



ZONING BOARD OF ADJUSTMENT MEETING NOTICE

Huxley City Council Chambers
515 N Main Ave Huxley Iowa 50124
November 17, 2022
1:00 PM

AGENDA

1. Call to order
2. Welcome Dan Nebbe to the Zoning Board of Adjustment.
3. Approve agenda as presented and/or amended.
4. Approve minutes from Tuesday July 19, 2022 meeting.
5. Business Items
 - a. Request for a variance to the six-foot fence height restriction under the current Chapter 165.37(1). The requested variance seeks to build a fence to a height of eight feet in the side and rear yards of an R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway, and located at 306 Oak Boulevard, Huxley, Iowa, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.
6. Adjournment

For more information on this and other agenda items, please call 515-597-2561 or visit City Administration Building at 515 N. Main Ave

Huxley Zoning Board of Adjustment Minutes

Tuesday July 19, 2022

Chairman Paul Wilken called the Zoom meeting to order at 12:00 P.M.

ROLL CALL: Wheeler, Wilson, Wilken present. Hyman- absent.

CITY STAFF PRESENT: Amy Kaplan – Zoning Clerk, Rita Conner- City Administrator.

CONSULTANTS PRESENT: None

GUESTS PRESENT: Scott Mohr, David Bentz, Ben Antons, Tom Trapp, Dr. Robert Davis.

APPROVE AGENDA AS PRESENTED AND/OR AMENDED: Motion –Wheeler, second –Wilson to approve agenda. 3 AYE. 0 NAY.

APPROVE MINUTES FROM DECEMBER 2, 2021 MEETING: Motion- Wilson, second- Wheeler to approve minutes. 3 AYE. 0 NAY.

BUSINESS ITEMS: Received a request for proposed variance to the north (side yard) setback requirement shown on the 1988 plat and the current Chapter 165.30 (2), reducing the setback to 7.5 feet, in accordance with Section 165.43(K) of the Zoning Ordinance for an M-1 zoned property located at 408 Campus Dr, Huxley, Iowa and legally described as: Parcel A of Lot 1 in H.D.C. Plat No. 1, an Official Plat in Huxley, Story County, Iowa.

The dental office would like to expand the northwest corner of their building to the north with a seventeen-foot addition, that is eighty feet long.

Discussion was had by the Board. No public comments were received.

Motion by Wheeler, second-Wilson, to grant the variance. Wheeler, Wilken, Wilson voted yes. MCU.

ADJOURNMENT: Motion – Wilson, second- Wheeler to adjourn meeting at 12:18 P.M. 3 ayes, 0 nays. Motion carried.

Amy Kaplan, Zoning Clerk

Paul Wilken, Chairman

Date of Approval

NOTICE OF PUBLIC HEARING

TO: ALL CITIZENS AND ALL PARTIES IN INTEREST WHO MAY BE ENTITLED TO NOTICE AND OPPORTUNITY TO BE HEARD ON A REQUEST FOR A VARIANCE UNDER THE ZONING ORDINANCES FOR PROPERTY LOCATED AT 306 OAK BOULEVARD, HUXLEY, IOWA.

You are hereby notified that at one o'clock p.m. on the 17th day of November 2022, at Huxley City Hall, 515 N. Main Avenue, Huxley, Iowa, the Board of Adjustment of Huxley, Iowa, will hold a public hearing on the application by Everett A. Ihle for a variance to the six-foot fence height restriction under the current Chapter 165.37(1). The requested variance seeks to build a fence to a height of eight feet in the side and rear yards of an R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway, and located at 306 Oak Boulevard, Huxley, Iowa, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.

All persons will have the opportunity to be heard on such variance at such time and place. Thereafter, the Board of Adjustment may act on such request for a variance without further notice or opportunity for hearing.

Submitted by: Amy Kaplan, Zoning Clerk

LOCALiQ

Ames Tribune

PO Box 631851 Cincinnati, OH 45263-1851

PROOF OF PUBLICATION

City Of Huxley - Legals
CITY CLERK'S OFFICE
City Of Huxley - Legals
515 N Main AVE

Huxley IA 50124-9416

STATE OF WISCONSIN, COUNTY OF BROWN

The Ames Tribune, a daily newspaper printed and published at Ames, Story County, Iowa, and personal knowledge of the facts herein state and that the notice hereto annexed was Published in said newspaper in the issues dated:

11/03/2022

and that the fees charged are legal.

Sworn to and subscribed before on 11/03/2022

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$26.10

Order No: 8006808

Customer No: 842111

PO #:

of Copies:

1

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

AMY KOKOTT
Notary Public
State of Wisconsin

#8006808

**NOTICE OF PUBLIC HEARING
TO: ALL CITIZENS AND ALL
PARTIES IN INTEREST WHO
MAY BE ENTITLED TO NOTICE
AND OPPORTUNITY TO BE
HEARD ON A REQUEST FOR A
VARIANCE UNDER THE ZONING
ORDINANCES FOR PROPERTY
LOCATED AT
306 OAK BOULEVARD,
HUXLEY, IOWA.**

You are hereby notified that at one o'clock p.m. on the 17th day of November 2022, at Huxley City Hall, 515 N. Main Avenue, Huxley, Iowa, the Board of Adjustment of Huxley, Iowa, will hold a public hearing on the application by Everett A. Ihle for a variance to the six-foot fence height restriction under the current Chapter 165.37(1). The requested variance seeks to build a fence to a height of eight feet in the side and rear yards of an R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway, and located at 306 Oak Boulevard, Huxley, Iowa, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.

All persons will have the opportunity to be heard on such variance at such time and place. Thereafter, the Board of Adjustment may act on such request for a variance without further notice or opportunity for hearing.

Submitted by: Amy Kaplan, Zoning Clerk

Published in the Ames Tribune on November 3, 2022 (1T)

[illegible]

CITY OF HUXLEY, IOWA

Application for Building Permit

597 2842

Name of Applicant: Everett Thle Date:

Address of Property: 306 Oak Blvd

Legal Description of Property:

DESCRIPTION OF WORK

Use of Structure:

See plan for details

Valuation:

Check One ☐ New ☐ Alteration
☐ Addition ☐ Moving
☐ Demolish ☐ Repair

No. of Rooms: Area Sq. Ft:

No. of Stories: Type of Siding:

Structure Height: Roof Covering:

Building Location, Feet from lot line:

Front: Back:

Left Side: Right Side:

Name of Contractor:

Address of Contractor:

SITE PLAN (north)

If more space is needed, attach plan.

Permit Fees:

Building Permit Fee: \$ 5.00

Water Connection Fee: \$

Sewer Connection Fee: \$

Building Sewer Fee: \$

Sidewalk/Driveway Fee \$

I hereby acknowledge that I have read this application and state that its contents are correct and agree to comply with all Ordinances of said City and all State Laws regulating construction. And, I also agree to notify the City Clerk's office for inspections at least 24 hours in advance of any connection to town utilities.

Shirley M. Thle
Signature of Owner or Contractor

For Office Use Only - Do Not Write Below This Line

BUILDING PERMIT

PERMISSION IS HEREBY GRANTED TO Everett Thle to erect ☒ enlarge ☐ alter ☐

a building at Fence 306 Oak Blvd

Approved by: Mark O'Brien, Zoning Administrator

Date: May 2, 20 00

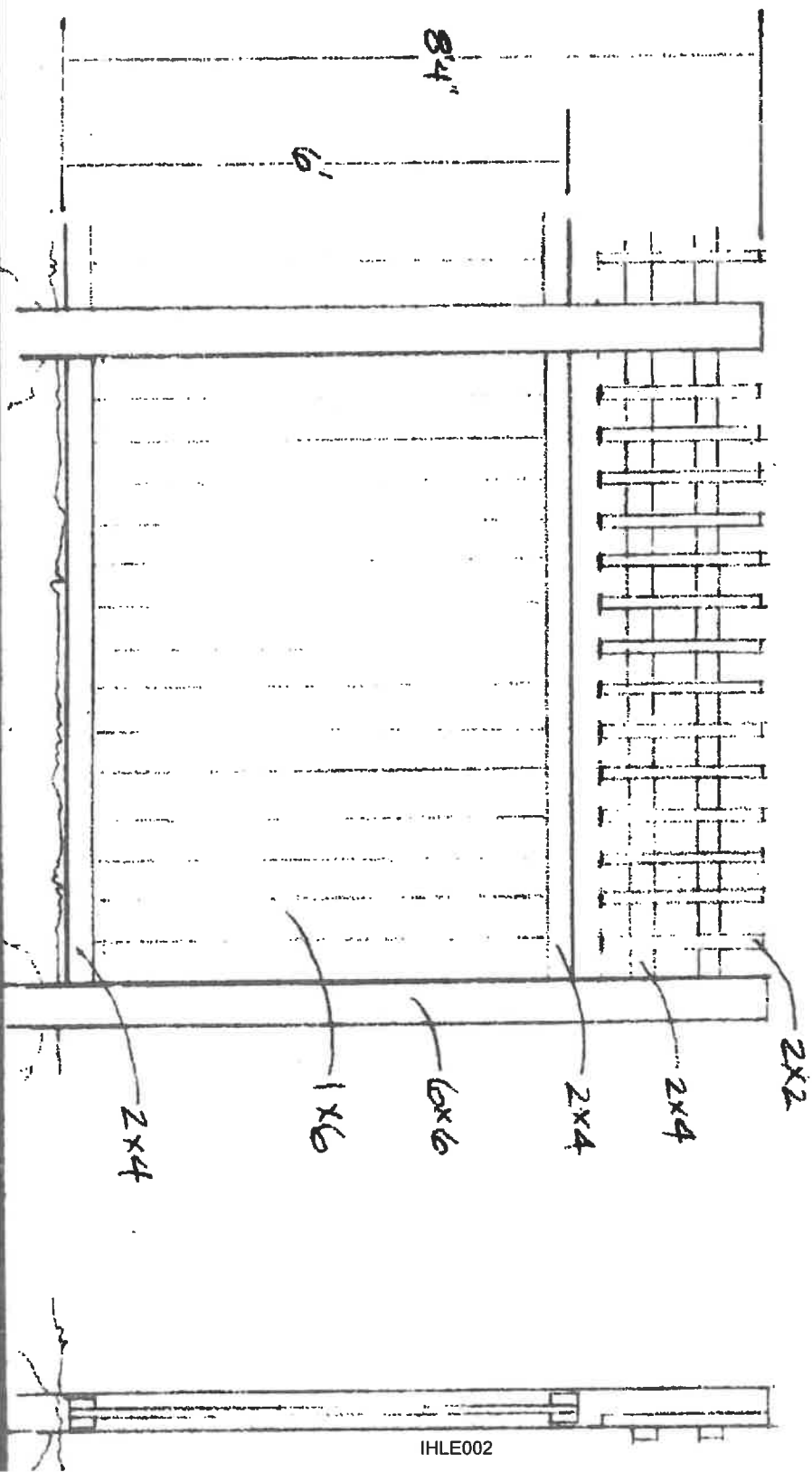
Comments:

IHLE001



ON BEAM (3)

FENCE DETAIL



IHLE002

THE IHLE

RESIDENCE

DATE

NOT TO SCALE

[REDACTED]

From: Everett Ihle <everett@ihletransport.com>

Sent: Tuesday, August 17, 2021 11:23 AM

To: Rita Conner <rconner@huxleyiowa.org>

Subject: Re: Fence Height and Derecho Damage

Replaced 6 ft fence with lattice. Same as I had before the god made storm

Everett Ihle

Ihle Transport Inc

MC: 189273 US DOT: 260093

800-373-2360 515-769-2360

Cell: 515-203-0173

On Aug 17, 2021, at 11:20 AM, Rita Conner <rconner@huxleyiowa.org> wrote:

Hello Mr. Ihle,

We had an email this week from one of the fence companies that you talked with about doing your fence project, who does a lot of work in Huxley. They are stating that the fence went in at 8' and not the 6' that was permitted. There is another neighbor now asking that fence company for 8'. I've been out to the property and the lattice work at the top of the fence does appear to exceed the 6' height limit.

You will recall that we reviewed this with you at length prior to issuing the

permit for the 6' fence, per the email chain below. Our attorney provided an opinion as well that the fence could not go back in at 8'.

Per the City's Code of Ordinances, the fence as constructed is not compliant. The additional 2' of height will need to be removed. Please contact me at your convenience to discuss the matter. Thank you.

Rita Conner
City Administrator
City of Huxley
515 North Main Avenue
Huxley, Iowa 50124
rconner@huxleyiowa.org
O 515-597-2561 ext.200
C 515-988-2174

From: Everett A Ihle <everett@ihletransport.com>
Sent: Friday, July 16, 2021 8:08 AM
To: Rita Conner <rconner@huxleyiowa.org>
Subject: Re: Fence Height and Derecho Damage

For now let's get a permit for 6ft. Been waiting almost a year don't want to miss out on the fence.

What do I need to do?

Everett A Ihle
Ihle Transport Inc
ICC: 189273 USDOT: 260093
PO Box 160 Huxley, Iowa 50124
800-373-2360

On 2021-07-16 08:04, Rita Conner wrote:

Good morning-

Mr. Ihle, it was nice to visit with you this week. We would be able to issue a permit for up to a 6' fence per our Code of Ordinances. I don't have the ability to issue a permit for an 8' fence.

I have re-reviewed our code section several times and am just not seeing any other interpretation. I am copying in our legal counsel Jim Nervig, who has already offered an opinion in this email chain, to see if the fact that the extra 2' of fence height would be decorative lattice work can have any bearing on our interpretation of the 8' height.

Rita Conner

City Administrator
City of Huxley
515 North Main Avenue
Huxley, Iowa 50124
rconner@huxleyiowa.org
O 515-597-2561 ext.200
C 515-988-2174

From: Everett A Ihle <everett@ihletransport.com>
Sent: Friday, July 16, 2021 7:45 AM
To: Rita Conner <rconner@huxleyiowa.org>
Subject: Re: Fence Height and Derecho Damage

I guess I need to get the permit for the fence. What do I need to do?

Everett A Ihle
Ihle Transport Inc
ICC: 189273 USDOT: 260093
PO Box 160 Huxley, Iowa 50124
800-373-2360

On 2021-07-14 06:35, Rita Conner wrote:

Everett, any time this afternoon that would work for a call on this?

Get [Outlook for iOS](#)

From: Everett A Ihle <everett@ihletransport.com>
Sent: Tuesday, July 13, 2021 2:05:18 PM
To: Rita Conner <rconner@huxleyiowa.org>
Subject: Re: FW: Fence Height and Derecho Damage

Why does that make a difference.? Putting any amount of old with new looks like crap.

We did not want to replace this fence. The darn wind blew it down. We only want back what

Derecho (Act of God) tore down. Just so we are all on the same page. No one in City of Huxley has

installed a 6ft fence with 2 ft Lattice. Right?

Everett A Ihle
Ihle Transport Inc
ICC: 189273 USDOT: 260093
PO Box 160 Huxley, Iowa 50124
800-373-2360

On 2021-07-13 13:42, Rita Conner wrote:

Hello, Mr. Ihle,

We've been interpreting that the fence was more than 50% destroyed

in the storm. Is this correct? If so, we do not have ability under the ordinance to allow it to be built back to the prior 8', as it is non-conforming within the City's zoning ordinance. Please advise, thanks.

