

**Town of Red Hook
Zoning Board of Appeals Meeting Minutes
September 13, 2006**

CALL TO ORDER

The meeting was called to order at 7:15 p.m. by Timothy Ross, Chairman.

ROLL CALL

Members present: Kenneth Anderson, Gordon Denegar, Corinne Weber, and Tim Ross, Chairman.

Members absent: John Douglas, Robert Latimer, and Michael Mosher

PRELIMINARY BUSINESS

The minutes of the August 9, 2006 meeting were unanimously approved.

There was no comment on the Planning Board minutes.

Building Inspector/ZEO permits and letters: No comment.

Comments from the Chairman: It was noted that three applicants have formerly withdrawn their applications: John Corcoran, Ralph Choinsky and Glenn Coon.

Chairman Ross then stated that the Board would take a short recess for the purposes of consulting with Town Attorney Christine Chale regarding the Cokertown Rod and Gun Club appeal. The Chairman noted that no deliberations would take place in that meeting. The recess commenced at 7:20 p.m. and ended at 8:15 p.m.

Tim Ross described the meeting with the town attorney as a privileged discussion regarding the legalities of the decision before the Board.

PUBLIC HEARING - CONTINUATION

8:00 p.m. Appeal 06-11 Cokertown Rod and Gun Club application for interpretation of Chapter 143, Article VIII of the zoning law regarding non-conforming use. The Chairman asked that only new information be presented during the continuation of the public hearing. He indicated that since the last Board meeting he made a site visit to the property owned by Kathy Stewart and Carlos Gonzalez. John Hopler, the property owners, and one of their employees, walked with him on the portion of the property that is beyond the Rod and Gun Club's berm. There was some evidence that bullets have crossed over the berm. That is not the fact before the Board, but is a point of information that Ms. Stewart and Mr. Gonzalez wanted brought forward. Another point: in discussions with Club members, it has been noted that some newspaper articles have been a bit unfair and somewhat slanderous toward members. The Chair stated that this was not appropriate. The members of the Club have different interests than some of the

neighbors. This does not make them terrorists, does not make them bad people, just individuals with different interests and passions. The Board intends to come to a resolution in a civilized manner; the name-calling and mud slinging is not doing anyone any good. Mr. Ross then noted that the Board had received the Sept. 8, 2006 letter from attorney Jeffrey Rothschild. That letter is attached to, and made part of, these minutes. The Chairman then opened the public hearing at 8:20 p.m.

Kathy Stewart, Red Hook: Has dealt with John Hopler of the Rod and Gun Club and has found him to be very helpful. Knows of no one connected with her or no one she knows who had been “slinging mud”. (*Tim Ross interrupts to say that his comments were not directed at anyone in particular.*) It is understood that the Club members have different interests than the neighbors. That’s America.

Tim Ross: His comments were triggered by editorials in the newspaper.

Kathy Stewart: Recently? She did not see any.

Tim Ross: He personally did not see it, but members of the Club did and were upset by what was written.

Peter Klose, Attorney for Kathy Stewart and Carlos Gonzalez: Since a membership list for the Club has not been produced or disclosed, he asked if any Board member or family member was a member of the Rod and Gun Club. (*Board members were polled. None were personally a member or had a family member who was a member of the Club, except Tim Ross. He stated that his older brother was a member in the 1970s, but has not been a member since.*) Mr. Klose then asked if, other than Attorney Rothschild’s Sept. 8th letter, additional evidence had been submitted.

Tim Ross: Other than his site visit to the Stewart/Gonzalez property, which showed evidence of bullets crossing over the berm, no other evidence has been submitted.

Mickey Steiman, Attorney for Jean Horkan: With regard to Jeffrey Rothschild’s Sept. 8, 2006 letter, which indicated that a list of names of Club members would not be provided: believes it would be difficult for the Board to make a decision with out the factual element of who the members are, both range members and regular members. Feels that Mr. Rothschild’s characterization of the membership list as proprietary in nature is telling. Thinks of something that is proprietary as something that is secret; something one does not want one’s competitors to know; or, something in a mercantile sense that is being marketed. Does not know why the records are not being turned over and was present at the Board meeting at which the Chair requested a list of the members. The only thing provided was an approximation of numbers of members. The issue of members, who are only Range members with no privileges, and full members, is of critical importance as to whether the use has been enlarged and expanded. Additionally, another issue is when the shooting range actually came into existence as it is today, and when the shooting shed was constructed. The building permit, which was issued in 1997, indicates the shed was started in 1991. The redacted financial records submitted by the

Gun Club show it as a project, as late as Dec. 22, 1992—not a completed event. The records indicated that some bags of cement, blocks and dirt fill were purchased, totaling about \$1,000. This is important as to when the shooting range and shed came into existence because it is fairly close to Feb. 8, 1993, which is the critical date in this matter.

Tim Ross: Assures that the Board has analyzed all the facts intently.

The Chairman then asks if there is any other public comment. Hearing none, he closes the public hearing at 8:25 p.m.

Mr. Ross states that the Board has reviewed all of the information provided by the Gun Club, by neighbors, town records and town laws. This information has been compiled into a document that he will read aloud, followed by a Board discussion. The applicant will then be given the opportunity to decide if it wishes the Board to make a decision this evening, or wait until the next meeting where potentially more Board members would be present. With only four members present at this meeting (a majority of the Board), a unanimous vote would be required to overturn the cease and desist order. The Chair then reads the document, which, as a preamble to the Board's decision, is attached to and made part of these minutes.

