

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 black ink that reads "Diane Rauh". The signature is written in a cursive, flowing style.

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

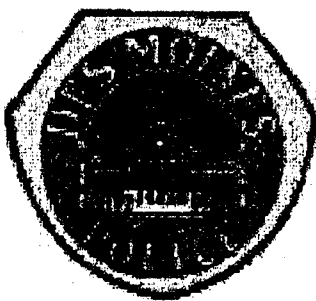
This decision and order may be appealed to the City Council by filing a written request with the City Clerk's Office within three (3) business days after receipt of this

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.

A handwritten signature in black ink that reads "Cassandra Webster". The script is cursive and fluid.

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. KATHARINE 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

①

9/16/2012 Ex. E

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 # C00834113 and 1118745 The dog mentioned was a black Pitt Bull. Bulles is not black and is not a pitt bull, also I have never had my dog walked 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 Bahr lives on E 17th & Garfield and testified at the hearing of witnessing the whole thing. My dog and dog walker was just two houses from my house at 1844 E 17th. When Mr Ames dog got loose and came running at my dog Bahr. Bahr 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 choke collar that is tight around his neck and the leash is hooked to the choke 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 C00684630 and 10-33030
Jo Quitt Wilson stated she took her
daughter Sierra Miller to Mercy
Medicine Center Emergency room
on Oct 1st 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 Raab, there were pictures, police reports and Bubba was in quarantine for 3 weeks. Also when Bubba bit Piper Raab - 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

FILED
SEP 17 PM 12:12
CITY CLERK
JESS MOTTEN

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 fluid and cursive, with the first name "Diane" and last name "Rauh" clearly distinguishable.

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

together last week. Document 1 and 2 are the vicious dog declaration letter. 3 is the document service form. 4 is the letter from the city clerk's office notifying Mr. Archer of when the hearing was going to be and the document service of that. 6 is a definition of vicious dog. I'd like to go through that and just mention those points that I believe are applicable here. 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 or to cause injury to otherwise endanger the safety of human beings or domestic animals. Any dog that snaps, bites or manifests a disposition to snap or bite." I believe all three of those apply in this case. And I think the information submitted to the -- will support that. 18-59 is seizure, impoundment disposition of a vicious dog. And it just pertains to the process according to city ordinance. Documents 9, 10, 11, 12, 13 refer to an animal bite incident that occurred on 19th of August, 2012. And that's documented under Des Moines Case 2012-26027. Documents 14, 15, 16, 17, 17A, 17B, 18, 19, 19A, 19B, 19C, 19D refer to an animal bite that occurred on December 4, 2011. Documented under Case Number 2011-40850. I do need to make mention that basically, the -- there's a supplemental in there clarifying the actual date of occurrence was November 4, 2011, November 4, 2011, instead of December 4th. There was a little confusion on that date. But it was November 4th instead of December 4th. Documents 20, 21, 22, 23, 24, 25, 26 refer to an animal bite that occurred on July 27, 2011, documented under Case Number 11-24189. Documents 27, 28, 29, 30, 31, 32, 33, 33A documented an animal bite that occurred on June 14, 2011. Documented under Case 11-18745. Documents 34, 35, 36, 37, 38, 39, 40 and 41 document an animal bite that occurred on October 11, 2010, under Case Number 10-33030. Kind of a summary of what -- what brought us here is on August 19, 2012, Barry Archer's brindle and white colored male boxer and shepherd mixed breed dog named Sergeant Bubba bit a child in the face when the child went to hug the dog and startled it. That bite caused a laceration to the child's chin. Those photographs submitted are photographs of the child that was bit in the chin. On December 4, 2011, a dog -- Barry Archer's dog -- another dog owner claimed that while walking his dog, Barry Archer's dog slipped off its collar and grabbed his dog, the other dog, by the neck until it passed out. Like I said before, the clarification on the date of occurrence is November 4, 2011, instead of December 4, 2011. There's vet records to substantiate the correction in the date. On July 27, 2011, Barry Archer's dog went after, bit and killed a stray cat that was in his yard. On June 4, 2011, another dog owner claimed that while walking his own dog, Barry Archer's dog bit his dog which caused a puncture wound to that dog. The other dog owner and Barry Archer agreed that a child was walking Barry Archer's dog at the time of the incident. Barry Archer claimed that the other dog got off of its collar and it attacked his dog while his dog was on a leash. However, nothing in the report indicates that Barry Archer reported that to the police department. On October 11, 2010, a child was walking to school, walked by Barry Archer's dog and when she went to pet the dog, it jumped up and bit the child in the arm which caused puncture wounds. Certainly, using the August 19th incident as a point of discussion, maybe the child startling the dog could be considered provocation in its