Rita Conner

City Administrator

City of Huxley

515 North Main Avenue

Huxley, Iowa 50124

rconner@huxleyiowa.org

O 515-597-2561 ext.200

C 515-988-2174

From: Everett A Ihle <everett@ihletransport.com>
Sent: Tuesday, July 13, 2021 7:23 AM
To: Amy Kaplan <akaplan@huxleyiowa.org>
Subject: Re: FW: Fence Height and Derecho Damage

We have finally found a company to repair my 6 foot Fence with Lattice 2 foot. The contractor says it is going to

look odd with new 6 foot sections in between the old sections with 2 foot lattice on top. The only reason we are

repairing the fence is not because we want to but Derecho (at of God) forced us.

Everett A Ihle
Ihle Transport Inc
ICC: 189273 USDOT: 260093
PO Box 160 Huxley, Iowa 50124
800-373-2360

On 2021-05-07 13:03, Amy Kaplan wrote:

From: Jim Nervig <Jim.Nervig@brickgentrylaw.com>
Sent: Thursday, May 6, 2021 9:22 AM
To: Rita Conner <rconner@huxleyiowa.org>; Amy Kaplan <akaplan@huxleyiowa.org>
Cc: streetsupt@huxleyiowa.org

Subject: Re: Fence Height and Derecho Damage

Rita:

Based on the facts you provided, the 8-foot fence appears to have had the status of a legally nonconforming structure, because it was apparently approved by City permit long ago. However, the fence has now been removed, and the owners want to construct a new one.

Section 165.09(2) of the Zoning Ordinance provides: "Should such nonconforming] structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the requirements of this chapter."

Therefore, it appears that the fence lost its nonconforming use protection upon its destruction by storm. The Ordinance requires that it be reconstructed in compliance with current zoning regulations.

Jim Nervig

Brick Gentry P.C.
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Phone: 515-274-1450
Fax: 515-274-1450

Email: jnervig@brickgentrylaw.com

Confidentiality Notice: The information in this email may be confidential and/or privileged. This email is intended to be reviewed by only the individual or organization named above. If you are not the intended recipient or an authorized representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this email and its attachments, if any, or the information contained herein is prohibited. If you have received this email in error, please immediately notify the sender by return email and delete this email from your system.

Treasury Circular 230 Disclosure: To the extent this communication contains any statement regarding federal taxes, that statement was not written or intended to be used, and it cannot be used, by any person (i) as a basis for avoiding federal tax penalties that may be imposed on that person, or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

From: Rita Conner <rconner@huxleyiowa.org>

Date: Wednesday, May 5, 2021 at 2:59 PM

To: "jim.nervig@brickgentrylaw.com"

<Jim.Nervig@brickgentrylaw.com>, Amy Kaplan

<akaplan@huxleyiowa.org>

Cc: "streetsupt@huxleyiowa.org"

<streetsupt@huxleyiowa.org>

Subject: Fence Height and Derecho Damage

Hi Jim,

We have a resident that constructed an 8' fence by City approved permit in 2000. The fence is technically 6' high with about 2' of lattice trim. A photo is attached prior to the storm. The fence encircled only part of the yard and not the entire perimeter.

- We've reviewed Chapter 165.37 to determine if there was an adjacent zoning district condition that would have allowed the 8'. This is not the case.
- There is no file record of a Board of Adjustment action.

I am interpreting that the fence was allowed by the City at the time, perhaps with an interpretation that the lattice was decorative only. Does this seem plausible? Perhaps a moot point at this date.

If the fence had not been taken down by the storm, it would be standing today and assumed to be grandfathered in. Is there any case to be made that the fence can automatically be put back in at the prior height because of the weather event destroying it?

Appreciate any advisement, thanks.


Rita Conner

City Administrator

City of Huxley

515 North Main Avenue

Huxley, Iowa 50124



rconner@huxleyiowa.org
O 515-597-2561 ext.200
C 515-988-2174



CITY OF HUXLEY
515-597-2561

REC#: 00144542 7/16/2021 12:01 PM
OPER: AK TERM: 003
REF#: 703586

Email completed perm

Name of Applicant: Everett Shue Date

Email Address: everett@metraco.com

Property Address: 306 OAK BLVD NW

Owner's Name: Everett Shue Phone Number

Contractors Name: American Fence

Contractors Phone #: 515-608-0010

Contractors Address: 6300 NW Beaver Johnson Dr

Zoning/Property Usage: Commercial ☐ Residential ☒

Height of fence: 6 How far off the property line will the fence be? on line

Type of fence: ☒ Wood ☐ Chainlink ☐ Vinyl ☐ Other

Will fence be placed over a storm water easement? Yes ☐ No ☒

TRAN: 0.4122 BUILDING PERMITS
IHLE FENCE PERMIT
BUILDING PERMITS 25.0000

TENDERED: 25.00 CREDIT CARD
APPLIED: 25.00-

CHANGE: 0.00

Site Plan Requirements **Draw a site plan layout on the back of this form indicating:

- New fence location
- Existing fences
- House location & neighbors' homes if applicable
- Street & driveway locations
- Property lines
- Measurements (including height of fence)
- North arrow
- Easements

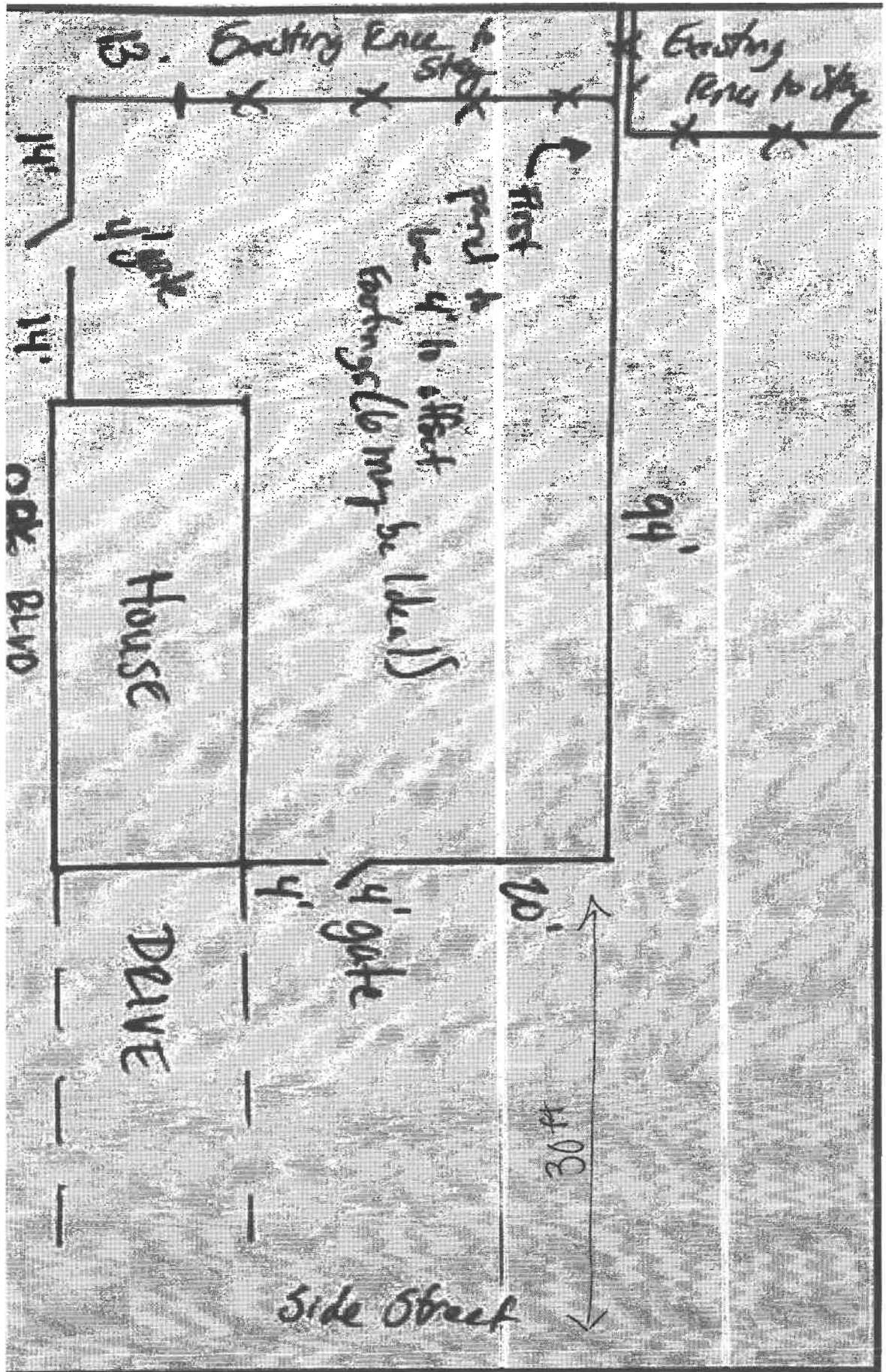
I hereby acknowledge that I have read and completed this application and state that its contents are true and accurate. I understand that the finished side of the fence must face outward. I agree to comply with all Ordinances of the City and all State laws regulating construction. Failure to comply with the code is a misdemeanor offense. It is recommended that a property survey be obtained to ensure proper placement. Failure to have a survey exposes the property owner to risk of improper placement. This application will be returned to you if all the information is not completed. I, the undersigned, understand that I am responsible for correctly locating the property lines. It is a responsibility to obtain and follow relevant sections of the Huxley City Code. See Chapter 165 Zoning Regulations.

[Signature]
Signature of Owner or Contractor

NATHAN ANDERSON
Printed Name of Owner or Contractor

Office Use Only

Approved By: Rita Conn Title: City Administrator
Date: 7/16/21





HUXLEY

— HEART OF THE PRAIRIE —

HOLD-HARMLESS and INDEMNIFICATION AGREEMENT for IMPROVEMENTS LOCATED WITHIN A PUBLIC EASEMENT

Whereas, an easement has been granted to the City of Huxley, Iowa (hereinafter referred to as "City") for the purpose of constructing, reconstructing, repairing, enlarging, and maintaining a **PURPOSE OF EASEMENT** together with appurtenances thereto, under, over, through, and across the easement area, which is described as the following address: 306 ORISKANY BLVD Huxley, Iowa

Whereas, Everett J. Hile (hereinafter called "Grantor"), owner of said property, is requesting permission within the above described easement area in violation of the terms of said easement; and

Whereas, the City has agreed to grant permission for said **IMPROVEMENTS** to be located within the Easement Area, and the Grantor hereby agrees to hold the City harmless for any damages caused to any structures or improvements located within the Easement Area, and further that the City shall not be responsible for replacement of any structures, walls or fences, paving, landscaping, or other improvements within the Easement Area which the City may find necessary to remove in the performance of any maintenance, construction, reconstruction, or other action consistent with the purposes of the Easement, other than reseeding; and Grantor further agrees to hold the City harmless and to indemnify the City against any judgments or costs associated with or arising from any structures or improvements located within the Easement Area.

Granting aforesaid request, the City and its agents shall not assume any liability, and Grantor assumes all risks of damages, loss, costs, liability and expense, and agrees to indemnify and hold harmless the City, its officers, agents, or authorized representatives from and against any and all liability, damages, loss, costs, and expense which may accrue to or be sustained by the City, its officers, agents, or authorized representatives on account of any claim, suit, or action made or brought against the City, its officers, agents, or authorized representatives arising out of this Agreement. The City further reserves the right to revoke said permission for whatever reason to safeguard the public health, safety, and welfare.

This Agreement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

Grantor does HEREBY COVENANT with the City that Grantor holds the real estate on which the above-described Easement Area is located by title in fee simple, and that Grantor has good and lawful authority to execute this Agreement.

Words and phrases herein including acknowledgement hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the text.

Signed this 6 day of July, 2021.



By: (Property Owner/Grantor)

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

THE CITY OF HUXLEY, IOWA, Plaintiff, v. EVERETT A. IHLE and SHIRLEY M. IHLE, Defendants.	Case No. <u>HUCICI008100</u> ORIGINAL NOTICE AND CIVIL CITATION FOR MUNICIPAL INFRACTION FOR VIOLATION OF AN ORDINANCE OF THE CITY OF HUXLEY, IOWA
--	--

YOU ARE HEREBY NOTIFIED THAT THE UNDERSIGNED, ON BEHALF OF THE CITY OF HUXLEY CODE ENFORCEMENT OFFICER, STATES THAT THE ABOVE-NAMED DEFENDANTS DID VIOLATE CHAPTER 165 OF THE HUXLEY CODE OF ORDINANCES WITHIN THE CORPORATE LIMITS OF THE CITY OF HUXLEY, IOWA, AS FOLLOWS:

1. Defendants own property locally known as 306 Oak Boulevard, Huxley, Iowa 50124, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.
2. Defendants' property is located within in R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway.
3. Defendants constructed an 8-foot-tall fence by City approved permit in 2000.
4. The 8-foot-tall fence consisted of 6 feet of wood paneling with 2 feet of lattice trim on the top.
5. The fence only encircled part of the Defendants' side or rear yard and not the entire perimeter. A true and accurate photo of the fence is attached hereto as Exhibit 1.
6. Huxley Code of Ordinances section 165.37(1) provides for fences and walls for side and rear yards as follows:

No fence or wall shall exceed six feet in height, except in M-1 and R-4 Districts, where fences may not exceed eight feet in height. However, fences not to exceed

eight feet in height are permitted along the property line in any residential (R) District that immediately abuts an M-1 or C-1 or C-2 District or the right-of-way of a federal or State highway.

7. Accordingly, Defendants' fence was a non-conforming structure. See Huxley City Code § 165.05(41).

8. On August 10-11, 2020, a powerful derecho swept across the State of Iowa causing significant damage to personal property, trees, and fences.

9. During this storm, more than 50% of Defendants' fence was destroyed.

10. Huxley Code of Ordinances section 165.09(2) provides:

Where a lawful structure exists at the effective date of adoption or amendment of this Zoning Ordinance that could be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

....

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

11. After the fence was destroyed, Plaintiff informed Defendants that they needed a permit to rebuild the fence and could not rebuild the fence to a height of 8 feet.

12. Defendants applied for a fence permit and was approved for a 6-foot fence. A true and accurate copy of the fence permit is attached hereto as Exhibit 2.

13. However, despite Plaintiff's warnings and having a permit for only a 6-foot fence, Defendants ignored Plaintiff and the permit limitation, and rebuilt their fence at a height of 8 feet.

14. The rebuilt fence is in violation of Huxley Code of Ordinances section 165.37.

15. The aforementioned constitutes a violation of the Huxley Code of Ordinances, which is a municipal infraction. See Huxley Code § 3.01.

16. Each day that a violation occurs or is permitted to exist constitutes a repeat or

separate offense. See Huxley Code of Ordinances §§ 3.03, 165.45.

THE CITY OF HUXLEY, AS PLAINTIFF, SEEKS THE FOLLOWING:

A. That Defendants be assessed a civil penalty in the amount of \$750.00 for a First Offense. See Huxley Code of Ordinances § 3.03(1)(A);

B. That Defendants be ordered to abate the violation and to bring the property into conformance with the Huxley Code of Ordinances or that Plaintiff be allowed to abate the violations and assess all costs for such abatement to Defendants and/or the subject property;

C. That the Defendants be ordered to pay the costs of this action.

YOU ARE HEREBY NOTIFIED judgment may be entered against you unless you file an Appearance and Answer within twenty (20) days of the service of the civil citation upon you.

