

The Municipal Manager (Acting)
Mr. xxxxxx
Nelson Mandela Bay Municipality
Port Elizabeth
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Sept 6th, 2010

**Re: The keeping of unspayed bitches and a R2000 fine - refer letter dated 19/08/2010 from
(Senior Dog warden).**

Dear Sir,

I hereby declare a dispute and appeal to the Municipal Manager to set aside the administrative action taken against me, whereby I was fined R2000 for keeping two unspayed bitches and of being refused the right to be accepted as a breeder of American Pit Bull Terriers (APBT's) and that a process of consultation be started where our breed society and registering body be afforded the opportunity to participate in line with the spirit of community participation as embodied in the Act. . This is done in terms of:

1) [Promotion of Administrative Justice Act, 2000. \(Act No. 3 of 2000\)](#)

The objective of this Act is, and I quote ***"Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair."***

My plea is based on one or a combination of the following, which will be debated in greater detail with you:

- a) the action was procedurally unfair
- b) the action was materially influenced by an error of law;
- c) the action was taken—
 - (i) for a reason not authorised by the empowering provision;
 - (ii) for an ulterior purpose or motive;
 - (iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
 - (iv) because of the unauthorised or unwarranted dictates of another person or body;
- d) in bad faith; or
- e) arbitrarily or capriciously

2) Municipal Systems Act, 2000 (Act No. 32 of 2000)

This Act inter alia sets the framework for community participation based on core principles and processes to establish simple and an able framework that is just and fair. Community participation implies that by-laws can be formulated with the assistance of the public, improved and amended as the case may be. Furthermore, meetings of a municipal council and those of its committees are open to the public, including the media, and the council or such committee may not exclude the public, including the media, accept in special circumstances. The municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for:-

- (a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;
- (b) notification and public comment procedures, when appropriate;
- (c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate;
- (d) consultative sessions with locally recognised community organisations and, where appropriate, traditional minorities; and
- (e) report-back to the local community.

My plea is based on the following:

Your by-law with regard to the keeping of dogs is procedurally unfair, if you contemplate that American Pit Bull Terriers and all others that are not recognised by KUSA, Jack Russell Federation, Boxer Federation & German Shepherd Federation, be discriminated against by rejecting them as a breed, of being bred and kept, and as such refusing the right to owners to register them with the municipality, rejecting the request of applying on your prescribed form, and as such no due consideration is even granted, nor a proper explanation that is legally valid. This amounts to selective breed discrimination.

In fact, you did write to me in which you mentioned that only the above 4 associations are acceptable to you, and that you ordered my two bitched spayed. You have also given me a fine of R2000 for the 2 bitches. At the time of giving me a fine, when my premises were visited on July 14th, 2010, you did not give me a copy of you by-laws. You did not deem it even necessary. Subsequently I phoned in to request a copy and it was denied by Mrs. . This is how the public is serviced. Again when we phoned in MR. advised that the municipality could not make copies for me as their 2 copiers were out of order for the last month. Could this be that the accounts were not paid to service providers? This is an untenable service level to the community that pays its rates and taxes!

Then I received a letter from Mr. _____ (signed on behalf of Mrs. Connell), dated 19/08/2010, requesting my response within 7 days and only then was a copy attached of the by-law that was only promulgated on 31/03/2010. I then asked for an application form to register as a breeder of APBT's and was denied again. I then asked for the reason in writing - that was the 20 th of August and was promised a reply by the following Thursday the 26 th of Aug, as the municipality now had to contact KUSA to justify its actions, before I could have something in writing. Why KUSA? Is KUSA driving the by-laws that they must be consulted every time? Another 8 days later, and it is now the 3 rd of Sept; I was advised that the municipality is still not in possession of a KUSA letter, and as such, not in a position to respond to me on such a basic question which should actually already be worded and incorporated in the said by-laws, namely ***"By-law relating to prevention of public nuisances and public nuisances arising from the keeping of animals."*** Clearly, this does not seem to be the case.

Today is the 6 th of Sept, as I am writing to you, and still no reply forthcoming from the municipality, nor an indication of when I could expect an answer. I was given 7 days to respond. In turn I requested to then respond 7 days from the date of the municipality providing me with a valid reason as to why they reject a Pit Bull breeder. I have decided not to wait any longer, but to respond without any further delay.

The fact that KUSA is now pulled into this matter shows clearly that there is a second agenda that is being followed. Greg Eva's e-mail of 27 th August 2010 is prima facie proof in this regard. This is not acceptable to us as breed fanciers, and this matter will be referred to The Pit Bull Union of SA and the Pit Bull Federation of SA for legal counsel as well as the ADBA. They represent the breed in SA, and the municipality has just again refused to council with them, when I mentioned it to them. This is procedurally wrong, and is also an offence in terms of the [Promotion of Administrative Justice Act, 2000. \(Act No. 3 of 2000\)](#).

Now, having gone through this by-law, I do not notice any mention of the word American Pit Bull Terrier (APBT) anywhere. What it does refer to in Sec 15(1) is, and I quote ... ***"A breeder of dogs or cats who wishes to keep more than two dogs or cats must obtain permission from the municipality and the municipality may charge an annual fee for the exercise of such right to breed dogs and cats"*** In any event, where does this right come or hail from to charge a "breeder" a fee, and on what basis would it be applied and administered in an equitable way? What happens for example when a breeder does not breed for a year or more and resume breeding later with the stock of his preference or when the dogs are mature, etc.? I also see nowhere in your by-law that unspayed bitches cannot be kept - this is another infringement of individual freedom and rights in any event.

Furthermore, the 4 bodies mentioned in your writing to me, that are supposedly the only recognised breed bodies by the municipality, is an injustice in itself, and contravenes the right

of free association by our Constitution (“**Constitution**” means the Constitution of the Republic of South Africa, 1996). This leaves the SA Boerboelvereniging also out in the cold, not being recognized. By no means can these 4 bodies be elevated to a position to act as a monopoly in our society with regard to dogdom. We do not seek the approval nor recognition of KUSA, as they do not know our dogs and are not qualified to express an opinion. Our dogs are either registered by the SADBA locally since 1989, or overseas by the ADBA (American Dog Breeder's Association, Inc.) since 1909, and this is how we prefer it in a free society, based on free market principles.

Incidentally, for your elucidation, I wish to branch out a bit further regarding different breeds that are in a developmental state, which means they are not as yet recognized as a breed by the American Kennel Club (AKC), the British Kennel Club (BKC) or the Kennel Union of SA (KUSA), but they have their own breed clubs and developmental registries. These breeds are referred to as RARE breeds. And so, I wish to refer you to the book on this subject, called “A Celebration of Rare Breeds” written by one Cathy J. Flamholtz (published 1986). This book lists 54 different breeds in the making, some of which have already become pure-breeds. To mention just a few here is an abbreviated list by class of dog:-

The Jagd Terrier
The Czech Terrier

The Australian Kelpie
The English Sheperd

The Boykin Spaniel
The Cavalier King Charles Spaniel

The Tibetan Mastiff
The Tosa
Fila Brasileiro
The Argentine Dogo
The American Bulldog

Even more interesting, this is the position in America with rare breeds:

The American Rare Breed Association or ARBA is a national dog association of the United States, based in Cheltenham, Prince George's County, Maryland. The club was formed to register, show, educate and promote the breeding of uncommon dog breeds. ARBA handles breeds recognized by the Fédération Cynologique Internationale or by its own board of directors that are not yet recognized by the American Kennel Club.

Some of the ARBA's services include:

- Registering Rare Dog Breeds.
- Conforming Rare Dog Breed Shows.
- Seminars for Judges.
- Conforming Dog Shows.
- Public Awareness & Education.
- Giving Obedience and Championship Titles.
- Canine Citizenship Program.

Breeds in the ARBA

Companion

American Hairless Terrier
Bolognese
Cavalier King Charles Spaniel
Coton de Tulear
Danish/Swedish Farm Dog
English Toy Terrier
Havanese
Kyi-Leo
Löwchen
Moscow Toy Terrier
Mini-Pei
Toy Fox Terrier
Russian Tsventnaya Bolonka

Herding

Akbash Dog
Appenzeller Sennenhund
Australian Kelpie
Beauceron
Bergamasco
Cao de Serra Aires
Cao de Castro Laboreiro
Cao de Fila Miguel
Catalan Sheepdog
Dutch Shepherd Dog
English Shepherd
Entlebucher Sennenhund
King Shepherd
Catahoula Leopard Dog
Belgian Laekenois
Maremma Sheepdog

Hound

Anglo Francais Tricolor
Azawakh
Basset Artésien Normand
Basset Bleu de Gascogne
Basset Fauve de Bretagne
Basset Griffon Vendéen (Grand)
Basset Griffon Vendéen (Petit)
Batard
Black Forest Hound
Briquet Griffon Vendéen
Bruno de Jura
Chart Polski
Cirneco Dell'Etna
Drever
Fauve de Bretagne
Grand Anglo-Francais
Grand Basset Griffon Vendéen
Grand Bleu de Gascogne
Griffon Nivernais
Hamilton Hound
Hanoverian Schweisshund
Hellenic Hound
Kirhiz
Magyar Agar
Mountain Cur
Ogar Polski
Petit Bleu de Gascogne
Plott Hound
Podengo Canario
Poitvin
Porcelaine
Posavaski Gonici

Terrier

American Pit Bull Terrier
Cesky Terrier
JagdTerrier
Irish Glen of Imaal Terrier
Parson Jack Russell Terrier
Patterdale Terrier
Russell Terrier

Sporting

Barbet
Boykin Spaniel
Bracco Italiano
Braque Bourbonnais
Braque Dupuy
BRAQUE D'Auvergne
BRAQUE FRANCAIS
BRAQUE SAINT-GERMAIN
IRISH RED & WHITE SETTER
Kooikerhondje
Large Munsterlander
Nova Scotia Duck Tolling
Retriever
Old Danish Pointer
Perdigueiro Portugues
Picardy Spaniel
Small Munsterlander
Spinone Italiano
Stabyhoun
Spanish Water Dog
Wirehaired Hungarian Vizsla

Mudi
 Miniature Australian Shepherd
 Picardy Shepherd
 Polish Lowland Sheepdog
 Pyrenean Shepherd
 Pumi (dog)
 Romanian Carpathian Shepherd Dog
 Shiloh Shepherd
 Slovensky Cuvac
 South Russian Ovtcharka
 White German Shepherd Dog

Spitz

Alaskan Klee Kai
 Canaan Dog
 Canadian Eskimo Dog
 Carolina Dog
 Chinook
 Dingo
 Eurasier
 Finnish Lapphund
 German Spitz
 Greenland Dog
 Hokkaido
 Icelandic Sheepdog
 Japanese Spitz
 Jamthund
 Jindo Dog
 Kai Ken
 Karelian Bear Dog
 Kishu Ken
 New Guinea Singing Dog
 Norrbottenspets
 Norwegian Buhund
 Norwegian Lundehund
 Russo-European Laika
 Peruvian Inca Orchid
 Portuguese Podengo
 Sanshu
 Swedish Vallhund
 Swedish Lapphund
 Thai Ridgeback
 Xoloitzcuintli

Rastreador Brasileiro
 Redbone Coonhound
 Redtick Coonhound
 Sabueso Hound
 Schiller Hound
 Sloughi
 Slovakian Hound
 South Russian Steppe
 Styrian Roughhaired Mountain Hound
 Telomai
 Tennessee Treeing Brindle
 Transylvania Hound
 Treeing Walker
 Trigg Hound
 Tyrolean Hound
 Verelade
 Wachtelun
 Wirehaired Istrian Hound
 Yugoslavian Hound
 Petit Griffon De Gascogne

Working

Aidi
 Alapaha Blue Blood Bulldog
 American Bulldog
 Anatolian Shepherd
 Argentine Dogo
 Austrian Pinscher
 Black Russian Terrier
 Cane Corso
 Caucasian Ovtcharka
 Central Asian Ovtcharka
 Dogue De Bordeaux
 Estrela Mountain Dog
 Fila Brasileiro
 German Pinscher
 Greater Swiss Mountain Dog
 Hovawart
 Leonberger
 Olde English Bulldogge
 Dogo Canario
 Presa Mallorquin
 Pyrenean Mastiff
 Spanish Mastiff
 South African Boerboel
 Tibetan M

Clearly there are a host of breeds in the above that is not on the books of KUSA, and as such I reject the notion that they have to approve our breed. We do not need them, just as much the

2 American Pit Bull Registries, the UKC and ADBA, need the approval of the AKC. KUSA is not the be all and end all. Our Pit Bull breed associations offer essentially the same services as ARBA as we have our own breed standards based on the ADBA standards and conduct our own shows, have seminars for our judges, rescue for dogs in distress and is also involved in public awareness and education.

3) Promotion of Access to Information Act (No. 2 van 2000)

This Act gives effect to the constitutional right to access to any information held by the State and any information needed to protect one's fundamental rights. It includes provisions on what information the public has a right to access and the procedures for accessing such information. The Act represents a landmark in South African history to foster a culture of transparency and accountability in South Africa, being an essential mechanism to ensure good governance.

In terms of the above Act, I now request that you will make the following available to me by certified copies:

- a) The minutes of the meeting discriminating against our breed the APBT.
- b) Who was invited and who attended the meeting when opinions were solicited as to which breed registries and clubs were deemed acceptable.
- c) Your published invitation in the local press that such a meeting will be held (re community participation)
- d) And where these discriminatory measures are embodied in the by-law (quote me the exact clause please)
- e) if no formal records exist to substantiate, then just a comment to that extent will suffice.

This should be read in conjunction with my comments that the municipality should be seen to be procedurally fair, and that "administrative justice" prevails according to the Act, or alternatively the acting outside the scope of the Act and by-laws, which needs further clarification if that is the case.

In the meantime I place the R2000 fine in dispute, until this matter has been resolved satisfactorily. So it will not be paid with my next payment of my water and electricity account. I also need to see where in the by-laws a fine of R2000 is prescribed for the keeping of an unspayed bitch, and how this is reconciled with section 24 of the by-law that deal with "Transition provisions " as the by-law was only recently promulgated (apparently 31/03/2010). For ease of reference, I now quote 24(1) ***"A person who, at the commencement of this by-law, own a larger number of animals than the number contemplated in section 4(2), may not replace animals that die or are disposed of and must gradually reduce the number of***

individuals that may be kept." I feel victimized by the very way this matter has been handled, as well as the aggressive stance that I encountered.

I thus invite you to a meeting with our representative breed bodies, and hope that this matter could be amicably solved. Please provide me with 3 possible dates that suit you, as I have to give reasonable notice to all parties concerned for a meeting to be held. Please advise who this meeting needs to be with, and who will be present on your side so that I can put them on my mailing list when I come back to you.

May I also request that you come back to me within 7 days from receiving this letter by no later than the 14 th Sept 2010, so as to set the ball rolling and bring this matter finally to a close.

Yours faithfully, xxxxxxxxxxxxxxxxxxxxxx

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Received on behalf of municipality Date: