Minutes
Administrative Board of Appeals
January 28, 2013

MEMBERS PRESENT:
David Levy, Vice Chair
Jose Lopez
Bode Labode
Jim Weaver
Jama Samiev, Alternate

MEMBERS ABSENT:
Ann O'Connor, Chair
Steve Simmonds, Alternate

OTHERS PRESENT:
RoseMarie Horvath, Law Department
Kevin Denker, Planning Department
Todd Shearer, Planning Department
Andrea Wisniewski, Recording Secretary

I. Roll Call
Mr. Levy 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.

Mr. Levy acknowledged the contents of the City's file as Exhibit 1 in each case.

II. Cases
12-12-91 From 12/31/2012
Stuart D. Hald
6012 Oak
Omaha NE 68106

WITHDRAWN AT APPLICANT REQUEST
REQUEST: Appeal Police Department denial of firearm registration.

12/31/2012:
Mr. Hald was not present. Sgt. Mark Hanner, Omaha Police Department, stated that Mr. Hald’s application was denied due to a conviction for CCW dating from June of 1992. A butterfly knife, a machete, a Glock model 23, and a nightstick were discovered in the vehicle.

Motion to hold this case over to the January meeting by Mr. Weaver. Second by Mr. Lopez.

AYES: Weaver, Lopez, Labode, Levy.

Motion carried 4-0. Case held over to January 28, 2013.

1/28/2013:
The Board received notice that Mr. Hald wished to withdraw his appeal.

Motion to place case on file by Mr. Samiev. Second by Mr. Weaver.

AYES: Weaver, Lopez, Labode, Samiev, Levy.

Motion carried 5-0. Case placed on file.
12-12-92  *From 12/31/2012*
Mohamed A. Abdile  
2901 Maplewood Bd Apt 5  
Omaha NE 68134

REQUEST:  Appeal Police Department denial of taxicab permit.

12/31/2012:
Mr. Abdile was not present. Sgt. Mark Hanner, Omaha Police Department, reported that Mr. Abdile stated on his application that he was unfamiliar with city traffic ordinances; this was the reason for his denial. Mr. Levy read a letter from Mr. Abdile, which stated that he made a mistake on his application form and was indeed knowledgeable of traffic laws.

Motion to hold this case over to the January meeting by Mr. Labode. Second by Mr. Weaver.

AYES: Lopez, Labode, Weaver, Levy.

Motion carried 4-0. Case held over to January 28, 2013.

1/28/2013:
Mr. Abdile appeared before the Board. Mr. Levy read from the denied application that Mr. Abdullla’s application was denied due to the fact that Mr. Abdile indicated that he does not have knowledge of the geography of the city; nor does he have knowledge of traffic ordinances and motor vehicle laws of Omaha, Nebraska.

Mr. Abdile explained that he has driven taxi cabs in Kansas in the past. He moved here approximately one year ago. When he filled out his application for an Omaha taxi cab license, he made an error, and asked the clerk at the counter for another form. This person declined to give Mr. Abdille another form and told him that he would need to file an appeal. Mr. Abdile assured the Board that he is an experienced taxi cab driver and asked the Board to grant his appeal.

Mr. Levy asked Mr. Abdile three questions: 1) whether he had a valid Nebraska driver’s license, 2) whether he drives in Omaha regularly, and 3) how he got to today’s meeting. Mr. Abdile presented his current driver’s license, stated that he does regularly drive in Omaha, and drove himself to today’s meeting. Mr. Samiev asked Mr. Abdile how long he had driven taxi cabs in Kansas. Mr. Abdile replied that he had three years’ experience.

Motion by Mr. Samiev to grant the appeal. Second by Mr. Labode.

AYES: Lopez, Labode, Samiev, Weaver, Levy.

Motion carried 5-0. Appeal granted.

12-12-93  *From 12/31/2012*
Jason B. Protiva  
314 S 68th Av  
Omaha NE 68132

REQUEST:  Appeal Police Department notice of nuisance.

WITHDRAWN AT APPLICANT REQUEST

12/31/2012:
Mr. Protiva was not present. Kevin Denker, Planning Department, stated that Mr. Protiva has a school bus parked on the side of his house. The bus is currently resting on pavers; Mr. Protiva has requested an extension until spring in order to pour pavement for this area. Mr. Denker commented that the applicant also had certain items stored on his property that were of concern, such as tires and a motorcycle lift. Mr. Denker suggested that the Board hold this case over to the January meeting, as he would like an opportunity to work with Mr. Protiva to resolve the issues on his property.
Motion to hold this case over to the January meeting by Mr. Labode. Second by Mr. Lopez.

AYES: Labode, Weaver, Lopez, Levy.

Motion carried 4-0. Case held over to January 28, 2013.

1/28/2013:
The Board received notice that Mr. Protiva wished to withdraw his appeal.

Motion to place case on file by Mr. Weaver. Second by Mr. Lopez.

AYES: Labode, Samiev, Levy, Weaver, Lopez.

Motion carried 5-0. Case placed on file.

12-12-94 From 12/31/2012
Rigoberto Alvarado
4607 S 22nd St
Omaha NE 68107

REQUEST: Appeal Police Department notice of nuisance.

12/31/2012:
Mr. Alvarado was not present. Kevin Denker submitted photos of the property.

Motion to hold this case over to the January meeting by Mr. Weaver. Second by Mr. Lopez.

AYES: Weaver, Lopez, Labode, Levy

Motion carried 4-0. Case held over to January 28, 2013.

1/28/2013:
The Board Secretary stated that she had received a telephone call from Mrs. Alvarado today – she had indicated that her entire family is home sick with the flu. She requested that their case be held over to the next meeting of the Board.

Motion to hold this case over to February 25, 2013 by Mr. Samiev. Second by Mr. Weaver.

AYES: Samiev, Weaver, Lopez, Labode, Levy.

Motion carried 5-0. Case held over to February 25, 2013.
12/31/2012: Patty Noland appeared before the Board. Kevin Denker, Planning Department, stated that this notice of nuisance relates to an unplated vehicle and a boat parked on their property. In the opinion of the Police, this boat exceeded the City ordinance prohibiting recreational vehicles longer than twenty feet in driveways. He added that this particular boat measures 19 feet in length; the additional length comes from the motor and trailer.

Ms. Noland stated that since receiving the notice of nuisance by the Police, the car in question has been plated. In regards to the boat on this property, she stated that their boat does not obstruct anyone’s view, adding that this is a 19 foot boat which rests on a 19 foot trailer. She stated that the vehicle has a motor which, when in a down position, would be less than twenty feet. Ms. Noland commented that they had extended their driveway to the back of their house – the boat is parked in this extension.

After some discussion regarding the boat in question, it was suggested that this case be held over to the January meeting in order to allow time for the boat to be measured with the motor in a down position.

Motion to hold this case over to the January meeting by Mr. Labode. Motion died for lack of a second.

Mr. Weaver asked Ms. Noland whether she would like this item to be held over to the January meeting. Ms. Noland initially stated that she would like to take care of this matter today; however, she changed her mind and asked that this item be held over to the January meeting.

Motion by Mr. Weaver to deny the appeal. Second by Mr. Lopez.

AYES: Lopez

NAYS: Weaver, Labode, Levy.

Motion failed 1-3.

Motion to hold this case over to the January meeting by Mr. Weaver. Second by Mr. Labode.

AYES: Labode, Weaver, Levy.

NAYS: Lopez

Motion carried 3-1. Case held over to January 28, 2013.

1/28/2013:
Mrs. Nolan was not present. Officer J.V. Stokes, Omaha Police Department, and Todd Shearer, City Planning Department, appeared before the Board. Mr. Shearer submitted photos of the property. Mr. Denker stated that the boat parked on this property measures approximately 23 feet in length; City ordinance forbids any vehicle over 20 feet in length from being parked in the front yard setback. Officer Stokes confirmed Mr. Denker’s statement, adding that the Nolan’s boat measures 22 feet, 8 inches in length from tip to tail. Reference was also made to a non-operational vehicle on the property.

Mr. Denker stated that Ms. Nolan had been directed at the December 31, 2012 meeting to make arrangements for the boat to be re-measured by the City before today’s meeting; Mr. Denker had not been contacted by the applicant. Mr. Shearer stated that at the time when he visited the Nolan property, both Mr. and Mrs. Nolan were combative with him; thus, he turned the matter over to the Police Department. Officer Stokes stated that he did revisit the property and measured the boat today; the boat still measures over the 20 foot limit as described in City code.
Mr. Weaver asked whether City code designates that both boats and their trailers may not exceed twenty feet in length. Mr. Levy read from section 55-742 of the Omaha Municipal Code, confirming that the length of the vehicle shall not exceed twenty feet if the vehicle is parked in the front or side yard of a property.

After some discussion, Mr. Weaver made a motion to deny the appeal. Second by Mr. Lopez.

AYES: Weaver, Lopez, Labode, Samiev, Levy.

Motion carried 5-0. Appeal denied.

*The Board decided to hear case number 13-1-2 before case number 13-1-1*

Christine Tomcak appeared before the Board. Kristie Biodrowski and Jill Moss, Nebraska Humane Society, appeared before the Board. Ms. Biodrowski stated that the Humane Society responded to the Tomcak property following an incident in which the Tomcak dog left their property and attacked a dog which was being walked in the street by its owner. This dog received two puncture wounds to its chest in this incident. The Tomcak’s dog was declared to be a Potentially Dangerous Dog as a result of this incident.

Ms. Tomcak stated her family adopted Spanky five years ago from the Humane Society. She stated that although her family is appealing the Potentially Dangerous Dog designation, particularly the muzzle requirement, they have made changes to their property in order to prevent any possibility of incident. At the time of the incident involving their dog, the Tomcak’s employed an invisible fence to contain Spanky; something that they were not aware was an accepted fence according to City ordinance. Ms. Tomcak stated that in the five years that they have owned Spanky, he has only left their yard one time; and has never attempted to chase anyone; in fact, she testified that Spanky responds very well to the invisible fence, and is afraid to cross the perimeter even when he is not wearing the collar for this product. She stated that it was only the owner of the other dog who saw the incident, adding that she has a hard time believing that Spanky left the yard. Mr. Tomcak was home at the time of this incident, and hearing a sound, found Spanky in their yard, still behind the boundary of the fence. Ms. Tomcak stated that the owner of the other dog was walking two dogs at the time; if they entered the Tomcak yard, she could understand Spanky going up to them and possibly trying to show his dominance on his territory. However, she denied that her dog would have attacked. She stated that Spanky did not have to be called off during this incident; nor did the other dog require any stitches.

Ms. Tomcak reported that her dog has undergone behavioral analysis through the Humane Society, and was not determined to be aggressive. He is in an obedience class, and has not been identified as needing additional training due to aggression. He gets along with the mailman, the UPS delivery people, and regularly goes with the Tomcak’s to the pet store and the local book store, which welcomes dogs. Ms. Tomcak stated that they have four children and an eighteen year old cat; she doesn’t believe that Spanky is a dangerous dog. She concluded by stating her willingness to complete obedience training and pet ownership classes; however, she disagreed with the need to muzzle her dog, which is not aggressive.

Mr. Labode asked Ms. Tomcak whether she believed that her dog attacked in the incident being discussed. Ms. Tomcak replied that she could not see this situation happening as the other dog owner described, reaffirming her belief that the other dog must have entered their yard in order for any incident to have taken place at all. She stated that she lives across the street from Westside High School; the other owner stated that she had been unable to use the sidewalk on the opposite side of the street due to the high volume of traffic. Ms. Tomcak questioned how the other dog owner was able to walk both of her dogs in the street if traffic in the area was so heavy, noting that the street is barely wide enough to allow two lanes of traffic. In response to Mr. Levy, Ms. Tomcak stated that there is no sidewalk on her side of the street.
Mr. Weaver asked as to whether the effectiveness of the invisible fence collar had been checked by the Humane Society on the date in question. Ms. Biodrowski replied that Spanky was not wearing his invisible fence collar at the time when the incident occurred. Ms. Tomcak confirmed this statement, but pointed out that even now, months after the incident, her dog is still reluctant to leave the yard, even after they stopped using the invisible fence system. She stated that with or without his invisible fence collar, he will not cross the fence perimeter. Ms. Weaver commented that this is common behavior for an animal that has been using this type of system for a while. Ms. Biodrowski countered that the effectiveness of invisible fencing varies from animal to animal based upon how good their training was. Mr. Labode stated that he had recently been the victim of a dog attack in a public space; and its owner had been unable to believe that their dog would attack anyone.

Mr. Levy asked for clarification as to what Mr. Tomcak heard on the day in question, particularly as to whether or not he heard the dogs fighting. Ms. Tomcak stated that her husband had heard a yelp, and had come out to find Spanky still within their yard. She denied the other owner’s allegation that Spanky had had to be called off, that he had chewed through the other dog’s leash, and that Mr. Tomcak had denied her any assistance. In response to Mr. Levy’s question, Ms. Tomcak stated that the invisible fence line is a few feet from the curb.

Mr. Weaver asked for details regarding the other owner’s complaint. Ms. Biodrowski submitted a copy of the officer’s report, which included the complaints of the other owner. The Board asked whether the other owner had been asked to appear at today’s meeting. Ms. Moss replied that the other owner had not wished to attend today’s meeting. Mr. Samiev asked whether the Humane Society had taken into account the results of the behavior analysis done on Spanky during their appeal proceedings. Ms. Biodrowski replied that the behavior analysis had taken place after the Humane Society appeal had been denied. She confirmed that there was no third-party witness to the event in question; adding that the appeal was denied based on violation of ordinance and due to the injuries sustained by the other animal.

While the Board discussed the effectiveness of invisible fencing, Ms. Tomcak stated that her family is no longer using this type of restraint system; adding that they intend to erect fencing or a kennel in the spring. Currently, Spanky is being allowed outside only while on a leash. In response to Mr. Samiev’s question, Ms. Tomcak denied that Spanky had ever attacked any animal or person in the past. She commented that he is routinely kenneled at her mother’s house with her dogs when the family is out of town, and has had no incidents.

Pictures of the other dog’s broken leash were viewed by the Board. Mr. Levy asked Ms. Tomcak how Spanky responds to the sight of another dog while being walked on his leash. Ms. Tomcak replied that since the incident in question, she has Spanky sit and wait for the other dog to pass by whenever they encounter another dog. Before the incident in question, Spanky may have attempted to approach other dogs while being walked, but stopped immediately when told to. Ms. Tomcak commented that he is not the kind of dog who pulls on his leash. Mr. Levy asked whether Spanky is aggressive when approaching other dogs. Ms. Tomcak stated that his desire to approach them was more in the interest of smelling the other dog, not an act of aggression.

Ms. Biodrowski was asked to view pictures of the snapped leash and to give an opinion as to whether this extendable-type leash had been chewed apart. Mr. Samiev asked Ms. Biodrowski how long the incident in question was. She estimated that this encounter happened quickly, and was not prolonged. Mr. Levy asked whether Ms. Tomcak knew the other party involved in this incident. Mr. Tomcak stated that she does not know Ms. Skold, and had had some anxiety about walking Spanky in their neighborhood, lest she unknowingly take her dog past Ms. Skold’s house and make her uncomfortable. Mr. Weaver again asked Ms. Biodrowski to give an opinion as to how Ms. Skold’s dog’s leash broke. Ms. Biodrowski viewed the pictures and stated that in her opinion, the leash appeared to have broken or snapped during the incident, and did not necessarily appear to have been chewed. It would have taken a few minutes to chew through. She stated that it was more likely that the leash snapped or pulled apart during the incident. Mr. Samiev stated that he found it hard to believe that Spanky both chewed through this leash and attacked the other dog in the time allowed.

