



ATTORNEYS

November 21, 2023

VIA Email and Hand Delivery

Susan McNamara-Hill
Essex Junction Town Clerk
2 Lincoln Street
Essex Junction, Vermont 05452

**In re. Jason Struthers
Notice of Violation of City of Essex Junction Land Development Code Section 724
(8 Taft Street)**

Dear Ms. McNamara-Hill,

Please find enclosed for filing with the Development Review Board a Notice of Appeal of the Notice of Violation dated November 20, 2023 sent to our client Jason Struthers and a copy of the Notice of Violation.

Also enclosed is a check for \$100 to cover the filing fee of the appeal. Thank you for your attention to this matter, and please be in touch with any questions.

Sincerely,

/s/ Megan Nelson
Megan Nelson Esq.
mnelson@mskvt.com

Encl.

cc: Chris Yuen (email)
Teresa Hass (email)

STATE OF VERMONT
City of Essex Junction, Development Review Board

In re. Jason Struthers
Notice of Violation of City of Essex Junction Land Development Code Section 724
(8 Taft Street)

NOTICE OF APPEAL

NOW COMES Appellant Jason Struthers (“Appellant”), by and through his counsel, MSK Attorneys, and hereby appeals, pursuant to 24 V.S.A. § 4465, the Community Development Director’s Notice of Violation (“the NOV”) of City of Essex Junction Land Development Code (“LDR”) Section 724 regarding 8 Taft Street. The NOV was issued on November 20, 2023. A copy of the NOV is attached hereto. Appellant is the owner of 8 Taft Street and therefore has a right to appeal pursuant to 24 V.S.A. § 4465.

First, the City of Essex Junction (“the City”), does not have authority to regulate Appellant’s duck farming operations at 8 Taft Street. Such issue is currently pending before the Superior Court Environmental Division (“Environmental Division”) in an appeal of this Development Review Board’s (“DRB”) decision to the contrary. The Vermont Agency of Agriculture, Food & Markets (“the Agency”) has determined that Appellant’s duck farm meets the definition of farming provided for in Section 2.16 of the Required Agricultural Practices Regulations (“RAPs”). The Agency has thus concluded that Appellant’s duck farm is regulated under the RAPs. 24 V.S.A. § 4413(d)(1)(A) states that:

(d)(1) A bylaw under this chapter shall not regulate: (A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

By completely prohibiting agriculture regulated by RAPs in any zoning district, such as Appellant’s, the City regulates Required Agricultural Practices in violation of 24 V.S.A. § 4413(d)(1)(A). As the Legislature has not provided the City with the power to regulate RAPs,

the City has no authority to enforce its LDRs against Appellant's duck farm. Thus, the City also has no authority to issue this NOV to Appellant regarding his duck farm.

Further, the City does not have the authority to enforce the NOV at this time since the pending appeal has divested the City of its jurisdiction over the matter. The subject of the NOV is effectively identical to the matter currently before the Environmental Division. The matter in this NOV and appeal is whether the City may enforce its LDC against Appellant's duck farm or whether the City's prohibition of Agriculture within the R-1 zoning district constitutes the regulation of Required Agricultural Practices, in violation of 24 V.S.A. §4413(d)(1)(A). This is pending as Questions 1 and 4 of Applicant/Appellant's Statement of Questions in Docket No. 23-ENV-00120. Therefore, whether the City is allowed to issue an NOV at all to Appellant's duck farm is also currently under appeal. The City's Zoning Administrator and the DRB have been divested of jurisdiction over enforcement actions against Appellant's duck farm while this appeal is pending. *Cf. Freimour & Menard*, 2012 WL 8898500, at *5, slip op. at 7 ("when Neighbors filed their notice of appeal on April 26, 2011, jurisdiction over consideration of Applicants' conditional use approval application, CU #397, was conferred to the Environmental Division and the ZBA was divested of such jurisdiction"); *see also In re Dorset Meadows Associates LLC PUD*, No. 2-1-19 Vtec, 2019 WL 1423064, at *3, slip op. at 7 (Vt. Super. Ct. Env'tl. Div. Mar. 19, 2019) (Walsh, J.) (DRB divested of jurisdiction to consider preliminary plat and master plan applications while appeal was pending before the Environmental Court).

Because the City has been divested of jurisdiction over the matter and for the sake of judicial efficiency, Appellant requests the City stay any enforcement action against Appellant's duck farm while the appeal is pending before the Environmental Division. In addition to the lack of jurisdiction, to come into compliance in the next 7 days would cause unnecessary waste and

injustice. To come into compliance in the time given would result in the slaughter of 50 animals. There is no location that is suitable to move the ducks at this time so culling them would be the only form of compliance available to Appellant. Appellant's ducks produce eggs or are sold live, they are not approved for the sale of meat and have never been culled in large numbers. If the Environmental Division determines that Appellant may continue with his duck farming operation, then Appellants entire business will have been destroyed by an enforcement action the City did not have the authority to bring. If the Environmental Division determines that the City may bring such an action, Appellant will of course come into compliance. However, because of the severe and permanent consequences of coming into compliance and the ongoing appeal, Appellant requests the City stay any enforcement action regarding Appellant's duck farm until the Environmental Division reaches a decision.

DATED at Burlington, Vermont this 21st day of November, 2023.

Respectfully Submitted,

MSK ATTORNEYS

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