purest form. But from what I understand, the dog knew the child and the child knew the dog. And to just accept the fact that the dog was startled by the child coming up to hug it and they both knew each other as provocation, I kind of have an issue with that. But moving beyond that, here we have five incidences where this dog has bit. I think I would be remiss in not initiating something to help make Mr. Archer control this dog. This dog has a -- a disposition to snap and bite as the ordinance talks about. I don't take these decisions lightly. Very conservative on making declarations. But I think something needs to be done for the safety of the -- of 198,000 people in Des Moines and 40,000 cats and dogs that, if Mr. Archer doesn't do something, that we're going to have yet a sixth bite and maybe it will be even more serious. Mr. Archer is able to keep his dog and get it out of impound as long as he follows the vicious dog ordinance. That's all I have.

HEARING OFFICER CASSANDRA WEBSTER: OK, thank you. Mr. Archer, would you like to come to the microphone? Would you please state your name for the record?

BARRY ARCHER: My name is Barry Archer.

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

BARRY ARCHER: I do.

HEARING OFFICER CASSANDRA WEBSTER: OK, you may proceed.

BARRY ARCHER: On the dog bite Case Number 33030, the little girl did ask if she could -- wait a minute, am I on the wrong one here?

HEARING OFFICER CASSANDRA WEBSTER: That was the oldest one that you were referring to, October 11, 2010, dog bit the child on the arm with a puncture wound.

BARRY ARCHER: OK, yes, ma'am. Yes, I passed them kids almost every day for a year walking the dog. They asked me if I could -- if they could pet the dog and I told them yes. The little girl petted the dog and we were walking away, and she said something about my dog biting her. So I stopped, I checked her arm. I ran my hand up and down her arm looking for blood or a cut. And there was nothing on her arm. Not even a scratch! So two or three days later, I got a call from the mother that told me that they had gone to the doctor and it cost them \$1600 to have the bite repaired. So I said well, OK, send me the doctor bill. Give me your insurance agent's phone number, his name, and I'll contact all of them and make sure this is right. Well, ma'am, I never heard another word from them. I haven't seen them since this incident. I never got a bill from her or anything. Once I told them that I was going to contact the hospital and their insurance agent, I haven't seen them or heard from them ever again. Nobody ever contacted me. I do not believe that my dog bit her. Because there were no marks on her arms when I checked them. And then when I told them that I

was going to call the insurance company and the hospital, I got no bills, no phone calls of any kind from this woman. So I just assumed that the dog hadn't bit her because if the insurance company that paid \$1600, I'm sure I would have heard something from the insurance company.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: And I know my dog didn't bite her.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: And this next one is 40850, it's the man with the German shepherd. We pass each other every once and a while on Cleveland when we walked. But my dog did not get away from my collar and leash, excuse me. When I walk my dog, my dog has this around his neck. And it's hooked here. And he has a collar just like this one on him right now. And I hooked this through here, too. So he's hooked to this chain and to this collar.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: There's no way he could have got out of both of those. And even the vet has told me to make this chain larger because it's too small for my dog's neck. But to get out of that and both of them at the same time is almost impossible.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: And I've never heard or seen this guy again either. I never had received anything from this gentleman, and I just let it go at that figuring that, you know, that he was wrong and my dog hadn't bit his dog at all. Because I never heard from him again or seen him again in the last year.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: The next one is 18745. I was told -- I was at work when this happened. And the girl that was walking my dog is 35 years old, not 10. I would not allow a child of 10 to walk my dog. And I never signed a paper agreeing that I agree there was a 10-year-old child walking my dog. I have never let anybody younger than 30 walk my dog. I have these people here that walk my dog and they're all over 30 years old.

[Inaudible]

HEARING OFFICER CASSANDRA WEBSTER: You'll have an opportunity to testify.

BARRY ARCHER: Just hold on. OK, this Jamie Ames stated that my dog bit his dog and he described my dog as a black and white pitbull. And I have pictures of my dog and my dog is not black and white. And he's not a pitbull.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: Like I said, I was at work at the time this happened. And the woman over here, she witnessed what happened and the lady that was walking the dog, she couldn't be here today because she had to work. And she told me that that dog had gotten off the collar, come over and bit Bubba before Bubba ever bit his dog. That, I don't know if that's -- that's -- as far as I know, that's what happened because I was at work. And when I got home, that's what I was told.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: And this 20 -- or 26027 and I -- this is Tracy Robb, and I was sitting down with her at her house talking to her. And my dog was on the leash and he was sitting down on parking watching the kids down the street at the park play. Piper come running out of the house and she jumped on the back of my dog. I mean, I know she didn't mean to hurt him. She jumped on his back and put her arms around him just to hug him and it just startled him and he nipped her here on the chin. That's -- I was there when it happened, and that's what happened and I can't -- you know, I feel sorry for the little girl because the little girl loves my dog. They play all the time together in my backyard. And I'm really sorry that that happened. And the deal with the cat, I've let my dog out before I go to work in the backyard. I didn't see my dog kill a cat. And I don't know if he did kill a cat. I can't say for sure. But they said there were scratches on his face. I've got pictures that show that there's a bush right on the corner of my shed where he runs through the bush to get behind the shed. He could have got the scratches from the bush. But I did not see my dog kill that cat. And I honestly can't say if he did or not. But I just thought I was doing the right thing by calling them and telling them that that had happened in my backyard. But I -- I don't know if he killed it or not. It was just in the backyard. I let him out, went in and took a shower and come back out and walked behind the shed and there was the cat.

HEARING OFFICER CASSANDRA WEBSTER: OK. And did anybody ever find out who the owner of the cat was?

BARRY ARCHER: Ma'am, there are so many wild cats in that neighborhood. I was told it belonged to this woman down the street. So I walked down to her house and asked her if her cat was gone and she said no, the cat -- my cat is out in the garage nursing its kitties. So it wasn't her cat. But there are so many feral cats and so many dogs running loose in that neighborhood it's unbelievable. But I think that's all of them. But I have never let anybody under 10 years old, never let a 10-year-old walk my dog. I've got better sense than that. I've hired Katie to walk my dog and she's 35. I hired this woman to walk my dog and she's 37. There has never been a 10-year-old kid ever walk my dog! Ever! And like I said, on most of these, I talked to the people and when I tell them what I'm going to do, that's the last I see of them.

I've never heard from them, any of these people again. And like he said, I got -- my house is right there, the address is right there. Everybody knows that dog in the neighborhood. Every kid in that neighborhood plays with my pup. He's not a vicious dog in no sense or form. There are too many kids in that neighborhood that just come up to him and hug him and kiss him and play with him for him to be listed as a vicious dog. It's too many -- I don't know how they do it. But my dog is not a vicious dog. He's just, you know, all these reports and stuff have never been substantiated and -

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: And my dog is taking the brunt of it and like I said, most of the people that have tried to say my dog bit them, I believe all they were out for was the money because as soon as I mentioned I'm going to, you know, I'm going to go to the insurance company and stuff, I don't ever see them again. And I've never heard from either one of the lady or the gentleman about their dog or their kid ever being bit. And the other guy, like I said, all I can tell you is what I heard from the people that walked my dog, that my dog was on 17th and Garfield, not Cleveland, when this guy got -- when his dog got loose from the leash and come over and bit my dog and when he bit my dog, that's when my dog bit his. And I have a witness that will clarify that for you.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: Thank you.

HEARING OFFICER CASSANDRA WEBSTER: Thank you. So you want to go ahead? If you have -- you want to speak to one of those incidences?

TRACY ROBB: I can speak to both. I'm Piper's mother.

HEARING OFFICER CASSANDRA WEBSTER: What's your name?

TRACY ROBB: My name is Tracy Robb.

HEARING OFFICER CASSANDRA WEBSTER: OK. Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth?

TRACY ROBB: Yes, I do.

HEARING OFFICER CASSANDRA WEBSTER: OK. Go ahead and share with me what you'd like to share about that.

TRACY ROBB: On the incident with the gentleman, I don't know his name and I don't know the -- but I live on the corner of East 17th and Garfield. And my kitchen window is a big kitchen window and I can see everything that goes on from my corner. And at the time, I didn't even know who Barry or Bubba was, but I did know there was a lady that walked the dog. I've seen him in the neighborhood and I talked to him but I

wasn't good friends with him or anything like that, you know. And she was walking Bubba home. Bubba was still on his leash. This gentleman was walking this way towards her as she's on the sidewalk walking this way. He's in the street with his dog. It's a good sized dog. The dog's collar was way too big. It slipped off. His dog came over to where Bubba was, bit Bubba, Bubba bit his dog because obviously that dog bit him. But the whole time, Bubba was contained on his leash. This gentleman's dog was not. And I had seen the gentleman the next day at the park. And I had actually -- let me back this up. I had come outside after I seen the incident happen. I wanted to make sure this gentleman's dog was all right and make sure that Bubba was all right. I didn't see anything on Bubba. I did see a little scratch on the dog's chest. It was just a scratch. The next following day, I had seen this gentleman at the park up the street from me because my children play up there. And I had said something to him, asked him if his dog was OK and then he had informed me that he was going to call animal control because -- not because that Barry's dog bit him but because he thought Barry's dog was a pitbull and he was concerned it was a pitbull which the dog is not a pitbull. But the whole time, the guy didn't seem like he was concerned that his dog had gotten bit or that his dog had been the one that had gotten off the leash and bit first.

HEARING OFFICER CASSANDRA WEBSTER: OK.

TRACY ROBB: As far as Piper, Piper loves Bubba. And even after the whole incident happened, she's telling the doctors and everybody how much she still loves him. And he's a very good dog and he loves her. She plays with him all the time. She had a swimming pool, he would play in the swimming pool with Piper in the backyard. I mean, they loved each other. Incident that did happen is he didn't know -- piper wasn't out there when me and Barry was talking. When Piper came out, Bubba was paying attention like he said to the stuff that was going on around him and not what was going on. She came running out of the house and jumped on him. It wasn't like she walked up to him and hugged him and then he nipped her. No. She just ran up on him and jumped on him and hugged him. And I had repeatedly told this to the doctors at the doctor's office and to the animal control. And as far as how he acts around other animals, I have two dogs, little dogs that he walks by every day. And Barry will stop and reach over the fence and pet my dogs as he's got Bubba in his hand. Bubba never tries to go after my dogs. The only thing that happens is I have a boy dog and Bubba is a boy so they kind of tinkle on each other but the dog -- yeah, he's never shown any aggression towards my two little dogs, he's never shown any aggression towards me. I've even had - I'll have my friends come with me and walk. He's never shown my aggression towards strange people. And so -

HEARING OFFICER CASSANDRA WEBSTER: How old is your daughter?

TRACY ROBB: She's 7 years old.

HEARING OFFICER CASSANDRA WEBSTER: And she plays with Bubba on other occasions, she's played with him a lot?

TRACY ROBB: Oh, yeah. They love each other, you know. I mean, the dog, as soon as he hears Piper's voice, his tail starts to go and he perks up and he's licking her face. You know, but at this day that the dog bit her, she didn't come out and say anything to him. Usually her greeting is hi, Bubba, you know, she greets him. She don't just run up on him.

HEARING OFFICER CASSANDRA WEBSTER: Were you surprised at the way the dog reacted to her?

TRACY ROBB: Yes. Because I've never seen Bubba act like that, you know, because he's a good dog. He's never been aggressive, you know. But I also try to teach Piper, too, she knows you're not supposed to run up on a dog. Because animals can act out, even human beings when they feel scared or they feel like they're being threatened, they're going to react, too, you know. I mean, the person I'm more mad at is myself because I should have probably tried to stop Piper from, you know, jumping on the dog but I didn't know she was going to jump. It happened so fast. It was like bam, and it was over.

HEARING OFFICER CASSANDRA WEBSTER: Right. OK. Have you ever seen Bubba bite or snarl or snap at anybody else?

TRACY ROBB: No, ma'am, I have not.

HEARING OFFICER CASSANDRA WEBSTER: OK. Anything else?

TRACY ROBB: No.

HEARING OFFICER CASSANDRA WEBSTER: Thank you for your testimony. Anybody else have anything to say over here? Well, you'll have a chance. What's your name?

MARIAN COCHRAN: My name is Marian Cochran.

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

MARIAN COCHRAN: I do.

HEARING OFFICER CASSANDRA WEBSTER: OK, go ahead.

MARIAN COCHRAN: I usually walk Bubba sometimes three or four nights a week. I work with the department of health and we're on this health kick. Get healthy. Well, they encourage us to walk. Well, I don't like to walk by myself, so I go get Bubba and I take Bubba with me.

HEARING OFFICER CASSANDRA WEBSTER: Are you a neighbor?

MARIAN COCHRAN: I am. So on several occasions, Bubba is -- and I have him also at my house because sometimes I'll bring him home. I'll have

supper and then I'll walk later after supper and then I'll take the dog home. Bubba is always well mannered. We walk by a lot of fences with a lot of dogs. And he doesn't act like he even sees them. On one occasion, we've had -- we had one dog that was out and about and we just kept on walking, and the dog started barking at Bubba and he just kind of acted like we just kept walking on and he didn't act like he wanted to get in the fence, bother the dog or whatever. And I also have a Pomeranian at the house. Now, you know Pomeranians are small. And I think probably Dakota probably weighs, I don't know, between 6 and 8 pounds and they lay down in the kitchen together and there's no aggression. He's never been aggressive ever to Dakota. My children come over to the house, and he's never aggressive to them. They pet. When he sees a truck pull up, he knows who's in there, he wags his tail and the kids pet him and he's never been aggressive. He's a family dog.

HEARING OFFICER CASSANDRA WEBSTER: How old are your children?

MARIAN COCHRAN: And we love him.

HEARING OFFICER CASSANDRA WEBSTER: Are your children adult children, then?

MARIAN COCHRAN: Tristan is 15 and then his cousin is 12.

HEARING OFFICER CASSANDRA WEBSTER: OK.

MARIAN COCHRAN: And they come over -- they come over to the house. So Gage is 12.

HEARING OFFICER CASSANDRA WEBSTER: Have you seen Bubba interact with smaller children than that? Have you had opportunity to?

MARIAN COCHRAN: No, I have not.

HEARING OFFICER CASSANDRA WEBSTER: OK, thank you.

MARIAN COCHRAN: Thanks.

HEARING OFFICER CASSANDRA WEBSTER: Anybody else?

DENNIS HILLSER: Yeah. I take him -- I'm -- that's my mom and I live with her, too.

HEARING OFFICER CASSANDRA WEBSTER: What's your name? I'm sorry, what's your name?

DENNIS HILLSER: Dennis Hillser.

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

DENNIS HILLSER: Yeah.

HEARING OFFICER CASSANDRA WEBSTER: Go ahead.

