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**TRANSCRIPT OF PROCEEDINGS**

**ORANGE COUNTY BOARD OF ZONING ADJUSTMENT**

**BZA NO.:** ZM-07-10-010

**APPELLANTS:** David W. & Jennifer T. Foley

**DATE:** November 1, 2007

**LOCATION:** Orlando, Florida

**BOARD MEMBERS PRESENT:**

Frank DeToma, Chairman

Asima Azam

Roderick Love

Scott Richman

Joe Roberts

Marcus Robinson

**ALSO PRESENT:**

Rocco Relvini, Zoning Department

Tara Gould, Orange County Attorney

Howard Carling, neighbor in favor of appellants



1 representation, legal counsel, is here today to address that point, if necessary.

2 The facts on this case are these: in May of 2007 Code Enforcement Division

3 received a complaint about this property; they investigated and discovered

4 enclosures behind the residence containing exotic birds; Code Enforcement

5 cited the applicant, or appellant in this case, for having enclosures in his

6 backyard without proper permits; on April 18<sup>th</sup>, 2007, the Code Enforcement

7 Board found the appellant in violation of having unauthorized structures in his

8 backyard and directed the appellant to come into compliance by June 17<sup>th</sup>, a

9 couple of months later, 2007; on June 18<sup>th</sup> 2007 the site was re-inspected and

10 was found in compliance; the appellant did remove the enclosures; the case was

11 closed; then the appellant and the Zoning Manager began to discuss the real

12 intent of this issue, which was whether or not the property owner can set up

13 enclosures in his backyard to raise exotic birds and sell them from his house

14 which is zoned single-family residential. The property is zoned R-1A. The R-

15 1A district is a single-family housing district. Most of the County's single-

16 family residential subdivisions are zoned R-1A. The Zoning Manager

17 determined the setting up of enclosures to hold birds, breed the birds, and sell

18 the birds, is not a permitted use in the single-family residential zoning districts.

19 The Zoning Manager determined this use to be Commercial Aviculture, which

20 is not permitted in single-family residential districts. The Zoning Code defines

1 Aviculture as the raising, breeding, and/or selling of exotic birds, excluding  
2 poultry for commercial purposes. This is what the appellant intends to do. Once  
3 again, Commercial Aviculture is not a permitted use in the zoning regulations.  
4 Our graphic apparatus is not working today. So, I have quite a few exhibits that  
5 I need to explain and then our staff will present them to the BZA for their  
6 review. I have a zoning map that indicates and highlights the property and  
7 shows the properties in yellow are zoned single-family residential. And then,  
8 following that, there is an exhibit I have which is an aerial that gives the BZA  
9 and overview, sort of a crow's view, of what ... of the layout of the land, the  
10 structures that exist, and how the residential community is laid out. I also have  
11 an exhibit that indicates the ... I have an exhibit that shows the Code  
12 Enforcement's violation, and the description of the violation. And then I have  
13 photographs that show the applicants enclosures when they were in fact in his  
14 backyard. Again these enclosures ... excuse me for a second ... OK. So that the  
15 viewing public can see the exhibits, these are some of the photographs of the  
16 enclosures the applicant had in his backyard. Again, they're not existent today.

17 **FRANK DETOMA:** Mr. Relvini, excuse me, you said that there was one of the  
18 exhibits you have there ... Is that the ... Is that the Code Enforcement  
19 violation? That was not in our booklets.

1 **ROCCO RELVINI:** Correct. Then I have an exhibit of the first page of the  
2 applicant's website that gives a little bit of background of, I guess, of the  
3 business he has. And then we also have another exhibit which is the applicant's  
4 sales agreement for any buyer in case they wanted to buy the birds in question.

5 **JOE ROBERTS:** Mr. Relvini, could you put the picture of the cages that you had  
6 previously back on the screen back up there.

7 **ROCCO RELVINI:** Can you see them? It looks like we have ... Can you see'em  
8 on your screen?

9 **FRANK DETOMA:** Our screens are not on.

10 **ROCCO RELVINI:** OK. Very good. Let me ... I apologize for this. I didn't  
11 anticipate the malfunction this morning. Here's the zoning map. This is the  
12 property. Here's the aerial. That's the property. We only have black and white  
13 apparently; the color's not working. And then this is a copy of the violation –  
14 it's not the actual violation notice, but this is off Code Enforcement Division's  
15 website, and I highlighted in yellow exactly what they ... what the applicant  
16 was cited for, and what the required action was. I just say that as an ...  
17 informational purposes only because the applicant did, in fact, comply with the  
18 Code Enforcement's directive. And then this is the applicant's sales agreement.  
19 Obviously, I'm not going to go through one line at a time, but it says here  
20 Seller, Buyer. There's another page to it as well. And what we have here on this

1 next chart is ... hum ... if I can zero in ... This is the County's Zoning Use  
2 Table, and this is the Table that outlines the uses that are allowed, not allowed,  
3 in Orange County, and those that need Special Exceptions. And I highlighted  
4 here Commercial Aviculture, aviaries. And then here up on top will give you  
5 the zoning districts that it's allowed in. And if you follow my pen, you can see  
6 that in the R-1A zoning district there's no permitted symbol ... sorry ... here ...  
7 So, the use is not permitted in the zoning district. Here is a definition of  
8 Commercial Aviculture. It's a very lengthy definition, and let me just state here  
9 in the record that they give you a couple of characteristics of a Commercial  
10 Aviculture, number one being that "The operations exists with the intent and for  
11 the purpose of financial gain." Number five, "Sales are conducted at the subject  
12 location." Number six, "The operation involves birds or supplies which were  
13 purchased or traded for the purpose of resale." And then, finally, " The  
14 operation or activities related thereto are advertised, including, but not limited  
15 to, newspaper advertisements or signs." And this exhibit here is a definition of a  
16 Home Occupation. I'm not going to go through it line by line. However, they do  
17 give you some examples of what a Home Occupation is, or are not: "Home  
18 occupation shall not be construed to include barber shops, beauty parlors, plant  
19 nurseries, teasrooms, food processing, restaurants, sale of antiques, commercial  
20 kennels, real estate offices, or insurance offices." Here's a definition of an

