

Minutes  
Administrative Board of Appeals  
January 30, 2012

MEMBERS PRESENT: Ann O'Connor, Chair  
David Levy, Vice Chair  
Jose Lopez  
Jim Weaver  
Bode Labode

MEMBERS ABSENT: Steve Simmonds, Alternate  
Jama Samiev, Alternate

OTHERS PRESENT: RoseMarie Horvath, Law Department  
Kevin Denker, Planning Department  
Debbie Hightower, Recording Secretary

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**I. Roll Call**

Ms. O'Connor called the meeting to order at 1:00 pm.

Mr. Denker asked that the board receive as Exhibit 1 in each of this meeting's cases the contents of the City's file on each case.

Ms. O'Connor acknowledged the contents of the City's file as Exhibit 1 in each case.

**II. Cases**

**11-12-074** *(over from 12/19/11)*

Appeal Omaha Police Department denial of Taxicab Driver's Permit: Bryan Cordner, 313 Main Street, Plattsmouth, NE 68048

At the Administrative Board of Appeals meeting held on January 30, 2012, Bryan Cordner did not appear before the board.

Mr. Levy made a motion to DENY the appeal. Seconded by Mr. Lopez.

AYES: Levy, Weaver, Lopez, Labode, O'Connor

Motion carried 5-0

**12-1-001**

Appeal Omaha Police Department denial of firearm registration: Andrew Strickland, 4728 North 41<sup>st</sup> Street 68111

At the Administrative Board of Appeals meeting held on January 30, 2012, Andrew Strickland appeared before the board.

Lt. Colene Hinchey, Omaha Police Department, stated that Mr. Strickland was denied a firearm registration based on a CCW charge in 1984. Lt. Hinchey stated that Mr. Strickland was stopped for a traffic violation in a red VW Beetle vehicle and a loaded 44 caliber automatic gun was found in Mr. Strickland's pocket. Lt. Hinchey stated that Mr. Strickland was fined \$10.00.

Mr. Strickland explained that the gun was registered to him but he was unaware in 1984 that he had to have the gun on the seat of his vehicle.

In response to Mr. Weaver, Mr. Strickland stated that he does not remember going to court for the CCW charge in 1984 but he admitted that he was the only one in his family that owned a VW Beetle.

Lt. Hinchey stated that since 1984, Mr. Strickland has only had traffic violations on his record.

Mr. Strickland explained that he will be employed at a package liquor store located at 33<sup>rd</sup> and Parker Street and he is required to carry a registered handgun.

Mr. Labode made a motion to GRANT the appeal. Seconded by Mr. Weaver.

AYES: Weaver, Lopez, Labode, Levy, O'Connor

Motion carried 5-0

**12-1-002**

Appeal Omaha Police Department denial of firearm registration: Benjamin H. Elmore, 4461 Crown Point Avenue 68111

At the Administrative Board of Appeals meeting held on January 30, 2012, Benjamin H. Elmore appeared before the board.

Lt. Colene Hinchey, Omaha Police Department, stated that Mr. Elmore was denied a firearm registration based on a CCW charge in 1993. Lt. Hinchey stated that Mr. Elmore was stopped for a traffic violation and stated that he had a loaded weapon under the seat of his vehicle. She stated that Mr. Elmore was also found to be a fugitive from justice at the time.

Mr. Elmore stated that he forgot to put his weapon on the dash of his vehicle but when he was stopped he let the police officer know that he had a weapon. Mr. Elmore stated that he had a bench warrant and spent one night in jail.

Mr. Levy asked Lt. Hinchey for more information regarding the warrant. Lt. Hinchey stated that the warrant was listed as a felony but was for fugitive interstate. Mr. Elmore stated the warrant was for non-payment of child support. Lt. Hinchey stated the felony must have been dropped down but the weapon charge was a Class I misdemeanor. Lt. Hinchey stated that Mr. Elmore does not have any other criminal entries on his record since 1993 but has had several tickets for traffic violations.

Mr. Weaver made a motion to GRANT the appeal. Seconded by Mr. Labode.

AYES: Lopez, Labode, Levy, Weaver, O'Connor

Motion carried 5-0

**12-1-003**

Appeal Omaha Police Department notice of nuisance at 3920 Frederick: Kione M. Lowe, 3920 Frederick #14 68105

At the Administrative Board of Appeals meeting held on January 30, 2012, Kione M. Lowe appeared before the board. Ms. Lowe stated that her reason for appeal is to request an additional 30 days to allow time to purchase her license plates when her tax refund is received on approximately February 7, 2012.

In response to Mr. Weaver, Ms. Lowe stated that she purchased her vehicle in July 2011 but is presently not driving the vehicle. She indicated that she moves the vehicle from time to time.

Mr. Levy made a motion to DENY the appeal with 30 days to comply. Seconded by Mr. Labode.

AYES: Labode, Levy, Weaver, Lopez, O'Connor

Motion carried 5-0

**12-1-004**

Appeal Reckless Owner declaration issued by the Nebraska Humane Society: Dan and Kim Grell, 15321 Parker Plaza 68154

At the Administrative Board of Appeals meeting held on January 30, 2012, Dan Grell, Kim Grell, Mackenzie Grell and Larry Forman, attorney appeared before the board.

Mark Langan, Nebraska Humane Society (NHS), 8929 Fort Street, appeared before the board with Erin Connely. Mr. Langan submitted the NHS Investigative Report (Exhibit 2). He stated that NHS enforces the Reckless Owner Ordinance, 6-87, which states that any owner of a dog that is declared potentially dangerous must abide by certain requirements (Exhibit 3). If the owner does not abide by the requirements, they are designated a Reckless Owner and must forfeit their dog to NHS and not own animals for the next four years.

On May 20, 2011, a Standard Poodle named Rowdy, owned by the Grell's was running loose in the neighborhood and bit Erin Connely on her ankle and also bit her dog. The NHS was called and a citation was issued for Improper Restraint of an Animal to Kim Grell and she received a \$100 fine. She was also issued a Potentially Dangerous Dog Declaration and Kim Grell was advised that she had to abide by the requirements of the declaration. On June 13, 2011, Kim Grell appealed the Potentially Dangerous Dog declaration to NHS but was denied. There was no appeal filed to the Administrative Board of Appeals therefore the Potentially Dangerous Dog declaration was in effect for Rowdy.

On October 27, 2011, Erin Connely reported that she had observed Rowdy running loose in the nearby park and that the dog had charged her adult son and dog. Rowdy was not leashed, muzzled or being walked by anyone. NHS responded and issued citations to Dan Grell for Improper Restraint of an Animal and for a Potentially Dangerous Dog running loose and he later received a \$75.00 fine. A Reckless Owner declaration was issued to Dan Grell and at that time the Grell's were required to turn Rowdy over to NHS within 24 hours and failed to do so. The Grell's also did not appeal the Reckless Owner Declaration to NHS.

On November 13, 2011, NHS was contacted by several neighbors, which live across the street from the Grells, to report that Rowdy was again running loose and charging people. After making contact with the Grells, the Grells denied that Rowdy was running loose. A citation was issued to Kim Grell for Improper Restraint of an Animal and Harboring a Dangerous Animal. The Grells again refused to turn Rowdy over to NHS and demanded that NHS obtain a search warrant. On November 14, 2011, the NHS served a search warrant at the Grell residence but no one was home.

On November 17, 2011, the Grells went to NHS with their lawyer, Larry Forman in an attempt to resolve the case. On November 22, 2011, as per Omaha City Prosecutor, Marty Conboy, Rowdy was allowed to be boarded at a kennel in Bennet, Nebraska pending the decision of this board and the legal proceedings in connection with this case.

Ms. Connely, 1876 North 153<sup>rd</sup> Avenue, appeared before the board. Ms. Connely stated that on May 20, 2011, she went out to get the mail and Rowdy came out of nowhere and attacked her dog and flailed him in the air. In the process of getting the dog away, she stated that she rolled her ankle and Rowdy bit her on the ankle and she has since had surgery. Since that incident, Rowdy still runs loose and is a danger in the neighborhood.

Mr. Forman, 7171 Mercy Road, stated that the Grells have been members of the Eldorado community for over 20 years. The Grells purchased Rowdy three years previously for their daughter, Mackenzie and there were never any problems for the first two and one half years that Rowdy was in the neighborhood. Mr. Forman submitted a packet with several photos of Rowdy and a photo of the ankle injury to Ms. Connely (Exhibit 4). With regard to the incident in question, Rowdy got out of the home and Mackenzie was chasing him when he noticed Ms. Connely's little dog. He indicated that the ankle injury is nothing more than a scratch. Mr. Forman explained that Kim Grell was the one who asked that the police be called because NHS was demanding that she produce evidence that the dog had been vaccinated. On October 27, 2011 the report stated that Rowdy ran loose but the restraining device broke. On November 11, 2011, the dog was restrained with another device and never got outside

into the right-of-way and was always on the Grell property. Mr. Forman pointed out that all dogs are potentially dangerous but Rowdy does not roam the neighborhood and terrorize other people. He stated that Dan Grell previously turned the neighbors in for having unlicensed vehicles as per city code. Mr. Forman stated that NHS informed those neighbors to call whenever Rowdy was out.

Mr. Forman indicated that the \$100,000 insurance policy requirement is not an issue. He submitted a copy of the Grells' homeowner's insurance policy indicating that there is \$300,000 in personal liability coverage (Exhibit 5). Mr. Forman stated that Rowdy is neutered and fitted with a microchip, the Grells have purchased the Potentially Dangerous Dog license and Kim Grell has attended the owner responsibility class. The behavior analysis that was generated by Dawn Thrapp, NHS, recommended that Rowdy attend a regular obedience class which the Grells are willing to do. Exhibit 4 also includes an email from the dog kennel in Bennet, Nebraska, where Rowdy has been boarded for the last 70 days, which states that there is no indication that Rowdy is aggressive towards any other dogs or people. Mr. Forman explained that the Grells have spent approximately \$1,700 but would also be willing to build a 6' high privacy fence around their backyard and take Rowdy to obedience class. He asked the board to give Mackenzie one more chance with Rowdy.

Ms. O'Connor asked Mr. Langan when the Grells were notified that they had to get a dog behavior evaluation. Mr. Langan answered that the Grells were notified on May 20, 2011 when they were initially issued the Potentially Dangerous Dog declaration and there still has not been a dog behavior class attended by the Grells. Mr. Langan explained that a dog is required to go through a dog behavior evaluation to determine which class a dog should be placed in.

Mr. Forman answered that Kim Grell attended one session at NHS and was under the impression that it was no longer necessary but it became apparent that it was a misunderstanding. In response to Mr. Levy, Kim Grell stated that she attended two ownership classes at the end of September 2011. Mr. Levy concluded that there was a fair amount of time between May 20, 2011 and September 2011.

Ms. O'Connor questioned when the Grells were notified that they had to provide insurance. Mr. Langan stated the Grells were notified on May 20, 2011 and later informed via a letter in August 2011. Mr. Forman stated that the Grells had the insurance at all times but had not submitted it to NHS.

Mr. Levy asked Mr. Langan if the NHS's basis to declare the Grells a Reckless Owner because of the violation of the requirements of the Potentially Dog declaration. Mr. Langan confirmed that NHS is not alleging that there have been three convictions under the Potentially Dangerous Dog ordinance.

In response to Mr. Labode, Mr. Langan responded to the photo of the injury to Ms. Connely and stated it appears to be a scratch caused by a tooth indentation. He stated that the Potentially Dangerous Dog ordinance states that a potentially dangerous dog is one who injures a human being that does not require medical attention. He concluded that there was an injury conducted to Ms. Connely's ankle by the dog and it is immaterial whether the injury was a bite or a scratch.

Mr. Forman referred to Ordinance 6-149 that defines a dangerous animal as one who attacks, snaps, bites at or has a history of attacking human beings or other domestic animals without provocation and one who bites a human being without provocation. He stated that he does not believe the injury was a bite.