Motion to grant appeal by Mr. Samiev. Second by Mr. Lopez.

AYES: Samiev, Weaver, Lopez, Levy.

NAYS: Labode.

Motion carried 4-1. Appeal granted.
REQUEST: Appeal Public Works Department site plan denial (Dunkin Donuts, 144th & Pacific Streets)

Jeff Lake with Olsson Associates and Tom Meister, of Savoreaux Corporation DBA Dunkin Donuts appeared before the Board. Ryan Haas, Public Works Department, explained that his department had denied this application due to the fact that it does not meet driveway stacking requirements. He stated that stacking requirements for coffee shops are 275 feet; this proposed Dunkin Donuts location is approximately eighteen feet short of this requirement.

Mr. Lake stated confirmed that the site is currently ten feet short of the 275 foot stacking requirement. He submitted a site plan of the proposed location (Exhibit #2). Mr. Haas stated that he doesn’t believe that the current site plan meets stacking requirements; however, it comes very close to the intent of the requirements. He added that the difference in the stacking requirements and what the site plan currently provides is less than one vehicle length. Mr. Levy added his belief that the location of this proposed building differs from some other cases that the Board has seen in that traffic in this area is much lighter and should present less danger to other travelers in the area. Mr. Samiev asked Mr. Lake how long it takes the business to serve each customer in the drive through. Mr. Meister replied that it takes approximately one minute to serve each customer.

Motion to grant appeal by Mr. Samiev. Second by Mr. Weaver.

AYES: Lopez, Labode, Samiev, Weaver, Levy.

Motion carried 5-0. Appeal granted.

Discussion Item:
Order to Show Cause Hearing:
12-7-54 (From 7/30/12, 10/29/12, & 11/26/12)
Appeal Nebraska Humane Society Reckless Owner declaration: Jonathon Rutten, 3232 N. 40th Av., 68111.

7/30/2012:
At the Administrative Board of Appeals meeting held on July 30, 2012, Jonathon Rutten appeared before the Board.

Mark Langan, Nebraska Humane Society (NHS), stated that this appeal is unique in that it is for both the denial of a Reckless Owner declaration and the denial of two Potentially Dangerous Dog declarations issued by NHS. He submitted into evidence the Investigative Report from NHS, a letter to Mr. Rutten regarding his appeals of the Potentially Dangerous Dog/Reckless Owner declarations, and a copy of the city ordinances which correspond to such declarations (Exhibit 2). The Board decided to hear the Potentially Dangerous Dog declarations and the Reckless Owner declaration separately.

Mr. Langan reported that on June 1st, 2012, NHS was called to Mr. Rutten’s address after receiving a report that Mr. Rutten’s dogs Bruno (male American bulldog) and Trina (female American bulldog), had attacked a mail carrier. Based on this incident, NHS issued two Potentially Dangerous Dog declarations, one for each of Mr. Rutten’s dogs. At the time of this incident, it was determined that neither dog was vaccinated or licensed, nor did Mr. Rutten carry the insurance required under city ordinance for such a breed. Mr. Rutten was also cited for these additional issues.

Mr. Matthew Spanke, mail carrier, appeared before the Board and stated that he was delivering mail to one of Mr. Rutten’s neighbors at 3236 North 40th Avenue when he heard the screen door open at Mr. Rutten’s house. Mr. Spanke stated that he had been attacked by these dogs previously, and was listening for any noises coming from the direction of Mr. Rutten’s home. He could see a woman struggling with Bruno and Trina. Both dogs escaped from this woman, ran towards Mr. Spanke and attacked him, the male dog Bruno on his left and the female dog Trina on his right. He attempted to use his bag and dog spray on both dogs with no effect. At one point, he fell from a 2 ½’ retaining wall trying to get away from Bruno and Trina. Mr. Spanke stated that he yelled repeatedly for the owners to come and get their dogs. Mr. Rutten eventually arrived on the scene and collected Bruno and Trina.
Mr. Langan reported that at the time of this incident, NHS was made aware of a second unreported incident which had occurred two weeks previously. During this earlier incident, Mr. Spanke was again delivering mail to a neighbor’s house when Mr. Rutten’s mother came to the edge of her property to retrieve their mail. While she was waiting for her mail, Trina, the female bulldog, slipped her tether in the front yard, ran down the street, and attacked Mr. Spanke. During this attack, she bit Mr. Spanke on the arm. Mr. Spanke reported that this was the first time he had been attacked by a dog on the job. Mr. Rutten’s mother had a difficult time getting control of Trina. Mr. Spanke reported the incident to his postmaster, who chose not to report the incident to NHS. Reporting the incident would have jeopardized Mr. Spanke’s employment with the Post Office. Mr. Langan stated that Mr. Rutten filed an appeal of the Potentially Dangerous Dog declarations issued June 1, 2012 with NHS on June 12, 2012.

