

HIAWATHA BOARD OF ADJUSTMENT MINUTES
REGULAR SCHEDULED MEETING
August 14, 2017

The Hiawatha Board of Adjustment met in regular session on August 14, 2017. Chair, Dick Whitmore called the meeting to order at 6:00 p.m. Members present: Steve Dodson and David Matthews. Members Absent: Christina Goodman. Staff present: Community Development Director, Pat Parsley, Assistant Building Official, Jim Fisher. Guests in Attendance: Darryl Cheney, Kenny Jones, Mark Powers, Mayor Bennett and City Attorney Mark Parmenter.

There being no business, Chair Whitmore opened the training session with Mark Parmenter.

There being no business Chair Whitmore adjourned the meeting at 6:45p.m.

Dick Whitmore, Chair

Date Signed

ATTEST:

Patrick Parsley, Community Development Director

City of Hiawatha
Community Development Department
Building, Zoning, Code Enforcement & Development
101 Emmons St., Hiawatha Iowa, 52233-1697
PHONE (319) 393-1515

Purpose: Zoning Interpretation Appeal **Date:** 09/29/2017

To: Board of Adjustment

Name on Request: Brent and Kristine Sorenson

Address: 209 2nd Avenue **Zone:** R-3

Number of Lots: 1

Reviewed by: Patrick Parsley, Community Development Director
Jim Fisher, Building Official
Jen Goerg, Community Development Clerk

Purpose: The Board of Adjustment is to consider whether the interpretation of Community Development is correct or if the interpretation of the appellant is correct.

Description: Before August 21, 2017 our Department was notified the residents of 209 2nd Avenue were keeping ducks. We made contact with the residents and sent them a letter on August 21, 2017 regarding the zoning regulations for keeping ducks. The letter included a notice to abate the activity by September 5, 2017 or appeal the findings.

On August 24, 2017 our Department received an appeal letter from the residents. The letter contained an admission of the possession of ducks for the past five years. The appellant claimed the ducks to be pets and not livestock.

Our Department sent a follow up letter to the residents explaining the appeals process and associated fees. The letter also contained our interpretation of the specific code sections in question.

On September 21, 2017 our Department received the appeal application and fee for a Board of Adjustment hearing.

On September 29, 2017 we sent notice to the appellant the hearing would be held on October 9th at 6:00 PM in the Council Chambers. The letter also noted the meeting packet would be available at City Hall on October 6, 2017. A notice of the meeting was published in the local news paper on October 3, 2017.

Community Development Interpretation: The Community Development code interpretation includes several sections of the city code. The first is Chapter 55 which defines poultry as livestock and further limits livestock to those zoning districts which allow them.

**CHAPTER 55
ANIMAL PROTECTION AND CONTROL**

55.01 (3) “Livestock” means an animal belonging to the bovine, caprine, equine, ovine or porcine species; farm deer, as defined in Section 481A.1 of the Code of Iowa; ostriches, rheas, emus or **poultry**.

(Code of Iowa, Sec. 717.1)

55.05 LIVESTOCK. It is unlawful for a person to keep livestock within the City except in compliance with the City’s zoning regulations.

The zoning regulations referenced in Chapter 55 are found in the Unified Development Code (UDC); Chapter 165, of the Hiawatha Code. The UDC includes the keeping of poultry as an agricultural use.

165.96 (12) “Agriculture” means the raising of food and feed crops and products, and including tree and vine products, animal husbandry including bee-keeping, dairying, poultry, and pasturage

Further; the Land Use Matrix-Figure I and Land Use Section 165.16 specifically allow agricultural uses in agricultural zones and in some residential zones. To be allowed in an R-3 residential zone the lot must be at least three acres in size.

HIAWATHA, IOWA – UNIFIED DEVELOPMENT CODE

FIGURE I - LAND USE MATRIX

P = Permitted, C = Conditional, A = Accessory, N = Not Allowed

ZONING DISTRICTS

LAND USES	ZONING DISTRICTS														NOTES			
	A	R-1	R-3	R-5	R-7	R-MH	C-ORS	C-2	C-3	C-4	C-R	C-WH	I-1	I-2		CPR-1	CPR-2	CPR-3
Abrasive Manufacturer														P				
Adult Day Habilitation Vocational Rehabilitation								P	P				P					
Adult Entertainment Establishment ¹										C		C	P	P				
Agriculture	P	P ²	C ²															

¹ Subject to the restrictions contained in Section 165.26.

² Limited to the production of crops and the pasturing and shelter of grazing livestock on lots of three acres or larger.

³ Including accessory animal boarding facilities in within a permanent and completely enclosed structure. All animals on the premises for treatment, boarding, grooming or other related purpose shall be at all times kept within said structure. Any such structure shall be located and/or soundproofed to prevent any associated animal noises exceeding 50 decibels from being transmitted across any adjacent properties zoned or being used for residential purposes.....

165.16 LAND USES AND REGULATIONS BY DISTRICT. Land use regulations and standards for development in all districts are provided by zone districts.

3. R-3 Single Family Residence District.

A. Land Uses.

P = Permitted, C = Conditional, A = Accessory, N = Not Allowed

Land Use		Notes
Agriculture	C	Limited to the production of crops and the pasturing and shelter of grazing livestock on lots of three acres or larger.
Cemetery	C	
Communication Tower	A	Subject to FAA approval. See Section 165.27.

Since livestock is allowed in the UDC only in locations which coincide with agricultural use, we are requiring the ducks to be removed from 209 2nd Avenue. This is a small lot (< 3 acres) in an R-3 zone.

We have recently used this same interpretation to prevent keeping a horse in a commercial zone. The request to stable the horse as a pet was for a commercial lot currently used as a residence.

Appellant Interpretation: The appellant interpretation will be presented at the meeting.

BOA Action: The suggested Board of Adjustment motion is stated in the positive regarding the appellant’s appeal. Approval of this motion requires **three concurring votes of the members of the Board of Adjustment and a statement of reasons.**

165.80 BOARD OF ADJUSTMENT.

3. *Finality of Decision and Necessary Vote.* All decisions and finds of the Board on any appeal or upon any application for a variance or conditional use, after a public hearing, shall, in all instances, be the final administrative decision and shall be subject to judicial review as provided by law. The concurring vote of three members of the Board shall be necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Code, or to effect any variance in such ordinance.

(Suggested motion)

The BOA moves to support the interpretation of the appellant; Brent and Kristine Sorenson, based on the facts presented including:

1. _____
2. _____
3. _____
4. _____

Notice to Abate Nuisance

Brent D. Sorenson
209 2nd Ave
Hiawatha, IA 52233

August 21st, 2017

RE: 209 2nd Ave, Hiawatha, IA 52233

This correspondence is to inform you that the Hiawatha Code Enforcement Department has received a complaint regarding the above-referenced property. Your cooperation in this matter is appreciated.

The complaint is regarding the following Hiawatha City Codes:

55.05 LIVESTOCK. It is unlawful for a person to keep livestock within the City except in compliance with the City's zoning regulations.

Keeping of livestock is considered agricultural use and defined in Hiawatha's City Code as follows:

165.19 (12) "Agriculture" means the raising of food and feed crops and products, and including tree and vine products, animal husbandry including bee-keeping, dairying, poultry, and pasturage

The parcel located at 209 2nd Ave is zoned R-3. According to Hiawatha's zoning regulations agriculture is permitted as a conditional use provided the following requirements are met:

165.16 (3) LAND USE: Limited to the production of crops and the pasturing and shelter of grazing livestock on lots of three acres or larger.

According to our records the parcel size is 0.21 Acres and does not meet the current zoning requirements to keep livestock at this location. The following actions are required for compliance:

Corrections: Cease and desist the keeping of livestock (Ducks) located at 209 2nd Ave, Hiawatha, IA 52233.

I will be at the property on **09/05/2017** at which time necessary corrections are due.

If you disagree, or feel the above information is incorrect, the appeal process can be completed by submitting a written letter with the City Clerk within **5 business days** of receipt of this letter. If we receive no communication we would expect the problem to be corrected.

If the conditions in the complaint exist, this is your opportunity to remedy these issues prior to any further involvement by the City. We hope that by extending you this courtesy, our involvement will be minimal.

If you have any questions, please contact the Community Development Department at (319) 393-1515.

