



John S. Berry, P.C., L.L.O.
Andrew D. Strotman
Christopher M. Ferdico
Chad J. Wythers
F. Matthew Aerni
Perry A. Pirsch
Suzanne D. McNamara
Michael J. Koberlein
Justin B. Kalemkiarian
Jerusha L. Hancock
Joseph J. Donnelly
Cameron Kroeger
Stephani M. Bennett
Patricia Wenzl
Seth W. Morris
R. Joseph Pilgrim

Wade Stevens
(1896 - 1983)

John Stevens Berry Sr.
- Of Counsel -

BERRY LAW FIRM

2650 North 48th Street • Lincoln, Nebraska 68504
Phone (402) 466-8444 • Fax (402) 466-1793
jsberrylaw.com

With offices in Omaha and Kansas City

March 23, 2018

To the clerk, secretary, or other official whose duty it is to maintain the official records of the Lancaster County, and the Lancaster County Attorney; and

To the clerk, secretary, or other official whose duty it is to maintain the official records of the City of Lincoln, and the Lincoln City Attorney; and

To the other persons as identified on the certificate of service at the bottom of this claim

Re: Tort Claim on behalf of William Donnelly, and Jeanne Donnelly

By way of introduction, this firm represents William and Jeanne Donnelly, and pursuant to Neb. Rev. Stat. § 13-901, et seq., with this letter they each present a tort claim against both Lancaster County, and the City of Lincoln, due to negligence or wrongful act(s) of the employee(s) of the Lincoln – Lancaster County Health Department, and/or the Animal Control division of the Department.

Time and Place of the occurrence giving rise to the claim:

The acts of negligence started on November 10, 2016 and continued through and including March 30, 2017. The place of the occurrence was at the office of the Lincoln-Lancaster County Health Department, 3131 O Street, Lincoln, NE 68510.

Such other facts as are known to the claimants

On November 10, 2016, a woman named Margaret McKitterick was bit by a dog of the breed cane corso. On that date, Ms. McKitterick was walking on the sidewalk in the area of 7440 Stevens Ridge Road, in Lincoln, Lancaster County. A dog ran out of the garage of the home at 7440 Stevens Ridge Road, charged at Ms. McKitterick, barked at her, growled at her, jumped on her, and bit her on the left wrist leaving 1 puncture wound and bruising her small finger. Fortunately the dog relented, and Ms. McKitterick returned home where she contacted Animal Control.

On that same day, Officer Purdham of Animal Control (a division of the Lincoln-Lancaster County Department of Health) met with Ms. McKitterick and received her description of the incident. Officer Purdham then drove to 7440 Stevens Ridge Road, where she met with Jacqueline K. Kohles (the resident of 7440 Stevens Ridge Road), who admitted Blue got loose from where he was tied up in the garage of the home. Ms. Kohles stated Blue belongs to her son, Travis Swiggart, who lives outside of the city limits. Ms. Kohles told Officer Purdham that Blue stays with Ms. Kohles a couple of days each week while Mr. Swiggart was at work.

Because Ms. Kohles was harboring Blue, pursuant to both Linc. Mun. Ord. § 6.02.410, and Neb. Rev. Stat. § 71-4401(7), Ms. Kohles, was an owner of Blue.

As an owner of Blue, Ms. Kohles was cited for animal at large, and allowed to keep Blue at her home, or Mr. Swiggart's home, as part of a quarantine procedure.

Once Blue bit Ms. McKitterick, Blue met the definition of a potentially dangerous dog pursuant to both Linc. Mun. Ord. § 6.02.450, defining a potentially dangerous dog as, "... (a) any dog that when unprovoked (1) inflicts an injury on a human being that does not require medical treatment;.... (3) chases or approaches a human being in a menacing fashion or apparent attitude of attack...", and Neb. Rev. Stat. § 54-617(7), defining a potentially dangerous dog as, "... (a) any dog that when unprovoked (i) inflicts an injury on a human being that does not require medical treatment... (iii) chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack..."

Linc. Mun. Ord. § 6.10.030 states, "Whenever it shall come to the attention of Animal Control that any person within the City of Lincoln is keeping or harboring a....potentially dangerous dog....the Chief Animal Control Officer shall notify the owner of such dog in writing that the dog is declared...potentially dangerous and must be registered accordingly within 10 days after receipt of such written notice."

Officer Purdham was an Animal Control officer on November 10, 2016, and therefore on November 10, 2016, Animal Control had actual knowledge that Blue was a potentially dangerous dog. Notwithstanding this actual knowledge, Animal Control failed to serve the notice upon either Ms. Kohles, or Mr. Swiggart as required under § 6.10.030.

§ 6.10.030 says Animal Control "shall" notify the owner of a potentially dangerous dog, as provided in § 6.10.030. Because the ordinance says "shall", the serving of such notice is not a discretionary function. Rather, it is a ministerial act that Animal Control was required to perform.

Of course, after being served with such notice, it would be unlawful for the owner of a potentially dangerous dog to further harbor said dog within the City of Lincoln without

first complying with various requirements concerning registration as set forth in Linc. Mun. Ord. § 6.10.040. Further, pursuant to Linc. Mun. Ord. § 6.10.035, within 15 days of the declaration of a dog as being potentially dangerous, the owner SHALL have the dog neutered or spayed, and SHALL have the dog implanted with a microchip.

Moreover, had Ms. Kohles been notified that Blue was a potentially dangerous dog, she would not have continued to harbor the dog.

By March 30, 2017, Animal Control had still not notified Ms. Kohles, nor Mr. Swiggart that Blue was a potentially dangerous dog. And on March 30, 2017, Blue was again (or perhaps, still) being harbored by Ms. Kohles at 7440 Stevens Ridge Road.