Ms. O’Connor asked to hear from Mr. Rutten regarding these two incidences. Mr. Rutten stated that he did not understand the first incident in mid-May, commenting that neither NHS nor the police department were called as a result of this incident. He added that he had previously warned Mr. Spanke about Bruno and Trina, advising him not to walk on the grass near his property, and pointing out a sign on his property about the dogs. He told Mr. Rutten to walk around the side of the house to deliver mail, away from the dogs. Mr. Rutten maintained that Mr. Spanke approached his house despite his warnings and was not paying attention to his dogs tethered in the front yard. He stated that Mr. Spanke entered the front yard, turned around, and went back on the sidewalk. He did not comment as to whether or not Trina bit Mr. Spanke as was claimed.

In regards to the second incident on June 1st, Mr. Rutten stated that his mother was opening their side door. Mr. Spanke was in their yard delivering mail at this time. Mr. Rutten stated that his female dog, Trina, slipped her collar, came out of the side door, and ran up to Mr. Spanke, who swung his mail bag at her. Trina nipped at the mail bag before Mr. Rutten could grab her. During this time, the male dog, Bruno, began struggling to get outside as Mr. Rutten was putting Trina back inside the house. Mr. Rutten restated that he had previously told Mr. Spanke to stay off his property and had warned him about the dogs tied up in the front yard.

Mr. Langan stated that an appeal hearing was held at NHS on June 25th, 2012 for the two Potentially Dangerous Dog declarations and the Reckless Owner declaration issued by NHS. At that hearing, Mr. Rutten’s appeal was denied. Mr. Levy asked whether the NHS review panel considered only the June 1st, 2012 incident, or if the earlier incident was also included. Mr. Langan replied that NHS based its denial on both incidences, commenting that the June 1st, 2012 incident was sufficient in and of itself to meet the requirements for the issuance of a Potentially Dangerous Dog definition.

Mr. Labode asked for clarification in regards to the numerous citations issued to Mr. Rutten listed in NHS’ report. Mr. Langan replied that these included the Potentially Dangerous Dog declarations, the citations for no insurance, vaccination and license, and court appearance citations. Mr. Langan informed the Board that Mr. Rutten has a poor history with NHS and recounted numerous contacts with Mr. Rutten through the years. These incidences include two occurrences in 2005 where Bruno was found to be running loose around the neighborhood and attacked a poodle; a conviction for animal cruelty in 2007 for allowing bulldog puppies to live in filth; a complaint in 2009 about both dogs not being vaccinated and licensed; a conviction in 2012 for not licensing his animals or having insurance on his two dogs.

In response to Mr. Langan, Mr. Rutten replied that he was young at the time of these incidences. He asserted that he had only recently gotten Bruno and Trina back from an aunt who lives out of state, and was in the process of obtaining their licenses and insurance when the June 1st, 2012 attack occurred. Mr. Samiev asked Mr. Spanke whether he had spoken to Mr. Rutten about his dogs prior to the June 1st, 2012 incident. Mr. Spanke he had never met Mr. Rutten prior to Bruno and Trina attacking him on June 1st, 2012. He commented that since this attack, Mr. Rutten’s mail service has been cut off. Mr. Spanke stated that he takes extra measures to avoid Mr. Rutten’s dogs, including crossing the street to avoid the sidewalk in front of Mr. Rutten’s house. Mr. Samiev asked whether Mr. Spanke was on Mr. Rutten’s grass when the attacks occurred. Mr. Spanke denied being on Mr. Rutten’s property, stating that both attacks took place at a neighboring property, 3236 North 40th Avenue.

Mr. Rutten protested that the mid-May incident was not reported to NHS or the police department. He insisted that he had previously had a conversation with Mr. Spanke, in which he told Mr. Spanke to stay off the property and made him aware of the sign in his front yard warning people about his dogs. He maintained that his dog Trina never bit Mr. Spanke, only nipped his mail bag. Mr. Samiev and Mr. Labode asked Mr. Rutten what steps he has taken to preserve the safety of the neighborhood in regards to his animals. Mr. Rutten replied that he had purchased muzzles, and was in the process of installing a privacy fence in his backyard for the dogs when the June 1st, 2012 incident occurred.
The Board asked Mr. Langan to explain NHS’ issuance of a Reckless Owner declaration to Mr. Rutten. Mr. Langan stated that on June 13th, 2012, just twelve days after NHS issued Potentially Dangerous Dog declarations to Mr. Rutten, NHS and the Omaha Police Department received a report of a dog running around the neighborhood and acting aggressively towards neighbors. Upon their arrival, Mr. Charles Fultz told NHS that Mr. Rutten’s female bulldog Trina had been running loose around the neighborhood and had charged his grandchildren who were Mr. Fultz’ front yard. It was reported that Trina was acting aggressively; i.e., barking, growling. During this incident, a neighbor by the name of Charles Swanson fired a gun at Trina. Mr. Langan confirmed with the Omaha Police Department that shots were fired in this incident. Animal control officers interviewed Mr. Rutten, who admitted that Trina had gotten loose. Mr. Rutten was again issued citations regarding this incident, including a Reckless Owner declaration. Trina was confiscated by NHS. Bruno was left at Mr. Rutten’s house as he was not involved in this particular incident. Mr. Rutten was required to surrender Bruno to NHS within 24 hours of the issuance of the Reckless Owner declaration. Mr. Langan stated that as of today’s date, Mr. Rutten still has no surrendered his male dog as is required under city ordinance.