1 accessory use. I will be passing these to the Board for their review. And this is  
2 an accessory structure or use definition. I'm showing the BZA these definitions  
3 because the appellants information package he has referred to these two items  
4 as being what ... what ... he feels that ... this is what he should fall under – the  
5 accessory structure and use, and home occupation. Finally, staff did receive  
6 three commentaries in opposition and ... uhm ... none in favor. However, that's  
7 just for information purposes as well. The applicant contends that his use is not  
8 the Commercial Aviculture but an accessory use and/or a home occupation. The  
9 Zoning Manager contends the applicant's use and operation has more  
10 characteristics of a Commercial Aviculture use than an accessory use like a  
11 pool or a shed or a home occupation like conducting arts and crafts from one's  
12 home. The BZA needs to understand that this is a policy determination that will  
13 effect the entire County; this is not simply a matter of who is opposed and who  
14 is favor. This is ... If the BZA overrules the Zoning Manager every single  
15 family residence zoned single-family would be allowed to set up enclosures and  
16 breed and sell exotic birds from their homes. Once again, if the BZA concurs  
17 with the applicant, they should overrule the Zoning Manager. If not, then they  
18 should uphold the Zoning Manager. And that concludes staff's presentation.  
19 The staff's recommendation, obviously, is to uphold the Zoning Manager's  
20 Determination. Mr. Chairman.

1 **FRANK DETOMA:** Thanks, Mr. Relvini. Uhm. I'm going to have the applicant  
2 come up. But I also wanted to have the County Attorney staff speak on this  
3 matter ... and probably ... If you don't mind, let's do it first. Can I have County  
4 staff make some comments ... the legal nature of the application. This is  
5 something that we have not done in the past. We have uphold ... upheld and  
6 discussed Zoning Manager appeals before hand. I am loath to get involved in an  
7 issue that is going to effect the whole County ... and rezone ... But I want to  
8 find out the staff ... County staff ... legal staff's opinion on this ... And, if you  
9 can keep it kind of short.

10 **TARA GOULD:** Good afternoon. My name is Tara Gould and I am an Assistant  
11 County Attorney – for those of you whom I haven't met. Just as a reminder for  
12 the BZA the issue of whether or not the County ordinances are constitutional or  
13 invalid is not before the BZA. That's properly going to be before a court of  
14 competent jurisdiction which, of course, the applicant, if he chooses to do so,  
15 would have the opportunity to bring that ... to bring that challenge. The issue  
16 before the BZA is solely whether or not to uphold the Zoning Manager's  
17 Determination as it relates to Commercial Aviculture and Home Occupation.  
18 Uhm. Having said that, the County Attorney's Office has reviewed in general  
19 the authority of the County to adopt land use regulations as it relates to  
20 commercial uses within its jurisdiction ... and ... you know ... feels very

1 confident that we have the authority to regulate commercial land use ... which  
2 is the issue before the BZA today.

3 **FRANK DETOMA:** OK. Questions of the County Attorney by my fellow Board  
4 members? OK. I'm going to have the applicant come up here. Is he here? Hi.  
5 Please come forward, sir, mame. State your name and address for the record.  
6 This is in District 3. This is in Mr. Roberts' District.

7 **JOE ROBERTS:** Mr. and Ms. Foley, please step forward there. Again, state your  
8 name and address for the record.

9 **DAVID FOLEY:** My name is David Foley.

10 **JENNIFER FOLEY:** My name is Jennifer Foley.

11 **DAVID FOLEY:** We live at 1015 North Solandra Drive.

12 **JOE ROBERTS:** OK. Mr. and Ms. Foley, we have all your data that you  
13 originally sent us. I put mine in book form here. So, in relationship to this ...  
14 without going page by page ... can you ... you want to add anything to this?

15 **DAVID FOLEY:** We have prepared about a ... like a ten minute explanation. Can  
16 we give you that?

17 **JOE ROBERTS:** Yes, sir.

18 **DAVID FOLEY:** So, as we said, we live at 1015 North Solandra, and we've been  
19 there for seventeen years.

20 **JENNIFER FOLEY:** With our nearly 13 year-old daughter, Ellen.

1 **DAVID FOLEY:** We're here to ask you for two things. We'd like to keep our  
2 backyard bird business. We'd like to rebuild our aviaries with galvanized sheet  
3 metal. Specifically, what we'd like to ask you to reverse the Zoning Manager's  
4 Determination and TO issue an Order stating: Commercial Aviculture is  
5 permitted as a Home Occupation/Accessory Use in R-1A and that Galvanized  
6 sheet metal as siding does meet the requirements of §38-79 (114).

7 **JENNIFER FOLEY:** And there's a simple way to do this, that is to read the  
8 definition of Home Occupation, Accessory Use, and Condition 114 and then  
9 decide for yourselves.

10 **DAVID FOLEY:** I'm confident you'll see that we have good reason to be here,  
11 and I intend to give you good reason to approve our request, so that we can get  
12 back to our bird business; and rebuild our aviaries.

13 **JENNIFER FOLEY:** But before we take that simple step, we want to tell you  
14 why we have to take it at all.

