

CITY OF LOGAN  
BOARD OF ADJUSTMENT  
December 13, 2012

At 7:00 P.M. Chairman Todd Cohrs called the meeting to order. Those board members present were: Cohrs, Rosengren, Muell, Lesline and McDonald. Also present were Jason Roden, Zoning Administrator and Marilyn Keizer, Secretary. Others attending were Attorney Judson Frisk, Dr. Hieb and approximately 32 citizens (list attached to the minutes on file at City Hall).

Motion was made by Board Member Lesline and seconded by Board Member McDonald to approve the agenda. 5 ayes.

Chairman Cohrs told the committee that we are here to review the request to allow chickens on property from Dr. Hieb.

Chairman Cohrs opened the Public Hearing at 7:02 P.M.

Applicant's side of the case: Attorney Judson Frisk presented the Hieb's side of the case. He presented some GIS maps with an aerial view of the Hieb property. Frisk stated that they have approximately 8 ½ acres at the edge of Logan. The maps showed the house, garden and chicken hut, which is located behind the timber and isolated from the road. He also presented signatures from all of the neighbors that live in the area. Frisk restated that his client lives at the edge of the city limits on approximately 8 ½ acres of land which contains two houses and the rest is pastureland and timber. Her closest neighbor is a pine plantation. The Hieb's home is fronted by West 4<sup>th</sup> Street, and the rest of the property is entirely rural. The legal description of her property is described as out lots to Milliman's addition to Logan, and it was outside the city limits until the 50's or 60's when the town expanded that direction. He stated that his client grew up on this property and that they moved there in 1956. Dr. Hieb went to medical school, was in the military, practiced in Yuma, AZ and returned to Logan after her parents died. Frisk stated that she came back to Logan because she wanted to have the rural use of her property and have a healthy lifestyle. He said that one of the things she wanted to do to maintain this lifestyle was grow some of her own eggs because they are safer than buying commercial eggs. Frisk stated that she has had chickens in that neighborhood for several years. With regard to the signatures from the neighbors, the closest neighbor to the east did not even know she had chickens until the complaint was brought forth. He said that her properties are much bigger than city lots, and they would be more like several city blocks. The property is isolated from other properties because of the nature of the topography at the top of the hill on West 4<sup>th</sup> Street. Frisk stated that his client's value of her property has increased by her ability to raise her personal flock of chickens. Frisk said that he didn't think her having chickens would in any way change the character of that part of the town. Iowa Code 414.12 states that the Board of Adjustment is for granting variances that will not be contrary to public interest where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of

the ordinance shall be observed and substantial justice be done. Frisk stated that he thinks substantial justice in this case would be to allow a small, hobby group of chickens for his client. At that time, Frisk introduced Gary Guge to talk about the character of that neighborhood. Mr. Guge stated that he moved to his property in '68 or '69. He said that he had been the County Extension Director for 41 years, and he had about 6 questions concerning chickens during that time. Guge stated that he never had any problems with chickens carrying disease in town, and there would be a lot bigger risks from the turkeys that run wild in the area. Frisk asked that based on Iowa Code 414.12, that this is going to cause substantial damage to the Hieb's and it's not going to hurt anyone in the neighborhood based on the neighbors approval, and from the character of this neighborhood that the board would approve this variance. Chairman Cohrs asked for clarification on how many chickens are on the property and if they are currently there. Dr. Hieb stated that they have 12-18, and they are on the property at this time.