Mr. Samiev asked what typically happens in cases where an owner refuses to surrender an animal. Mr. Langan stated that NHS will typically ask for the owner’s cooperation; if unsuccessful, a search warrant is obtained so that they can locate and confiscate the animal. Mr. Samiev asked Mr. Rutten why he did not surrender Bruno as was required. Mr. Rutten maintained that Bruno was not involved in the mid-May, June 1st, or June 13th, 2012 incidences, and that this was the reason why he did not surrender Bruno to NHS.

Mr. Rutten stated that during the June 13th, 2012 incident, his mother had opened the door to bring Trina to the front yard. While she was in the front yard, Trina ran towards a minor, Floyd Wallace, sitting on a neighbor’s porch at 3236 North 40th Avenue. Mr. Rutten stated that this was the same address at which Mr. Spanke hit his dog Trina with his mail bag. Floyd Wallace ran across the yard, into his yard, and down the street. Trina began to chase Floyd Wallace, pulling Mr. Rutten’s mother behind her. During this incident, Mr. Rutten stated that Trina was muzzled and was on a leash. Floyd Wallace ran into the house. Mr. Swanson came out of the house with his gun and began yelling and shooting. Mr. Rutten claimed that Mr. Swanson at one point grabbed him by the back of his shirt, forced him to the ground, and put a gun in his face.

Mr. Samiev again asked Mr. Rutten why he did not surrender Bruno as is required under city ordinance. Mr. Rutten stated that the animal control officer told him that he needed to surrender Trina; however, he was not told that he needed to surrender Bruno. Mr. Langan rebutted that the Reckless Owner declaration issued to Mr. Rutten on June 13th, 2012 clearly states that the owner must surrender all animals in his possession within 24 hours. Mr. Langan added that Mr. Rutten also received a letter following his NHS appeal on June 25th, 2012 which again stated that Mr. Rutten must surrender all animals in his possession within twenty-four hours. Mr. Levy asked Mr. Langan why NHS has not yet obtained a search warrant and seized Bruno. Mr. Langan stated that NHS was awaiting today’s decision by the Board before moving forward.

Mr. Labode asked Mr. Rutten why he had not vaccinated or licensed Bruno and Trina, or obtained the necessary insurance required for dogs of their breed. Mr. Rutten stated that he had been on his way to the insurance office on June 1st, 2012. He stated that his dogs had already been licensed and vaccinated. According to Mr. Rutten, the insurance was the only thing that had not been completed. Mr. Langan countered that neither Bruno nor Trina were vaccinated at the time of the June 1st, 2012 incident, which occurred at approximately at 12:30 in the afternoon. According to records from Mr. Rutten’s veterinarian, the dogs were not vaccinated until 4:00 in the afternoon, well after the attack had taken place. Mr. Langan added that Mr. Rutten’s insurance policy was dated June 11th, 2012 – eleven days after the attack. In response to Mr. Levy’s question regarding the need for insurance, Mr. Langan replied that owners of American bulldogs are required to carry insurance under city ordinance, regardless of whether or not they are ever determined to be Potentially Dangerous Dogs.
Floyd Wallace, the minor who was charged by Trina on July 13th, 2012, appeared before the Board. Mr. Wallace stated that Bruno is a nice dog; he has not known him to bite or bark at people. Mr. Wallace described him as being a “lazy dog” and “lovable”. When asked about Trina, Mr. Wallace stated that she is aggressive.

After some additional discussion, Mr. Levy made a motion to deny the appeal for Potentially Dangerous Dog in regards to the female American bulldog, Trina. Second by Mr. Samiev.

AYES: Levy, Lopez, Labode, Samiev, O’Connor

Motion carried 5-0; appeal denied.

Mr. Samiev made a motion to grant the appeal for Potentially Dangerous Dog in regards to the male American bulldog, Bruno. Second by Mr. Labode.

Ms. O’Connor asked Mr. Spanke to confirm his statement that Bruno was involved in the June 1st, 2012 attack. Mr. Spanke repeated his statement that both dogs attacked him on that day, and not just the female dog Trina as Mr. Rutten claims.

AYES: Labode, Samiev, Levy

NAYS: Lopez, O’Connor

Motion carried 3-2; appeal granted.

Mr. Levy asked Mr. Rutten whether he would be willing to accept Trina’s permanent surrender to NHS if the Board granted his appeal for Reckless Owner today. Mr. Rutten stated that he would accept this requirement. In response to Mr. Samiev’s question, Mr. Rutten stated that a privacy fence will still be installed at his residence. Mr. Levy asked Mr. Langan whether he had any more input on the matter of the Reckless Owner appeal. Mr. Langan asked that the Board condition the Reckless Owner motion so that Mr. Rutten is required to attend Owner Responsibility and Dog Behavior classes, and to require Mr. Rutten to install a 6’ privacy fence on his property to contain Bruno. Mr. Levy asked Mr. Rutten whether he would comply with these stipulations. Mr. Rutten replied that he would agree to these requirements.

Motion by Mr. Levy to grant the appeal for Reckless Owner declaration, subject to the following conditions: 1) that Mr. Rutten surrender Trina to the Nebraska Humane Society, and that he make no attempt to challenge her permanent surrender; 2) that Mr. Rutten attend “Owner Responsibility” and “Dog Behavior” classes offered by the Nebraska Humane Society by no later than September 30, 2012; and 3) that Mr. Rutten install a 6’ privacy fence on his property for the purpose of containing Bruno within twenty days. Second by Mr. Samiev.