15 **DAVID FOLEY:** Code Enforcement treats birds differently than dogs and cats. I  
16 can actually sell a few dogs and cats at home – but not birds. Code Enforcement  
17 took action against us because had a website where we promoted the business  
18 and where we offered birds for sale. A website that offers birds for sale is  
19 enough to label what we do Commercial Aviculture, and that triggers a Code  
20 Enforcement Action. A website advertising dogs wouldn't do that. Code

1 Enforcement doesn't bother the backyard dog breeder until they have more than  
2 20 dogs, or until they produce more than, or sell more than two litters in a given  
3 year. In fact, the Animal Services section of the Code makes a distinct between  
4 commercial and non-commercial kennel. And a non-commercial kennel is at a  
5 residence, selling dogs, but no more than 25% of the income comes from dog  
6 sales. So, you can see there's an imbalance between the way Code Enforcement  
7 practice deals with dogs and cats, and birds ... enough to raise the question, "Is  
8 this really what the Code intends? Does the Code intend for me to get out of the  
9 bird breeding business business, and switch over to dog breeding business?" I  
10 don't think so. And I think you'll agree: we really can get back to our limited  
11 bird-breeding business, and rebuild our aviaries.

12 **JENNIFER FOLEY:** And I think that, too, and one way I think you can do that is  
13 to say that backyard bird breeding is an accessory use just like backyard dog  
14 breeding.

15 **DAVID FOLEY:** Now, the Zoning Manager has said, No. Backyard bird breeding  
16 is not an accessory use. He hasn't explained that. But even I have some  
17 reservations. Backyard dog breeding as an accessory use has some limitations;  
18 the code gives it very clear limitations. But backyard bird breeding as an  
19 accessory use doesn't have any limitations in the Code. Only the general, open-  
20 ended, almost subjective limitations of accessory would apply. And those are

1 that the use be subordinate, customarily incidental and typically found in  
2 association with the principal use. That doesn't put any limit on the number of  
3 birds that can be at the residence, that doesn't put any limit on the number of  
4 birds a person can raise, that doesn't put any limit on the number of birds can  
5 sell. But Home Occupation does put some limits on that. Home Occupation  
6 does squeezes the backyard bird breeder into a little box that fits into a  
7 residential neighborhood.

8 **JENNIFER FOLEY:** So, now we'd like to – if you're ready – take a look at the  
9 definition of Home Occupation.

10 **DAVID FOLEY:** One thing I really like about this definition is that it starts with  
11 the line: Home Occupation shall mean any use. Home Occupation can be  
12 anything ... including a backyard bird breeding ... as long as it stays within the  
13 confines of the definition. Before we look into those limits, let's go right to the  
14 end of the definition. The end of the definition has ... lists. ... ten uses that are  
15 specifically prohibited. Those are the only uses that are prohibited. One of them  
16 got the attention of the Zoning Manager, and that was Commercial Kennels.  
17 The Zoning Manager decided that if the definition of Home Occupation  
18 prohibits Commercial Kennels, then it must also mean to prohibit Commercial  
19 Aviculture. But that's not what the definition says. This is not a list of  
20 examples; this is the list. This is the finite list of the uses that are specifically

1 prohibited – and the only uses that are prohibited. The Zoning Manager can't  
2 add to the list. And the BZA can't add to the list either. The only way to add a  
3 new prohibited use to this list is for the County Commission to draft a new  
4 ordinance. So, a little backyard bird business isn't prohibited, and it should be  
5 OK as long as it can fit within the limits of Home Occupation. So, let's take a  
6 look at those. I think you'll see they will let us keep our backyard bird business,  
7 and rebuild our aviaries.

8 **JENNIFER FOLEY:** The following is a checklist of the conditions for Home  
9 Occupation.

10 **DAVID FOLEY:** Let's go through them one by one, and apply them to what we  
11 do. Our little bird business is ... conducted entirely within a dwelling or  
12 accessory building; it is carried on by an occupant; it is clearly incidental and  
13 secondary to the use of the dwelling – Mr. Roberts was there and he can say  
14 what he has to say; avoids changing the character of the dwelling; only  
15 commodities made on premises are sold on premises – I want to add here that  
16 we actually don't sell anything at the house, checks are sent to the PO Box that  
17 was on the contract, the bird is put in a box and taken to the airport and shipped  
18 air-freight; all sales are conducted within a building – again, there are no sales  
19 in a building ... but ... uhm ... well, let me go on; no outdoor display of  
20 merchandise – no; no visible display outside the building; only two family

1 members residing participate; only mechanical equipment normal to household  
2 use; and no more than 25% of the home is used.

3 **JENNIFER FOLEY:** There's just one other element of the definition we haven't  
4 covered yet, and that line reads as follows:

5 **DAVID FOLEY:** "Fabrication of articles such as commonly classified  
6 under the terms "arts and handicrafts" may be deemed a home occupation  
7 ... excuse me ... subject to the other terms and conditions of this  
8 definition." This says that "arts and handicrafts" can be a Home  
9 Occupation. That's all it says. It doesn't say only "arts and handicrafts"  
10 can be a Home Occupation. So, this doesn't present any obstacle to back  
11 yard bird breeding as a Home Occupation. That really about covers it.  
12 Back yard bird breeding – or Commercial Aviculture as the Code calls it  
13 – can be squeezed into this definition and into a residential neighborhood.  
14 So, again, I'd like to keep those ... that backyard bird business and  
15 rebuild my aviaries.

16 **JENNIFER FOLEY:** Now, if you're still with us, we'd like to turn to galvanized  
17 sheet metal.

18 **DAVID FOLEY:** Because my aviaries, or bird cages, have a foot print that's  
19 bigger than 150 square feet, they have to meet certain architectural standard.  
20 And that standard reads: exterior and roof shall be comprised of materials

1 commonly used throughout Orange County in single family residential  
2 construction, such as stucco, brick, vinyl, aluminum or wood for siding or  
3 walls, and shingles, tiles or corrugated metal for the roof. Zoning Division  
4 objects to my use of galvanized sheet metal as siding, and claims that this is not  
5 a common siding material. This is not what the Condition requires; the  
6 condition requires that the material be a common building material. The reason  
7 I say this is because Orange County doesn't have an architectural standard for  
8 residential siding. Anything can be used as siding in Orange County – as long  
9 as it meets the Florida Building Code. So, if we have to decide how to read this  
10 Condition ... Common material? Or, Common siding? The fact that really tips  
11 the scale is that anything goes as siding in residential construction. It just  
12 doesn't make common sense to say: I can put anything on the side of my house,  
13 but I can only put certain things on the side of my shed. So, that's why I say this  
14 requirement doesn't require that the material be a common siding; it simply  
15 requires it be a common building material. Orange County doesn't really care  
16 that much about siding. And neither do my neighbors. All the neighbors I asked  
17 said that our aviaries – as they once were – were OK with them. So, we'd like  
18 to rebuild the cages, And get on with our little backyard breeding bird business.  
19 Again, we know that the plain language of these definitions – the definition of  
20 Home Occupation, the definition of Accessory Use, and the definition ... or

1 Condition 114, will allow you to make your decision ... in our favor ... with  
2 confidence. So, specifically, again, we're asking you to reverse the Zoning  
3 Manager's Determination and to issue an Order that states: Commercial  
4 Aviculture is permitted as a Home Occupation/Accessory Use in R-1A; and that  
5 Galvanized sheet metal as siding meets the requirement of §38-79 (114).

6 **JENNIFER FOLEY:** Thank you.

7 **DAVID FOLEY:** Yep. Thank you.

8 **JOE ROBERTS:** Mr. Foley, how many birds do you have there?

9 **DAVID FOLEY:** Right now we have about twenty-two.

10 **JOE ROBERTS:** Generally, when you had them in the pens outside, how many  
11 birds did you have at that time?

12 **DAVID FOLEY:** Well, the cages are set up for pairs. Uh ... When there are more  
13 than two birds in ... There are six units. It's a little complex. There are six little  
14 units. Each one is four by four by eight. Uhm ... When the pairs do breed and  
15 produce babies, and the babies are left there, there can be as many as six in one  
16 unit. But ... uhm ... I don't know if you know much about ... you know ... bird  
17 breeding. It's not like they all produce. But ... does that help answer your  
18 question?

19 **JOE ROBERTS:** No. No. How many is the maximum number of birds you've  
20 had in those pens at one time, is what I'm asking you.

1 **DAVID FOLEY:** I believe I've never had more than thirty birds.

2 **JOE ROBERTS:** That's the little ones and the parents, if you will?

3 **DAVID FOLEY:** Right. Right. You know I ... ah ... you know I claim on the  
4 website – I think it's on that first page that you may have in front of you – that I  
5 raise more than anybody, anywhere. And ... ah ... That's a little bragadoceous.  
6 What it means is that nobody else is doing it; nobody else works with this  
7 particular species of toucan ... because it's still possible to import this. I don't  
8 think anybody is importing them. But they can be imported. So, most people  
9 who raise birds wouldn't see it as cost effective, and very few people work with  
10 these birds because it's a difficult bird to work with.

11 **JOE ROBERTS:** So, you have twenty-two, or eleven breeding pairs; is that what  
12 you're saying?

13 **DAVID FOLEY:** No. No, I'm not saying that.

14 **JOE ROBERTS:** How many pairs?

15 **DAVID FOLEY:** I have no more than six breeding pair. So, that's about ... That's  
16 a little more than half of what I have. The other birds ... I have injured birds  
17 that do not sell and do not breed. I have a bird, for instance, that has no toes. I  
18 have a bird that has a beak ... It broke the tip off. These are toucans; they have  
19 long beaks. It broke the tip off. So, I have birds that will not breed ... and ...  
20 how else can I help you with that?

1 **JOE ROBERTS:** Rocco ... uh ... Let me ask you a question. On the kennels. Mr.  
2 Foley mentioned that the Code said that there could be as many as twenty dogs.  
3 What is the Code on that?

4 **ROCCO RELVINI:** Mr. Foley is correct. Our Zoning Code does allow no more  
5 than twenty animals as pets.

6 **JOE ROBERTS:** On R-1A?

7 **ROCCO RELVINI:** Yes.

8 **JOE ROBERTS:** And that can be a breeding facility, if the owner so chose?

9 **ROCCO RELVINI:** It states that the breeding at a residence of ... breeding at a  
10 residence of two or less litters per calendar year, provided that no more than  
11 twenty animals are kept, housed, or confined at the residence at any one time. If  
12 I may add ... and that's the definition ... the Zoning manager looked at that  
13 definition, but also identified that a Commercial Aviculture is a specified use in  
14 the Code in the Use Table ... uh ... it goes out of its way to say – Commercial  
15 Aviculture, exotic birds, being sold for commercial, financial gain – this is  
16 where you can do it. He found the R-1A ... there was no allowance for that use  
17 in that zoning district. So, he went ahead and said, “Well, it looks like this use  
18 is specified out of the Zoning Code, so, how can I ignore the use – it's listed as  
19 being a prohibited use?”

1 **RODERICK LOVE:** Mr. Roberts, may I? Rocco, have we received any feedback  
2 from community residents whether favorable or in opposition to this?

3 **ROCCO RELVINI:** We received three commentaries in opposition. And I would  
4 suggest that that be a secondary matter in this case.

5 **RODERICK LOVE:** OK. My second question ... and I haven't seen those  
6 commentaries ... anything related to noise, nuisance, anything to that extent?

7 **ROCCO RELVINI:** No ... uhm ... one applicant ... ah ... property owner  
8 indicated strongly opposed, this is a residential area. And another who was in  
9 favor ... I'm sorry ... This one's in favor says never caused any problem. And  
10 then this one says, "Close to my house. No good." "No opinion. Don't mind so  
11 long as there are no problems such as loud noise." Then there is a half interest  
12 property owner that indicated the property is zoned R-1A and commercial  
13 activities are not permitted. And then the other half interest owner indicated the  
14 same thing. And then someone checked the box opposed. And then someone in  
15 favor said, "I understand it has been there for a long time. We did not know it. I  
16 can't see where it would be a problem." So, we have two commentaries in  
17 favor, and three in opposition.

18 **ASIMA AZAM:** I have a question for Mr. and Mrs. Foley. In your presentation  
19 you went through and diagrammed the two definitions of Home Occupation and  
20 Accessory Use, and are arguing that by virtue of the fact that those definitions

1 don't prohibit or explicitly speak to aviculture, it's permitted. But what you  
2 haven't spoken to at all is the definition of aviculture. For me, if you were  
3 trying to convince me that this use is permitted, you would have to go through  
4 the definition of aviculture and basically prove that you don't meet that  
5 definition. So, if the definition of aviculture says "raising, breeding, or selling  
6 of exotic birds", you would have to show me that you are raising breeding or  
7 selling exotic birds, and then in the commercial purposes part of the definition,  
8 you would have to tell me that you don't meet one through nine of the criteria  
9 which demonstrate commercial purpose. If you were to prove that to me, then I  
10 would agree with you and say, "You're right." The Code specifically defines  
11 aviculture, and it's not a permitted use in R-1A. It's not that's it's not permitted  
12 anywhere in the County, it's just not permitted in this zoning district. But look I  
13 don't meet any of the criteria for commercial purposes, and I'm not raising,  
14 breeding, or selling exotic birds. But to me, what you've done in your argument  
15 is you've ignored the section of the Code that speaks to exactly what we're  
16 talking about and you've gone to some ambiguous definitions that don't speak  
17 to aviculture and tried to argue that because those definitions are ambiguous  
18 and don't speak to aviculture, it should be permitted. But we're not ... you  
19 haven't addressed at all the provision of the Code that specifically discusses the  
20 use we're talking about.

1 **DAVID FOLEY:** OK. I ... ah ... really would love to tell you that this is just a  
2 hobby ... because I've been doing it for seven years and I have an income/loss  
3 statement that says I've made \$600. But I really have to go all the way. You  
4 know, I did think about presenting this as a hobby, but I wasn't ... I didn't want  
5 to seem ... I just decided not to do that – to go ahead and say, “This is  
6 Commercial Aviculture.” Now, let me address your issue in a different way.  
7 What you've been told, I'm sure, if you look at the Use Table, that the  
8 conjunction of R-1A and Commercial Aviculture says that ... that empty spot  
9 there ... at the conjunction of R-1A and Commercial Aviculture means that the  
10 use is prohibited period, that the use is prohibited as a primary use, as an  
11 accessory use, and as a home occupation. But if we can pull the slides back up?  
12 Is it possible? We have one slide that gives you a neat little paraphrase of  
13 Section 38-74 paragraph (b)(1). This is the paragraph that explains how to use  
14 the Use Table. And there are two sentences in this paragraph. One of the  
15 sentences tells us what is permitted. The other one tells us what is prohibited.  
16 The first sentence says ... I think it's towards the end, Jen ... 38-74 ... that's  
17 (d)(1) ... you can go on ... that's (b)(1). The first sentence, as you see, says,  
18 “The permitted uses are indicated in the Use Table.” The second sentence says,  
19 “No primary use shall be permitted unless indicated.” Alright, well, the first  
20 sentence tells us what's permitted. That's all it tells us. It just says the permitted

1 uses are indicated in the Use Table. It doesn't the prohibited uses are indicated  
2 by omission. It doesn't say that. The second sentence tells us what is prohibited.  
3 And that says, "No primary use shall be permitted unless indicated." That  
4 means the Use Table only tells us what primary uses are prohibited. That's why  
5 we've made this case that it can be permitted. This definition – this thing called  
6 Commercial Aviculture – can be permitted as an accessory use, which is  
7 permitted in R-1A, and can be permitted as a Home Occupation, which is also  
8 in R-1A. Remember that the definition of Home Occupation does have some  
9 real guidelines that restrict what we can do. And I'll add ... and I know Mr.  
10 Roberts you're concerned with the number of birds ... One of the issues that  
11 confines me, and confines the number of birds that I can have are the caging  
12 requirements of the Florida Fish and Wildlife Conservation Commission. They  
13 have minimum caging requirements. And the cages that you saw on the screen  
14 – the old ones – those are the minimum. So, I can't have smaller cages and  
15 more birds. And that's really the minimum for a pair of birds. So, as soon as  
16 they have babies I have to do something with them. So, in other words, the five  
17 hundred square feet that we're allotted as accessory structure – only half of that  
18 we're using for the aviaries, the other half is consumed with a shed that has all  
19 our household stuff in it. Uhm. Now, how would you like to talk about that  
20 issue again? Was that ... Does that explain to you why we've argued this ...

1 Commercial Aviculture, which simply means a commercial activity ... And  
2 remember, if you take a look at the nine indicators, none of them indicate  
3 nuisance, they just indicate ... with one exception – number nine refers to  
4 traffic ... traffic can be a nuisance ... But all of them just refer to whether the  
5 business is being advertised, whether we have an occupational license, whether  
6 we have a sales tax ID number in order to buy food. They're just ... they're just  
7 ways of determining commercial activity; they're not ways of determining  
8 nuisance. So, yes, we're a commercial activity, but, again, because the Use  
9 Table doesn't ... It doesn't say for instance that ... no use ... Here we have no  
10 primary use shall be permitted unless indicated. It doesn't say no accessory use  
11 shall be permitted unless indicated. It doesn't say no use shall be a Home  
12 Occupation unless indicated. The Use Table shows you what's permitted, and  
13 then it shows you what primary uses are prohibited. We're not pursuing this as  
14 a primary use. It's an Accessory Use, or a Home Occupation.