Zoning Administrator's side of the case: Jason Roden stated that Dr. Hieb filled out the application for a variance to allow chickens, and he had to deny it because the code states that he has no ability to change the set codes. He said it states that you cannot have animals, and fowl falls into that category. Roden stated that Hieb's have multiple acres, but it's all zoned residential right now. He stated that she has options where she could actually rezone portions of their property. Roden said they could section off where their home is right now, and the rest of the property could be rezoned as agricultural like Gary Guge did several years ago. He stated that if they do something like that, there is no question that they could have animals. It would have to meet certain requirements of being far enough away from other residences, like 100 feet away from your neighbor. He said you couldn't have a stock farm. With it being residential you're only allowed a certain number of buildings, and that would be a home, one outbuilding and maybe a utility shed. He stated that by rezoning agricultural, you're allowed to have a building for housing animals and various other stipulations. Roden stated that another option would be to table it to the City Council where they would specify the number of chickens and the lot size or square footage so that you don't have them on a small lot with neighbors on all sides. He said the Council would have to change the city ordinance so it would all be spelled out in black and white. Roden said the other option is to not involve the council and go in front of the board to change the zoning. He said he thought that would be a nonissue. Chairman Cohrs asked if there was any property adjoining this property that is already zoned agriculture. Roden stated that there is. With regard to the zoning, Roden stated that the Hieb's had acquired another piece of property that has a house on it so they would have to legally separate off some of that and some of their current residence to meet the requirement for agriculture zoning. He stated that the Board of Adjustment is allowed to grant a temporary variance up to twelve months or until the city either changes their code or they rezone portions of their property as agriculture.

Interested property owners express their opinions. Pat Tillinghast stated that his biggest beef wasn't the chickens but how they acquired the chickens. He stated that when he goes by their house the chickens are in the road, and he almost hits them. He stated that he has gone to the City to complain about it, and police officers have gone up there and never issued a citation. Tillinghast stated that when he wanted to have horses, the City

made him go door to door to get signatures and then charged him fifty dollars a year per horse as a pet so he could keep them on his agriculture zoned property. He asked why they would be able to do the same thing with chickens and have them for free. Roden asked how many years ago this happened, and stated that maybe someone interpreted the codes wrong. He stated that if this is zoned agriculture and are far enough away from each property, he shouldn't have needed any signatures. Tillinghast stated he has had to pay fifty dollars per horse, per year since it was rezoned. Roden stated that was something that might need to be looked at again. Tillinghast asked if he would get his money back. Chairman Cohrs stated that they can't answer to his situation at this time. Tillinghast stated that if they are going to allow that, then they should do something similar for him. He stated that the Hieb's should have to go through the same process and license them and account for every chicken they have. Roden stated that would be up to the City Council. Terry Francis stated that with the location and amount of land that Hieb's have the board should take that into consideration. He stated that there should be some specific parameters if they are going to allow them. Jim Ertleman stated that he thinks this should be addressed by the City Council as an ordinance issue. Jim Poore stated that he is not in favor of having chickens inside the city limits because he doesn't want them living next door to him.

Applicant's rebuttal: Judson Frisk called on Dr. Hieb to discuss what happened when the chickens got out. Dr. Hieb apologized for them getting out and stated that dogs get out every once in awhile too. She stated that since they got out that one time they have put them in a 360 degree coop so they won't get out again. Frisk stated that it is the Board's job to make an adjustment, and they made an application to them asking for a variance. He stated that they might make an application for a zoning change, but this is the quickest way to get some action. Frisk stated that they are asking for the variance because they feel it's not going to damage anybody in the neighborhood. He said they will file for a zoning change, but it's going to take awhile to get that so at the present time they wish to have this variance. He stated that it won't change the character of the neighborhood, and it adds to the value of this property for his client who came back to Iowa so she could enjoy this property. He said he doesn't see any safety issues, and she doesn't have any roosters.