After some discussion regarding the height and style of the fence to be installed at Mr. Rutten’s property, Mr. Levy declined to modify his motion further. Ms. O’Connor called the question.

AYES: Labode, Samiev, Levy

NAYS: Lopez, O’Connor.

Motion carried 3-2.
10/29/2012:
Mark Langan, Nebraska Humane Society, appeared before the Board. Mr. Langan reported to the Board that Mr. Rutten has not complied with all of the terms stipulated by the Board at the July 30th, 2012 meeting of the Administrative Board of Appeals:

From 7/30/2012 Minutes: Motion by Mr. Levy to grant the appeal for Reckless Owner declaration, subject to the following conditions: 1) that Mr. Rutten surrender Trina to the Nebraska Humane Society, and that he make no attempt to challenge her permanent surrender; 2) that Mr. Rutten attend “Owner Responsibility” and “Dog Behavior” classes offered by the Nebraska Humane Society by no later than September 30, 2012; and 3) that Mr. Rutten install a 6’ privacy fence on his property for the purpose of containing Bruno within twenty days. Second by Mr. Samiev.

Mr. Langan confirmed that Mr. Rutten surrendered his female American bulldog, Trina, to the Humane Society, and that she had been euthanized due to aggression issues. Mr. Langan stated that Mr. Rutten had attended an owner responsibility class and dog behavior classes as required. However, Mr. Langan reported that Mr. Rutten had not complied with the third part of the Board’s motion, which required him to erect a 6’ privacy fence on his property within twenty days. Mr. Langan stated that Mr. Rutten has instead chosen to erect a dog kennel on his property. He has covered this kennel with a tarp in order to block view of the dog. Mr. Langan submitted photos of the property which show this kennel in Mr. Rutten’s backyard; he added that Mr. Rutten reported to animal control officers that he cannot afford to erect a 6’ privacy fence in his backyard.

Mr. Langan stated that two other incidences involving Mr. Rutten and his dog Bruno have occurred since his appearance before the Board in July. The first incident occurred on August 1st, 2012 – one day after his appearance before the Board. The Humane Society received a call from Mr. Rutten’s mail carrier (who testified at the July 30th meeting – please see minutes), who claimed that Mr. Rutten had come outside of his house when he attempted to deliver mail to the property. According to the mail carrier, Mr. Spanky, Mr. Rutten stood with his dog in a threatening fashion, glaring at the postal worker. A citation was issued to Mr. Rutten for not having Bruno muzzled. At the time of this citation, animal control officers heard Mr. Rutten threaten the mail carrier. All mail service to Mr. Rutten’s house has been discontinued as a result of this incident. A trial was scheduled to take place regarding this incident today. Mr. Rutten failed to appear at this hearing, and a bench warrant was issued for his arrest.

A second incident occurred on October 1st. Mr. Rutten called the Nebraska Humane Society and asked them to come to his house. He stated that he was walking his dog down the street when the neighbor’s dog attacked his dog. Mr. Rutten claimed that his dog was muzzled; the neighbor disputed this fact. Mr. Langan stated that there was some debate over where the attack actually took place; the Humane Society learned from eyewitnesses that the neighbor’s dog has been unrestrained and issued citations accordingly.

After hearing the facts presented by Mr. Langan, the Board came to a general consensus that Mr. Rutten needed to appear before them in order to explain his actions since his appearance before them in July. Mr. Levy commented that it was disappointing to hear that Mr. Rutten has not availed himself appropriately of the chance given to him by the Board. In response to Mr. Denker’s question, Ms. Horvath stated that it was within the Board’s power to call Mr. Rutten back before them and to potentially revoke their earlier approval if they deemed it to be appropriate.

The Board Secretary asked Ms. Horvath how she can notify Mr. Rutten of the hearing on November 26th if mail service has been suspended. Mr. Denker offered to send one of his inspectors out to Mr. Rutten’s house to place the meeting notice on his front door.

Mr. Weaver stated that he was not in attendance at the July 30th meeting. He clarified that the main item up for discussion at the November 26th hearing would be the issue of the 6’ privacy fence. He asked Mr. Langan to speak in regards to the difference between a 6’ privacy fence and the kennel that has been erected on Mr. Rutten’s property. Mr. Langan responded that he had been told by the Board to install a 6’ privacy fence on his property; common sense would dictate that a kennel covered by a tarp differs from a privacy fence, which would cover the entire back yard. Mr. Langan stated that the structure erected on Mr. Rutten’s property does not meet his definition of a 6’ privacy fence. Mr.
Levy asked whether there were any other issues besides the privacy fence which would be of concern and would also be under the Board’s jurisdiction. Mr. Langan confirmed that the only item under the Board’s jurisdiction at the November 26th meeting would be the matter of the 6’ privacy fence. He stated that he had informed the Board of the two incidences involving Mr. Rutten since his appearance before the Board in order to illustrate his uncooperativeness with other entities outside of the Administrative Board of Appeals.

Mr. Labode stated that at the time of his appearance before the Board in July, Mr. Rutten seemed to be willing to construct a 6’ privacy fence as directed. Mr. Labode stated that he would like to see Mr. Rutten reappear before the Board to explain why he did not implement the agreement reached at that meeting. Mr. Weaver countered that the structure on Mr. Rutten’s property does measure 6’ in height and contains Bruno; although the matter of “privacy” could be debated. Mr. Denker stated his belief that the City could produce a definition of “privacy fence” if needed. Mr. Levy stated that as the person who made the motion at the July 30th meeting, it had not been his intention to allow the structure now shown to be on Mr. Rutten’s property.

Mr. Lopez asked Mr. Langan for the date of his organization’s last contact with Mr. Rutten. Mr. Langan replied that NHS’ last contact with Mr. Rutten had been on October 1st. In response to Mr. Levy’s question, Mr. Langan stated that it could be up to a two year process (or longer) in order to convict Mr. Rutten as a Reckless Owner in the event that he avoids arrest for his warrant. Mr. Levy thanked Mr. Langan, adding that relying on Mr. Rutten’s warrant could result in a lengthy procedure. Mr. Langan agreed with that statement. Mr. Levy stated that the Board attempted to work with Mr. Rutten in July in order to allow him to keep his dog, and it now appears that Mr. Rutten is not holding up to his end of the bargain.

Mr. Labode made a motion to require Mr. Rutten to appear before the Board on November 26, 2012. Second by Mr. Levy.

AYES: Labode, Levy
NAYS: Lopez
ABSTAIN: Weaver

Motion carried 2-1-1.

11/26/2012:
Jonathon Rutten appeared before the Board.

Mark Langan, Nebraska Humane Society, summarized the case again for the Board members, and concluded by stating that Mr. Rutten had not complied with all of the terms stipulated by the Administrative Board of Appeals at their July 30th, 2012 meeting (see above). Mr. Rutten was to install a 6’ privacy fence in the backyard of his property; this fence was to be for the purpose of containing his male American bulldog, Bruno. Mr. Langan stated that Mr. Rutten has installed a makeshift chain link dog kennel on the property in lieu of the required fence and covered it with blue tarps (for photos, see file).

Mr. Rutten stated that he had been unaware that a dog kennel would not be sufficient. He stated that the kennel is 6 feet in height, and is not left in this kennel for long periods of time. Mr. Rutten stated that he would be willing to install a privacy fence on the property if the Board requires him to do so.
In response to Mr. Levy’s question, Mr. Rutten confirmed that he has attended the Humane Society’s dog behavior and owner responsibility classes as required by the Board. He added that Bruno has arthritis in his legs and is a very laid-back animal; he is not aggressive.

Mr. Levy stated that a dog kennel was not what he had in mind when he made a motion requiring Mr. Rutten to install a 6’ privacy fence on his property at the July 30, 2012 meeting. He stated that the dog kennel installed on Mr. Rutten’s property does not meet the intent of the agreement made between Mr. Rutten and the Administrative Board of Appeals at that meeting. Mr. Rutten again stated that he would be willing to install a 6’ privacy fence in his backyard; he added that he would need to discuss this with his landlord, as he rents his home.

Motion by Mr. Levy to reopen case number 12-7-54. Second by Mr. Simmonds.

AYES: Lopez, Levy, Simmonds, O’Connor

Motion carried 4-0. Case reopened.

Motion by Mr. Levy to clarify the Board’s July 30th, 2012 motion; stating that a 6’ privacy fence is a fence that encloses the entire rear yard, regardless of whether this fence is made of wood or metal (chain link). Mr. Rutten must erect a 6-foot fence which encloses the entire perimeter of his back yard in order to contain the male American Bulldog, Bruno by no later than December 31, 2012. Second by Mr. Simmonds.

AYES: Simmonds, Levy, Lopez, O’Connor

Motion carried 4-0.

1/28/2013:
Kristie Biodrowski, Nebraska Humane Society appeared before the Board and reported that Mr. Rutten was not in compliance with the terms stipulated by the Administrative Board of Appeals at their November 26, 2012 meeting. Ms. Biodrowski reported that Mr. Rutten has installed a 25 foot long by six foot wide wooden privacy fence along the north side of his house. This fence runs from the front of the house to the back, and does not encompass the entire perimeter of the yard as was stipulated by the Board.

After some discussion, Mr. Weaver made a motion to require that Jonathon Rutten appear before the Administrative Board of Appeals on February 25, 2013. Second by Mr. Labode.

AYES: Weaver, Lopez, Labode, Levy

NAYS: Sami

Motion carried 4-1. Mr. Rutten is required to appear before the Administrative Board of Appeals on February 25, 2013.
III. Election of Officers

Mr. Weaver made a motion that the current chair, Ann O'Connor, and vice-chair, David Levy, be renewed in their office “by acclamation”. Second by Mr. Samiev.

AYES: Weaver, Lopez, Labode, Samiev

ABSTAIN: Levy

Motion carried 4-0-1.

IV. Approval of Minutes from October 29th, 2012 and November 26th, 2012

Not enough members were present who could vote to approve the minutes from November 26th, 2012. These minutes will be approved at the February 25, 2013 meeting.

Motion by Mr. Weaver to approve the minutes from December 31, 2012. Second by Mr. Lopez.

Motion carried by mutual consent.

V. Adjournment

Meeting adjourned by mutual consent at 2:12 pm.

Andrea Wisniewski, Planning Department
Recording Secretary