While reading a list of the documentation reviewed by the Board, Peter Klose asked the Chairman to include the following: photographs of the Stewart/Gonzalez property that he submitted on behalf of his client at the Aug. 9, 2006 meeting; his letter dated July 13, 2006; and, Bob Fennell's letter of July 14, 2006. Town Attorney Christine Chale indicated that these documents would be added to the list.

Upon completion of the reading the Chair notes that it was a summary of the facts the Board reviewed. He asks the Gun Club if they wish to have the Board vote at this meeting, noting that although there are only four Board members present, they are in a position to make a decision. However, three members are absent.

The Club members confer with their attorney. There is a general discussion regarding the fact that if the cease and desist order is to be overturned or modified, a minimum of four votes (a majority of the Board) would be required. Since only four members are present, that would necessitate a unanimous vote. If it is not a unanimous vote, the order stands.

Mr. Ross asks the Board if there is any discussion regarding the document he read. Ken Anderson asks if the use of the club and its facilities are monitored. John Hopley states that there is a gate with a combination lock so that only members can enter. There currently is no type of log or sign-in sheet.

Mr. Rothschild then requests, and receives, clarification regarding the voting process. He states that the cease and desist order read to him as if all activity of the Rod and Gun Club would be shut down; Bob Fennell always stated that was never his intention. But, how can the Club ask for a vote if it does not know the effect of the cease and desist order? He asks if anybody knows the effect. Chairman Ross states that the Club should

not do anything it didn't do prior to March 8, 1993. Mr. Rothschild replies that the order doesn't say that. Attorney Christine Chale points out that is the reason they are before the Board. The Chair, as a courtesy, is offering to table the matter until the next meeting when it is more likely there will be a full Board present.

After further conferring with the Club members, Mr. Rothschild states that the Club has decided to ask the Board to vote now.

Tim Ross then makes the following motion:

NOW, THEREFORE, BE IT RESOLVED, that:

1. The appeal from the Cease and Desist Order is denied. This Board finds that there was sufficient evidence before the Zoning Enforcement Officer and Building Inspector to determine that as of the date of the Cease and Desist Order, the use of the property significantly exceeded its permitted nonconforming use status and was therefore illegal. The Cease and Desist Order is modified in part as further provided in Section 2 below.
2. The use of the property of the Cokertown Rod and Gun Club at 516 Turkey Hill Road as a rod and gun club continues to be a valid nonconforming use but only to the extent of the use existing as of March 8, 1993. Based on the evidence provided, such use is found and determined by this Board not to exceed the following:
 - a. Use of range and traps during the hours of 8 a.m. to 7:00 p.m., with not more than 10 hours per weekly period, plus an additional 8 hours per weekend for up to twelve weekends per year.
 - b. Number of concurrent users of the range and traps not to exceed four, with the exception of up to twelve weekends per year, at which time the number of concurrent users may be up to 15.
 - c. Use exceeding such level is prohibited by law as an impermissible expansion of the prior nonconforming use.
3. Any further expansion, modification, or addition to the physical structures on the property will require site plan approval in accordance with Section 143-125 of the Code.
4. Further use as a rod and gun club in accordance with such nonconforming use status must comply with all applicable codes, ordinances, regulations and other requirements, including without limitation the following:
 - a. The Town's Zoning Law at Section 143-25 regarding Noise. The Club shall take reasonable measures to mitigate the sound emanating from the Club Property at the property line such that there is no violation of the Noise Ordinance.
 - b. State laws regarding trespass. The Club shall modify its berm such that no ammunition will regularly travel outside the property boundary. The Club continues to be solely responsible for safe operation and to prevent trespasses occurring on neighboring property.
 - c. State and federal laws regulating disposition of lead shot.

5. A copy of this decision shall be filed with the Town Clerk, the Zoning Enforcement Officer, the Building Inspector, and the Secretary of the Planning Board within ten days of adoption of this resolution.

Corinne Weber seconds the motion. There was no discussion. The motion was unanimously carried by the following roll call: Kenneth Anderson—yes; Gordon Denegar—yes; Tim Ross—yes; Corinne Weber—yes.

Tim Ross states that the Board has clarified the cease and desist order to reflect what the evidence showed with regard to how the Club was used prior to March of 1993. That is the intent of the motion that was just passed. He then asks if there are any questions.

Peter Klose: What does the decision say about the building?

Tim Ross: Nothing, that matter was not before the Board.

Christine Chale: There are findings that relate to that matter.

Susan Elias, Red Hook: Will this be monitored?

Tim Ross: As with any zoning law, no, there is no continuous enforcement. However there will be a response to complaints.

Susan Elias: What about the berm? Would you check that to see if it was altered?

Tim Ross: That is the responsibility of the Club—to prevent their shots from trespassing onto the Stewart/Gonzalez property.

Mickey Steiman: Was there a specific finding that the building permit and the certificate of occupancy were improperly issued?

Tim Ross: That was noted in the findings but is not relevant to the appeal before us.

Mickey Steiman: Can the Club members now use the shooting shed as a building without a certificate of occupancy, which was used for the expanded use? That's an important issue for us because part of it may encroach on my client.

Christine Chale: My understanding of the Board's decision is that they made a finding that the building permit and the certificate of occupancy were inappropriately issued, but they did not include in their decision a determination that the current use of the shoot shed is illegal.

Mickey Steiman: But the building itself can't be used if the certificate of occupancy was improperly issued. As I understand it, without a proper CO the building can't be used, therefore the building can't be used for any purpose.

Christine Chale: That is not the decision of this Board.

Tim Ross: That's a separate issue.

As there were no further questions or comments, the meeting was adjourned at 9:20 p.m.

Respectfully submitted by,

Lea Cassarino
Clerk of the Board



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letter.rtf"



"Cokertown FINAL
Findings and Decisior

Attachments: