

**IN THE MUNICIPAL COURT
OF**

ROSWELL, GEORGIA

CITY OF ROSWELL,

CASE NO. C-00866

Plaintiff

-vs-

ANDREW STEVENS

WORDES, Defendant

CITY ORDINANCE

- ORDER -

History

The above-entitled matter came on for arraignment on March 19, 2009 at which time the Defendant appeared with Counsel, entered a plea of Not Guilty, and filed his General Demurrer to the accusation.

The City of Roswell responded thereto on May 22, 2009.

The Defendant has filed an additional Demurrer on May 26, 2009, and at the same time has filed a Plea in Bar.

The City of Roswell has notified the Court that it has no desire to argue the merits of the Demurrers and Plea in Bar, and has chosen to rely upon the response and brief on file with the Court.

The Court is satisfied with the present status of this case, and finds that further oral argument would serve no useful purpose in resolving the matter, and that neither party has requested oral argument.

Facts:

The Defendant is a resident of the City of Roswell, residing at 335 Alpine Drive within the corporate limits of Roswell, and was so residing on the 17th day of February, 2009, and remains in residence there at the present time.

The above address is located in an R-1 zoning district.

The Defendant was on February 17, 2009, and has been since said date, in possession of live chickens on his property at the above address.

Contentions of the parties:

Defendant contends that the chickens are pets, and that pets are not prohibited in the R-1 zoning district.

The City contends that chickens are livestock, and are not allowed in the R-1 zoning district.

Applicable Law:

The ordinance under which the Defendant is charged reads as follows:

Section 5.3.2 Permitted and Conditional Uses

Permitted and conditional uses shall be as provided in Table 5.1, "Permitted and Conditional Uses for Residential Zoning Districts." TABLE 5.1 provides that "livestock raising, not including poultry and hogs" is prohibited in the R-1 zoning district.

Construction of an ordinance is a question of law subject to the canons of statutory construction, and it is the court's duty to determine and put into effect the intention of the lawmakers. *City Of Atlanta v. Miller*, 256 Ga. App. 819 (2002); *DeKalb County v. Post Apartment Homes* 234 Ga. App. 409, 411 (1998).

All the words of the legislature, however numerous, ought to be preserved, and effect given to the whole, if it can be done. No doubt courts could sometimes better legislation by rejecting some of the words delivered to them by the legislature for construction; but to do this courts have no power." *Smith v. Davis*, 85 Ga.625 (631).

Bo Fancy Productions, Inc. v. Rabun County Board of Commissioners, 267 Ga.341 (1996) held that "Zoning ordinances are to be strictly construed in favor of the property owner" quoting *Harrison v. City of Clayton*, 261 Ga. 513 (1991).

"Since statutes or ordinances which restrict an owner's right to freely use his property for any lawful purpose are in derogation of the common law, they must be strictly construed and never extended beyond their plain and explicit terms."

Fayette County v. Seagraves 245 Ga. 196, 197-8 (1980).

Any ambiguities in the language employed in zoning statutes should be resolved in favor of the free use of property. *City of Cordele v. Hill* 250 Ga. 628 (1983).

Even though they are to be strictly construed in favor of the property owner and any ambiguous language therein is to be resolved in favor of the free use of property, zoning ordinances nevertheless must be given a reasonable construction. *Board of Commissioners of Henry County v. Welch*, 253 Ga. 682, 683 (1985).

Stanfield v. Glynn County, 280 Ga. 785 (2006) reaffirms that zoning ordinances are to be strictly construed in favor of the property owner..."Since statutes or ordinances which restrict an owner's right to freely use his property for any lawful purpose are in derogation of the common law, they must be strictly construed and never extended beyond their plain and explicit terms, and any ambiguities in the language employed in zoning statutes should be resolved in favor of the free use of property. *Bo Fancy Productions v. Rabun*

County Board of Commissioners, 267 Ga. 341, 342-3 (1996).

In 2008 our Georgia Court of Appeals in *Henry v. Cherokee County*, 290 Ga. App. 355 told us again that "The construction of a zoning ordinance is a question of law for the courts. In construing such an ordinance, we consider the general rule that the owner of land in fee has the right to use the property for any lawful purpose. Since zoning ordinances restrict an owner's right to freely use his property, they are in derogation of common law. Thus, they must be strictly construed in favor of the property owner and never extended beyond their plain and explicit terms. Any restrictions must be clearly established, and ambiguities in the language of zoning ordinances should be resolved in favor of the free use of property." *Cherokee County v. Martin*, 253 Ga. App. 395, 396 (2002).

Northside Corporation v. City of Atlanta, 275 Ga. App. 30 (2005) adopted language stating that "The construction of a zoning ordinance, under the facts, is a question of law for the courts, and in construing it the cardinal rule is to ascertain and give effect to the intention of the lawmaking body." *DeKalb County v. Post Apartment Homes*, 234 Ga. App. 409, 411 (1998), and followed the 2002 case of *Cherokee County v. Martin*, 253 Ga. App. 395, 396 in which it stated that "zoning ordinances must be strictly construed in favor of the property owner and never extended beyond their plain and explicit terms."

Conclusion:

The parties having submitted briefs outlining their contentions, and furnishing their respective statements of authority, and having waived oral argument, and it

Appearing that the City Ordinance under which the Defendant was charged appears on its face to be too vague and ambiguous for enforcement in that a reading of the Ordinance would lead one to believe that the raising of livestock, "not including poultry and hogs" would be prohibited in this zoning district. If they are not included in the prohibited "livestock" then there would be no such prohibition against them, and now, therefore, after due consideration by the Court, it is

ORDERED and ADJUDGED, that the General Demurrer filed by the Defendant herein be, and the same is hereby

SUSTAINED, and the case is hereby
DISMISSED.

This 5th day of June, 2009.


MAURICE H. HILLIARD, JR., Judge
MUNICIPAL COURT OF ROSWELL