

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

210 Fidalgo Avenue
Kenai, Alaska 99611

**IN THE MATTER OF THE APPEAL
OF JEFF TWAIT AND HEATHER
MORNING RE: APPEAL OF
DENIAL OF KENNEL LICENSE
PERMIT**

Case No. BA-16-02

DECISION ON APPEAL

I. INTRODUCTION

Jeff Twait and Heather Morning (“Appellants”) timely appealed the denial of a private Kennel License to keep four or more dogs at their home located at 1808 Julie Anna Drive, Kenai Alaska 99611. For the reasons set forth below, the Appellant’s appeal is GRANTED and the City of Kenai Board of Adjustment (“Board”) grants the requested Kennel License with specific conditions as set out below.

II. PROCEDURAL HISTORY

On January 23, 2016, the City’s Animal Control Office contacted the Appellants in response to a neighbor’s complaint regarding Appellants’ animals. [R.71] On March 24, 2016, the Appellants applied for a private Kennel License to allow them to keep four or more dogs at their residence. [R.56] Notification of the application was provided to all property owners within a 300 foot periphery of the Appellant’s parcel. [R.71] The Animal Control Office received numerous written responses from neighbors related to the Appellants’ animals running loose, barking and defecating on private property. [R.65, 66-68 and 70] No public hearing was requested. [R.71]

On April 15, 2016, Animal Control employees conducted an inspection of the premises proposed for the Kennel License location. [R.71] The License Application was subsequently denied. [R.71-73] In the written denial of the License, Chief Animal Control Officer, Jessica

Hendrickson made findings regarding the required standards for operating a kennel facility. [R. 71-73] The findings indicated that all standards were met except two. [R.71-73] First, the facility was not adequately designed to keep all animals on the premises. [R.72] It was noted that there were holes in the fence and other means for animals to escape. [R.72] It was explained that the conclusion that animals were not adequately contained on the premises was substantiated by written reports and phone calls from neighbors in regards to loose dogs. [R.72] Second, it was determined that the facility did constitute a nuisance to neighbors. [R. 72-73] It was noted that during the investigation process, Animal Control Officers found several occurrences in which smaller dogs were allowed to roam free, leaving feces on neighbors' yards. [R.72-73] Reports indicated that two dogs had been wandering the neighborhood and growled at neighbors when they were shooed away. [R.72-73] Additionally, Animal Control had received complaints of excessive barking during the day and at night. [R.72-73] The letter of denial also provided specific steps that the Appellants could take to improve their chances of receiving a kennel license. [R.73]

The Appellants timely appealed the denial of the private Kennel License. [R. 9] The Appeal provided that the Appellants were taking the necessary steps to secure the facility as suggested in the denial letter from Ms. Hendrickson. [R. 9]. It was explained in the Appeal that large dogs were being secured in kennels and that the pet door was kept closed to impede small dogs from going into the back yard unsupervised when the Appellants were not present. [R.9] The Appeal also stated that the Appellants had photographic evidence showing that it was other dogs, not theirs, that were roaming and defecating on private property. [R.9] Additional written comments were received both supporting and opposing the License Application and included in the record of the Appeal. [R.13, 33 and 34]

On June 21, 2016, Board Members Pat Porter, Brian Gabriel, Mike Boyle, Henry Knackstedt and Tim Navarre were present for the Appeal hearing. At the hearing, public comment was received from Lynette Kennedy, Karin Bahma and David Salmon. The Appellants were present for the hearing and provided testimony along with the Chief Animal Control Officer.

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.”¹ The Board reviews the appeal *de novo*.² Therefore, no deference is given to the decision by the Chief Animal Control Officer. While public testimony does hold evidentiary weight, the Board cannot base its decision solely on support or opposition by the public.³

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Kenai Municipal Code Chapter 3.15 governs Kennel Licenses. A private or commercial license is required in the City to keep four or more dogs in one location.⁴ In order to receive a license under KMC 3.15.020, the standards in KMC 3.15.050 must be met. These standards provide that the operator must:

- (a) Comply with the provisions of this title, the terms, conditions, and limitations of any license issued hereunder and any City regulations promulgated under this title.
- (b) Provide shelter adequate to preserve the health of the animals kept in the facility.
- (c) Maintain the facility in a sanitary condition.
- (d) Provide for the adequate care and feeding of animals kept in the facility.
- (e) Design and equip the facility so as to keep all animals on the premises.
- (f) Keep only that number of animals in the facility which is safe and healthy for the facility’s sake.
- (g) Maintain the facility in such a manner that it does not constitute a nuisance to owners or occupiers of land in its vicinity.⁵

¹ KMC 14.20.290(f)(2).

² *Id.*

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

⁴ KMC 3.05.010(7)

⁵ KMC 3.15.050

The written comments submitted in the record and the verbal comments at the hearing were primarily centered on the Appellant's animals getting loose and entering private property, leaving messes behind and showing aggressive behavior, as well as excessive barking that disturbed the neighbors. These issues primarily focus on subsections (e) and (g) of KMC 3.15.050 as set out above: keeping the animals on the premises; and maintaining the facility in a manner that does not constitute a nuisance. The verbal testimony at the hearing indicated that since the Appellants had constructed new fencing and secured the doggy door preventing animals from going outside when the Appellants were not home, the problems had ceased or at least dramatically decreased. Other verbal and written comments focused on problems with cats and raised issues of private covenants. Because the Kennel License is to keep four or more dogs, and does not involve cats, the issue of loose cats is not directly relevant to the granting or denial of a Kennel License. Further, the City does not enforce or necessarily recognize private covenants. Private land owners are free to enforce the covenants themselves in a private action outside the Board of Adjustment process.

The Appellant's testimony indicated that they currently have six dogs. Four of which are twenty pounds or less, and two much larger dogs. They indicated that several of the dogs are very old and that they were agreeable to not replacing them as nature took its course. They further indicated that all their animals (dogs and cats) were now locked inside after ten p.m. and that the dogs no longer had access to the outside when the Appellants were not home. The Appellants indicated that they had given all their neighbors their telephone numbers so they could be called if any problems arose.

The Appellants stated that they had followed all the recommendations from the Chief Animal Control Officer to better secure the facility and reduce barking. These improvements included construction of a six foot tall sight obscuring fence, ensuring there were no holes in the fencing, moving the dog kennel away from the fence and securing the doggy door, so the animals did not have unrestricted access to the yard. They also provided that when they were away from the house the dogs were placed in their kennel in the basement.

The testimony from the Chief Animal Control Officer explained that she had recently inspected the proposed site for the Kennel License on June 15, 2016, and that all the recommendations she had made to the Appellants in her April 18, 2016 denial letter [R. 71-73]

had been accomplished. Ms. Hendrickson also stated that since the improvements had been made, the Animal Control Office had not received any complaints about the Appellants dogs. Ms. Hendrickson further stated that if a license was granted, the facility would be re-inspected in January 2107 for renewal.

The Board finds that the testimony and comments indicate that all the recommended improvements to the proposed facility have been completed. That since the improvements have been made and access to the yard has been eliminated when the Appellants are not home, the facility is now designed and equipped to keep all the dogs on the premises and it no longer constitutes a nuisance to owners or occupiers of land in the vicinity. The Board further finds that several of the animals are very old and that the owners are agreeable to not replacing them in the future. All other conditions as required in KMC 3.15.050 are met as supported by the evidence and testimony submitted by the Appellants and Chief Animal Control Officer.

V. CONCLUSION

The Board unanimously concludes that the decision to deny the Appellants a private Kennel License by the Chief Animal Control Officer is REVERSED. The Board hereby GRANTS the Appellants a private Kennel License with the following conditions: (1) no new dogs are to be kept at the facility while the existing dogs are kept at the premises (2) if any of the current dogs leave the facility, no new dogs shall be kept at the facility under the Kennel License herein granted that would result in a total number of dogs of four or more. If new dogs are brought to the facility resulting in four dogs or more being at the facility, a new Kennel License must be applied for.

DATED this 30th day of June, 2016.

BY: 

Pat Porter, Chair

Tim Navarre, Board Member
Henry Knackstedt, Board Member
Mike Boyle, Board Member
Brian G. Gabriel, Board Member
Pat Porter, Board Chair

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 30th day of June, 2016, a copy of this DECISION ON APPEAL was distributed by Certified and/or First Class Mail to each of the following:

Jeff Twait and Heather Morning

Jeff Twait & Heather Morning
1808 Julie Anna Drive
Kenai, AK 99611

Jessica Hendrickson, Chief Animal Control Officer
City of Kenai

Jessica Henderson, Chief Animal Control Officer
510 North Willow Street
Kenai, AK 99611

Sandra Modigh, City Clerk
City of Kenai, Alaska

