

Date July 14, 2008

PUBLIC HEARING ON VICIOUS
ANIMAL APPEAL OF JOSHUA GREEN

WHEREAS, Joshua Green, 2525 County Line Road, Lot #247, filed an application for appeal before the City Council of the City Hearing Officer's decision upholding the Chief Humane Officer's declaration of his dog as a vicious animal; and,

WHEREAS, Mr. Green requested an opportunity to address the City Council regarding his appeal; and,

WHEREAS, Mr. Green has been provided with the opportunity to address the City Council on the matter of his appeal; and,

WHEREAS, the dog falls under the definition of vicious dog as contained in Section 18-41 of the Des Moines City Code relating to vicious dogs; NOW THEREFORE,

BE IT RESOLVED (Choose one of the two alternatives):

Alternative One: That the order of the Hearing Officer be upheld and Mr. Green's dog be declared vicious.

MOVED BY _____ TO UPHOLD DECLARATION

Alternative Two: That the order of the Hearing Officer be reversed and Mr. Green's dog not be declared vicious.

MOVED BY _____ TO REVERSE DECLARATION

FORM APPROVED:

K. Massier
Katharine Massier
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

ATTACHMENT (1)

Transcript of Hearing

ADMINISTRATIVE HEARING TRANSCRIPT
Wednesday, June 4, 2008
City v. Green
Vicious Dog

HEARING OFFICER LEANN DUCEY: Good afternoon. My name is LeAnn Ducey and I'm an Administrative Hearing Officer. It is 1:00 p.m. on June 4, 2008 and we are conducting an administrative hearing on a vicious dog declaration. The appellant is Joshua Green. When I call you to give testimony today please come up to the podium, speak into the microphone and state your full name and address for the record. You will then be sworn in. This is an informal hearing and to that matter the hearing is now open. Would the representative from the City please come forward, identify yourself and present any information you have pertaining to this hearing.

SERGEANT SCOTT RAUDABAUGH: My name is Scott Raudabaugh. I'm the police sergeant assigned to the animal patrol unit as the supervisor and by City ordinance and I'm in the role of the Chief Humane Officer for the City of Des Moines, Iowa.

DUCEY: Please raise your right hand. Do you Sergeant Raudabaugh, swear or affirm the testimony you are about to give is the truth, the whole truth and nothing but the truth?

RAUDABAUGH: Yes.

DUCEY: Go ahead.

RAUDABAUGH: I'd like to start off by, uh, submitting some documents for the record.

DUCEY: Okay.

RAUDABAUGH: I've got, two sets of the same copies of various documents relative to this. A copy for myself to work from. A copy that anybody wishes to look at and I'll leave it on the podium here.

DUCEY: Okay.

RAUDABAUGH: And then a copy to submit to you.

DUCEY: Okay. I'll mark this as City Exhibit A. Thank you.

RAUDABAUGH: I also have uh three sets of the same photographs taken by the Des Moines Police Department Identification Technician. One is in black and white and one's in color and when I printed the color ones they didn't turn out so well, but, uh, they're an accurate representation.

DUCEY: Okay.

RAUDABAUGH: And like I said there are two sets here and I'm going to submit them to you.

DUCEY: Okay.

RAUDABAUGH: And certainly if anybody wishes to look at them.

DUCEY: Okay. Do you want to leave one set on the podium just in case they do want to look at it?

RAUDABAUGH: I would rather have you look at both sets.

DUCEY: Oh, they're not the same pictures?

RAUDABAUGH: They are the same pictures.

DUCEY: Okay. I'll mark these as City Exhibit B.

RAUDABAUGH: And last but not least, uh, Mr. Green came to the animal shelter and presented me with three photographs showing his, his dog. I'll let him describe what they are, but for the record I'll submit them since they are in my possession.

DUCEY: Okay.

RAUDABAUGH: And then you can look at them and if necessary keep them for the record or give them back to me. I have no need for them.

DUCEY: Okay. I'll mark those as City Exhibit C.

RAUDABAUGH: I'd like to briefly go through the set of documents presented.

DUCEY: Okay.