DENNIS HILLSER: I take him to my sister's and stuff and she's got ducks and chickens and she's got three dogs and cats and they all play in the backyard and stuff and I walk him all the time, too, and I've never had a problem with him. Nothing. He doesn't even bother the ducks, chickens. I mean, I've never seen a problem with him. So --

HEARING OFFICER CASSANDRA WEBSTER: You've sort of adopted Bubba? Sounds like you guys --

DENNIS HILLSER: Yeah.

HEARING OFFICER CASSANDRA WEBSTER: You hang out with him quite a bit.

DENNIS HILLSER: Good dog, so --

HEARING OFFICER CASSANDRA WEBSTER: OK. Thank you. All right. Sir, you want to go ahead? What was your name?

JAMIE AMES: Jamie Ames.

HEARING OFFICER CASSANDRA WEBSTER: Jamie Ames. OK so raise your right hand, please. Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth?

JAMIE AMES: Yes, ma'am.

HEARING OFFICER CASSANDRA WEBSTER: Go ahead, please.

JAMIE AMES: On the night I was walking my dog, I will confirm that my dog did get off of his collar. I'm not going to dispute that fact at all. When we were walking, I had my dog's collar on backwards which the knot wasn't -- it has a clasp on it and the clasp wasn't locking on it. So it started to widen up. But I have three kids of my own, you know. I have a 7-year-old, 8-year-old and a 13-year-old. And my dog, I'm not going to say it's the best dog in the world because yeah, it does bark. It's very protective over my kids. When I'm around, it -- if there's other animals around, yeah, my dog is going to bark to try to protect me. And when I was walking my dog, I was going down the street. All of a sudden, my dog started to bark. And so I was holding him back. And beings that the collar was too big, he backed out of it and I went to grab him. I missed him. And yeah, he went over to Mr. Archer's dog and I don't know if he bit his dog but my dog did have two puncture marks. I called the ARL and they did confirm it. They took pictures of it. At least that's what the ARL came in and he actually snapped two pictures. I'm not sure of the officer's name.

HEARING OFFICER CASSANDRA WEBSTER: All right.

JAMIE AMES: But when, you know, the ARL told me not to go and

confront him. I said OK, I had no problems with him. I didn't report him to the police, you know. My dog isn't the most well behaved because he's still a pup. He's a year and a half old. He's a big boxer bulldog. And right now, he weighs approximately 95 pounds.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JAMIE AMES: But, you know, as to the fact that I said it's a little girl. I said it's a smaller person walking. I couldn't attest to the age. I'm not a dog, you know, scientist. I don't know the breeds of the dogs, you know, if I said it was a pitbull, you know, my dog -- people call my dog a pitbull and it's a boxer bulldog, you know? I'm not a dog specialist.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JAMIE AMES: But that's all I have to say.

HEARING OFFICER CASSANDRA WEBSTER: All right. Thank you. Go ahead, sir. You state your name, please?

ROBERT EDMUNDS: Robert Edmunds.

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

ROBERT EDMUNDS: I do.

HEARING OFFICER CASSANDRA WEBSTER: OK, go ahead.

ROBERT EDMUNDS: We and Mr. Archer meet periodically walking down Cleveland. And one morning, his dog broke loose and grabbed my dog -- come across the street and grabbed my dog, and we wrestled with them for 10 to 15 minutes and couldn't get them loose. So Mr. Archer, he was out of breath so he fell on the grass, so my dog just passed out so I kicked the dog in the side. And he turned him loose and went on back to Mr. Archer and I called Mr. Archer after it was all over. And told him what the damage was. He said put the bill in my mailbox which I did. And then he told animal rescue man that his dog didn't get loose or nothing like that. So Animal Rescue League, wasn't no witnesses so he said there was nothing they could do about it.

HEARING OFFICER CASSANDRA WEBSTER: OK, this was the incident from 2011, December or November 2011?

ROBERT EDMUNDS: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK. Thank you. Let me just think about this a second here, hard to keep all these straight. There's so many here. You said before that you and Mr. Archer walked together?

ROBERT EDMUNDS: No.

HEARING OFFICER CASSANDRA WEBSTER: OK.

ROBERT EDMUNDS: We just in passing.

