

**BEFORE THE BOARD OF ADJUSTMENT FOR THE  
CITY OF KENAI, ALASKA**

210 Fidalgo Avenue  
Kenai, Alaska 99611

**IN THE MATTER OF THE APPEAL  
OF LISA HANSEN:  
APPEAL OF CHIEF ANIMAL  
CONTROL OFFICER DENYING  
A LIVESTOCK PERMIT FOR  
EDUCATIONAL PURPOSES AT  
704 POPLAR CIRCLE**

**Case No. BA-22-01**

**DECISION ON APPEAL**

**I. INTRODUCTION**

LISA HANSEN appealed the DECISION of the Chief Animal Control Officer denying a renewal of a livestock permit for educational purposes at 704 Poplar Circle for keeping up to 25 chickens. For the reasons set forth below, the Board of Adjustment REVERSES the decision of the Chief Animal Control Officer and GRANTS the Livestock Permit for Educational Purposes with certain conditions as further set forth below.

**II. PROCEDURAL HISTORY**

Ms. Hansen submitted an application for a Livestock Permit for Educational Purposes signed on April 30, 2020. [R.57] The Application requested a permit for two years for 5-10 chickens under one year of age. [R.57] After a site inspection on May 27, 2020, the application was approved as submitted that same day by the Chief Animal Control Officer. [R.61, 63] A complaint was received by Animal Control on April 21, 2021, regarding crowing of roosters originating from the subject property. On April 22, 2021, the Chief Animal Control Officer spoke with Ms. Hansen and notified her of the complaints regarding roosters and solutions were discussed. [R.70]

On March 9, 2022, Ms. Hansen applied for a renewal of the Livestock Permit for Educational Purposes for a duration of 1-2 years for up to 25 chickens aged 0-2 years old. [R.28]

and 29] Inspections of the property were conducted by Animal Control on April 14 and 15, 2022. [R.31-36] The inspection reports indicate over 30 chicken were on the property. [R.31-36] The inspection reports also indicate the smell of chicken feces was observed to be excessive, and noticeable off the property. [R.31-36] The reports also indicate elevated noise from the roosters and that additional complaints had been received by animal control regarding chickens outside their coops. [R.36] On April 26, 2022, the Chief Animal Control Officer issued a written decision denying the requested renewal of the Livestock Permit for Educational Purposes. [R.147 and 148.] The denial letter stated that complaints had been received from neighbors with regard to the keeping of chickens on the property, that 35 chickens were present during the latest inspection, that there was an odor from the chickens, elevated noise and that video and photos had been received showing the chickens outside their coops. [R.147-148] The letter also noted that the animals appeared to be well kept and fed in facility, but that ultimately the facility constituted a nuisance for neighbors. [R.147-148]

On May 11, 2022, a timely appeal was filed on behalf of Ms. Hansen requesting that the Board of Adjustment overturn the decision of the Chief Animal Control Officer and grant the renewal of the Livestock Permit for Educational Purposes. [R.5-7]

On June 21, 2022, the Board of Adjustment convened to hear the matter.

### III. STANDARD OF REVIEW

Kenai Municipal Code provides that “...the Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken.”<sup>1</sup> The Board reviews the appeal *de novo*.<sup>2</sup> Therefore, no deference is given to the decision by the Administrative Officer. While public testimony does hold evidentiary weight, the Board cannot base its decision solely on support or opposition by the public.<sup>3</sup>

The function of the Board is to determine whether the requirements for a permit have been met and grant or deny the permit based on the substantial evidence before it.<sup>4</sup> Substantial evidence

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<sup>1</sup> KMC 14.20.290(f)(2).

<sup>2</sup> *Id.*

<sup>3</sup> *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 172 n.11(Alaska 1993)

<sup>4</sup> *Id.* At 931-932.

is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>5</sup> The Board must make specific findings supporting its conclusions.<sup>6</sup>

#### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kenai Municipal Code 3.10.070-Livestock within the City Limits, prohibits the keeping of livestock within the City except under specific circumstances. Because the subject property is located in the suburban residential zone of the City and is less than 40,000 square feet in size, livestock may only be permitted to be kept on the property for longer than 14 days for educational or youth activities such as 4-H or Future Farmers of America.<sup>7</sup> The permit cannot exceed 2 years without a renewal application and must specify the type and number of livestock to be kept.<sup>8</sup> Conditions can be imposed on the permit and the permit can be revoked for violations of City Code or permit conditions.<sup>9</sup>

Public comment during the hearing and provided in the record both supported and opposed the continued use of the property for the keeping of chickens. Comments in opposition to the permit renewal generally focused on excessive noise, strong odor, loose chickens, attraction of predators and spread of disease. Owners of an adjacent property commented that they had tried to be supportive of the educational project, but that the permit for 5-10 chickens was quickly exceeded and that the operation had turned into a much larger commercial operation. Mr. Howard commented that the structures housing the chickens were not the appropriate distance from his property line. Another neighbor in the subdivision indicated that that she could smell and hear the chickens when outside in her yard. Other neighbors and community members indicated their support for the Livestock Permit for Educational Purposes. This supportive verbal and written commentary generally focused on the importance of the educational component of permit for youth, importance of chickens for local food security, and support for the care Ms. Hansen and her family put into the chickens.

Mr. Giordano provided a staff report on behalf the City of Kenai's Animal Control. He indicated that his inspection of the property indicated that there were more than 25 chickens on the

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<sup>5</sup> *Id.* Citing *Kiener v. City of Anchorage*, 378 P.2d 406, 411(Alaska 1963).

<sup>6</sup> *Fields*, at 932. And KMC 14.20.180(c).

<sup>7</sup> KMC 3.10.070(d).

<sup>8</sup> KMC 3.10.070(d)(2)

<sup>9</sup> *Id.*

property and his inspection verified complaints regarding noise and odor from the chickens. Mr. Giordano testified that at the time of his inspections, Ms. Hansen indicated she was unsure how many chickens were on the property and that they had to return the next day to count them. He testified that the Ms. Hansen violated her original permit for 5 to 10 chickens, and that his last inspection found that they were also in violation of their requested new permit as well based on the number of chickens.

Ms. Hansen argued through her attorney and direct testimony that they were substantially in compliance with the permit. Her testimony along with her husband and daughter's (Faith Marie Goodrood) emphasized the educational importance of the chickens for Faith, and other youth throughout the state. The testimony indicated that care had been taken to keep the chickens safe and sanitary, and that protocols were followed to reduce noise and odor impacts to neighbors. Testimony indicated that Faith would graduate from high school in September, but that the property would remain an educational opportunity for other youth outside the neighborhood until the family moved from the rented property. Ms. Hansen also testified that the inspection by Animal Control occurred at the worst time of year in regards to odor and that the chickens were noisier when disturbed by neighbors or loose dogs and cats in the area.

After reviewing the record, public commentary, argument and testimony, the Board makes the following findings and conclusions based on the substantial evidence:

1. The Hansen's have violated the terms of their permit. The Hansen's only permit approved prior to this decision allows for 5 to 10 chickens to be kept. The substantial evidence indicates there are 30 or more chickens on the property.
2. While few if any complaints were received when there were only 5-10 chickens on the property, complaints from neighbors have increased with the increased number of chickens.
3. Adequate shelter is provided for the health of the animals.
4. The facility is generally maintained in a sanitary condition, however the number of chickens and keeping of roosters results in an unreasonable and substantial odor and noise that disturbs at least some of the neighbors. The Board finds that a resident in a suburban residential neighborhood, on lots less than 40,000 square feet, have a reasonable expectation not to live next to 30 or more chickens that are not site screened and create noise and odor that escapes the property.

5. The chickens are adequately cared for and fed.
6. The facility has had improvements made to keep animals on the premises, though the record indicates they have escaped in the past.
7. The number of chickens may be safe for the facility but appear to be excessive for what is reasonable for adjacent property owners given the zoning, lot sizes and lack of screening.
8. Even though the Hansen's have taken steps to control noise and odor, at times the facility likely is a nuisance to at least some neighboring property owners.
9. The Hansen's have made efforts to be good neighbor's with regard to the keeping of the chickens and the Board recognizes the importance of the educational component of chickens for Faith and other students. The Board also recognizing the goal of improving local food security, though this permit was issued for educational purposes.
10. Faith will be done with her relevant education in September. While other students may be utilizing the facility beyond Faith's graduation, the impact of the operation is on the local neighborhood.
11. The Hansen's are renting the property and intend to relocate themselves, or at least the chickens prior to July 1, 2023.

In light of these findings and conclusions, the Board Grants the permit under the following conditions:

1. A flock of chickens not exceeding 25 of any breed may be maintained until October 1, 2022 on the property. No additional chickens of any sex may be brought to the property. Any chickens hatched at the property must be promptly moved to a location off the property. The Board finds this balances Faith's educational need with the impact on the neighborhood.
2. After October 1, 2022 and until July 1, 2023, only ten chicken hens of any breed may be kept on the property. No roosters are allowed on the property after October 1, 2022. After July 1, 2023 no chickens may be kept on the property without further City action. This allows a limited continuing education opportunity and provides reasonable time for the Hansen's to reduce their flock size.

3. Animal Control and or the Planning and Zoning Department must verify the location of the structures housing chickens and ensure they meet the set back requirements in City code. Any structures violating the setback requirements must be moved within 10 days of notice.
4. All other City Ordinances must be followed on the property.

Dated this 8<sup>th</sup> day of July, 2022

BY: Brian G. Gabriel Sr.  
Brian G. Gabriel Sr., Board Chair

BY: James Baisden  
James Baisden, Board Member

BY: Deborah Sounart  
Deborah Sounart, Board Member

BY: Jim Glendening  
Jim Glendening, Board Member

BY: Henry Knackstedt  
Henry Knackstedt, Board Member

BY: Tea Winger  
Tea Winger, Board Member

**Notice of Right to Appeal**

This decision constitutes the final decision of the City of Kenai Board of Adjustment in this matter. An appeal of this decision to the Alaska Superior Court must be filed within thirty (30) days of the date of this decision, in accordance with Kenai Municipal Code Section 14.20.300, Alaska Statute 22.10.020(d), and Alaska Rule of Appellate Procedure 602(a)(2).

**CERTIFICATE OF DISTRIBUTION**

I certify that on 8<sup>th</sup> day of July, 2022, a copy of this DECISION ON APPEAL was distributed by Certified and/or First Class Mail to each of the following:

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City of Kenai  
210 Fidalgo Avenue  
Kenai, AK 99611

Jessica Hendrickson, Chief Animal Control Officer  
City of Kenai  
510 North Willow Street  
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Shellie Saner, City Clerk  
City of Kenai, Alaska