Mr. Langan explained that Ordinance 6-149 deals with the definition of a dangerous dog, which does states "bites", but the definition of a potentially dangerous dog is one that injures a human being that does not require medical attention and a bite is not required for a Potentially Dangerous Dog declaration. Mr. Langan responded to Mr. Forman's comments and explained that NHS at no time has gone door-to-door and that the neighbors are the ones who prompted the complaint calls. Mr. Langan pointed out NHS tries to listen to the evidence of each case and presently has a record of 60% denials and 40% to grant appeals.

He stated that there is nothing in the Potentially Dangerous Dog declaration that talks about euthanasia.

Mr. Weaver asked Ms. Connely if there were any injuries to her dog. Ms. Connely stated her dog, Reggie, did not have any injuries but Rowdy was shaking her dog by the back legs. Mackenzie Grell, 15321 Parker Plaza, stated that she was present and Rowdy never picked up Ms. Connely's dog. She pointed out that the animal control officer could not find any injuries on Ms. Connely's dog. Mackenzie Grell stated that Ms. Connely was actually hitting and kicking Rowdy but she did not see Rowdy bite Ms. Connely.

Mr. Levy questioned an incident that happened on November 13, 2011 involving two individuals but at a December 8, 2011 meeting Mr. Grell denied that Rowdy was loose on November 13, 2011. Mr. Grell answered that Rowdy was restrained with a chain at all times on his property on November 13, 2011.

Mr. Langan pointed out that Mr. Grell did admit that Rowdy was off the property on October 27, 2011 but Mr. Grell's information is inconsistent with the November 13, 2011 incident because more than one witness complained that Rowdy was off the property. Mr. Forman stated that the neighbors across the street are out to get Mr. Grell because he has complained about unlicensed vehicles.

Mr. Grell stated that shortly after the November 13, 2011 incident he asked one of the girls who lives across the street why NHS was called and she said that NHS told her to call any time she saw the dog outside.

Mr. Langan stated that the dog, Rowdy, violated the Potential Dangerous Dog declaration on October 27, 2011, which is why the Reckless Owner Declaration was issued to Dan Grell.

Mr. Levy questioned if anyone was home when the restraining device broke. Mackenzie stated that she saw the chain break and immediately chased after Rowdy.

In response to Mr. Levy, Mr. Forman submitted a fence proposal from S & W Fence (Exhibit 6) that shows the fence will be enclosed and up against the house. He also stated that the Grells are willing to install the fence at a cost of \$2,068.74 and immediately attend the required obedience classes.

In response to Mr. Levy, Mr. Langan stated that if the Reckless Owner appeal is granted, the Potentially Dangerous Dog declaration will remain in effect for the lifetime of the dog unless, after two years, there are no violations and the dog has been good, then the dog can come off the list.

Mr. Labode made a motion to GRANT the appeal subject to installing a 6' high privacy fence in the backyard within 30 days. Seconded by Mr. Levy with an amendment to the motion that the applicant(s) also comply with all dangerous dog ordinances.

Mr. Denker pointed out that it might be a problem getting the fence installed within 30 days due to the permit process and the time of year.

AYES: Levy, Lopez, Labode

NAYES: Weaver, O'Connor

Motion carried 3-2

**12-1-005**

Appeal Reckless Owner declaration issued by the Nebraska Humane Society: Debbie Haycraft, 5408 South 45<sup>th</sup> Avenue 68117

At the Administrative Board of Appeals meeting held on January 30, 2012, Debbie Haycraft and Pete Offerdahl appeared before the board.

Mark Langan, Nebraska Humane Society (NHS), 8929 Fort Street, appeared before the board. Mr. Langan stated that the Reckless Owner Ordinance 6-87 (Exhibit 2) states that a person becomes a Reckless Owner after receiving three convictions of the animal control code in a 24-month period. If a person receives three convictions they must forfeit the animals to NHS and cannot reside or own any animals for four years. On April 29, 2010, Ms. Haycraft was found guilty of Improper Restraint of an Animal and received a \$50 fine. On February 15, 2011, Ms. Haycraft was found guilty of Improper Restraint of an Animal and received a \$50 fine because her dog attacked another dog but there was no injury. On October 25, 2011, Ms. Haycraft was found guilty of Improper Restraint of an Animal and received a \$100 fine because her dog and another dog had attacked and killed 7 pet chickens in the neighborhood. Mr. Langan pointed out that between 2009 and 2011, besides the above citations, there was six other impounds of Ms. Haycraft's dogs that were picked up by NHS officers or brought in to the shelter by other people. A Reckless Owner declaration was issued after the third conviction and Ms. Haycraft appealed to NHS and was denied the appeal.

Ms. Haycraft stated that on October 2008 she had a house fire and had to stay with her daughter. She stated that while she was looking for another place, her yellow lab, Marley, was staying with friends and got loose several times. She stated that Marley was a young dog and missed them and she believes he was trying to find them. After finding a new place in April 2010, Marley was use to running and got hit and killed by a car on August 24, 2010. She stated that after Marley was killed she got Jake, a black lab but he seemed lonely so she got another dog, Black Jack. Ms. Haycraft stated that she surrendered Black Jack to NHS shortly after he climbed the fence and got out of the back yard. Ms. Haycraft stated that she would have fought the convictions regarding Marley if someone would have explained the process.

Mr. Offerdahl submitted photos (Exhibit 3) of the back yard and explained that they have repaired the holes in the fence, secured the gate and installed a 6' high dog kennel.

Ms. Haycraft stated she cares for her dogs and is not a reckless owner. Ms. Haycraft pointed out that she did the responsible thing by turning over Black Jack. Mr. Offerdahl explained that he recently had a stroke and Jake has been a large part of his recovery.

In response to Mr. Weaver, Mr. Langan explained that Jake was with another dog when the chickens were killed, a car hit Marley and Black Jack has been euthanized.

In response to Mr. Levy, Mr. Langan indicated that if the appeal is denied, Ms. Haycraft will be declared a Reckless Owner and she will not be able to own or reside with any animals for four years. Ms. Haycraft stated she has always owned a dog but she will return Jake to the breeder if worse comes to worse.

Mr. Weaver made a motion to DENY the appeal based on the fact that the dog had been running loose prior to previous convictions. Motion dies for lack of a second.

Mr. Weaver made a motion to DENY the appeal. Seconded by Mr. Levy.

AYES: Weaver, Lopez, Levy, O'Connor

NAYES: Labode

Motion carried 4-1

**12-1-006**

Appeal plumbing test score: Tyler Grossenbacher, 233 Hackberry Drive, Gretna, NE 68028

Appeal was withdrawn at the request of the applicant.

**12-1-007**

Appeal denial of Third Grade Stationary Engineer certificate: Robert Kohlmeier, 14507 Franklin Street 68154

At the Administrative Board of Appeals meeting held on January 30, 2012, Robert Kohlmeier appeared before the board.

Thomas Phipps, Chief Mechanical Inspector, City of Omaha, appeared before the board. Mr. Phipps stated that Mr. Kohlmeier failed to pay for his 2011 license renewal therefore his license became invalid on March 1, 2011. The City Ordinance prohibits the Permits and Inspections Division from renewing a license that is invalid or no longer exists.

Mr. Kohlmeier stated that his place of employment was reimbursing him for his license but his manager lost the paperwork and did not renew his license. He stated that he would be paying for his own license in the future.

Mr. Levy made a motion to GRANT the appeal. Seconded by Mr. Labode.

AYES: Labode, Levy, Weaver, Lopez, O'Connor

Motion carried 5-0

**III. Approval of Minutes from December 19, 2011**

Mr. Weaver made a motion to approve the minutes from the December 19, 2011 meeting. Seconded by Mr. Lopez.

AYES: Levy, Weaver, Lopez, Labode, O'Connor

Motion carried 5-0.

**IV. Discussion – Gun Ordinance**

Michelle Peters, Assistant City Attorney, City of Omaha and Lt. Colene Hinchey, Omaha Police Department discussed the revisions of the City Ordinance that are relative to handgun registrations that were recently passed by the City Council.

**V. Adjournment**

It was the consensus of the board to adjourn the meeting at 3:13 p.m.

Debbie Hightower, Planning Department  
Recording Secretary