

To the editor:

I am an attorney representing Martin Roby of recent chicken fame. Although the following is rather lengthy, it is meant to provide a history of Martin's struggles with the Town of Stuyvesant, which he chose as a location for his family farm because of their right to farm law, and their demonstrated commitment to the development of a comprehensive plan which identified agriculture as the town's primary land use. He was aware that the Town had received funding from the Hudson River Greenway Communities Council's "model communities program" to achieve that goal, and that Stuyvesant was the recipient of several state farmland protection grants in partnership with Scenic Hudson. To Martin, who really wanted to be a farmer, the location seemed ideal.

Martin Roby originally had difficulty containing his livestock because Gerald Ennis insisted that he could not erect a fence. He was cited at least once because they had escaped from containment. They are now properly contained, healthy, and well cared for. But this was only after a protracted, frustrating, and expensive battle, which Martin and I had believed was finally finished.

In the beginning, Martin did everything he could to control his poultry, including imposing the unhealthy alternative of keeping them confined in an incomplete structure. It was incomplete because during Martin's renovation of his poultry outbuilding, Gerald Ennis stopped by, looked over the structure, saw what Martin was doing, and assured him no permits were necessary. Specifically, Martin was installing better windows and weatherproofing for what was to be a permanent poultry house. But not long after his visit Gerald Ennis posted a stop work order on the outbuilding. On the order itself there's a space where the reason for the order is to be clearly written, which was left blank.

My first conversation with Gerald Ennis was brief, and the only answer I could get from him was that "Mr. Roby needs a permit." Okay...a permit for what? The reply was simple: he needed a permit to correct his building violation, and also a permit for a fence if it is to be over four feet high. Furthermore, Mr. Ennis stated, Martin could not have a permit for a fence until he brought his building violation into compliance.

We immediately adopted the position that fencing a proper pen to confine his flock was a separate project from any building alteration, and conditioning one on the compliance with another did not seem to be rational in terms of achieving the ends of community zoning and building codes. The health of the poultry was at stake and, furthermore, because Mr. Ennis had initially stated that no permits were necessary, we really needed to know what we were supposed to apply for in terms of any structural permit. Martin contacted an architect who held the same position: he needed to know what he was supposed to focus on.

My first written contact with Mr. Ennis was on April 4, 2005, and in that letter I stated: "...please explain in your reply the reason for the current 'Stop Work Order' posted at the property location, signed by yourself. No steps can be taken to alleviate this problem

without understanding, exactly, what the problem is. I am sure you are aware that § 382 of the NY Executive Law directs a remedy to the community in the event of a 'knowing' violation. At this point in time, Mr. Roby has no direct knowledge of any violation on his part whatsoever." There was no reply.

I wrote Mr. Ennis again on April 11, 2005. We again pressed the issue that Martin wanted to comply with the necessity of any permits, etc., and was willing to hire an architect if necessary. The only thing we needed to know was: what was Martin violating? It is quite difficult to apply for a permit for an unknown. At the same time, I began contacting the Town requesting copies of the Zoning Ordinance and other relevant information. After a lengthy delay, I finally received a fair portion of what I requested.

The materials revealed what I had suspected. Martin's use of his land was a qualified agricultural activity under the Town Zoning Ordinance, and as such he was exempt from any permit requirement for any fences he might need, of any size. Gerald Ennis would later insist (on my voicemail, reproduced on Martin Roby's web site at <http://www.eichybush.com/e.mp3>), that Martin's "own personal chickens" do not fall into the category of agricultural use. In my written reply I cited the Town Of Stuyvesant Zoning Ordinance, Section 2, Definitions, page 5, where "agricultural" is defined as:

"Agricultural - The production, keeping or maintenance, for sale, lease or personal use of plants and animals useful to man, the harboring of more than five (5) animals of any species with the exception of the keeping of household pets, and/or the cultivation of food products or other useful growths of the field, forest or garden for personal use, business or gainful operation."

I advised Martin that he was entirely within his rights to go ahead and erect his fence, but he was a bit frightened to do so immediately. There were some threatening encounters with a specific local resident. I further advised him that he was in an "agricultural district" and not in a "hamlet zone" which would impose further restrictions. The Town had no right to "interpret" their clearly-worded Ordinance in an idiosyncratic manner. At this point we knew we were going to file an appeal to the zoning board, which we expected to be rejected, and were also beginning to prepare for a civil suit against the Town of Stuyvesant. In addition, we considered filing in federal court on the grounds that Martin was the victim of discrimination by the Town.

While I researched and prepared for Martin's day in court, I discovered several things:

1. "Personal use" was not defined anywhere in the Zoning Ordinance.
2. Various advisory opinions, papers, and judicial proceedings have held that the authority to issue a Stop Work Order must derive directly from a Zoning Ordinance, and, at that time (I hope this has been corrected), The Town of Stuyvesant Zoning Ordinance did not appear to grant any zoning enforcement officer of the Town the specific authority to do so (see e.g. NYDOS, "Zoning Enforcement," at 6 [Jan. 2003]).

3. The Stuyvesant Zoning Ordinance, Section 10, Administration and Enforcement, Violations, page 33, directed to an enforcement officer issuing any notice of violation that the "...notice shall include the description of the alleged violation, including the section of the ordinance violated." Of course, this was not done in this case. Note the use of the word "shall" which, according to the canons of legal interpretation, does not provide an option to do otherwise.

4. While researching this matter with the NY Department of State, I discovered that Mr. Gerald Ennis's name was missing from the list of certified active code enforcement personnel. There are continual training requirements set forth in Title 19 of the NYCRR for zoning enforcement officers, and those current in their continuing education requirements are listed on the DOS web site. As of January 30, 2006, he remained unlisted. Unless there is some mistake, Mr. Ennis may not have the authority to act in his position.

I informed Mr. Ennis of all of this. In early May I filed an appeal with the zoning board, a copy of which is attached to this message. This was never to be heard. In a complete turnaround, I was contacted by an attorney who informed us that we were correct in our interpretation, the Town apologized, Martin could have any fence he wanted, and that he would receive any permits he needed to proceed. Within days, Martin erected his fences and applied for, and received, his permits. We believed that was the end of the story.

Martin Roby is energetic, brilliant, and of sufficient means to be able to build and operate a well-planned family farm. This is all he is trying to do. A visit to his farm would not show otherwise. I am surprised at this recent turn of events. Mostly I am surprised that the Town would enact this legislation at all; it is ridiculously punitive, and at this time, although I cannot reveal our exact strategy, I can hint that it could easily be successfully challenged in state and possibly also in federal court. As I stated on the Independent's website beneath the initial article, "...to pass a law for the purpose of targeting a specific individual is an egregious abuse of power. To admit that one is doing so at a public meeting is sheer stupidity." The last time I checked, we in the United States still had a Constitution. And, I believe it safe to say that the Town of Stuyvesant is not privileged to violate it without consequence.

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