

**The Minutes of
Honeyville City Board of Appeals
January 5, 2022 Special Meeting**

Andy Yeates called the meeting to order at 7:00 p.m.

Present were Board Members; Vickie Chidester, Thomas Bingham, Andy Yeates and David Hougaard.

There were approximately 7 members of the public present.

Andy Yeates offered the invocation & led the group in the Pledge of Allegiance.

BUSINESS:

A. Board of Appeals Training: Codey Illum, introduced himself stating that he is a member of the Planning Commission as well as the Zoning Administrator for Honeyville City. He referred to training information from the Utah League of Cities and Towns regarding Board of Appeals. The Board of Appeals works within the strict rules of the law as it is written. Decisions cannot be based on emotion, but on how the law was written and the intent at that time.

The Appeals authority cannot create or change the law, this can only be done by going through the Planning Commission and City Council. When making a decision they should refer to the following three questions:

1. Did the land use authority correctly interpret the factual situation?
2. Did the land use authority correctly apply the laws as it was written?
3. Did the land use authority violate the due process or any rule in that procedure?

It can be hard to leave personal feelings aside, however the ordinance and law need to be followed how it was written.

B. City Presentation: Codey Illum, the City's zoning administrator stated that Derek Farr is appealing a ruling that was made on his parcel. There was a letter sent to Derek on November 9, 2021 from the city stating that he is in violation of Honeyville City Code 10-24-4. The code reads as follows: **10-24-4: DISTANCE BETWEEN BUILDINGS**

An accessory building or structure for animals or fowl which exceeds four hundred (400) square feet shall be separated from a main building as follows:

- A. Same Lot: Thirty feet (30') from a dwelling located on the same lot.
- B. Adjacent Lot: Fifty feet (50') from a dwelling located on an adjacent lot.
- C. Existing Or Proposed Street: Fifty feet (50') from an existing or proposed street.

Codey I then read the definition of structure as defined in section **10-3-4: DEFINITIONS OF WORDS AND PHRASES: STRUCTURE**: Any building, shelter, sign, wall, fence, pole or other improvement with a fixed location on the ground or attached to something having a location on the ground.

This information was stated in the letter the city sent. Also, within that letter it states; "in response to your request for an administrative determination, determined that what you have built to enclose your horses was not a corral but a fence. (See administrative determination dated August 27, 2018). But this determination did not excuse you from compliance with the setback requirements for these types of fences. Your structure (fence) for your horses is closer than fifty feet from a dwelling on an adjacent lot." The letter also stated that Derek would have 30 days to bring his structure into compliance. Derek, as is his right, has decided to appeal this decision.

Andy Y asked for clarification on the zoning of the Farr property. The Farr property is zoned Agricultural 5. This raised the question of when permits are required because it is an agricultural area. **Codey I** clarified that according to state code, which the city has adopted, land owners should be applying for a fence permit before they build a fence. The board asked questions about Honeyville City's regulations on fence permit requirements. Codey reminded the board that the issue they were discussing wasn't whether or not a building permit was issued, but rather if Derek was within the setbacks set forth in the city code.

The Board wanted to know when the land owner was first noticed about this violation. It was clarified that a letter was sent under the previous administration letting the Farr's know that their fence was not compliant. Back in 2018 Codey I as the Zoning Administrator did an administrative determination regarding the Farr's property. He determined it was a fence however, throughout a litigation process the City's legal counsel found that the Farr "fence" is not a fence but rather a "structure" according to the way Honeyville City Code is written. The City's attorney has counseled the city that the Farr's are in violation and the structure needs to become compliant.

C. Farr Presentation: **Derek Farr** stated that he has not received anything stating that the administrative interpretation from 2018 has been overturned. He further shared that when he came to the city and spoke with the former clerk Emily, he was told he did not need a permit for the fence. He further shared that there are violations of this code all over the city and that he is being called out and forced to comply with a code that no one else is being held to. Derek showed pictures of individuals around town who he feels do not currently meet the code. **David H** stated that the purpose of the meeting tonight is not to catch other individuals who may not be compliant, but rather to determine if the city followed the process. **Derek F** directed the board to section 10-22- 14:B of the Honeyville City code which states "Prior Created Lots: On any

lot of record held under separate ownership at the time of passage of this title, such lot may be used for a single-family dwelling. The side yard requirements may be reduced in proportion to the reduced width of the front lot line of the property, but in no case shall the side yards be reduced to less than eight feet (8') on one side or twenty feet (20') combined". Derek felt that this applied to him because he feels his lot would be considered a "prior created lot". **David H** stated that this section of the code applies to where the Farr's could put their home on their lot, but does not excuse them from complying with section 10-24-4 of the code. Derek also directed the Board to section 10-5-21:E of Honeyville City's code. **Andy Y** stated that according to state code a fence is a division of property and what Derek has on his property is not a division of property. **Derek F** feels that the ambiguity lies within the code particularly in 10-24-4. He feels that no one would determine a fence as a structure. He also shared that previously the City had done an Administrative Interpretation that defined Derek's "structure" as a "fence". **David H** shared that there is a definition for fence and structure within the code. The board asked for further clarification regarding the Farr's structure. **Derek F** clarified that each pen is 600 square feet a piece. **Vickie C** asked when the Board of Appeals application was submitted. **Derek F** couldn't remember the exact date but stated he responded the Thursday after he received the City's letter, that letter was dated November 9. Later in the discussion, Brittney, the City Clerk verified that Derek Farr had informed her he would be filing an appeal on November 17th and that he submitted his appeal application on November 19th. **Vickie C** also asked about the marking on Derek's map that showed 2-3, she wasn't sure what this represented. **Derek F** clarified that marking represented 2 or 3 ft. **Vickie C** asked how the Farr's fence/structure was constructed. **Derek F** stated that the posts are drilled directly into the ground and that the entire fence/structure is held together with a weld and would consider it pretty permanent. There was further discussion regarding the spirit of the code and issues with the neighbors being in a lawsuit. **Vickie C** pointed out that someone could potentially live in that home and they would have to smell the horses. **Derek F** shared that his horses have exceptional care. The horse pens are cleaned, by hand, every day. **Andy Y** stated that becoming compliant with the city code would protect Derek from future issues. **Vickie C** stated that no matter how many days a year the neighbor lives in the home, they still have rights. She posed the question of why Derek wouldn't come into compliance by moving the fence/structure 2 or 3 ft. **Derek F** responded that he could become compliant, but asked why others are not being held to the same standard and referred the Board to section 10-5-22:E of Honeyville City's Code which states:

Approval Standards: The following standards shall apply to a variance:

1. The board of appeals may grant a variance only if:
 1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of this title is observed and substantial justice done.

Derek stated that he is asking for a variance, his reasons are as follows: 1. He feels that this issue will cause an unreasonable hardship. 2. He shared that he has special circumstances that pertain to his property because his frontage is less than the required 300', making him a legal non-conforming lot in A-5. 3. He expressed that other people in the same zone are enjoying the rights he is requesting. **David H** asked Derek to clarify what those rights are. **Derek F** clarified stating that others in the community are allowed to have a non-compliant fence. **David H** expressed that there are different ways to be non-compliant and that not all pertain to this situation. **Andy Y** informed Derek that some of these fences are also grandfathered in because they have been around for so long. There was further discussion regarding the code. It was pointed out that Derek is claiming a financial hardship but that the hardship Derek is experiencing is self-imposed and economic. It was also stated that the individuals that Derek feels are getting rights he is not being allowed, have never been cited for a violation. They may exist, but no one has been cited. It was further clarified that the difference with other situations around town and the Farr's is that the city is in a lawsuit and the city's attorney has directed them to instruct Derek that he is in violation of the code. **Derek F** feels that section 10-24-4 & 10-24-5 of the code should be re-written because it is unclear. He is requesting a variance until the code is addressed and then he is more than happy to comply with the code. Derek expressed frustration with his neighbor and the legal situation he is in, he feels that it is his right to contain his animals where he wants on his property.

David H asked Codey to interpret section 10-24-4:1 and how that would read if a dog is fenced in a yard. **Codey I** reminded the board that they were not there for this, but rather to determine if the city followed the proper procedures. The Board felt that they needed an interpretation to make a decision. Codey reminded them that he already made an interpretation regarding code and he was informed by the city's attorney that his interpretation was wrong. Because of this, if he received complaints regarding the code, he would defer to the city's attorney who should be looking out for the best interest of the city and its citizens. He then directed the Board back to the reason they were there, stating the Farr's had been sent a letter from the city informing them that they were in violation of code 10-24-4 and the Farr's decided to appeal this decision. The letters that were sent to Derek Farr were generated by the city's attorney and they were signed by the Mayor as a representative of the city. Codey further reported that this was not the first letter the Farr's had received notifying them that they were in violation. Back in August 2017, the former Mayor, Dave Forsgren, sent a letter to

the Farr's informing them they were in violation, but failed to lay out a timeline for when this needed to be corrected. However, that letter started the city in this direction. The city has been named in the lawsuit due to lack of enforcement. **Andy Y** asked about where the fault lies because Derek had asked the former clerk, Emily if he needed and fence permit and he was told no. **Codey I** expressed that this does not change the fact that the Farr's are in violation of the code. He reminded the Board why they were there and reiterated the process the city followed when noticing the Farr's of the violation (refer to the previous paragraph). **Mayor Bingham** stated that the city attorney advised him to offer the city's assistance to move the Farr structure and become compliant. The Mayor has reached out to Derek and offered the assistance and he told the Mayor that he would not move the fence until he is forced to.

Larry Haramoto's attorney requested to speak. The Board stated that he was not on the agenda and he was not allowed to speak during this meeting.

Derek F again expressed that he felt the code was ambiguous and asked the Board to consider a variance.

DAVID HOUGAARD motioned to Close the Open Meeting Enter into a Closed Session at 8:48 p.m. **VICKIE CHIDESTER** seconded the motion. MOTION CARRIED with Vickie Chidester for, Thomas Bingham for, Andy Yeates for and David Hougaard for.

Open Meeting Closed at 8:48 p.m.

THOMAS BINGHAM motioned to re-enter the Open Meeting at 9:32 p.m. **ANDY YEATES** seconded the motion. MOTION CARRIED with Vickie Chidester for, Thomas Bingham for, Andy Yeates for and David Hougaard for.

Open Meeting Resumed at 9:32 p.m.

DAVID HOUGAARD motioned to deny the request the Farr's presented. The decision for denial was based off of section 10-5-21:5 (or E), subparagraph 3 & 4. Subparagraph 3 reads: The board shall review an administrative decision for correctness and shall give no deference to the reasonableness of the decision being appealed. The Board finds that the city; the Mayor, City Council, Zoning Administrator, made their decision correctly as it pertains to the rules. Subparagraph 4 reads: Because the provisions of this title are in derogation of a property owner's common law right to unrestricted use of property, any provision of this title found to be ambiguous shall be construed in favor of the property owner. The Board feels that paragraph 10-24-4:2 (or B) clearly addresses setbacks and reads as follows: 10-24-4: DISTANCE BETWEEN BUILDINGS: An accessory building or structure for animals or fowl which exceeds four hundred (400) square feet shall be separated from a main building as follows: B: Adjacent Lot: Fifty feet (50') from a dwelling located on an adjacent lot. This section of code along with

the definition of structure as found in the Honeyville Code make this un-ambiguous. The Board was unable to find the code ambiguous when they refer to the sections listed above. The motion for denial seconded by VICKIE CHIDESTER. MOTION CARRIED with Vickie Chidester for, Thomas Bingham for, Andy Yeates for and David Hougaard for.

ANDY YEATES motioned to adjourn at 9:35 p.m. DAVID HOUGAARD seconded the motion. MOTION CARRIED with Vickie Chidester for, Thomas Bingham for, Andy Yeates for and David Hougaard for.

Meeting adjourned at 9:35 p.m.

The foregoing minutes were taken and typed by Brittiny Chlarson.

I certify these minutes to be true and accurate to the best of my knowledge.

ATTEST:

DATE APPROVED: 1/26/22



A handwritten signature in blue ink, reading "Brittiny Chlarson", written over a horizontal line.

Brittiny Chlarson – Clerk/Recorder

A handwritten signature in blue ink, reading "David Hougaard", written over a horizontal line.

David Hougaard – Board of Appeals