15 **ASIMA AZAM:** I understand what you're saying. If I can paraphrase what I think  
16 your argument is, it's just that you're agreeing that Commercial Aviculture is  
17 prohibited in a residential district as a ...

18 **DAVID FOLEY:** As a primary use it is prohibited.

19 **ASIMA AZAM:** ... primary use. You're classifying it as an accessory use. Uhm.  
20 Can we see the definition of accessory use again because I think ... I kind of

1       feel like we're running in circles ... mainly because even if we ... even if you  
2       meet the definition of accessory use, one of the requirements of that is that it be  
3       in character with the adjacent property uses ...

4       **DAVID FOLEY:** Like ... like having dogs or cats.

5       **ASIMA AZAM:** ... which is the purpose of the Zoning Code.

6       **DAVID FOLEY:** Right.

7       **ASIMA AZAM:** People who live in a residential district have a right to expect  
8       that ...

9       **DAVID FOLEY:** Sure.

10      **ASIMA AZAM:** ... you know, that there's going to be residential uses. And even  
11      if we went to that accessory use, uhm, you know, how are you in character with,  
12      or consistent with the adjacent property uses?

13      **DAVID FOLEY:** Well, you know, having animals is certainly customary in  
14      residential neighborhoods. Raising animals is customary. And it's even  
15      customary to sell a few animals. So, in that sense, we fit in. We do have to  
16      abide by all the setbacks, and all the building requirements. That was one of the  
17      issues that we raised. Uhm. I think one concern you may have ... are the  
18      consequences ... of allowing birds ... is that possible? Is that something that's  
19      on your mind?

20      **ASIMA AZAM:** I'm sorry ... I didn't ... ?

1 **DAVID FOLEY:** The consequences of allowing a lot of birds in somebody's back  
2 yard.

3 **ASIMA AZAM:** Uhm. I mean, to me, it's just ... I mean, I have no problem with  
4 aviculture. I don't know how my other Board members feel. I love ... birds. We  
5 have a bird at our house. It's just that if I lived in a residential neighborhood, I  
6 don't think I would want somebody raising birds in their backyard because its  
7 not a use that's consistent with what else is in that neighborhood. It's a  
8 residential neighborhood. And ... that would probably be my opinion.

9 **DAVID FOLEY:** I did a little research on the Commission meeting that removed  
10 the definition of Hobby Aviculture from the Code. That was in 1995. Linda  
11 Chapin and our current Property Appraiser were proponents of this and they ...  
12 at that time only three animals were allowed as hobby ... for hobbyists. And  
13 what they said was that they were removing those definitions so that  
14 responsible pet owners, responsible animal owners, could have more than just  
15 three. They were taking the limits off. I understand what you're saying. I can  
16 tell you that ... the map ... I was surprised that there were ... was more than  
17 one negative comment because we went around the neighborhood and did a  
18 questionnaire and very few people even knew we had the birds. They were  
19 surprised that we had them. Our neighbor James, we've asked him repeatedly,  
20 please let us know, tell us ... and uhm ... and he has not complained. In fact,

1 his comment is, “Well the blue-jays are louder than what you’ve got going on  
2 there. So ... so ... specific to our situation ... there are at least twenty different  
3 questionnaires ... we went around the neighborhood and asked, “What do you  
4 think?” And they all said it was OK. I guess ... not many of them mailed the  
5 County’s letter back in but ... I agree ... people can be irresponsible but ... uh  
6 ... one of the consequences of making a favorable decision for us today would  
7 be that people who are responsible can do this and they can have something to  
8 do at home ... that, you know, makes their life a little easier ... and ...

9 **FRANK DETOMA:** Any more questions? Anybody else want to speak? Do you  
10 know, Joe?

11 **JOE ROBERTS:** Would any ... Thank you, Mr. and Ms. Foley. Would anybody  
12 like to speak in favor? Please come forward and state your name and address.

13 Anyone who would like to speak in opposition?

14 **HOWARD CARLING:** Howard Carling, 810 Irwin Drive. Ah ... We’ve lived in  
15 the neighborhood for fifty years. And we never even suspected that they had  
16 birds at that residence. And as far as we’re concerned, and most of the people I  
17 know, and I can speak for the head of our neighborhood association – she said I  
18 could bring her name up, bring her up into this – that she doesn’t have any  
19 objections to it, as a person, not as the organization, but as a person. And we

1 have no objection to it. I don't see where it's a problem to anybody. And that's  
2 all I've got to say about the subject.

3 **JOE ROBERTS:** Thank you. Mr. Chairman, I ask that the public hearing be  
4 closed.

5 **FRANK DETOMA:** The public hearing is now closed.

6 **ROCCO RELVINI:** May I?

7 **JOE ROBERTS:** Yes, go ahead.

8 **ROCCO RELVINI:** Staff would like to make a few concluding comments, if we  
9 may.

10 **JOE ROBERTS:** Please.

11 **ROCCO RELVINI:** The number of birds is not an issue in this case. If they're  
12 simply ... if they're being used as pets, the Zoning Manager has conceded that,  
13 if you use them as pets, he doesn't have an objection. He doesn't want to start  
14 regulating pets. Aviaries would be permitted as long as birds were pets, and as  
15 long as the enclosures that contained the pets met the design standards for  
16 accessory structures. The issue that the Zoning Manager had was that ... uhm  
17 ... it was the commercial activity of the use, the financial gain, and that was  
18 what prompted the Zoning Manager to akin ... equate the applicants' use as a  
19 Commercial Aviculture, the financial gain, the commercial gain. And that's  
20 what he ... He couldn't get himself to say that this is a use that should be

1 located in single-family residential neighborhoods throughout Orange County.

2 And, finally ... uh ... permitted land uses can act as nuisances and that is why

3 the County has separate nuisance laws. That's all we have to say about that.