YOU ARE FURTHER NOTIFIED you must electronically file the Appearance and Answer within twenty (20) days using the Iowa Judicial Branch Electronic Document Management (EDMS) at <http://iowacourts.state.ia.us/Efile> unless you obtain from the Court an exemption from electronic filing requirements.

YOU ARE FURTHER NOTIFIED IF YOU FAIL TO APPEAR within twenty (20) days, a judgment shall be entered against you as demanded by the Plaintiff and you will be ordered to bring the property into compliance with the Huxley Code of Ordinances. Also, you will be ordered to pay a civil penalty, costs, and fees which will be assessed as a judgment and in rem against the real estate.

YOU ARE FURTHER NOTIFIED IF YOU APPEAR AND DENY the above allegations cited against you within twenty (20) days, you will receive electronic notification through EDMS of the date and time of the hearing on this matter.

YOU ARE FURTHER NOTIFIED IF YOU DENY the above allegations cited against you and fail to appear in court without good cause, judgment will be entered against you as demanded by the Plaintiff and you will be ordered to bring the property into compliance with the Huxley Code of Ordinances. Also, you will be ordered to pay a civil penalty, costs, and fees which will be assessed as a judgment and in rem against the real estate.

YOU ARE FURTHER NOTIFIED IF YOU APPEAR AND ADMIT the above allegations cited against you, a judgment may be entered against you as demanded by the Plaintiff and you will be ordered to bring the property into compliance with the Huxley Code of Ordinances. Also, you will be ordered to pay a civil penalty, costs, and fees which will be assessed as a judgment and in rem against the real estate.

Respectfully Submitted,

BRICK GENTRY P.C.

By: /s/ Matt O'Hollearn

Matt O'Hollearn (AT0010122)

6701 Westown Parkway, Suite 100

West Des Moines, Iowa 50266

Telephone: (515) 274-1450

Facsimile: (515) 274-1488

Email: matt.ohollearn@brickgentrylaw.com

ATTORNEY FOR PLAINTIFF

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 641-421-0990. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

IMPORTANT

YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO PROTECT YOUR INTERESTS.

306 Oak Blvd

E-FILED 2021 SEP 17 2:36 PM STORY - CLERK OF DISTRICT COURT



EXHIBIT 1

04/04/2020

IHLE015



CITY OF HUXLEY
515-597-2561

REC#: 00144542 7/16/2021 12:01 PM
OPER: AK TERM: 003
REF#: 703586

Email completed perm

Name of Applicant: Everett Jule DateEmail Address: everett@juletransportProperty Address: 306 OAK BLVD NWOwner's Name: Everett Jule Phone NumberContractors Name: American FenceContractors Phone #: 515-608-0010Contractors Address: 6300 NW Beaver Johnson LnZoning/Property Usage: Commercial ☐ Residential ☒Height of fence: 6 How far off the property line will the fence be? on lineType of fence: ☒ Wood ☐ Chainlink ☐ Vinyl ☐ OtherWill fence be placed over a storm water easement? Yes ☐ No ☒

TRAN: 0.4122 BUILDING PERMITS
IHLE FENCE PERMIT
BUILDING PERMITS 25.00CR

TENDERED: 25.00 CREDIT CARD
APPLIED: 25.00-

CHANGE: 0.00

Site Plan Requirements **Draw a site plan layout on the back of this form indicating:

- New fence location
- Existing fences
- House location & neighbors' homes if applicable
- Street & driveway locations
- Property lines
- Measurements (including height of fence)
- North arrow
- Easements

I hereby acknowledge that I have read and completed this application and state that its contents are true and accurate. I understand that the finished side of the fence must face outward. I agree to comply with all Ordinances of the City and all State laws regulating construction. Failure to comply with the code is a misdemeanor offense. It is recommended that a property survey be obtained to risk of improper placement. This application will be returned to you if all the information is not completed. I, the undersigned, understand that I am responsible for correctly locating the property lines. It is a responsibility and responsibility to obtain and follow relevant sections of the Huxley City Code. See Chapter 165 Zoning Regulations.

Nathan Anderson
Signature of Owner or Contractor

Nathan Anderson
Printed Name of Owner or Contractor

Office Use Only

Approved By: Rita ConnTitle: City AdministratorDate: 7/16/21

EXHIBIT 2

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

THE CITY OF HUXLEY, IOWA, Plaintiff, vs. EVERETT A. IHLE and SHIRLEY M. IHLE, Defendant.	Case No. HUCICI008100 ORDER FOR DEFAULT JUDGMENT
--	--

On this date, this matter comes before the Court pursuant to Plaintiff, the City of Huxley, Iowa's, Written Application for Default Judgment pursuant to Iowa Rule of Civil Procedure 1.972 and Iowa Code section 364.22(7). Having reviewed the pleadings and affidavits of service on file in the above-captioned matter, the Court finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this above-captioned action.
2. Plaintiff filed an Original Notice and Civil Citation for Municipal Infraction in the above-captioned matter on September 17, 2021.
3. Defendant Shirley M. Ihle was personally served, and as such, Defendant Everett A. Ihle was served via substitute service, with the Civil Citation for Municipal Infraction on September 28, 2021.
4. An Affidavit of Service for Defendants was filed on September 29, 2021.
5. Pursuant to Iowa Rule of Civil Procedure 1.303(1), Defendants had twenty (20) days from the date of service in which to appear, move or answer.
6. Defendants have not appeared, moved, answered, or filed or served any other responsive pleading in this matter.

7. Defendants' failure to do so constitutes a default. See Iowa R. Civ. P. 1.971(1).

8. Plaintiff is entitled to the relief requested in the Civil Citation for Municipal Infraction, and judgment should be entered. See Iowa Code § 364.22(7) ("If the person named in the citation is served as provided in this section [364.22] and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.").

9. Defendants' own property locally known as 306 Oak Boulevard, Huxley, Iowa 50124, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.

10. Defendants' property is located within an R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway.

11. Defendants constructed an 8-foot-tall fence by City approved permit in 2000.

12. The 8-foot-tall fence consisted of 6 feet of wood paneling with 2 feet of lattice trim on the top.

13. The fence only encircled part of the Defendants' side or rear yard and not the entire perimeter. A photo of the fence was attached to the Infraction as Exhibit 1.

14. Huxley Code of Ordinances section 165.37(1) provides for fences and walls for side and rear yards as follows:

No fence or wall shall exceed six feet in height, except in M-1 and R-4 Districts, where fences may not exceed eight feet in height. However, fences not to exceed eight feet in height are permitted along the property line in any residential (R) District that immediately abuts an M-1 or C-1 or C-2 District or the right-of-way of a federal or State highway.

15. Accordingly, Defendants' fence was a non-conforming structure. See Huxley City Code § 165.05(41).

16. On August 10-11, 2020, a powerful derecho swept across the State of Iowa causing significant damage to personal property, trees, and fences.

17. During this storm, more than 50% of Defendants' fence was destroyed.

18. Huxley Code of Ordinances section 165.09(2) provides:

Where a lawful structure exists at the effective date of adoption or amendment of this Zoning Ordinance that could be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

19. After the fence was destroyed, Plaintiff informed Defendants that they needed a permit to rebuild the fence and could not rebuild the fence to a height of 8 feet.

20. Defendants applied for a fence permit and was approved for a 6-foot fence. The fence permit was attached to the Infraction as Exhibit 2.

21. However, despite Plaintiff's warnings and having a permit for only a 6-foot fence, Defendants ignored Plaintiff and the permit limitation, and rebuilt their fence at a height of 8 feet.

22. The rebuilt fence is in violation of Huxley Code of Ordinances section 165.37.

23. The aforementioned constitutes a violation of the Huxley Code of Ordinances, which is a municipal infraction. See Huxley Code § 3.01.

24. To date, Defendants have failed to abate the violations as required by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Written Application for Default Judgment against Defendants, Everett A. Ihle and Shirley M. Ihle, is GRANTED.

