

MINUTES of the ST. CHARLES CITY COUNCIL
For Monday, September 29, 2014 held at 6:00 p.m. at
830 Whitewater Avenue
St. Charles, Minnesota

MEMBERS PRESENT:

Councilmen:

John Schaber

Dave Braun

Orv Dahl

Wayne Getz (absent)

Mayor Bill Spitzer

STAFF PRESENT:

Nick Koverman (City Administrator) and Ken Frank (Chief of Police).

OTHERS IN ATTENDANCE: Josepfina Perez, German Victoria (Project Fine), Lindsay Randall, Judd Whitcomb, Tamara Haag, Brittany Haag, Freddy Perez, Myrna Perez, Heather Klason, Cathy Groebner, and Dan White.

1. ESTABLISH QUOROM/CALL TO ORDER

Quorum was established with Mayor Spitzer calling the meeting to order at 6:08 p.m.

2. PLEDGE OF ALLEGIANCE

3. APPROVAL of the AGENDA

Motion to approve: **John Schaber**

No further discussion.

Motion carried.

- 4. Dangerous Dog Hearing.** Administrator Koverman began by providing brief comments regarding the process of the evidentiary hearing outlining opening comments by the Chief of Police, following by testimony by the owner, proceeded by testimony by the Police Department, then follow up questions by the Council, the evidentiary hearing would be closed, the Council would deliberate, and finally the Council would look to make a motion to approve/disapprove resolution making factual findings and make an order to affirm or overrule the September 18, 2014 dangerous dog declaration. He asked if anyone had any questions. Hearing none, the Chief of Police was invited for opening comments.

Ken Frank, Chief of Police- Chief Frank began by stating that the applicant lives at 1213 Whitewater Avenue #7 and has ownership interest in Max, the lab/pitbull mix. Mr. Dale Judd Whitcomb resides at 978 Bluff Avenue and keeps the dog at that residence. On June 25, 2014, Max left Mr. Whitcomb's property and aggressively chased and knocked a Samantha Perez, a seven (7)year-old child, off a bicycle off of Mr. Whitcomb's property, without provocation. In the course of responding to the June 25, 2014 incident, Police Chief Ken Frank notified both the Applicant, Brittany Haag, and Mr. Whitcomb, that the City considered Max to be potentially dangerous, and that further incidents would subject Max to enforcement of the City's dangerous dog regulations. On August 21, 2014, Max again left Mr. Whitcomb's property, and without provocation, threatened Lindsay Marie Randall, who was passing by with her infant in her stroller, in an aggressive manner and ultimately bit Ms. Randall on her leg. On September 16, 2014, Max again broken free of his restraint and threatened Mary Patricia Koehler, a mail carrier who was about to deliver mail to Mr. Whitcomb's residence, in an extremely aggressive manner, and proceeded to exit Mr. Whitcomb's property and chase Ms. Koehler in her mail delivery vehicle on two occasions. Shortly thereafter, Police Chief Frank and Officer Renee Hewitt arrived at Mr. Whitcomb's property in response to Ms. Koehler's complaint about Max, and Max, who was still free of his restraint, proceeded to charge at Chief Frank and bark in a very aggressive manner, forcing Chief Frank to wield a dog catch pole to prevent Max from attacking him. It was at that point he discussed the matter with Administrator Koverman to declare the dog a dangerous dog. On September 18, 2014, the City's Police Department issued a Notice to Mr. Whitcomb declaring Max to be a dangerous dog and providing him with the opportunity to request a hearing before the City Council to challenge the City's declaration

within 14 days from the date of the notices. Frank expressed that it was these four incidents that were very concerning at which time he felt it was critical to move ahead.

Brittany Haag—Ms. Haag stated that Max did not push the girl off the bike that she fell off, but that he accidentally got away. Max didn't touch her, she said. She commented on the lady walking the infant were walking by. Testified that another officer came by and that it didn't seem like a bite. Max was in the house, no way he could have reach her as Max is tied up in the back. Mayor Spitzer asked her where she was and she said she was outside most of the time. When she unhooks him sometimes he gets through the door because it does not always lock when she is trying to take him back. She testified she was 16 years old.

Judd Dale Whitcomb—Testified he did not see the incidents with the mail lady or the Perez'. With the mail lady, Max was tied to back of house and that the chain only broke once and he replaced it. He did get away. With the lady that was bit, he told the officers if there were any medical expenses that he would take care of it. The officer hadn't checked her yet if it was a bite. With the Chief, put Max in the house and he broke through the door. He came bolting out. He stated that like most dogs, he doesn't like uniforms. He stated that yes, he is aggressive, he admitted. Went out across the street before I could grab the leash. He has pulled the stake out of the ground. That can't happen anymore because he tied it to the house with a shorter chain. He is a young dog. He has gotten better, but he does sound and act aggressive. He has scratched, but hasn't bit.

Tamara Haag—Times that Max is tied outside and little kids walk by calling for Max. He runs out and he is not aggressive. He is anxious, but not aggressive. He wants attention, but is not aggressive. Testified that friends are over and doesn't act like he is going to bite them. He has had his shots and is licensed.

Ken Frank—He began by stating the applicant Tamara Haag resides at 1213 Whitewater Avenue #7 in the City and has an ownership interest in Max, a lab/pit bull mix. Mr. Judd Dale Whitcomb resides at 978 Bluff Avenue in the City, and harbors and keeps Max at this location. On June 25, 2014, Max left Mr. Whitcomb's property and aggressively chased and knocked a Samantha Perez, a seven (7)year-old child, off a bicycle off of Mr. Whitcomb's property, without provocation. Josephina Perez was invited to testify.

Josefina Perez—She testified it's not the animal's fault, but that it has to be on a secured leash as it almost bit my grandchildren. He grandchildren were on summer vacation and would ride by. With the incident, she jumped on top of her and the grandson went to get a broom. The dog was barking very close. She saw Brittany Haag and told her to grab the dog and get her away from the children. After that on another day the dog came into my yard and was barking at me and I wanted to fend it away but the kids were in the yard. The grandchildren coming home from school don't walk close to the house. She testified that last Friday she was walking with her grandson and she tried to tell him the dog wasn't there, but the grandson wouldn't walk there. She said she has nothing against her neighbors.

Chief Frank relayed that he had spoken with Mrs. Perez and that the City took the incident very seriously. He said he went back and met with Mr. Whitcomb and Mrs. Haag and discussed the licensing requirements and that we considered this animal a potentially dangerous dog.

On August 21, 2014, Max again left Mr. Whitcomb's property, and without provocation, threatened Lindsy Marie Randall, who was passing by with her infant in her stroller, in an aggressive manner and ultimately bit Ms. Randall on her leg. Chief Frank called her to testify.

Lindsy Randall—On the 21st, Ms. Randall testified she decided to take her 4 year old daughter for a walk in a stroller. She lives on the opposite side of the street where Max lives. Testified she saw Brittany Haag and another boy and she saw Max come across the street. Did not appear to be on a leash, but doesn't mean he wasn't on one at one time, she said. Came at me and my daughter, barking and aggressive, circled the stroller. The two youth hollered (Brittany Haag and unidentified boy), Max circled one more time and bit me in the back of calf, she explained. Ms. Haag said that Max does not bite and Ms. Randall said he just did and you need to take him in and lock him up. Young boy came over and Max circled the stroller twice which made her nervous because he was at the right height to get in the stroller. The youth ran at Max and the dog ran back toward the house. The boy was able to get hold of Max by his collar. She proceeded to walk home and call City Hall and the police wanting to know if he had his

shots. Officer Floerke stopped and then went down. Because it had broken the skin, she watched the bite but never had to go in because it had its shots. She was told to watch for infection.

Ken Frank—Mary Koehler could not attend, but he stated that the dog did break free of his leash. Went across the fence to the neighbor's yard. When it confronted him, he went back around the house and the dog ran around and the Chief had to use the catch pole to back off the dog until he was able to get off the property. On this day, September 16, he felt he couldn't move when the dog had broken away. He stated those two incidents were the most extreme encounters in his 30 years of law enforcement.

In response to Applicant Brittany Haag's request for a hearing, the City Council conducted a hearing on September 29, 2014.

Freddy Perez--father of Samantha Perez, he testified dog had a scratch, but didn't think it was due to dog. After talking with daughter she said she was riding back when she saw Max coming. He explained that he figures the dog reached across and tipped the bike over. The father of Ms. Haag drove up after learning about the incident and Mr. Perez explained to him that it's not the first time this type of incident has happened. This time the dog charged at his child. The dog is always loose. The leash was so long, from the back of the house could reach down into the street. So many incidents, why does the leash keep breaking, he asked.

Mayor Spitzer asked for additional comments. Clm. Schaber stated that he walks by almost every day. He has seen the dog without a leash at the Whitcomb house and the dog is without a leash. Both dogs fly around the house, several times he has witnessed this behavior but Max never came into the street after me, he said. But restated he has seen the behavior.

Mayor Spitzer called for a motion to close the evidentiary hearing (6:39 p.m.).

Motion made: **Orv Dahl**

No further discussion.

Motion carried.

Mayor Spitzer identified the Findings of Fact and asked if the dates were correct.

Mayor Spitzer read the findings aloud.

1. Applicant resides at 1213 Whitewater Avenue #7 in the City and has an ownership interest in Max, a lab/pit bull mix.
2. Mr. Judd Dale Whitcomb resides at 978 Bluff Avenue in the City, and harbors and keeps Max at this location.
3. On June 25, 2014, Max left Mr. Whitcomb's property and aggressively chased and knocked a Samantha Perez, a seven (7) year-old child, off a bicycle off of Mr. Whitcomb's property, without provocation.
4. In the course of responding to the June 25, 2014 incident, Police Chief Ken Frank notified both the Applicant, Brittany Haag, and Mr. Whitcomb, that the City considered Max to be potentially dangerous, and that further incidents would subject Max to enforcement of the City's dangerous dog regulations.
5. On August 21, 2014, Max again left Mr. Whitcomb's property, and without provocation, threatened Lindsay Marie Randall, who was passing by with her infant in her stroller, in an aggressive manner and ultimately bit Ms. Randall on her leg.
6. On September 16, 2014, Max again broken free of his restraint and threatened Mary Patricia Koehler, a mail carrier who was about to deliver mail to Mr. Whitcomb's residence, in an extremely aggressive manner, and proceeded to exit Mr. Whitcomb's property and chase Ms. Koehler in her mail delivery vehicle on two occasions.

7. Shortly thereafter, Police Chief Frank and Officer Renee Hewitt arrived at Mr. Whitcomb's property in response to Ms. Koehler's complaint about Max, and Max, who was still free of his restraint, proceeded to charge at Chief Frank and bark in a very aggressive manner, forcing Chief Frank to wield a dog catch pole to prevent Max from attacking him.
8. On September 18, 2014, the City's Police Department issued a Notice to Mr. Whitcomb declaring Max to be a dangerous dog and providing him with the opportunity to request a hearing before the City Council to challenge the City's declaration within 14 days from the date of the notices.
9. In response to Applicant Brittany Haag's request for a hearing, the City Council conducted a hearing on September 29, 2014 and received public testimony regarding the dangerous dog declaration from the representatives of Max's owners, the City, and witnesses and victims of Max's behavior specified in Findings 3-8 above.
10. All required notices regarding the September 29, 2014 City Council hearing to review the City's September 18, 2014 dangerous dog declarations were properly made by the City.
11. The individuals who testified at the September 29, 2014 hearing are shown on Exhibit A, which is attached hereto and incorporated herein by reference.

Motion was made to approve the Findings of Facts:

Motion to approve: **Orv Dahl**

No further discussion.

Motion declared carried.

Mayor Spitzer asked if Council had any questions. He asked Chief Frank if he required all of the state statutes? He was requesting microchipping, Mayor Spitzer asked. Chief Frank acknowledged that it was part of the statute. Mayor Spitzer read the statute related to microchip process. Admin. Koverman read the other various requirements as outlined in Statute related to a dangerous dog declaration.

The registration fee for the dangerous dog is not included in the city's fees at this time, but the City would charge what a regular license would cost, but that January 1, the Council would look to the adopt the fee that was appropriate. The registration form would need to be created.

Mayor Spitzer highlighted again the significant requirements of the dangerous dog statute for Council.

Cm. Dahl stated people are in fear regardless of whether it bites and that there is a definite security issue. The dog kennel and muzzle are needed. He questioned the need for a microchip.

Cm. Schaber commented on the neutering being harsh. If the dog could stay on its own property and properly kenneled it would lessen the fear by many families. However, he stated he would error on the side that he doesn't want anything else to happen .

Cathy Groebner asked if the kennel had to be in a fence. Mayor Spitzer stated if the kennel route was the route that the owners chose that there wouldn't be any contact if someone came up.

Mayor Spitzer stated the incident has repeated itself several times in a course of a few months. He called it a public safety issue. He discussed the options and his experience with similar instances. He reviewed the Conclusions and Order outlined in the resolution.

Cm. Schaber asked Chief Frank if he would be satisfied if they did not go with all of the maximums. Chief Frank explained that it is state statute and that it is an all or none type of issue. Mayor Spitzer agreed and stated that with the declaration of the dangerous dog and by following state statute they were required to fulfill all of the requirements.

A motion was made to approve Resolution #36-2014.

Motion to approve: **Orv Dahl**
No further discussion.
Motion carried.

Motion to adjourn at 7:01 p.m.
Motion to approve: **John Schaber**
Motion declared carried.

William J. Spitzer, Mayor

Attest: _____
Nick Koverman, City Administrator