At approximately 7:00 PM on March 30, 2017, my clients, William and Jeanne Donnelly were walking their dog, and their daughters dog, down the sidewalk on Stevens Ridge Road, near Ms. Kohles's residence. While they were in front of Ms. Kohles's residence, Blue exited the home unrestrained, and without any provocation, viciously attacked Jeanne Donnelly. Ms. Donnelly was hospitalized overnight due to the attack, and missed several weeks of work. She sustained permanent damage to both of her arms due to the attack. William also sustained a puncture wound while trying to fight Blue off of Jeanne. They each sustained minor property damage, also, in the form of torn clothing.

If, after Blue bit Ms. McKitterick in November, 2016, Animal Control had executed its ministerial function of providing notice to Ms. Kohles that Blue was potentially dangerous, she would not have allowed Blue to be at her home after the date of notice. Animal Control's failure to execute its mandatory ministerial act before March 30, 2017, was a proximate cause of a foreseeable consequence (the attack of the Donnellys on March 30, 2017) of the failure to execute its ministerial act. This claim is a demand for payment of damages proximately caused by Animal Control's acts and/or omissions.

Of course, in addition to the immediate pain and horror of being attacked and the scars which were left behind, Jeanne still struggles with daily activities which require the use of her arms. By no means is she unable to use the arms. She has worked hard in therapy, and can use the arms fairly well. However, it is now almost a year since the attack, and she still pays for it when she uses the arms. She pays for it with terrible soreness, and fatigue.

William was fortunate in that his physical injuries were limited to a single puncture wound, and a sore back which resolved in a few days. The wound left a small scar on his right arm. However, watching his wife's arms getting ripped to shreds has left him with permanent memories of the event.

The Donnelly's claim as follows

Jeanne Donnelly:

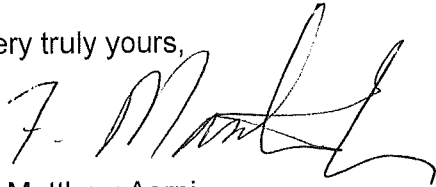
Special Damages	
<i>Provider</i>	<i>Amount</i>
Bryan LGH	\$13,449.96
Lincoln Orthopedic Physical Therapy	\$6594
Dr. Mitchell J. Henry, MD	\$1882
Lincoln Fire and Rescue	\$1072
Nebraska Emergency Medicine	\$441.09
Havelock Chiropractic	\$1817
Nebraska Spine and Pain Center	\$1810
Lost Wages	\$682.11
Clothing	\$20
Scar revision surgeries	\$7500 (estimated)
Total Special Damages Claimed	\$35,268.16
General Damages	
Temporary and Permanent: Pain, suffering, disfigurement, loss of use, loss of enjoyment of life. Temporary loss of consortium	\$300,000
Total Claim for Jeanne Donnelly	\$335,268.16

William Donnelly

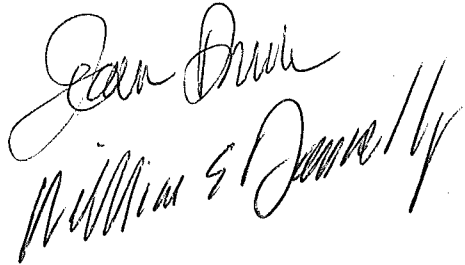
Special Damages	
<i>Provider</i>	<i>Amount</i>
Bryan LGH	\$1147.46
Nebraska Emergency Medicine	\$441.09
Pine Lake Health	\$245
Clothing	\$30
Total Special Damages Claimed	\$1863.55
General Damages	
Temporary: pain, suffering, disfigurement, loss of use, loss of enjoyment of life, loss of consortium; Permanent disfigurement, loss of enjoyment of life, suffering	\$10,000
Total claim for William Donnelly	\$11,863.55

Please remit the sum of \$ 335,268.¹⁶ to my office for settlement of Jeanne Donnelly's claim, and the sum of \$11,863.55 to my office for settlement of William Donnelly's claim.

Very truly yours,



F. Matthew Aerni
Enclosures



CERTIFICATE OF SERVICE

I, F. Matthew Aerni, certify that on March 23, 2018, a copy of the above tort claim was served via certified mail upon the following:

County of Lancaster, Nebraska
Attn: Dan Nolte, County Clerk
555 South 10th Street
Room 108
Lincoln, NE 68508

Jennifer Brinkman
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Deb Schorr
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Roma Amundson
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Todd Wiltgen
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

"Wild" Bill Avery
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Kerry Eagan
Chief Administrative Officer
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Ann Ames
Deputy Chief Administrative Officer
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Minette Genuchi
Administrative Assistant
Lancaster County Board of Commissioners
555 South 10th Street, #110
Lincoln, NE 68508

Lancaster Attorney
Attn: Pat Condon
575 South 10th Street
Lincoln, NE 68508

City of Lincoln, Nebraska
Attn: Mayor Chris Beutler
555 South 10th Street, Suite 301
Lincoln, NE 68508

Lincoln City Attorney
555 South 10th Street
Third Floor
Lincoln, NE 68508

Cyndi Lamm
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

Jon Camp
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

Jane Raybould
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

Carl Eskridge
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

Leirion Gaylor Baird
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

Roy Christensen
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

Bennie Shobe
Lincoln City Council
555 South 10th Street, Room 111
Lincoln, NE 68508

City of Lincoln
Attn: Clerk of the City
555 South 10th Street, Room 103
Lincoln, NE 68508