

**Minutes**  
**Administrative Board of Appeals**  
**May 21, 2012**

MEMBERS PRESENT: Ann O'Connor, Chair  
David Levy, Vice Chair  
Jose Lopez  
Steve Simmonds, Alternate

MEMBERS ABSENT: Jim Weaver  
Bode Labode  
Jama Samiev, Alternate

OTHERS PRESENT: RoseMarie Lee, Law Department  
Kevin Denker, Planning Department  
Clinette Warren, Recording Secretary

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**I. Roll Call**

Ms. O'Connor called the meeting to order at 1:01 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**

**12-5-033**

Appeal Omaha Police Department denial of firearm registration: Michael Kolb, 11026 R Plaza #9 68137

At the Administrative Board of Appeals meeting held on May 21, 2012, Michael Kolb appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on April 15, 2012, Mr. Kolb came into the Police Department to register a concealable firearm and was denied because of a conviction for possession of marijuana less than an ounce offense in July 2003.

Mr. Kolb stated that he was appealing because he was so close to the 10-year waiting period. He added that he does not use marijuana any longer since he has a daughter and is now employed.

In response to Mr. Levy, Sgt. Nordby stated that there were only traffic offenses on Mr. Kolb's record since the 2003 incident.

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

AYES: Levy, Lopez, Simmonds, O'Connor

Motion carried 4-0

**12-5-034**

Appeal Omaha Police Department denial of firearm registration: Corey C. Jenkins, 10840 Cottonwood Lane #40 68164

At the Administrative Board of Appeals meeting held on May 21, 2012, Corey Jenkins appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that Mr. Jenkins came into the Police Department on April 21, 2012 to register a concealable firearm and was denied based on a possession of paraphernalia charge from September 6, 2008. He was convicted of the charge on October 8, 2008.

Mr. Jenkins stated that he was appealing because he has stayed out of trouble since the 2008 conviction and is now employed full-time.

In response to Mr. Levy, Sgt. Nordby explained that in 2008 the Nebraska State Patrol made a traffic stop on Mr. Jenkins' vehicle because of expired plates. Mr. Jenkins gave his consent for the officers to search his vehicle, during which time they located the marijuana paraphernalia. Sgt. Nordby noted that there was a marijuana charge from that incident that was dismissed.

In response to Mr. Simmonds, Sgt. Nordby stated that there was no other criminal activity on Mr. Jenkins' record since that 2008 incident, except for the case going into warrant. Mr. Jenkins explained that at the time he was not working and did not have the money to pay the fine. He added that he was 18 years old at the time.

Mr. Levy made a motion to grant the appeal. Seconded by Mr. Simmonds.

AYES: Levy, Lopez, Simmonds, O'Connor

Motion carried 4-0

**12-5-035**

Appeal Omaha Police Department denial of firearm registration: Allen J. Heesch, 14006 Manderson Plaza #105 68164

At the Administrative Board of Appeals meeting held on May 21, 2012, Allen Heesch appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on April 30, 2012, Mr. Heesch came into the Police Department to register a concealable firearm and was denied based on a possession of marijuana less than an ounce charge and conviction from March 2009.

Mr. Heesch stated that he wanted the handgun for protection of his home. He added that he no longer smokes marijuana because of his employment. His employer conducts random drug testing on its employees.

In regards to the issue of protection, Sgt. Nordby explained that if Mr. Heesch was not able to register a concealable firearm in the city, he would still be eligible to possess a shotgun or rifle without being required to obtain a permit.

In response to Mr. Simmonds, Sgt. Nordby noted that there was a DUI offense on Mr. Heesch's record from 2009 and a non-related speeding charge.

Mr. Simmonds made a motion to deny the appeal. Seconded by Mr. Lopez.

AYES: Levy, Lopez, Simmonds, O'Connor

Motion carried 4-0

**12-5-036**

Appeal Omaha Police Department denial of firearm registration: Philip H. Hansen, 4841 South 137<sup>th</sup> Street 68137

At the Administrative Board of Appeals meeting held on May 21, 2012, Philip Hansen appeared before the board.

Sgt. Eric Nordby, Omaha Police Department, stated that on May 2, 2012, Mr. Hansen came into the Police Department to register a concealable firearm and was denied based on a carrying a concealed weapon charge and conviction from 1986 and for false information on his registration application. Sgt. Nordby explained that Mr. Hansen mistakenly obtained two previous firearm registrations, one from 1987 and the other from 2002, with the Omaha Police Department since the 1986 conviction. Sgt. Nordby stated that he did research into why Mr. Hansen was able to register handguns in both those instances and discovered that Mr. Hansen was not truthful in his answers to questions on the registrations regarding prior convictions.

Mr. Hansen explained that he was appealing because he already owned a current handgun certificate and Purchaser's Permit. In response, Sgt. Nordby explained that there are laws at the Federal statute level, State statute level, and City statute level in regards to handguns. The Purchaser's Permit is issued by the Sheriff's Department based on the state statute. The qualifications for the registration of a concealable firearm in the City of Omaha are higher than those for the state.

In response to Mr. Simmonds, Sgt. Nordby stated that there were only minor traffic offenses and a charge for an unrestrained dog on Mr. Hansen's record since the 1986 conviction.

Mr. Hansen explained that all of the questionnaires he had previously filled out for handguns asked if he had ever been convicted of a felony not a misdemeanor.

In response to Mr. Simmonds request for information regarding the events surrounding the carrying a concealed weapon charge, Sgt. Nordby stated that an officer observed Mr. Hansen stopped in traffic speaking with a known prostitute who was then seen entering his vehicle. The officer initiated a traffic stop on Mr. Hansen's vehicle and located three firearms.

Mr. Simmonds made a motion to grant the appeal. Seconded by Mr. Levy.

AYES: Levy, Lopez, Simmonds, O'Connor

Motion carried 4-0

**12-5-037**

Appeal a Potentially Dangerous Dog declaration issued by the Nebraska Humane Society: David Gills, 2552 Fowler Avenue 68111

At the Administrative Board of Appeals meeting held on May 21, 2012, David Gills appeared before the board.

Mark T. Langan, Nebraska Humane Society (NHS), submitted to the Board a copy of the NHS Investigative Report, a copy of the letter to Mr. Gills stating that his appeal to NHS had been denied, and a picture of the bite wounds to the girl mentioned in the Investigative Report (Exhibit 2). Mr. Langan stated that on March 16, 2012, NHS received information from a 14-year old girl and her mother regarding a dog that came out of the yard located at 2552 Fowler and bit the girl while she was on her way to school. The girl reported that the dog bit her on the ankles, and after she fell to the ground, it bit her on her stomach. When she got to school, she reported the incident to the school nurse who took a picture of the dog bite, showing the scrapes and two puncture wounds. The girl's mother was called. She then took her to the University of Nebraska Medical Center pediatric hospital, where she was prescribed antibiotics.

The Nebraska Humane Society determined that the dog, a black and tan Miniature Pinscher named "Little Man", belonged to David Gills of 2552 Fowler. The dog did not have a vaccination on file at the time of the incident. Mr. Gills was cited for not having a pet license, no rabies vaccination, improper restraint of an animal, menacing behavior, and obstruction. He was also issued a Potentially Dangerous Dog declaration. Mr. Langan explained that the definition of a Potentially Dangerous Dog is one that inflicts injury on a human being that does not require medical treatment or one that chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack. Mr. Gills appealed the declaration from the Nebraska Humane Society on April 9, 2012. During the appeal Mr. Gills informed NHS of his neighbor, Nora Ponciano, who he indicated would tell them that the girl who was bitten and another girl had taunted his dog. NHS decided at that time to hold off on their decision until they had spoken with Ms. Ponciano. They interviewed her on April 13, 2012, during which she did not support any of Mr. Gills' claims or even admit to seeing much of anything that happened. Mr. Langan explained that, based on that, they decided to deny Mr. Gills' appeal of the Potentially Dangerous Dog declaration.

Mr. Gills presented the letter (Exhibit 3) from his neighbor, Ms. Ponciano. He stated that the letter had been submitted to the Nebraska Humane Society, since Ms. Ponciano could not appear. Mr. Gills claimed that what Mr. Langan presented to the Board did not agree with the information that had been given to him from NHS. Mr. Gills added that at the time of the incident, his dog was not old enough to get a vaccination since he was only four months old. Mr. Gills submitted a copy of the receipt from the Nebraska Humane Society which showed proof of the vaccinations given to Little Man (Exhibit 3). He explained that he purchased the dog for his father who suffers from dementia and that he wants to use the dog for breeding purposes in the future.

In response to Mr. Levy, Mr. Langan stated that there were no other photos of the dog bites other than the one taken by the school nurse. He also confirmed that no decision made by the Board that day would take Mr. Gills' dog from him, although there would be restrictions put on the dog for two years. If the dog successfully completed the Potentially Dangerous Dog requirements, Mr. Gills would get a letter letting him know that the dog was off probation.

Mr. Simmonds commented that he was mostly concerned with the fact that the dog attacked someone, regardless of the severity of the wounds. He added that the ordinance was put in place to protect people from dogs that could potentially inflict serious wounds to someone. Mr. Simmonds concluded that this particular case warranted a Potentially Dangerous Dog Declaration.

In response to Ms. O'Connor, Mr. Langan confirmed that the Potentially Dangerous Dog Declaration was a result of the dog attacking the girl, not because the dog did not have a rabies vaccination at the time of the incident. Mr. Levy added for the record that the report Mr. Gills submitted from NHS (Exhibit 3) was consistent with Mr. Langan's statement of what occurred.

Mr. Simmonds made a motion to deny the appeal. Seconded by Mr. Lopez.