Sincerely,

Jim Fisher
Assistant Building Official
City of Hiawatha

3a-3

August 24, 2017

Brent and Kristine Sorenson
209 2nd Ave
Hiawatha, IA 52233

To Whom It May Concern:

I am writing this letter to appeal the city's decision to evict my pet ducks, which I have had for five years with no prior complaints or incidents.

We checked with all of our neighbors on each side and behind us and no one had an issue with the pet ducks. They all will sign a petition for us to keep our pet ducks.

They are not livestock. They are water fowl. We do not keep ducks for eggs or any meat production so I don't believe keeping our ducks is considered agricultural use.

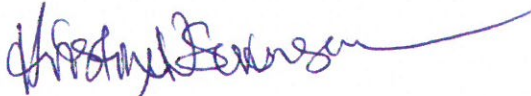
I will produce a petition signed by my neighbors to keep our ducks. It is our property and they are not causing any nuisance or issues.

If necessary, I am prepared to get an attorney to fight this.

Respectfully,



Brent Sorenson



Kristine Sorenson

Received: 8/25/17
BP

2nd Notice to Abate

Brent D. Sorenson
209 2nd Ave
Hiawatha, IA 52233

September 5th, 2017

RE: 209 2nd Ave, Hiawatha, IA 52233

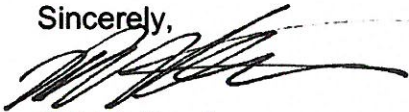
On August 25th we have received your letter of response to our notice to abate. We have noted you are not contending the presence of ducks on your property. However you are appealing our interpretation and enforcement of the Unified Development Code.

An appeal will be scheduled with the Board of Adjustment (BOA) as specified in UDC section 165.80-81 when the submittal is properly completed. **To qualify as an appeal you must submit the attached "Submittal Form" and the associated fee of \$150 by September 22nd, 2017.** This will be within 30 days of the original notice as allowed in UDC 165.81 (A). You may submit this form and payment at Hiawatha City Hall or you may send it to:

Community Development
City of Hiawatha
101 Emmons Street
Hiawatha IA 52233

Alternatively we are requiring the ducks to be removed within 30 days of this notice. If no appeal is filed we will inspect your property on October 9th to verify compliance with this abatement notice.

Sincerely,



Patrick Parsley
Community Development Director

Attached: Original Notice
Appeals Process Hiawatha Code Section 165.80-81
Submittal Form
Community Development Interpretation regarding keeping livestock

Hiawatha!

COPY

Notice to Abate Nuisance

Brent D. Sorenson
209 2nd Ave
Hiawatha, IA 52233

August 21st, 2017

RE: 209 2nd Ave, Hiawatha, IA 52233

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The parcel located at 209 2nd Ave is zoned R-3. According to Hiawatha's zoning regulations agriculture is permitted as a conditional use provided the following requirements are met:

165.16 (3) LAND USE: Limited to the production of crops and the pasturing and shelter of grazing livestock on lots of three acres or larger.

According to our records the parcel size is 0.21 Acres and does not meet the current zoning requirements to keep livestock at this location. The following actions are required for compliance:

COPY

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I will be at the property on **09/05/2017** at which time necessary corrections are due.

If you disagree, or feel the above information is incorrect, the appeal process can be completed by submitting a written letter with the City Clerk within **5 business days** of receipt of this letter. If we receive no communication we would expect the problem to be corrected.

If the conditions in the complaint exist, this is your opportunity to remedy these issues prior to any further involvement by the City. We hope that by extending you this courtesy, our involvement will be minimal.

If you have any questions, please contact the Community Development Department at (319) 393-1515.

Sincerely,

Jim Fisher
Assistant Building Official
City of Hiawatha

165.78 APPEALS OF DECISIONS. Any person affected by a decision of the Zoning Administrator in his or her enforcement of this Code may appeal said decision to the Board of Adjustment according to the procedures contained in Section 165.81 herein.

165.79 Reserved

165.80 BOARD OF ADJUSTMENT.

1. **Creation, Membership, Appointment, Terms.** There is hereby created a Board of Adjustment, consisting of five (5) members. The word "Board" when used in this Code shall mean the Board of Adjustment. Members of the Board shall be appointed by the Mayor and confirmed by the City Council to serve respectively for the following terms: One for one year, one for two (2) years, one for three (3) years, one for four (4) years, and one for five (5) years; the successor to each member so appointed to serve a term of five years. Vacancies shall be filled by the Mayor, subject to confirmation by City Council, for any unexpired term. Members may be removed by the Mayor, with consent of City Council, for cause after written charges have been filed and after a public hearing has been held.

2. **Meetings, Rules, Records, Procedures.** Meetings of the Board shall be held on the second Monday of the month, and at such other times as the Board may determine. Meetings shall be held if so requested by three members of the Board. All meetings and hearings conducted by the Board shall be open to the public. Any person may appear and testify at a hearing either in person or by duly authorized agent or attorney. The chairperson or, in their absence, the acting chairperson may administer oaths and compel attendance of witnesses. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall also keep records of its hearings, examinations, and other official actions. Every decision of the Board shall be by written record which shall include findings that set forth the specific relief or use granted or relief denied, and shall expressly set forth any limitations or conditions imposed on any relief granted, or work or use authorized. A copy of every rule or regulation order, requirement, decision, or determination of the Board shall be filed immediately in the office of the Zoning Administrator and shall be a public record. The Board shall adopt its own rules and procedures not in conflict with this Code or with the *Code of Iowa*.

3. **Finality of Decision and Necessary Vote.** All decisions and finds of the Board on any appeal or upon any application for a variance or conditional use, after a public hearing, shall, in all instances, be the final administrative decision and shall be subject to judicial review as provided by law. The concurring vote of three members of the Board shall be necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Code, or to effect any variance in such ordinance.

4. **Petition for Certiorari.** Any person or persons, jointly or severally, aggrieved by any decision of the Board under the provisions of this Code, or any taxpayer, or any officer, department board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Zoning Administrator.

5. **Fee.** A nonrefundable fee shall be paid by the applicant to the Zoning Administrator at the time an application for an appeal, variance, conditional use, or revised site plan is filed, which the Zoning Administrator shall forthwith pay over to the City Clerk to the credit of the general

revenue fund of the City. The fee shall help defray necessary costs and shall be in an amount established by resolution, from time to time, by the City Council.

165.81 JURISDICTION.

1. Appeals.

A. **Scope of Appeals and Procedure for Filing.** An appeal may be taken to the Board by any person, firm or corporation, or by any office, department, board or bureau affected by any decision of the Zoning Administrator, and where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Code. Such an appeal shall be submitted within 30 days of the decision of the Zoning Administrator, by filing a notice of appeal specifying the grounds thereof. The appeal shall be in the number of copies and contain such information as the Board, by rule, may require. The Zoning Administrator shall forthwith transmit to the Board all of the papers constituting a record upon which the action appealed from was taken.

B. **Effect of Appeal.** An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after the notice of the appeal has been filed with him or her, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life and property, in which case the proceedings shall not be stayed other than by a restraining order which may be granted by the Board or by a court of record on application, or on notice of the Zoning Administrator and due cause is shown.

C. **Hearing, Decision, and Records.** The Board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties by one publication of a notice in a publication of general circulation within the City of Hiawatha, said publication to be made not less than four (4) days nor more than 20 days before the date of hearing. The Board shall reach its decision within forty-five (45) days of the date of the public hearing unless such time is extended by mutual consent of the petitioner and the Board. The Board may, in conformity with the provisions of this Code, affirm or reverse, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken. The Zoning Administrator shall maintain records of all actions of the Board relative to appeals.

Hiawatha!

It is our interpretation ducks are poultry as generally defined. Poultry is "livestock" as specifically defined in Hiawatha Code Section 55.01.

3. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine or porcine species; farm deer, as defined in Section 481A.1 of the Code of Iowa; ostriches, rheas, emus or poultry.

(Code of Iowa, Sec. 717.1)

Hiawatha Code Chapter 55 subsequently bans keeping livestock unless it is permitted in the Hiawatha UDC.

55.05 LIVESTOCK. It is unlawful for a person to keep livestock within the City except in compliance with the City's zoning regulations.

The UDC specifically allows livestock only in agricultural zones and large residential tracts. The purpose for the specific regulations of livestock is twofold.