4 **JOE ROBERTS:** Mr. Relvini, let me ask you. The structures that he had ... his

5 pens and everything ... did that meet the ... building ... or the codes ... or

6 whatever may be ... to house those birds? Was that OK?

7 **ROCCO RELVINI:** We presented the applicant the design standard code. I'm not

8 aware that a thorough review was conducted on that. If you're asking staff

9 based on the photographs whether they met them or not, I would have to take a

10 conservative approach and say that it is our professional opinion that would not

11 meet the intent of what a residential structure that is characteristic of a resident

12 ... with residential characteristics. And when I say that ... I mean ... I say ... I

13 know ... I believe ... a house on the lot is made out of concrete block. It has a

14 slight pitch to it, if any. But I believe that there were some opening on that, you

15 know, and I think that we would probably have some concern about that.

16 **JOE ROBERTS:** Ok. Uh. Alright, sir, thank you. Well, I went out there and I

17 looked at the ... I'm sorry ... Mr. Foley, the public hearing is now closed

18 **FRANK DETOMA:** Mr. Foley, the public hearing is now closed.

19 **JOE ROBERTS:** Please step back up to the mike. Mr. Chairman, I ask that it be

20 reopened.

1 **FRANK DETOMA:** Fine. That's fine.

2 **DAVID FOLEY:** Thank you, Mr. Roberts. I just heard one thing that I wanted to  
3 address – the number of animals. The number of animals is appears in the  
4 Zoning Code under the definition of kennel. And it says some of the things that  
5 I told you. But one thing I didn't mention was that right at the very beginning of  
6 the definition of kennel, exotic animals regulated by Florida Fish and Wildlife  
7 are specifically excluded. Somebody, sometime, who may not even be with the  
8 County understood that Florida Fish and Wildlife is the regulatory authority  
9 over wild animals. So, those were excluded. So there is no regulation of these  
10 animals in the Code for a reason ... because somewhere, somebody understood  
11 that the governmental body that regulates these animals was created by the  
12 Constitution of the State, and that is Florida Fish and Wildlife.

13 **JOE ROBERTS:** Mr. Foley. Mr. Foley. I'm sorry, sir. But I allowed you to come  
14 back up to rebut what he said, not to restate your issues, sir.

15 **DAVID FOLEY:** Just on the issue ...

16 **JOE ROBERTS:** No sir. No sir. You were given an opportunity to rebuttal .. but  
17 you ... please ... I'm afraid you can't. That's it. No more. Your not going to  
18 restate your situ ... your issues. Mr. Chairman ...

19 **FRANK DETOMA:** Mr. Foley, do you have anything to add or comment on  
20 regarding the construction of your pens? That's what we were discussing. If

1       they meet Code, and if they meet or match the look and characteristic of your  
2       principal residence.

3       **DAVID FOLEY:** They have reviewed by an engineer, and signed, so that they  
4       could go through the Building Department. The one issue that we raised about  
5       the architectural standard was one we hoped you could clarify for us. They  
6       don't look my house, but they are made for animals, and they look like an  
7       animal house.

8       **FRANK DETOMA:** Thank you. Alright, public hearing is now closed.

9       **JOE ROBERTS:** I went out there and looked at Mr. Foley's property and ... what  
10      have you. Uhm. His pens were concreted into the ground, but it did take up half  
11      his back yard. And it does seem like a commercial application. The problem I  
12      have is that, you know, the person that has dogs, can raise twenty dogs ... it's  
13      going to make a lot more noise, and a lot more smell than these ... these birds.  
14      Yet, at the same time, the Code is very explicit as to where a bird commercial  
15      business should be, and it should be in A-2 zoning. And I think if ... if we were  
16      to override the ... ah ... Zoning Manger's decision, what's to say that the guy  
17      down the street wouldn't want to have pot-bellied pigs, and have twenty pot-  
18      bellied pigs in a pig swallow out in the back. So, it goes on and on and on, and I  
19      think that we would open up a Pandora's box, if we override the Zoning

1       Manager's decision. So, I recommend ... I'd like to make a ... Well, first, let  
2       me ask any of my other board members. ...

3       **FRANK DETOMA:** Would anyone else like to speak on this? Any comments?

4       **MARCUS ROBINSON:** I agree with you, Joe. It kind of got me when the Code  
5       allows you do commercial use for twenty pit bulls at a residential neighborhood  
6       ... which I'm thinking is ... that is more dangerous than say ole tweety bird ...  
7       doing commercial use for the tweety bird. But the Code is the Code. In saying  
8       that ... uh ... I think staff recommended that if he used that as pets, if he  
9       classified them as pets and gave him some time to ... ah ... maybe go in front  
10      of the Board of County Commissioners to try and get the Code changed to be  
11      more defined than what's allowed in residential areas. You know, because, like  
12      you say, I don't see any harm in birds. I ... can't win me over on it. So, that's  
13      my position. I feel the Code definitely needs to be relooked at and addressed.

14      **FRANK DETOMA:** OK.

15      **ASIMA AZAM:** I would just say that ... uhm ... I agree that if this was a hobby,  
16      and it wasn't a commercial venture, then it would probably be permitted as an  
17      accessory use and ... probably find a way to allow him to keep it. But because it  
18      is a commercial venture and really just falls exactly into the definition of  
19      commercial aviculture, I feel more comfortable going with a definition that's  
20      specific and defined and we meet rather than making a decision based upon the

1 fact that the definition that you're relying on is unclear and therefore it should  
2 be permitted. If we have a specific guideline, and we have one that's not  
3 specific, I think that we're obligated to make our decision based on the specific  
4 guideline. So, I would also be in favor of upholding the Zoning Manager's  
5 Determination.