IT IS FURTHER ORDERED that Defendants shall immediately abate the non-conforming fence by removing it or otherwise bringing it into compliance with the six-foot height restriction set forth in Huxley Code of Ordinances section 165.37(1).

IT IS FURTHER ORDERED that if Defendant fails to immediately abate their violation of the Ordinances, the City of Huxley, Iowa, is authorized to abate and correct the violations, including removal of the non-confirming fence, and the City's costs for abatement or correction of the violation shall be entered as a personal judgment against the Defendants, jointly and severally, and assessed against the Defendants' property where the violations occurred.

IT IS FURTHER ORDERED that Defendants are enjoined from further violating the Huxley City Code of Ordinances.

IT IS FURTHER ORDERED that Defendants pay a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) for a First Offense, as provide in section 3.03(1)(A) of the Huxley City Code of Ordinances, and judgment is hereby entered for the civil penalty against the Defendants.

IT IS FURTHER ORDERED that Defendants shall pay the court costs herein.

Defendants are notified that pursuant to Iowa Code section 364.22(10)(b) if Defendants willfully violates the terms of this Order, Defendants may be found in contempt of court and punished accordingly.

SO ORDERED.



State of Iowa Courts

Case Number
HUCICI008100

Case Title
THE CITY OF HUXLEY IAVEVERETT A. & SHIRLEY M.
IHLE
Type: ORDER FOR JUDGMENT

So Ordered

Kimberly Voss-Orr, Magistrate
Second Judicial District of Iowa

Electronically signed on 2021-11-15 13:26:46



HUXLEY

— HEART OF THE PRAIRIE —

Appeal to the Board of Adjustments

Date Submitted: _____ Board Review Date: _____
Property Owner: EVERETT IHL
Property Address: 306 CAK BLVD
Property Zoning: _____
Legal Description: _____

Please provide a detailed explanation of work to be done and why a special use permit is needed:

Around 2000 I installed a deck + 6' fence with 2x2
lattice. This was all permitted by City of Huxley. The
develoer Davecho took a Trees + 70900 of my fence.
I replaced my fence with same as I had the
day before they on Davecho. City says they will take
my fence down if I don't remove the fence

The fee for a special use permit is nonrefundable. All neighboring property owners will be notified of this request plus a notice will be published in a local newspaper. Please include a fully dimensional, to scale, site plan.

Signed:  Date: 11/23/21
EVERETT IHL 515-203-0173

Appeal to Zoning Board of Adjustments

Primary: \$100

Secondary: \$50

Special Use Permits: \$100

(office use only)

Date Hearing Advertised: _____

Decision of the Board:



HUXLEY

— HEART OF THE PRAIRIE —

Appeal to the Board of Adjustments

Date Submitted: 02/22/2022 Board Review Date: _____
Property Owner: Everett A Ihle
Property Address: 306 Oak Blvd Huxley
Property Zoning: _____
Legal Description: _____

Please provide a detailed explanation of work to be done and variance needed

Pre derecho I had a 6ft Fence with 2ft Lattice approved by the City of Huxley back in the Late 1990.

Post derecho I have installed a 6ft fence with a City permit. I would like now to add back the 2ft lattice to this fence. Same as the old fence of 22 years.

The fee for variance is nonrefundable. All neighboring property owners will be notified of this variance request plus a notice will be published in a local newspaper. Please include a fully dimensional, to scale, site plan.

Signed:  Date 02/22/2022

Appeal to Zoning Board of Adjustments

Primary: \$100
Secondary: \$50
Special Use Permits: \$100

.....
(office use only)

Date Hearing Advertised: _____

Decision of the Board:

April 27, 2022

Sent via Personal Service

Everett and Shirley Ihle
306 Oak Boulevard
Huxley, IA 50124

**RE: The City of Huxley, Iowa vs. Everett A. Ihle and Shirley M. Ihle
Story County Case No. HUCICI008100**

Dear Ihles:

Please be advised that the undersigned represents the City of Huxley, Iowa. Please direct all future correspondence on this matter to my attention.

On November 15, 2021, the District Court for Story County entered the attached Order for Default Judgment. This Order required you to:

immediately abate the non-conforming fence by removing it or otherwise bringing it into compliance with the six-foot height restriction set forth in Huxley Code of Ordinances section 165.37(1).

The Court further ordered that if compliance was not done immediately, the City:

is authorized to abate and correct the violations, including removal of the non-conforming fence, and the City's costs for abatement and correction of the violation shall be entered as a personal judgment against the Defendants, jointly and severally, and assessed against the Defendants' property where the violations occurred.

To date, you have failed to comply with this Court Order and your fence remains in violation of the Huxley Code of Ordinances. Therefore, the City of Huxley hereby demands that you bring your property into compliance by removing the top two feet of the fence within seven (7) days of the date of this letter. If compliance is not done, the City will abate the violation and assess the costs to do so against you and your property.

Please take notice and govern yourself accordingly.

Very truly yours,


Matt O'Hollearn

Enclosure (1)

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

THE CITY OF HUXLEY, IOWA,

Plaintiff,

vs.

EVERETT A. IHLE and SHIRLEY M. IHLE,

Defendant.

Case No. HUCICI008100

**ORDER FOR
DEFAULT JUDGMENT**

On this date, this matter comes before the Court pursuant to Plaintiff, the City of Huxley, Iowa's, Written Application for Default Judgment pursuant to Iowa Rule of Civil Procedure 1.972 and Iowa Code section 364.22(7). Having reviewed the pleadings and affidavits of service on file in the above-captioned matter, the Court finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this above-captioned action.
2. Plaintiff filed an Original Notice and Civil Citation for Municipal Infraction in the above-captioned matter on September 17, 2021.
3. Defendant Shirley M. Ihle was personally served, and as such, Defendant Everett A. Ihle was served via substitute service, with the Civil Citation for Municipal Infraction on September 28, 2021.
4. An Affidavit of Service for Defendants was filed on September 29, 2021.
5. Pursuant to Iowa Rule of Civil Procedure 1.303(1), Defendants had twenty (20) days from the date of service in which to appear, move or answer.
6. Defendants have not appeared, moved, answered, or filed or served any other responsive pleading in this matter.

7. Defendants' failure to do so constitutes a default. See Iowa R. Civ. P. 1.971(1).

8. Plaintiff is entitled to the relief requested in the Civil Citation for Municipal Infraction, and judgment should be entered. See Iowa Code § 364.22(7) ("If the person named in the citation is served as provided in this section [364.22] and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.").

9. Defendants' own property locally known as 306 Oak Boulevard, Huxley, Iowa 50124, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.

10. Defendants' property is located within an R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway.

11. Defendants constructed an 8-foot-tall fence by City approved permit in 2000.

12. The 8-foot-tall fence consisted of 6 feet of wood paneling with 2 feet of lattice trim on the top.

13. The fence only encircled part of the Defendants' side or rear yard and not the entire perimeter. A photo of the fence was attached to the Infraction as Exhibit 1.

14. Huxley Code of Ordinances section 165.37(1) provides for fences and walls for side and rear yards as follows:

No fence or wall shall exceed six feet in height, except in M-1 and R-4 Districts, where fences may not exceed eight feet in height. However, fences not to exceed eight feet in height are permitted along the property line in any residential (R) District that immediately abuts an M-1 or C-1 or C-2 District or the right-of-way of a federal or State highway.

15. Accordingly, Defendants' fence was a non-conforming structure. See Huxley City Code § 165.05(41).

16. On August 10-11, 2020, a powerful derecho swept across the State of Iowa causing significant damage to personal property, trees, and fences.

17. During this storm, more than 50% of Defendants' fence was destroyed.

18. Huxley Code of Ordinances section 165.09(2) provides:

Where a lawful structure exists at the effective date of adoption or amendment of this Zoning Ordinance that could be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

.....