RAUDABAUGH: The first page is a letter from Mr. Green regarding the hearing. The second page is a document service form related to that matter. The third page is a vicious dog letter in which the dog is declared vicious that was authored by me and signed by me as well. The document behind that is a document service letter in which the vicious dog letter was served to Mr. Green on his property. Behind that is a copy of the animal bite reports and then various criminal documents that charge Mr. Green with dog at-large and no City dog license. Behind that paperwork is a series of photographs taken by the police department identification technician. This supplemental report in here indicated that he did in fact take the pictures. Behind that is a copy of a rabies certificate that was faxed. I'm not sure if it was faxed by the Animal Rescue League or Animal Control, none the less it was a rabies certificate from All Creatures Small Animal, All Creatures Small Animal Hospital. It is a rabies certificate for Mr. Green's Labrador Retriever. Behind that is a miscellaneous, I will call it miscellaneous supplemental note that was in regards to Mr. Green calling about his dog. The next supplemental is merely that the dog was quarantined. Even though the dog is still at the animal shelter it is released from official quarantine because it didn't exhibit signs of rabies during that 10-day quarantine period. Behind that are copies of various City ordinances relative to what we are covering today. Primarily definitions, 18-41, vicious dog and I'm going to read through that.

Vicious dog means any dog which has attacked a human being or domestic animal one or more times, without provocation; any dog with a history, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or domestic animals; any dog that snaps, bites, or manifests a disposition to snap or bite. And the others really aren't relative to this. There's no indication that the dog is trained to bite or attack and it is not, it does not exhibit enough characteristics of a pit bull breed, but certainly does fit the first three portions of the vicious dog definition. Behind that is Section 18-59 that talks about seizure, impoundment and disposition of vicious dogs. I'm not going to read through it, but is relative to what we're doing here. If the dog, if my vicious dog declarations have held, certainly the provisions of 18-44 as far as licensing as a vicious dog apply and I'm going to review that and 18-58 talks about unlicensed vicious dogs and that they're always on a license after the vicious dog declaration is upheld and the dog is licensed as a vicious dog and it is probably the second time the license would have happened. Section 18-56 talks about confinement of a vicious dog and the requirements for such. 18-57 talks about what happens if the vicious dog is not properly confined. On May 16, 2008, Joshua Green's yellow Labrador Retriever named Chase was running loose when it went next door and attacked and bit Carla Howard as she exited her car. The dog bit Ms. Howard on the hand, the arm and the leg which resulted in transportation of her by Des Moines Fire Medics to Methodist Hospital. When you take a look at the photographs, you'll see that the injuries are certainly larger than just a few puncture wounds. In fact there's significant tissue damage. Ms. Howard is here today and she can elaborate a little bit more on the actual bite incident and possibly on her injuries. At this point that's all I have to present.

DUCEY: Okay, thank you. Ms. Howard. Will you come up please? Please state your name and address:

CARLA HOWARD: Carla Ann Howard, 2525 County Line Road, #245.

DUCEY: #245?

CARLA HOWARD: Yes.

DUCEY: If you could speak please we are recording this.

HOWARD: Okay.

DUCEY: If you will raise your right hand. Do you Carla Ann Howard swear or affirm the testimony you are about to give is truth, the whole truth and nothing but the truth?

HOWARD: Yes.

DUCEY: Okay. Tell me why you're here today.

HOWARD: I was walking, after walking from my home to my car the dog came at me from the right.

DUCEY: Can you tell me what happened?

HOWARD: Uh, yes. He bit me on the right hand first, let go and then grabbed my right forearm. When he let go he grabbed my blouse and ripped it and then went and bit me on the left knee.

DUCEY: Okay. Uhm, can you tell me the circumstances under which was the dog running, what was, when did you first notice the dog?

HOWARD: I first noticed the dog when he started to come after me. Come after me rather. Uhm, I didn't like that he was loose at the time.

DUCEY: Had you noticed this dog before?

HOWARD: Yes.

DUCEY: Okay. Is it normally on the chain or have you seen it once before?

HOWARD: Yes, on the chain.

DUCEY: Has the dog ever made any motions like it wanted to attack you or anything?

HOWARD: No. He has barked at me before.

DUCEY: Okay. Can you tell me the extent of your injuries? You said it was to the right hand, right forearm, your blouse was ripped and your left knee?

HOWARD: Uh, yes.

DUCEY: Did you require stitches?

HOWARD: 29 stitches. 29 stitches. There were 5 in my left knee and 4 in my hands and actually my forearm.

DUCEY: Do you have anything else to present today?

HOWARD: Nope, that's all.

