Minutes
Administrative Board of Appeals
July 27, 2009

MEMBERS PRESENT: Ann O’Connor, Chairman
Jay Incontro
Chris Jerram

MEMBERS ABSENT: David Levy

OTHERS PRESENT: RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
John Wynn, Parks Maintenance Department

I. Roll Call

Ms. Ann O’Connor called the meeting to order at 1:36 pm.

Mr. Kevin 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. Ann O’Connor acknowledged the contents of the City’s file as Exhibit 1 in each case.

II. Cases

9-7-61
Appeal Police Department denial of firearm registration: Mohammed Alyawa, 6420 S 164 Avenue 68135

Mohammed Alyawa appeared before the Board. Mr. Alyawa stated he did not remember having a concealed weapon 14 years ago. He has lived and worked in Omaha for the past 4-½ years but previously worked in Saudi Arabia for Caterpillar Company.

Sgt. Lance Harrison, Omaha Police Department, stated that in 1994 Mr. Alyawa fled from an officer in a motor vehicle, there was a short pursuit, he was held on the ground with handcuffs and concealed weapons were seized. In 1986 Mr. Alyawa was charged with flight to avoid arrest but the charge was dismissed. Mr. Alyawa was convicted of a DUI in 1992.

Motion to grant appeal by Mr. Incontro. Second by Mr. Jerram.

AYES: Jerram, Incontro, O’Connor

Motion carried 3-0

9-7-60
Appeal notice of nuisance issued by Parks Maintenance Department on June 9, 2009: Barbara Poindexter, 3430 Sahler Street 68111

Barbara Poindexter appeared before the Board. Ms. Poindexter stated she is elderly and believes her neighbors have been using her backyard for a dumpsite. She hired the neighbor kids to clean up the litter and debris.

Mr. John Wynn, City of Omaha, stated there is no longer a violation.

Motion to grant appeal by Mr. Jerram. Second by Mr. Incontro.
AYES: Incontro, Jerram, O'Connor

Motion carried 3-0

9-7-62
Appeal notice of nuisance issued by Parks Maintenance Department on June 17, 2009: Fred Humpal, 9217 Timberline Drive 68152

Fred and Rhonda Humpal appeared before the Board. Mr. Humpal submitted additional information to the board (Exhibit 2). There are six rolls of field turf that are being stored in the driveway but he is in the process of reselling or donating the turf.

Motion to deny with 120 days to comply by Mr. Jerram. Second by Mr. Incontro.

AYES: Incontro, Jerram, O'Connor

Motion carried 3-0

9-7-65
Appeal notice of nuisance issued by Parks Maintenance Department on June 19, 2009: Robert Horgan (Eagle Run Golf Course), 13415 Eagle Run Drive 68164

Robert Horgan appeared before the Board. Mr. Horgan stated he does not believe he is in violation of the litter and weed ordinance. The property is a golf course and consists of rough and native areas which would be impossible to mow and rake.

Mr. John Wynn, City of Omaha, submitted photos (Exhibit 2a-2c). There are nettles and thistle in the natural grass area. The natural grass area does not need to be mowed but the nettles would need to be sprayed and removed from the natural grass. The weeds are 2’ tall and are still in violation.

Motion to deny appeal for weeds only by Mr. Incontro. Second by Mr. Jerram.

AYES: Jerram, Incontro, O'Connor

Motion carried 3-0

9-7-63
Appeal notice of reckless dog owner declaration issued by the Nebraska Humane Society on June 24, 2009: Anthony Stafford, 10516 S Circle 68127

Anthony Stafford and Gregory Pivovar appeared before the Board. Mr. Stafford submitted a photo (Exhibit 2) and additional information (Exhibit 3). Mark Langan, Vice President of Field Operations and Christine Bidrowski, Field Supervisor for the Nebraska Humane Society and Steve Olson, legal representative for the Nebraska Humane Society also appeared before the board.

Mr. Pivovar, who is representing the Staffords stated that under Section 6-87 there are two ways to determine if someone is a reckless owner: 1.) if they are convicted of one or more violations of this chapter on three separate occasions in a 24 month period or 2.) if their animal is determined to be dangerous or potentially dangerous and has not complied with the requirements of the chapter pertaining to dangerous or potentially dangerous animals. The Humane Society ruled that the dog was a potentially dangerous animal and not in compliance of the section of the chapter to rehabilitate but those time periods have not yet passed.

In response to Mr. Pivovar, Mr. Langan stated the potentially dangerous animal determination was completed on May 18, 2009. Mr. Pivovar stated the reckless owner determination was done on
June 8, 2009 therefore there was not enough time to address the issues according to the time period under the city ordinance. The dog is spayed and micro-chipped. Classes will be completed within 90 days but that 90 days have not yet passed. There are no “warning” signs because the dog in question is no longer at the residence. A kennel was built in the backyard and meets all requirements of the city ordinance with regard to the size. The owners have a muzzle and a leash. Insurance has been arranged but the insurance company has advised to not pay the premium until the outcome of this hearing.

Mr. Langan stated that on June 8, 2009 the dog was loose therefore the owners were not in compliance with the reckless owner declaration. At that time the owners had two dogs and have since gotten rid of the other dog. A ticket was issued but there has not been a hearing to determine which dog was in violation.

Mr. Langan explained that a task force was formed by Mayor Fahey to explore a “pit bull” ban or other ways to keep the public safe from dangerous dogs. Based on the task force, several new ordinances (6-162 Determination of a Potentially Dangerous Dog and 6-87 Reckless Owner) were passed on October 15, 2008. The Potentially Dangerous Ordinance says that if a dog is declared a potentially dangerous dog, the owner of the dog has certain requirements that need to be fulfilled for that dog. If the owner does not fulfill the requirements, that owner falls into the reckless owner category. If a person is in the reckless owner category, a person cannot own animals for four years and all animals must be surrendered to the Nebraska Humane Society. The reckless owner ordinance is specifically for irresponsible dog owners. The Staffords own a Rottweiler dog named Jazmine. On May 19, 2009, the dog got loose from the Stafford’s yard and attacked a poodle being walked down the street by a person. According to the information obtained by the Nebraska Humane Society, the Rottweiler attacked the poodle several times and caused the owner to fall and scrap her leg. The poodle was treated for shock and bite wounds at a veterinary hospital. The Nebraska Humane Society issued citations to Anthony Stafford for several charges including improper restraining of an animal, pet damaging property and menacing behavior. The dog, Jazmine, was declared a potentially dangerous dog and Mr. Stafford was given a form that stated what he needs to do to comply with the potentially dangerous dog declaration. There is no time allotted for 6-156 which says that “immediately upon the effective date it should be unlawful for any person owning, harboring, or having the care of a potentially dangerous animal, to permit such animal to go beyond the property of such person unless the animal is under the control of a person 19 years of age or older, restrained securely by a leash no longer than 6’ and properly muzzled by a device approved by the Nebraska Humane Society.” On June 8, 2009 the Omaha Police reported to the Humane Society that two dogs (including the Rottweiler, Jazmine) were out of the Stafford yard. The dogs charged at the reporting parties before they could get the dogs out of their yard. That was a direct violation of the potentially dangerous declaration that was issued less than a month previously. A reckless owner declaration was issued to Anthony Stafford which required him to turn over the dogs within 24 hours unless an appeal was filed with the Nebraska Humane Society. An appeal was filed and was ruled against the Staffords. Jazmine was turned over to the Humane Society but the Staffords reported giving the other dog away. Jazmine has a history of animal control violations since 2000. In 2000, Jazmine was brought to the Humane Society by a neighbor for running loose. In 2002 the post office sent a letter to the Staffords regarding aggressive dogs and possibly disrupting mail service on the block. In 2003 there was a complaint of Jazmine running loose and trying to attack a neighbor’s cat. A citation was issued to Mrs. Stafford and she was convicted. In 2003, Jazmine was impounded two times after a complaint of her running loose. In 2008, there was a complaint and verification that Jazmine bit a relative. In 2008, another complaint was reported regarding a dog running loose.

Mr. Pivovar stated the Staffords have taken the appropriate steps to institute the measures to keep the public safe and to keep their dog including a kennel and changing the front door.

In response to Mr. Jerram, Mr. Pivovar stated the incident that happened on June 8, 2009 has not yet been adjudicated.

Mr. Langan stated public safety is the number one priority but he considers the dog, Jazmine, a danger to the community. Secondly, he stated he does not want to put the Nebraska Humane Society in a liability position by releasing the dog back to the Staffords and having the dog attack another animal or person.
In response to Mr. Incontro, Mr. Langan stated the Humane Society would not allow the owner to take classes within a 90-day period because of the situation at hand and the past history of the dog. The Humane Society considers the dog a threat to public safety due to the attack on the poodle and less than a month later the dog was running loose. There is documentation warning the owners several times over the past nine years that their dog was running loose. The Humane Society does not feel it is safe to have the dog in the community and the dog will be euthanized if it is not returned to the family.

In response to Mr. Jerram, Mr. Langan stated every dog that comes through the Humane Society goes through a series of temperament tests by trained professionals and a series of medical tests. The temperament testing would not be performed on Jazmine or any other dog that exhibited past dangerous behavior. The temperament tests are only performed to determine if a dog is suitable for adoption.

Mr. Pivovar stated the Reckless Owner statute states "three or more convictions in a two year period" but the Humane Society is going back to 2000. In response to Mr. Pivovar, Mr. Langan stated the statute reads, "...three or more convictions in a two period, or whose animal has been determined to be a dangerous or potentially dangerous animal and who has not complied with the requirements of this chapter pertaining to dangerous or potentially dangerous animals."

Motion to deny by Mr. Jerram. Second by Ms. O'Connor.

AYES: Jerram, O'Connor

NAYES: Incontro

Motion carried 2-1

9-7-64
Appeal notice of reckless dog owner declaration issued by the Nebraska Humane Society on July 7, 2009: DeAnthony Reynolds, 5314 N 34 Street  68111

DeAnthony Reynolds, Elizabeth Reynolds, and Lawrence Whelan appeared before the Board. Mark Langan, Vice President of Field Operations for the Nebraska Humane and Society and Steve Olson, legal representative for the Nebraska Humane Society also appeared before the board.

Mr. Whelan, who is representing the Reynolds submitted Section 6-87, Reckless owner (Exhibit 2) and Section 6-162, the process for determination and Section 6-149 which is the dangerous dog statute (Exhibit 3). The basis for the determination of the dog being a dangerous dog came from a court order for harboring a dangerous animal. In an effort to resolve the assault charge, Mrs. Reynolds plead guilty and was charged with harboring a dangerous animal. There was never a hearing within a judicial court to determine if Sid was a dangerous animal. Sid is a boxer mix and not a pit bull as classified by the Nebraska Humane Society (Exhibit 4). The Reynolds still have Sid in their care.

Mrs. Reynolds stated that over two years ago she was charged with assault when she attempted to break up a fight between her teenage daughter and another female. In order to have the assault charge dropped, she plead guilty to harboring a dangerous animal. The judge required probation and community service, the dog had to be microchipped, a sign put on the fence and sufficient barricades so the dog could not get out. She stated she was off probation early because everything was taken care of. The Humane Society did an assessment of her residence when she was on probation.

Mr. Reynolds stated that after his dog was running loose, he was given a citation for a reckless owner and at that time he was never questioned regarding insurance, vaccination, muzzle, etc.
Mr. Whelan submitted the Reckless Owner Declaration (Exhibit 5) that was taped to the Reynolds’ residence. Mrs. Reynolds stated the Reckless Owner Declaration was appealed and all paperwork was submitted to the Humane Society including the court orders.

Mr. Langan stated the breed of dog did not enter into the decision for a dangerous dog or potentially dangerous dog ordinance. The dog was declared dangerous by a judge in Douglas County Court and falls under Section 6-149, Dangerous Animals.

Mr. Incontro asked Mr. Langan to confirm that the judge declared the dog dangerous or was the owner declared reckless. Mr. Langan stated that when someone is found to be guilty of harboring a dangerous animal, the dog falls into the dangerous animal category.

In response to Mr. Jerram, Mr. Langan stated that on November 13, 2007 a field supervisor made contact with Elizabeth Reynolds and went over all dangerous dog requirements. It is customary practice to send a field supervisor to a residence with a dangerous dog. Christine Bidrowski, Field Supervisor for Nebraska Humane Society verified that she visited the Reynolds’ home after the conviction and went over each item in the Chapter 6 ordinances to verify that the requirements were followed.

Motion to lay over until the next meeting on August 31, 2009 to allow the Humane Society to have a hearing and make a determination if the dog is dangerous. Second by Mr. Incontro.

Mr. Langan stated the Reynolds had a hearing for a potentially dangerous dog at the Humane Society but a judge ruled the dog to be dangerous.

Mr. Jerram and Mr. Incontro disagreed with Mr. Langan’s interpretation of the judge’s ruling.

Mr. Incontro withdrew his second.

Mr. Olson, legal representative for the Humane Society, stated the dangerous dog can only be accomplished by order of court. The Humane Society cannot declare a dangerous dog but can declare a potentially dangerous dog by an administrative hearing.

Ms. O’Connor confirmed that Mrs. Reynolds plead guilty to harboring a dangerous animal in exchange for having the assault charge dismissed.

In response to Mr. Incontro, Mr. Langan stated that according to the Humane Society’s records, the dog was found to be a dangerous dog based on two incidents. On May 1, 2007 a complaint was issued by a mail carrier that was trapped on the front porch by the dog. Later in May 2007, Amanda Ault claimed she was walking her dog by the yard and an altercation happened with Elizabeth Reynolds. The dog in question attempted to attack her dog but there were no injuries sustained. Citations were issued by the Humane Society on both incidents which resulted in the case in court. Mrs. Reynolds was found guilty of harboring a dangerous dog.

Mr. Langan stated there is no Humane Society hearing attached to a dog that has been judicially declared a dangerous dog.

Motion to grant appeal by Mr. Incontro. Second by Mr. Jerram.

AYES: Incontro, Jerram

NAYES: O’Connor

Motion carried 2-1

III. Approval of Minutes from June 29, 2009
Motion to approve minutes from the June 29, 2009 meeting by Ms. O'Connor. Seconded by Mr. Incontro.

AYES: Incontro, O'Connor
ABSTAIN: Jerram

Motion carried 2-0-1

IV. Adjournment

Motion to adjourn by Mr. Jerram. Second by Mr. Incontro.

AYES: Jerram, Incontro, O'Connor

Motion carried 3-0

Meeting adjourned at 2:55 PM.

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