- Land is generally annexed into the city as agricultural land and it is appropriate to allow this type of activity; keeping livestock, while the land is still zoned and used of agricultural purposes.
- Livestock is considered bothersome in other zoning districts do to noise, smells, diseases and required amenities for keeping and caring for these animals. It would not be appropriate to keep cows, horses, pigs or poultry in residential areas.

3a-5

Brent and Kristine Sorenson
209 2nd Ave
Hiawatha, Iowa 52233

9/28/2017

Mr. & Mrs. Sorensen,

Enclosed please find information regarding the upcoming Board of Adjustment meeting where we will hear your appeal request. The meeting will be held on October 9th, 2017 at 6:00 pm in the Council Chambers of City Hall.

If you would like a copy of the official Board packet, you are welcome to pick it up at City Hall on October 6th, 2017 after 1:30pm.

If you have any questions or concerns, please feel free to contact us.

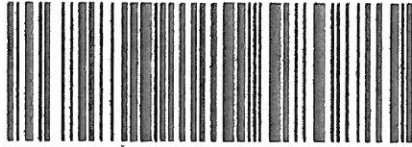
Thank you,

Community Development Department
101 Emmons Street
Hiawatha, Iowa 52233
319-393-1515 Ext. 227

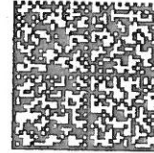
CERTIFIED MAIL

Hiawatha!

209 2nd STREET
52233-1697




7016 3560 0000 7793 0987



UNITED STATES POSTAGE
PITNEY BOWES
02 1P \$ 006.56⁰
0001955388 SEP 28 2017
MAILED FROM ZIP CODE 52233

Brent and Kristine Sorenson
209 2nd Ave
Hiawatha, Iowa 52233

9/28/2017

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <input type="checkbox"/> Complete items 1, 2, and 3. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p>	<p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>Brent & Kristine Sorenson 209 2nd Ave Hiawatha, IA 52233</p>  <p>9590 9403 0498 5173 5246 96</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p> <p>7016 3560 0000 7793 0987</p>	<p>3. Service Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail (Additional charges apply per \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery
<p>PS Form 3811, April 2015 PSN 7530-02-000-9053</p>	<p>Domestic Return Receipt</p>

INVOICE DATE	ACCOUNT #	ACCOUNT NAME	LINES	TIMES
10/3/17	2971	CITY OF HIAWATHA	1.00 x 34 Li	1
DESCRIPTION legals- 10-9 Appeals Hrg Sorenson				

COPY

PROOF OF PUBLICATION

I, Chris Edwards, do state that I am the publisher of THE GAZETTE, a daily newspaper of general circulation in Linn and Johnson, in Iowa. The notice, a printed copy of which is attached, was inserted and published in THE GAZETTE in the issue(s) of 10/3/2017

The reasonable fee for publishing said notice is \$16.98

By Chris Edwards

STATE OF IOWA, } SS:
Counties of Linn and Johnson

This instrument was acknowledged by Chris Edwards before me this 3rd day of October, 2017

Diane Gusta
Notary Public in and for the State of Iowa

NOTICE OF AN APPEALS HEARING TO WHOM IT MAY CONCERN:
You are hereby notified an Appeals Hearing will be held in the Hiawatha City Hall before the Hiawatha Board of Adjustment on Monday, October 9, 2017 at 6:00 p.m., to consider an interpretation to the Hiawatha City Hiawatha City Codes:
• 55.05 LIVESTOCK. It is unlawful for a person to keep livestock within the City except in compliance with the City's zoning regulations.
• 165.96 (12) "Agriculture" means the raising of food and feed crops and products, and including tree and vine products, animal husbandry including bee-keeping, dairying, poultry, and pasturage
• 165.16 (3) LAND USE: Limited to the production of crops and the pasturing and shelter of grazing livestock on lots of three acres or larger.
The appellant, Brent Sorenson, is appealing the determination of the Community Development Department regarding its interpretation as it applies to keeping ducks in an R-3 Zone.
All interested persons may file their comments in writing with the City Clerk of Hiawatha, Iowa, at or before said hearing and/or may appear in person at said hearing.
Kelly Kornegor, City Clerk

COPY

