

EXHIBIT D



September 12, 2012

Mr. Barry Archer
1244 E. 17th Court
Des Moines, IA 50316-2606

Subject: Vicious Dog Declaration

Attached is the ruling from the City of Des Moines Hearing Officer, for the Administrative Hearing on September 5, 2012. Please read it carefully, so you are aware of the decision, any deadlines you might be required to comply with, as well as any other requirements you may be held to.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR:kh
Attach

**City of Des Moines, Iowa
September 5, 2012 Administrative Hearing**

In re:)	
)	DECISION AND ORDER
BARRY ARCHER,)	AND
Appellant)	NOTICE OF RIGHT TO APPEAL
)	
)	
)	

Introduction and Parties

This is an appeal of the City of Des Moines’ declaration of a dog as a “Vicious Dog” as defined by Des Moines Municipal Code (“the Code”) Section 18-41.

Barry Archer, of 1244 E. 17th Court, Des Moines, Iowa, appeared on his own behalf as the owner of a brindle and white colored male boxer and shepherd mixed-breed dog, named “Sergeant Bubba.” Chief Humane Officer Sergeant Scott Raudabaugh with the Des Moines Police Department (the “DMPD”) appeared on behalf of the City of Des Moines (the “City”).

Background Facts

Sergeant Raudabaugh offered exhibits into evidence to support the City’s case, labeled 1-41. He also offered photographs, which were labeled Exhibits 42-48. The following five incidents were chronicled by the exhibits, which included Animal Investigation Reports, as well as some other documents and the photographs.

On October 11, 2010 at about 8:30am, JaQuita Wilson reported that her daughter, Sierra Motte, was bitten at 7:30 that morning as she walked to school by a brown and white boxer being walked on a leash by an older white male with a grey beard. She went to pet the dog and the dog jumped up and bit her on the right forearm (Animal Incident Investigation Report, Exhibit 35). Sierra suffered a puncture wound to her right forearm, and was treated at Mercy Medical Center Emergency Room. The older white male was later identified as Barry Archer, 1244 E. 17th Court, Des Moines,

Iowa, owner of a brindle/brown and white boxer mix named "Bubba" (Exhibit 37). Bubba was held for home quarantine for ten days.

On June 14, 2011, at about 9:50pm, Jamie Ames reported that his dog was bitten at 2:00 that afternoon by a black pit bull while walking his dog near the corner of Cleveland and E 17th Court. He reported that he kicked the dog off of his and then rushed his dog two blocks north to his home. He described the attacking dog as "likely a pitbull that is all black except a white strip on the chest/stomach area and white around the eyes." He also stated that the dog was being walked by a young girl, around 10 years old or younger. Two days later, an Animal Control Officer reported that Jamie Ames had told him he saw the dog that bit his dog at the park that day and that he lived south of him on E. 17th Court in a house with a big military sign in the front yard. The address was determined to be 1244 E. 17th Court, the address of Barry Archer. The ARL Officer reported seeing the dog in the window and it had a "white/black face" (Exhibit 30). Another report stated that an ARL Officer spoke to Barry Archer on June 17th, who stated that he had a neighbor kid walk his dog and another dog got out of its collar and started to attack his dog while it was on a leash. His dog then bit the other dog. The dog "Bubba" was placed under home quarantine for ten days (Exhibit 32). A supplemental report dated August 31, 2012 (Exhibit 33A) stated that the victim dog's owner, Jamie Ames, claimed that both dogs were on leashes the entire time and that "Bubba" pulled the person walking the dog across the street and started fighting with his dog.

On July 28, 2011 at 9:10am, Barry Archer called and reported to Animal Control that his dog had an altercation with a cat that was in his backyard the day before and the cat had died. The dog had scratches on his face from the encounter. The dog was quarantined at home for 10 days (Exhibit 23). Neither the identity of the cat nor its owner was determined.

On December 15, 2011 at around 11:20am, Robert Edmond reported that he was walking his dog down the street on November 4, 2011 at around 6:30am as he does every morning when Barry Archer's dog got loose and came and grabbed his dog by the neck and made him pass out. Then he was able to kick the dog off his dog. He took his dog to the vet and then Mr. Archer told him to put the vet bill in the mailbox and he would pay it. Mr. Edmond did so, but Mr. Archer never paid the bill. The Patient Chart for Mr. Edmond's dog states: "Mike [Mr. Edmond's dog] presented after pit bull attack while owner was on walk.... Severe, deep, bleeding injuries to ventral neck and throat area, exposing ripped musculature and vessels and nerves. 2 primary wounds present: 1st approximately 4-5 inches in diameter at ventral aspect, 2nd approximately 2-3 inches in diameter along left side of neck. Bleeding profusely from both wounds. No

obvious injury to airway or esophagus at this time, but significant muscle and vessel trauma" (Exhibit 19A).

On August 19, 2012 at around 10:00pm, Tracy Robb reported that her 7-year-old daughter, Piper, had been bitten by a neighbor's dog earlier that evening. She had been visiting with Barry Archer when Piper jumped on the dog Bubba to hug him from behind, and he bit her on the chin. She took her daughter to the Mercy Medical Center Emergency Room for treatment. Her wounded face was photographed (Exhibits 42-48). Piper sustained a puncture wound to the left side of her chin and received stitches (Exhibit 13). Bubba was quarantined at the ARL Shelter because of his history of bites (Exhibit 13).

On August 28, 2012, Sergeant Raudabaugh served Barry Archer at 1244 E. 17th Court a letter informing him that his brindle and white colored male boxer and shepherd mixed breed dog "Sergeant Bubba" was being declared a "Vicious Dog" as defined by City Code Section 18-41 (Exhibits 1-3). The letter detailed the incidents upon which the declaration was based, and detailed the requirements that Bubba be licensed with the City Clerk's Office as a vicious dog and properly confined and leashed. Mr. Archer was also advised of his right to appeal the declaration. Mr. Archer's request for an administrative hearing was filed on August 29, 2012. On August 29, 2012, Sergeant Raudabaugh served Barry Archer at 1244 E. 17th Court a letter from the City Clerk's Office advising him of the time and date for his hearing on the Vicious Dog declaration (Exhibits 4 and 5).

Discussion

City Code Section 18-41 states that *Vicious Dog* means:

- (1) Any dog which has attacked a human being or domestic animal one or more times, without provocation;
- (2) 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;
- (3) Any dog that snaps, bites, or manifests a disposition to snap or bite....

Mr. Archer's testimony included statements that the bite incidents were never substantiated and that his dog is not vicious. He stated that, when Sierra Motte claimed she was bit by Bubba on October 11, 2010, he had checked the girl's arm and found nothing. When the mother later called to tell him the cost to treat her daughter for the

bite, he testified that he offered to pay the bill but wanted her insurance agent's contact information as well as that of the hospital. Mr. Archer stated that the woman never returned the information to him and he concluded that, therefore, his dog did not actually bite the girl. The Animal Incident Investigation Reports seem to indicate that Bubba did, in fact, bite Sierra. Sierra had given the ARL Officer an accurate description of both Mr. Archer and Bubba at the hospital. Mr. Archer did remember the girl stating that Bubba had bit her on the day of the incident. The facts that Mr. Archer did not observe a bite upon inspection or that Sierra's mom never supplied him with the information about her insurance agent that he asked for are not enough to cast any real doubt over the fact that Bubba bit Sierra on October 11, 2010.

The testimony and evidence given regarding the June 14, 2011 incident contains some inconsistencies, but, nevertheless, also establishes that a bite occurred. Jamie Ames' report that the attacking dog was "all black except a white strip on the chest/stomach area and white around the eyes" does not match other descriptions of Bubba nor the picture of him shown at the hearing. The photograph was not admitted into evidence, but was observed from a distance by the hearing officer. Even if there had been no photograph, every other description of Bubba from all the parties involved omits any reference to black coloring. Mr. Ames' assertion that the dog was being walked by a child was apparently corroborated by Mr. Archer in the Animal Incident Investigation Report dated June 17, 2011. (Exhibit 32) where he stated "he had a neighbor kid walking his dog." Later, Mr. Archer insisted he never has children walk his dog, and Mr. Ames stated he may have been wrong about the dog walker being a child. Mr. Ames did admit his dog got off his collar and attacked Bubba first. Bubba did bite Mr. Ames' dog back, but remained on his leash. Tracy Robb also testified about this incident, stating that she witnessed the altercation between Jamie Ames' dog and Bubba. Certainly Bubba bit Mr. Ames' dog, causing a puncture wound, but was apparently provoked. No evidence was offered of any injury to Bubba.

Regarding the stray cat incident from July 27, 2011, Mr. Archer reported the incident himself, and apparently believed at that time that his dog was responsible for the cat's death. One of the Animal Incident Reports for this incident states that "the dog went after the cat and bit the cat and then the cat died" (Exhibit 21). Another report states, "Mr. Archer indicated he would need to tell the owner of the cat it was killed by his dog" (Exhibit 23). At the hearing, Mr. Archer testified that he did not know for sure whether his dog killed the cat. He stated that he was at work at the time. But considering his reports to the ARL officer and the fact that the cat was found dead in Mr. Archer's backyard, it is certainly more likely than not that Bubba was responsible for the death of the cat.

Mr. Archer also testified about the incident occurring on November 4, 2011. He claimed that Bubba did not get loose from his collar. He denies having knowledge of any altercation between Bubba and Mr. Edmonds' dog. Mr. Edmonds did testify and corroborate the story told by the Animal Incident Reports: that Mr. Archer's dog got loose and attacked his dog, causing substantial injuries. Mr. Edmonds was familiar with Mr. Archer and his dog, as he saw them many times over the years on their walks. Mr. Archer did not deny telling Mr. Edmonds to place the bill for the injuries to his dog in his mailbox. Mr. Archer's contentions that he never heard from Mr. Edmonds after the incident and that his dog did not get loose are insufficient to challenge the preponderance of the evidence regarding this incident, which shows that Bubba attacked and bit Mr. Edmonds' dog.

The August 19, 2012 bite to young Piper Casey's chin is undisputed by Mr. Archer. Both Mr. Archer and Piper's mom Tracy Robb testified that Piper came up behind Bubba to hug him and surprised or startled him, resulting in his biting Piper on the chin leaving a deep puncture wound. They both testified that Piper and Bubba play together often and Piper loves Bubba. Also, both stated that Bubba plays with children frequently and has never bitten another child or acted aggressively toward any of them.

A neighbor of Mr. Archer's and her adult son that apparently lives with her both testified that they have never seen Bubba act aggressively toward other animals or people. They testified to having frequent contact with Bubba and many opportunities to witness his demeanor in a variety of settings.

In this case, there are five instances where this dog has bit, either a human or a domestic animal. A preponderance of the evidence establishes that Bubba has a history of attacking or causing injury to human beings and domestic animals. Bubba does bite. He fits the definition of a vicious dog in these two respects, certainly. He has also once bit and caused injury above the shoulders of a person. This is actually one of the bases for declaring an animal to be "Dangerous" under Code section 18-196. Sergeant Raudabaugh stated that he doesn't take these decisions lightly and that he is conservative when it comes to making these declarations. He could have declared Bubba a "Dangerous Animal" by virtue of the most recent bite of Piper Casey on the face. Code Section 18-196 defines a *Dangerous Animal* as

any animal, including a dog...that has bitten or clawed a person while running at large and the attack was unprovoked, or any animal that has exhibited vicious propensities in present or past conduct, including such that the animal:

(1) Has bitten or clawed a person on two separate occasions within a 12-month period [or] (2) Did bite or claw once causing injuries above the shoulders of a person....

Fortunately for Mr. Archer and Bubba, Sergeant Raudabaugh took the more conservative route and only declared Bubba “Vicious,” which has much less severe consequences. The consequence of being declared a “Dangerous Animal” is for the dog to be humanely destroyed.

Mr. Archer does seem to follow good practices with Bubba, leashing him when outside his home. He testified to having a six-foot-high privacy fence, which is also good. The rules for maintaining a vicious dog which include keeping the dog on a leash held by an adult, or secured in his house or a special kennel, should not pose any difficulty for Mr. Archer, but he will perhaps be on higher alert to the propensities of Bubba and the possibility that he may bite again. Mr. Archer needs to take every reasonable precaution to ensure Bubba does not bite again, and that is what the vicious dog requirements are designed to help him do. The vicious dog declaration does not mean that Bubba isn’t oftentimes a delightful dog to be around.

Decision and Order

The preponderance of all the evidence in the record supports the City’s declaration of Mr. Archer’s brindle and white boxer mixed breed dog “Bubba” as a “Vicious Dog”, as defined in Code Section 18-41.

The declaration that Mr. Archer’s dog is a “Vicious Dog” is UPHeld. Mr. Archer is ordered to permanently license his dog Bubba as a “Vicious dog” within three (3) business days of the date below, as well as comply with all other requirements for maintaining a “Vicious Dog” as set out in the Code. Mr. Archer is also ordered to pay all impoundment and quarantine costs as well as any other related costs and fees as provided under Code Section 18-59.

If Mr. Archer fails to abide by the code requirements, further consequences may follow, up to and including requiring that the dog be humanely destroyed.

Right of Appeal

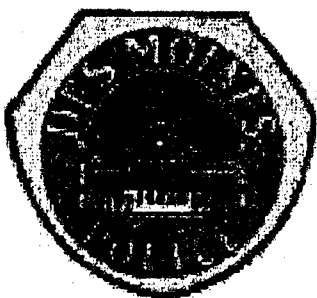
This decision and order may be appealed to the City Council by filing a written request with the City Clerk’s Office within three (3) business days after receipt of this

order, stating the reason for the requested appeal. Failure to file a written notice of appeal in a timely manner shall constitute a waiver of the right to appeal this Order, as provided under Section 18-59(e) of the Code.

This written ruling is submitted on this 12th day of September, 2012 in Des Moines, Polk County, Iowa. The City Clerk shall serve copies of this Decision and Order upon each of the parties.



Cassandra Webster
Administrative Hearing Officer



Chief Humane Officer

DOCUMENT SERVICE

DMPD Case number: 2012-26027

ARL number (if known): 16005

Animal owner's name: BARRY ARCHER

Address: 1244 E 17TH CT.

Location of service: SAME

Date and time served: 12 SEP 12 1247

Official serving document (print name):

SGT. TADDEAS ALPH

Official's identification number: 4770

Type of document served: Vicious dog letter Dangerous

animal letter Illegal animal letter Hearing ruling letter

City Council decision letter Other: _____

Name of person receiving document (they print their name):

SLID IN BETWEEN FRONT

Their signature: X INSIDE DOOR + FRAME

KF ACU

EXHIBIT E

9/16/2017 Ex. E

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To Whom it may concern:

I want to dispute the administrators decision on classifying my dog as a vicious dog. I do not feel there is enough evidence to substantiate the decision.

Case # C0083413 and 1118745 The dog mentioned was a black Pitt Bull. Bubba is not black and is not a pitt bull, also I have never had my dog mugged by a young girl. Both my dog walkers have been grown women over 30 years of age. There was a witness who saw Mr. Ames dog get loose from his collar and lead and come running toward my dog. Mr Ames testified his dog collar was too big and was put on backwards. Mr Ames testified his dog was protecting him. Mr Ames was on opposite side of the street. Mr Ames was going north on E 17th Ct toward his house at 1530 E 17th Ct. He was walking on the east side of E 17th Ct. My dog and dog walker was walking south toward University on E 17th Ct on the west side of street.

②

Mr Ames testified his dog was protecting him. How can this happen when he did not have control of his dog or have the dog in his possession. The dog was running loose and came across the street at my dog and dog walker lady. Mr Ames testified in the hearing that the incident happened at E 17th and Cleveland. The witness Tracy Babb lives on E 17th & Garfield and testified at the hearing of witnessing who whole thing. My dog and dog walker was just two houses from my house at 1944 E 17th. when Mr Ames dog got loose and came running at my dog Babbie. Babbie did not attack Mr. Ames dog, he was protecting himself and my dog walker lady. This incident happened at 2:00 o'clock in the afternoon bright daylight. Mr Ames lied about the events and location.

There are too many inconsistencies in this matter to label my dog a vicious dog.

(3)

Case # 1146850 Robert Edmond.

Mr Edmond testified my dog got loose and attacked his dog.

This did not happen. I have seen Mr Edmond walk his dog, however we walk on opposite sides of the street, and there is no way whatsoever my dog can get loose from his collar and leash.

This is a checker collar that is tight around his neck, and the leash is hooked to the checker collar and his collar with his tags on. This was displayed at the hearing. My dog never ever runs loose, he is always with an adult when he is being walked. Mr Edmond stated the incident happened on Dec 4 and did not report the incident until Dec 15 - that is 11 days later.

In the official animal incident investigation report - there was not enough evidence or information to issue a citation. This is just untrue

④

Case: ARL C00484630 and 10-33030
Jo Quira Nelson stated she took her
daughter Sierra Motta to Mercy
Medicine Center Emergency room
on Oct 11th 2010 for a dog bite.
By Iowa law all animal bites
must be reported to police and
the dog in question must be in
quarantine. I have never received
any statement from the hospital
or insurance company. I was
never notified by anyone that
my dog Sasha bit anyone child
or otherwise. The girl at the hearing
that was referred to was a
young girl around junior high
school age that asked to pet my
dog. She petted the dog and when
we were walking away she said
my dog bit her. I checked her arms
and there was no sign of a bite
not even a scratch. Her hands
and arms were not covered so
it would have been easy to see
blood, scratches of any kind and
there were none. There were no
evidence of to prove there was a
bite. There were no pictures

5

EX. E

and no police report - no evidence whatsoever to prove my dog bit Sierra Motta.

When Bubba bit Piper Rabb, there were pictures, police reports and Bubba was in quarantine for 3 weeks. Also when Bubba bit Piper Rabb - he was on his leash with caller sitting down ^{on curb} watching children playing at the park.

Piper ran out of the house, down the stairs and jumped on his back. He did not know she was running and when she jumped on his back he was on his leash with caller and could not get away from her, therefore he felt threatened and nipped her on the chin. This does not make him a vicious dog.

any animal will react when they feel threatened.

Sincerely,

Barry Archer
Barry Archer

SEP 17 PM 12:12
CITY CLERK
DES MOINES, IA

FILED

EX. E
6



September 19, 2012

Mr. Barry Archer
1244 E. 17th Court
Des Moines, IA 50316-2606

RE: Appeal of Vicious Dog Declaration

This is to acknowledge your appeal of the Hearing Officer's decision regarding the declaration of Sergeant Bubba as a "Vicious Dog."

Your hearing before the City Council has been scheduled for **Monday, October 8, 2012**. The meeting starts at 4:30 p.m. **Failure to appear at the scheduled hearing will be deemed as a waiver of your rights to a hearing.** Parking is available on the streets surrounding City Hall. A copy of the Administrative Hearing transcript will be sent under separate cover.

If you have any questions regarding this matter, please contact me at 283-4209.

Sincerely,

A handwritten signature in cursive script that reads "Diane Rauh".

Diane Rauh
City Clerk

DR:kh
Enc.

cc: Assistant City Attorney
Sgt Raudabaugh

EXHIBIT F



September 20, 2012

Mr. Barry Archer
1244 E. 17th Court
Des Moines, IA 50316-2606

RE: Hearing Transcript

Enclosed, please find a copy of the hearing transcript regarding your dog.

If you have any questions regarding this matter, please contact me at 283-4209.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is written in a cursive style with a large, prominent "D" and "R".

Diane Rauh
City Clerk

DR:kh
Enc.

cc: Assistant City Attorney
Sgt Raudabaugh

ADMINISTRATIVE HEARING TRANSCRIPT
SEPTEMBER 5, 2012
CITY VS. ARCHER
VICIOUS DOG

HEARING OFFICER CASSANDRA WEBSTER: Good morning. It's approximately 11:58 a.m. on Wednesday, September 5, 2012. My name is Cassandra Webster and I'm the administrative hearing officer. We're conducting this hearing this morning because of the city's declaration of a vicious dog owned by Barry Archer. Would the city representative please come to the microphone and clearly state your name and the title of your position with the city, please?

SERGEANT SCOTT RAUDABAUGH: My name is Scott Raudabaugh, I'm a police department -- or, I'm a sergeant with the police department and assigned to animal control and as such, I'm the chief humane officer for the City of Des Moines.

HEARING OFFICER CASSANDRA WEBSTER: Would you raise your right hand? Do you solemnly swear and affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth?

SERGEANT SCOTT RAUDABAUGH: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK, you can -- you may proceed, please.

SERGEANT SCOTT RAUDABAUGH: I'd like to start out by submitting some documents and some photographs for the record, if I could.

HEARING OFFICER CASSANDRA WEBSTER: Uh-huh.

SERGEANT SCOTT RAUDABAUGH: Just for the record, I supplied Mr. Archer with a copy of the documents so he'll be able to see what I'm referencing.

HEARING OFFICER CASSANDRA WEBSTER: OK.

SERGEANT SCOTT RAUDABAUGH: I've got two sets of photographs, the set that you have, ma'am, and then I've got a secondary set. I'm going to give those to Mr. Archer to look at as well. What those photographs are of the bite victim that occurred on August 19, 2012, under Des Moines Case Number 2012-26027.

HEARING OFFICER CASSANDRA WEBSTER: OK.

SERGEANT SCOTT RAUDABAUGH: I'd like to first start out by just kind of going through the documents and briefly explaining what they are. I'll try to keep it as brief as possible and then go through and provide a summary of why we're here. The first -- I've numbered each document in the upper right-hand corner area 1 through -- I'm not sure exactly. 41 but then there's been some additions since this was put