DUCEY: Okay. Thank you very much. Joshua Green. Please state your name and address for the record.

JOSHUA D. GREEN: Joshua D. Green, 2525 County Line Road, Lot 247.

DUCEY: Please raise your right hand. Do you Joshua D. Green swear or affirm the testimony you are about to give is truth, the whole truth and nothing but the truth?

GREEN: Yes ma'am.

DUCEY: Did you witness the attack?

GREEN: No I didn't, I was in the shower actually.

DUCEY: Alright. What do you have to discuss today?

GREEN: I'm bringing him out to Tracey, Iowa. My uncle owns like 20 acres out there. I'm gonna lock him up to a doghouse out there until I can find a better, a new house basically. I just can't afford the vicious dog insurance. I know he messed up, but he's three years old, he's never bitten anyone before. He's great with kids. I don't have actual photographs, I have them on my phone and my friend's phone I brought with me, just Chase playing with numerous kids. That's really all I got to say.

DUCEY: Okay. So what you're saying is that if he's not declared a vicious dog you would be taking him out of the City. Correct?

GREEN: Yeah. I can't have him at the trailer court. The trailer court already said I couldn't have him. I have to put him out there until I can find a better, a new house basically.

DUCEY: So this is only a temporary solution?

GREEN: What do you mean?

DUCEY: This Tracey, Iowa.

GREEN: Yes, it's temporary, until I can—he can stay out there as long as he wants. My uncle owns a lot of land out there and its fine. But I'll be trying to get a house as soon as possible.

DUCEY: So then you will be bringing the dog back into the City.

GREEN: Possibly. Depending on where I move. I'm probably moving to Osceola because I have some land out there that I'm going to buy so that's still country. I want to start building my house.

DUCEY: But there is a possibility

GREEN: There's a possibility.

DUCEY: You would have the dog back in Des Moines.

GREEN: There's a possibility, if he's not declared vicious, yeah.

DUCEY: If I did declare the dog vicious then you would have to have insurance.

GREEN: Yeah.

DUCEY: And you're telling me you're not capable of getting the insurance.

GREEN: The best company I found for it is \$1300 for six months. That's outrageous

DUCEY: Is that because the dog has had a bite.

GREEN: Bite in the--they say the last year. So obviously it's been more recent than a year so

DUCEY: I guess I'm not fully understanding you. You want to bring the dog back into the City limits and you would have to have insurance. But you're telling me you couldn't afford the insurance.

GREEN: Okay. To get him out you have to have that insurance, to get him out of the Animal Shelter

DUCEY: To license the dog, if it was declared vicious.

GREEN: Yeah, if it was declared vicious.

DUCEY: That's what I'm talking about, and if it was declared vicious then you would have to have the insurance. Sgt. Raudabaugh, could you please come up the microphone, you can stay there. Am I correct in the understanding that in order to get the dog out of Animal Control it has to have current license, correct?

RAUDABAUGH: That is correct. Whether it's involved in a bite or not, before it leave, any dog or cat leaves the Shelter it has to have a current license. In this particular case the dog has already been declared vicious and him to reclaim it it has to have insurance to license a dog, not only as a conventional dog, so to speak, but as a vicious dog. He could have done that pending the hearing even, if my recollection serves me correct, pending the hearing he could have agreed to license it as a vicious dog and done so and confined it as a vicious dog and done so and could have had the dog, could have, my error, if a little slightly different circumstances had the dog not been in the Animal Shelter but been declared vicious he could have kept it at home if he'd have done all of those things. But in this case it was impounded for quarantine at the Shelter because of the bite and thus he can't get it back until he licenses it as a vicious dog.

DUCEY: Okay.

RAUDABAUGH: Does that make sense?

DUCEY: Yes. Okay. I just want to make sure I'm really clear on this because this is very important to me. So if I declare the dog vicious he has to get the insurance and the license before it can be released. Correct? Even if he is going to immediately take it out of the City he still has to have a license, correct? And in order to get the license, if it's vicious he has to have the insurance?

RAUDABAUGH: Yes. The dog has already been declared vicious. If you uphold my declaration, for him to get the dog back he has to get the insurance period. The provision to remove a vicious dog from the City of Des Moines was removed from City ordinance last year. Unfortunately many vicious dog owners didn't actually comply with what they agreed to comply with and so that provision was removed, now anyone who has a vicious dog has to license it as such or essentially the dog is euthanized.