AYES: Levy, Lopez, Simmonds, O'Connor

Motion carried 4-0

**12-5-038**

Appeal a Potentially Dangerous Dog declaration issued by the Nebraska Humane Society:  
Michelle and David Minor, 5643 North 142<sup>nd</sup> Avenue 68164

At the Administrative Board of Appeals meeting held on May 21, 2012, Michelle and David Minor appeared before the board.

Mark T. Langan, Nebraska Humane Society, submitted into evidence the Investigative Report from NHS and a letter to Mr. Minor regarding his appeal of the Potentially Dangerous Dog designation (Exhibit 2). Mr. Langan stated that on April 5, 2012, NHS was notified of an incident that occurred approximately a month earlier. Fran Peterson reported walking down the sidewalk with her dog, Izzy, across the street but directly in front of the Minor residence. The Minor's dog Murphy, a boxer, came out of the yard and attacked and injured Ms. Peterson's dog. Her dog was bitten, shaken, and its leg was dislocated. NHS contacted Mr. & Mrs. Minor and issued a Potentially Dangerous Dog Declaration based on the incident. NHS decided that this incident fit Omaha City Ordinance 6-149 which defines a Potentially Dangerous Dog as one that injures a domestic animal; or one who chases or approaches a person upon streets, sidewalks, or any public ground in a menacing fashion or apparent attitude of attack.

Mr. Langan further stated that an appeal hearing was held on April 26, 2012 at the Nebraska Humane Society. Ms. Minor appeared and mentioned that on three other occasions her neighbors had complained to her about her dog behaving aggressively in the neighborhood. Those incidents occurred on February 12, 2012, March 12, 2012, and March 13, 2012. The Minor's appeal was denied based on the fact of the incident. Ms. Minor advised NHS that if her appeal were denied they would refuse to microchip the dog, which is a requirement of the Potentially Dangerous Dog ordinance (6-152), based on religious convictions.

Mr. Minor stated that their reason for the appeal was because he had spoken with someone from NHS who informed him that since both dogs involved in the incident were not leashed, both owners would be at fault. He explained that on the night of the incident he pulled into his driveway and opened the garage door, which is when his dog ran out. He claimed that his and Ms. Peterson's dog began barking, ran out into the middle of the street and began fighting. He and Ms. Peterson were able to separate the dogs. Mr. Minor reported that he visited Ms. Peterson at her home later that evening to inquire as to how her dog was doing. She responded that she believed her dog was fine, but wanted to take him to the vet. Mr. Minor stated that he assured Ms. Peterson that he would take care of her vet bill.

Mr. Minor explained that the other two incidents referred to by his wife occurred when people were walking their dogs unleashed. He submitted invoices to show that a 6' fence had been installed on their property (Exhibit 4 and 5); a letter stating that two electronic fence systems had been installed on their property (Exhibit 5); a letter from Murphy's vet stating that they had not had any aggression issues with him (Exhibit 6); a statement from Murphy's dog trainer (Exhibit 7); a copy of the payment for the vet bill for Ms. Peterson's dog (Exhibit 8); and a copy of the vet bill (Exhibit 9). Mr. Minor explained that they don't feel that they need to microchip the dog since it is their belief that it is a mark of the beast. They also don't think that micro-chipping the dog would prevent it from being aggressive.

Ms. Peterson stated that she was walking her dog Izzy on the evening of March 4, 2012, when Mr. Minor pulled into his driveway. His garage door went up and two dogs came out. The male dog, Murphy, ran across the street towards Izzy and shook her. After the attack Izzy was able to run home, but the Minor's dog grabbed Izzy a second time. Ms. Peterson was able to separate Murphy from Izzy and get her in the house. Ms. Peterson's husband took Izzy to the vet the next morning where she received pain pills, antibiotics, and had to have her leg reset. Ms. Peterson reported several other incidents where the Minor's dog had attacked other dogs in the neighborhood.

In response to Mr. Levy, Mr. Langan stated that he had not been told about the second attack that occurred almost immediately after the first incident. Ms. Peterson explained that she did not report the second attack because she didn't want to cause any trouble.

Ms. Minor stated that her dog Murphy would never hurt a child, adding that her dog has never bothered her two children or any other children that visit their home. She explained that she and her husband visited Ms. Peterson the night of the attack and apologized.

Mr. Simmonds made a motion to deny the appeal. Seconded by Mr. Levy.

AYES: Levy, Simmonds, O'Connor

NAYES: Lopez

Motion carried 3-1

### **III. Approval of Minutes from April 30, 2012**

Mr. Simmonds made a motion to approve the minutes from the April 30, 2012 meeting. Seconded by Mr. Lopez.

AYES: Simmonds, Lopez, O'Connor

ABSTAIN: Levy

Motion carried 3-0-1

### **IV. Adjournment**

It was the consensus of the board to adjourn the meeting at 2:05 p.m.

Clinette Warren, Planning Department  
Recording Secretary