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

19. After the fence was destroyed, Plaintiff informed Defendants that they needed a permit to rebuild the fence and could not rebuild the fence to a height of 8 feet.

20. Defendants applied for a fence permit and was approved for a 6-foot fence. The fence permit was attached to the Infraction as Exhibit 2.

21. However, despite Plaintiff's warnings and having a permit for only a 6-foot fence, Defendants ignored Plaintiff and the permit limitation, and rebuilt their fence at a height of 8 feet.

22. The rebuilt fence is in violation of Huxley Code of Ordinances section 165.37.

23. The aforementioned constitutes a violation of the Huxley Code of Ordinances, which is a municipal infraction. See Huxley Code § 3.01.

24. To date, Defendants have failed to abate the violations as required by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Written Application for Default Judgment against Defendants, Everett A. Ihle and Shirley M. Ihle, is GRANTED.

IT IS FURTHER ORDERED that Defendants shall immediately abate the non-conforming fence by removing it or otherwise bringing it into compliance with the six-foot height restriction set forth in Huxley Code of Ordinances section 165.37(1).

IT IS FURTHER ORDERED that if Defendant fails to immediately abate their violation of the Ordinances, the City of Huxley, Iowa, is authorized to abate and correct the violations, including removal of the non-confirming fence, and the City's costs for abatement or correction of the violation shall be entered as a personal judgment against the Defendants, jointly and severally, and assessed against the Defendants' property where the violations occurred.

IT IS FURTHER ORDERED that Defendants are enjoined from further violating the Huxley City Code of Ordinances.

IT IS FURTHER ORDERED that Defendants pay a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) for a First Offense, as provide in section 3.03(1)(A) of the Huxley City Code of Ordinances, and judgment is hereby entered for the civil penalty against the Defendants.

IT IS FURTHER ORDERED that Defendants shall pay the court costs herein.

Defendants are notified that pursuant to Iowa Code section 364.22(10)(b) if Defendants willfully violates the terms of this Order, Defendants may be found in contempt of court and punished accordingly.

SO ORDERED.



State of Iowa Courts

Case Number
HUCICI008100

Case Title
THE CITY OF HUXLEY IAVEVERETT A. & SHIRLEY M.
IHLE
Type: ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, reading "Kimberly A Voss-Orr". The signature is written in a cursive style with a horizontal line underneath it.

Kimberly Voss-Orr, Magistrate
Second Judicial District of Iowa

Electronically signed on 2021-11-15 13:26:46

From: [Rita Conner](#)
To: [Everett A Ihle](#); [Matt O'Hollearn](#)
Subject: Re: Sorry I miss spoke 50 years lived and run business in Huxley
Date: Monday, May 9, 2022 5:37:33 PM

Mr. Ihle, thank you for attending the Council meeting and speaking. Council determined that the fence needs to come down. If height compliance can be met by reducing the current height/lattice, that may also work. We are in contact with companies to do the work, the cost of which will be assessed to your property taxes. If you are able to address the matter yourself, the city would not need to employ a contractor. Please contact me or our legal counsel, Matt O'Hollearn, copied here, with questions.

Get [Outlook for iOS](#)

From: Everett A Ihle <everett@ihletransport.com>
Sent: Wednesday, November 17, 2021 12:44:45 PM
To: Rita Conner <rconner@huxleyiowa.org>
Subject: Sorry I miss spoke 50 years lived and run business in Huxley

--
Everett A Ihle
Ihle Transport Inc
ICC: 189273 USDOT: 260093
PO Box 160 Huxley, Iowa 50124
800-373-2360

From: [Eric J. Eide](#)
To: [Matt O'Hollearn](#)
Subject: FW: City of Huxley v. Ihle
Date: Tuesday, June 14, 2022 2:52:23 PM
Attachments: [image001.gif](#)
[image002.gif](#)
[image003.gif](#)
[image004.gif](#)
[Everett Ihle Fence.pdf](#)

Matt,

See below. I mis-entered your email address the first time. Eric

From: Eric J. Eide <>
Sent: Tuesday, June 14, 2022 2:42 PM
To: 'matt.ohollearn@brickgentry.com' <matt.ohollearn@brickgentry.com>
Subject: City of Huxley v. Ihle

Matt,

I asked Mr. Ihle to try and arrange for his own fence shortening - and he contacted a local guy (see attached estimate). I was hoping you would allow Mr. Ihle to proceed this way rather than via the contractor selected by the City. I would respectfully request 30 days to complete- based on the lead-team I see on the estimate.

Sincerely, Eric

Eric J. Eide
Attorney at Law
T: [\(515\) 956-3919 \(direct\)/\(515\) 956-3900 \(main\)](#)
F: [\(515\) 956-3990](#)
E: eeide@nyemaster.com



1416 Buckeye Avenue, Suite 200
[Ames, IA 50010](#)
www.nyemaster.com



NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it. Thank you.

Krogh Excavation & Contracting **"We DIG Your Dirt"**

Kyle Krogh 1105 Sand Cherry Ln. Huxley, IA 50124 (515) 321-0195 Cell

(515) 321-0195 Cell

Customer: Everett Ihle Date: 6-14-22 Invoice: # 103 546 639

Address: 306 Oak Blvd. Huxley, IA Project Title: Fence Lead time: 2-3 weeks

[illegible]

Thank you for your business. We will look forward to your next project.

*Payment due 15 days from invoice date or an 18% compounded finance charge with a minimum of \$10.00 per month will be applied to your account balance.

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

THE CITY OF HUXLEY, IOWA,
Plaintiff,

Case No. HUCICI008100

V.

MOTION TO SET ASIDE
JUDGEMENT & REQUEST HEARING


EVERETT A. IHLE and SHIRLEY M. IHLE,
Defendants,

1. We, Everett and Shirley Ihle, were served a civil station for municipal infraction on September 21, 2021.
2. We are an elderly couple and didn't understand to take action with set court.
3. Our intent was to replace the 6 ft fence plus lattice that was there prior to the derecho.
4. The city of Huxley is scheduled to remove our fence this Friday, July 15, 2022.
5. We are pleading with the court to set aside the judgement and request a hearing.

Respectfully Submitted,



Everett A. Ihle



Shirley M. Ihle

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

THE CITY OF HUXLEY, IOWA, Plaintiff, vs. EVERETT A. IHLE and SHIRLEY M. IHLE, Defendants.	Case No. HUCICI008100 RESISTANCE TO MOTION TO SET ASIDE JUDGMENT & REQUEST TO CANCEL HEARING (Expedited Relief Requested)
---	---

COMES NOW the Plaintiff, the City of Huxley, Iowa, by and through its undersigned counsel, and hereby resists Defendants' Motion to Set Aside Judgment and Request to Cancel Hearing, and in support thereof states as follows:

1. On September 17, 2021, Plaintiff filed an Original Notice and Civil Citation for Municipal Infraction against Defendants for rebuilding a fence in violation of the six-foot height restriction set forth in Huxley Code of Ordinances section 165.37(1).
2. Personal service of the Civil Citation for Municipal Infraction with Exhibits 1 and 2 was obtained on Defendants on September 28, 2021. See Iowa Code § 364.22(4).
3. Defendants acknowledged in their motion to set aside that they were properly served with the infraction, but did nothing in response.
4. Over a month after Defendants deadline to answer had passed, Plaintiff applied for a default judgment. See Iowa Rs. Civ. P. 1.303(1), 1.971(1).
5. On November 15, 2021, the Court entered an Order for Default Judgment.
6. On July 13, 2022, Defendants moved to set aside the default judgment and requested a hearing.

7. Defendants' motion should be denied without hearing because it is untimely and is not supported by good cause.

A. The Motion to Set Aside Default Judgment is Untimely.

8. Iowa Rule of Civil Procedure 1.977 requires a motion to set aside to be "filed promptly after the discovery of the grounds thereof, but no more than 60 days after entry of the judgment."