HEARING OFFICER CASSANDRA WEBSTER: At the same time. OK, I see what you're saying. What kind of dog do you have?

ROBERT EDMUNDS: German shepherd.

HEARING OFFICER CASSANDRA WEBSTER: OK. All right. I don't have anything else for you. Thank you. Anything else over here?
OK. Officer Raudabaugh, do you have anything further?

SERGEANT SCOTT RAUDABAUGH: I guess I just want to just add that, you know, it is very unfortunate that this -- that we're here. But it's pretty obvious that Mr. Archer's dog is -- is wonderful sometimes and not so wonderful other times. And my -- my ultimate goal is for him to keep his dog from biting yet again. That's the ultimate goal. With the restrictions that the vicious dog requires him to keep the dog on a leash held by an adult or secured in his house or secured in a special kennel and that he maintain liability insurance so if there is yet another bite that his insurance will cover expenses that may be associated with that bite. Thank you.

HEARING OFFICER CASSANDRA WEBSTER: OK. Anything else? Would you like to say one more thing? Sure, you can come up.

BARRY ARCHER: You've heard of people that come after my dog. My dog is not a vicious dog. All these incidents have never been substantiated, nobody has never come forth and said that, yes, most of the time when I -- like I said, when I confront them, I haven't seen them. I mean, there's people in my neighborhood that have young kids. 1 or 2, 3-year-old kids my dog plays with. My dog is not vicious in any way. I have a 6 foot privacy fence in my backyard. The dog doesn't leave the house without me on that leash as I showed you. And this lady here gonna walk my dog when I go back to work. And the lady that walked her before, like I said, she's not a young kid. She's 35 years old. I've never let anybody that young walk my dog. And my dog has never got off his collar ever.

HEARING OFFICER CASSANDRA WEBSTER: So the man that came up here, the incident from 2011, the German shepherd, your dog didn't get off the collar?

BARRY ARCHER: I showed you how I have my dog hooked up on that leash.

HEARING OFFICER CASSANDRA WEBSTER: At that time you did it that way, too?

BARRY ARCHER: That's the way he walks with me all the time. If he breaks one, he's held by the other.

HEARING OFFICER CASSANDRA WEBSTER: And what was your accounting of that incident again?

BARRY ARCHER: We pass each other every morning. We say, you know, we wave and stuff and I just go on. And the next thing I know, I got this guy telling me that my dog attacked him and he wants \$400.

HEARING OFFICER CASSANDRA WEBSTER: So you don't have any recollection of any kind of run-in with his dog?

BARRY ARCHER: My dog didn't get loose and attack his dog. That's for sure! You know, I'm not going to sit here and say, well, my dog didn't do it if he did. I'm sitting here telling you that my dog didn't bite that little girl.

HEARING OFFICER CASSANDRA WEBSTER: He was saying you were there and trying to get the dogs apart and you were out of breath. And fell down on the grass. None of that happened?

BARRY ARCHER: I would not step in between two dogs fighting. I'm not that dumb. I would not step in between two dogs fighting. My dog has never got off that leash the way I hooked him, he's never been off that leash and I check it every time I walk out that door.

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: And he's not a vicious dog by no sense, I wish I could have brought everybody that I wanted to today. But he's not a vicious dog. He gets along well with kids and other dogs in my neighborhood but -

HEARING OFFICER CASSANDRA WEBSTER: OK.

BARRY ARCHER: Too many reports on him, I guess. Thank you.

HEARING OFFICER CASSANDRA WEBSTER: Thank you. Anything else? OK. All right. Well, I know nothing about these cases until I hear them so I will deliberate on everything that I have heard today and all the testimony and all the evidence I have received and I will develop a written ruling which I will submit to the clerk's office and then she will be sure that you get a copy. So thank you for your time and testimony today.

BARRY ARCHER: Do I get to go get my dog?

HEARING OFFICER CASSANDRA WEBSTER: Not yet. This will be -- yeah, I will get it back to you as soon as I possibly can here in the next couple of days. And at that point, I'm sorry. All right? Thank you.