6 **FRANK DETOMA:** Well, I concur with my Vice Chair; it's really more about  
7 common sense versus a theoretical exercise, and pitting Florida statute against  
8 Orange County zoning regulations, you know, we're not talking about the  
9 number of birds, or the types of birds ... I think birds are great ... I mean,  
10 friends of mine have either raised African Greys, or Moluccans, Blue  
11 Hyacinths, so I'm familiar with the birds, but, uhm, what we're talking about ...  
12 the definition of aviculture versus an aviary, home use versus a commercial  
13 enterprise, and Ms. Asam pointed out the fact that Mr. Foley has basically  
14 overlooked the portion of Orange County Code that directly addresses what he  
15 admittedly is doing – running his little bird business – and, uh, wants to get that  
16 back up and running. I think there's been substantial proof that this is a business  
17 and not a hobby and not just a little, you know, having a few pets in the house.  
18 Orange County Code specifically addresses this type of business. Is it missing  
19 the point when other types of animals are allowed, or excluded? Possibly. Uhm.  
20 I find it hard to believe that the Fish and Wildlife, Game and Wildlife

1 Commission, is going to allow wild animals, not just birds, but, you know, lions  
2 and tigers, you know, to be in a residential area. If they are the authority, the  
3 regulatory body, and then following Mr. Foley’s line of reasoning that only the  
4 Game and Wildlife Commission can allow these ... has jurisdiction over that ...  
5 not Orange County, I don’t think anybody in this audience, the viewing  
6 audience, wants to have these type of animals next to them ... uhm, following  
7 that line of logic. But historically, accessory buildings have been sheds,  
8 cabanas, carports, detached garages, with clearly ... with uses clearly ancillary  
9 to the principle residence. Uhm. So, basically, it’s a general argument versus a  
10 specific ... a general argument about ... ah ... the law ... the applicability  
11 versus specific wording that expressly regulates this type of use. So, I am ... I  
12 can not see overruling the Zoning Manager’s decision on this.

13 **SCOTT RICHMAN:** Yeah, and I just want to say that I tend to agree with  
14 everything that’s been said by everybody. I think Ms. Asam said it best when  
15 she explained that what we’re trying to do here today and what you’re asking us  
16 to do – and I think you did a great job of pointing out the gray areas of our  
17 various statutes that we have – but I think that the people who wrote them can  
18 only do so much. And I was just looking at the definition of Home Occupation  
19 – Yes, it says “any use”, and then it goes on with a lot more language, and then  
20 it also says at the end “and provide that all the following conditions are met”.

1 And you pointed out the gray areas in those following conditions but ... uhm ...  
2 I don't think that we can expect that the people who drafted this language at the  
3 time it was drafted could possibly conceive of every use that they wanted to  
4 prohibit. Yes, they do list a number ... explicitly list a number of prohibited  
5 uses, and those are probably the most common ones that show up the most  
6 often, and so maybe they can get rid of eighty percent of the questions by listing  
7 those. But I also don't see in here that it says that this is an exclusive list. It  
8 doesn't say all uses are permitted except these; it just gives you a list of some  
9 that aren't permitted. And I think that ... ah ... new products and ideas are  
10 coming out all the time. And there's no way to predict what would be permitted  
11 and what wouldn't be permitted. And so, I think that it has to come down to ...  
12 ah ... a Board like this or the Board of Commissioners ... to decide whether a  
13 particular use, if it's not named in there, is appropriate or not. But I think we  
14 can't get away from the fact that Commercial Aviculture is prohibited in a  
15 residential area. I mean, it's permitted in agricultural for obvious reasons. Uh.  
16 But I don't think it's the position of this Board to overrule that or to change the  
17 law. There are other venues that you can go to if you want to get the law  
18 changed. And it's certainly your right to do it. And I would encourage you, if  
19 you think that that's ... that's ... if you think you're right ... and you think the  
20 law is wrong and you're being, sort of, unjustly prohibited from pursuing, you

1 know, your life's dream ... or ... or ... your way to make an income. Ah ... I  
2 would make one other comment too that hasn't been touched on too much  
3 which is about the structure itself ... and your belief that it doesn't ... that what  
4 your allowed to use for siding material isn't limited to commonly used siding  
5 material but rather commonly used building products because that might be the  
6 strict language that you saw in there. And I didn't see that attached in your  
7 definitions, so I haven't been able to study it, but I think that that seems to be a  
8 little of an illogical conclusion to me because then if anything that's used in  
9 building a building and be used for siding then you could just make the exterior  
10 of you building out of insulation, right? I mean, I think you have to use  
11 common siding materials, and I think we have issues like that come before this  
12 Board all the time, and we always ask, and people always agree to have their  
13 accessory building match to the greatest extent possible their residential  
14 building, just to keep the character of the residential neighborhood intact. And  
15 ... ah ... these are giant bird cages, so, I think that if ultimately you are able to  
16 do this and you want to do it, I would request, if it is going to come back in  
17 front of this Board, that you try to make those cages look more like the  
18 residence, or at least more what a common accessory building looks like.

19 **RODERICK LOVE:** I believe that all that needs to be said has been said. And I  
20 would just ask Commissioner Roberts, or you Mr. Chair, to call for a motion.

1 **JOE ROBERTS:** I'd like to make a motion that we uphold the Zoning manager's  
2 decision.

3 **FRANK DETOMA:** There's a motion to approve, and it's been seconded by Mr.  
4 Love. Any further discussion. Seeing none – Call the question. All those in  
5 favor of upholding the Zoning Manager's decision signify by saying "aye". All  
6 opposed like sign. Thank you for your time. Next item.

7

**CERTIFICATE**

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I, David Foley, Appellant, do hereby certify that I am authorized to and did re-write, through computer-aided transcription, from an official video recording, the foregoing proceeding, which did take place on the date and at the location herein designated. Further, I certify that the foregoing pages, numbered 2 through 37 inclusive, constitute a true, complete and accurate transcription, to the best of my ability.

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