Chairman Cohrs adjourned the public hearing and opened the regular meeting. McDonald stated that because of the property's size it warrants the Board to look at it, but the challenge that he has is the precedence it sets. If they grant the variance, what's to say that someone with a half acre lot will come and want the same variance. He stated that if they actually define how big of acreage will count, they are making an ordinance. McDonald stated that he liked the opinion of Jim Ertleman; that this would be better solved by getting a change to the ordinance. He said he wasn't totally against offering a temporary variance to give them time to do that, but he has a hard time getting his mind around the concept of a full variance with the attitude of what's to keep someone else from wanting the same opportunity on less acres and how is the Board to define what counts as large enough to have poultry. Lesline stated that she is glad that we have Mrs. Hieb and her husband back in town. She thinks we ought to welcome people that come to town and want to live here. She stated that they evidently like the town or they

wouldn't have come back. She stated that it's great, chickens or no chickens. Rosengren stated that he's thinking along the same lines as McDonald. He stated that the precedence is the more concerning thing. Rosengren has been to Hieb's house to see their chickens and their chicken coop, and the problem with chickens is that they don't always have the best owners. Having chickens everywhere is a concern. He thinks that the route of rezoning is good because then they don't have to worry about people asking for chickens everywhere in town. Rosengren stated that the Council could work towards their process if they want to allow chickens in town and set the requirements that would support that. Cohrs stated that we have some zoning regulations that we do follow and some criteria that have to be met in order to grant a variance. He said that it states beyond a reasonable doubt that all of the following exist. Number two is that such variance is necessary for the preservation enjoyment of the substantial property right possessed by other properties in the same zoning district and vicinity. By that, it basically would state that we have to grant this variance for the Hieb's to have chickens just like everybody else can in the district, and that's not right. He stated that if we grant the variance we will be opening ourselves up to everybody else asking for a variance, and we're not the ones to decide the property size, the limit of the amount of animals and what kind of animals they are talking about. Cohrs said that he liked the idea of a temporary variance to give them a little time. Since they have the chickens on the property yet, we could grant the temporary variance so they don't have to remove them right now and they can seek other avenues. It would be up to them to get that accomplished. McDonald stated that if they were to grant a temporary variance and during that timeframe nothing is resolved, then at that time he assumed they would be written up by the police for disobeying an ordinance. Cohrs stated that they should have time to remove the chickens. He said that this would give them time to seek other avenues. McDonald asked if they granted a temporary variance would they be setting themselves up to offer a temporary variance to anyone else who wants them. Cohrs said that they would, and McDonald asked if they were prepared to do that. At this point, Frisk stated that they are making an argument that he should have had a chance to respond to. He stated that they were not interpreting the statute right. Frisk stated that the city ordinance is not correct and if it's over broad it is thrown out by the state law. Cohrs stated that they can table it if they are not comfortable making a decision tonight. Muell asked how long they would table it for. Cohrs stated whatever it would take to get what they need. McDonald asked if anyone felt comfortable with making a motion. Muell stated that she thought it was a good idea to table it. Cohrs asked what concerns she would want resolved, and she said she is wondering about the time limit. Cohrs said it would be whatever they wanted to deem it up to twelve months. He said they would probably set a date for a meeting in mid January. Rosengren asked if they didn't grant a temporary would the chickens have to be removed from the property immediately. Cohrs stated that they probably would. McDonald asked Frisk why this was an issue for this zoning board. Frisk stated that they are asking for a variance for an illegal act outside of what the ordinance allows. He stated that it has to go before the Board of Adjustment. McDonald stated that if they granted this variance they would be overruling an ordinance, and he said he was very uncomfortable doing this. A temporary variance and zoning issues were discussed with Jason Roden. McDonald stated that Roden makes a good point that they would not be offering a variance for the property owner to have chickens

but for her to have a chance to rezone. McDonald stated that he was leaning towards tabling the motion and researching what it takes to rezone a piece of property in the city limits to an agricultural status. He said if that protects us by the size of the property, then he wouldn't worry about setting precedence. He asked if they don't grant the variance today, would that Hieb's have to get rid of their chickens. Cohrs stated that they would be given a reasonable amount of time.

Motion was made by McDonald and seconded by Rosengren to table the motion until a meeting can be set up in January. Voting aye: Rosengren, Cohrs, Lesline, Muell and McDonald.

Motion was made by Rosengren and seconded by McDonald to adjourn. 5 ayes.

Todd Cohrs, Chairman  
Marilyn Keizer, Secretary