9. There are no exceptions to the sixty-day time limit. See In re Marriage of Draker-Falcon & Falcon, 2017 WL 2181508, at *1 (Iowa Ct. App. May 17, 2017).

10. The time to set aside a default judgment was intentionally made short, "as it was not felt advisable to leave judgments open to uncertainty for any long periods of time." See Iowa R. Civ. P. 1.977 official cmt.

11. The 60-day deadline to file a motion to set aside ran on January 14, 2022, six months prior to the current motion being filed.

12. Furthermore, although not applicable, Defendants also failed to file this motion to set aside "promptly" after being made aware of the judgment. Although Defendants were likely aware of the judgment within days of its entry, at minimum, Defendants were aware of the judgment on April 27, 2022, when they were personally served the attached letter. See attached Exhibit 1. However, they did not move to have the judgment set aside at that time, and instead waited nearly three months (and to the days immediately before the Plaintiff is set to perform the abatement work permitted by the Court's order) to file the present motion.

13. Accordingly, Defendants request to have the default judgment set aside should be denied as timely.

B. The Motion to Set Aside is Not Supported by Good Cause.

14. Even if the motion to set aside is considered timely, it should also be denied because it is not supported by good cause.

15. Iowa Rule of Civil Procedure 1.977 provides that “[o]n motion and for good cause shown, . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.”

16. “The burden is on the movant to plead and prove good cause.” No Boundary, LLC v. Hoosman, 953 N.W.2d 696, 700 (Iowa 2021).

17. “Good cause is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect.” Id.

18. In this matter, Defendants simply claim, “We are an elderly couple and didn’t understand to take action with set court.”

19. However, confusion by Defendants, either because they are not knowledgeable in the ways of litigation and/or did not understand the consequences of a failure to appear in response to an original notice, is not sufficient to be good cause under Rule 1.977. See Haynes v. Ruhoff, 157 N.W.2d 914, 918 (Iowa 1968). As that court aptly stated:

Confusion, for one reason or another, seems to affect everyone these days, but when confused as to legal notices, reason requires that one seek legal advice in order not to disrupt court procedure and the expeditious adjudication of the parties’ rights. . . . [W]e cannot hold that a lack of understanding as to the legal effect of a notice in a civil action will excuse one from taking affirmative action to obtain an understanding and an attempt to appear as required. To permit one to set aside a default when he admits he took no reasonable steps to appear and defend would abrogate completely the rules of civil procedure requiring appearances within a

specified time and reward one's neglect or inattention to legal notices properly served upon him.

Id.

20. If Defendants were confused, they should have sought out legal counsel. In this regard, it is important to note that Defendants did seek out and retain counsel in this matter. Plaintiff was originally scheduled to perform the abatement of Defendants' property on June 15, 2022. However, based upon a request from Defendants' counsel, Plaintiff delayed the abatement for 30-days so Defendants could perform the work themselves. See attached Exhibit 2. However, Defendants apparently changed their mind on performing the abatement and filed the attached motion instead.

21. Defendants have not set forth any good cause to have the default judgment set aside, and as such, the motion to set aside should be denied.

WHEREFORE Plaintiff respectfully requests that the Court deny Defendants' motion to set aside without hearing.

REQUEST FOR EXPEDITED RELIEF

22. As Defendants' motion states, in accordance with the Court's abatement order, Plaintiff has hired an abatement contractor who is scheduled to abate the violation on Friday, July 15, 2022.

23. For the reasons set forth above, Plaintiff does not believe a hearing is necessary on this matter, and respectfully requests the court cancel the hearing set for August 15, 2022 and address this matter without hearing on an expedited basis.

24. Plaintiff does not believe this motion is filed in good faith; but rather, was filed solely for the purpose to delay the abatement work already scheduled.

25. Accordingly, Plaintiff requests expedited relief in this matter, so compliance with the court's abatement order can be obtained.

Respectfully Submitted,

BRICK GENTRY P.C.

By: /s/ Matt O'Hollearn

Matt O'Hollearn (AT0010122)
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Telephone: (515) 274-1450
Facsimile: (515) 274-1488
Email: matt.ohollearn@brickgentrylaw.com
ATTORNEY FOR PLAINTIFF



BRICK GENTRY P.C.

ATTORNEYS & COUNSELORS AT LAW

MATT O'HOLLEARN

ATTORNEY

T: 515-274-1450

F: 515-274-1488

matt.ohollearn@brickgentrylaw.com

April 27, 2022

Sent via Personal Service

Everett and Shirley Ihle
306 Oak Boulevard
Huxley, IA 50124

**RE: The City of Huxley, Iowa vs. Everett A. Ihle and Shirley M. Ihle
Story County Case No. HUCICI008100**

Dear Ihles:

Please be advised that the undersigned represents the City of Huxley, Iowa. Please direct all future correspondence on this matter to my attention.

On November 15, 2021, the District Court for Story County entered the attached Order for Default Judgment. This Order required you to:

immediately abate the non-conforming fence by removing it or otherwise bringing it into compliance with the six-foot height restriction set forth in Huxley Code of Ordinances section 165.37(1).

The Court further ordered that if compliance was not done immediately, the City:

is authorized to abate and correct the violations, including removal of the non-conforming fence, and the City's costs for abatement and correction of the violation shall be entered as a personal judgment against the Defendants, jointly and severally, and assessed against the Defendants' property where the violations occurred.

To date, you have failed to comply with this Court Order and your fence remains in violation of the Huxley Code of Ordinances. Therefore, the City of Huxley hereby demands that you bring your property into compliance by removing the top two feet of the fence within seven (7) days of the date of this letter. If compliance is not done, the City will abate the violation and assess the costs to do so against you and your property.

Please take notice and govern yourself accordingly.

Very truly yours,

Matt O'Hollearn

Enclosure (1)

EXHIBIT 1

IN THE IOWA DISTRICT COURT IN AND FOR STORY COUNTY

THE CITY OF HUXLEY, IOWA, Plaintiff, vs. EVERETT A. IHLE and SHIRLEY M. IHLE, Defendant.	Case No. HUCICI008100 ORDER FOR DEFAULT JUDGMENT
--	--

On this date, this matter comes before the Court pursuant to Plaintiff, the City of Huxley, Iowa's, Written Application for Default Judgment pursuant to Iowa Rule of Civil Procedure 1.972 and Iowa Code section 364.22(7). Having reviewed the pleadings and affidavits of service on file in the above-captioned matter, the Court finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this above-captioned action.
2. Plaintiff filed an Original Notice and Civil Citation for Municipal Infraction in the above-captioned matter on September 17, 2021.
3. Defendant Shirley M. Ihle was personally served, and as such, Defendant Everett A. Ihle was served via substitute service, with the Civil Citation for Municipal Infraction on September 28, 2021.
4. An Affidavit of Service for Defendants was filed on September 29, 2021.
5. Pursuant to Iowa Rule of Civil Procedure 1.303(1), Defendants had twenty (20) days from the date of service in which to appear, move or answer.
6. Defendants have not appeared, moved, answered, or filed or served any other responsive pleading in this matter.

7. Defendants' failure to do so constitutes a default. See Iowa R. Civ. P. 1.971(1).

8. Plaintiff is entitled to the relief requested in the Civil Citation for Municipal Infraction, and judgment should be entered. See Iowa Code § 364.22(7) ("If the person named in the citation is served as provided in this section [364.22] and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.").

9. Defendants' own property locally known as 306 Oak Boulevard, Huxley, Iowa 50124, and legally described as Lot Seventeen (17) in Timberlane Plaza Plat No. 2 in the City of Huxley, Story County, Iowa.

10. Defendants' property is located within an R-1 District that does not immediately abut an M-1, C-1, C-2, or the right-of-way of a federal or State highway.

11. Defendants constructed an 8-foot-tall fence by City approved permit in 2000.

12. The 8-foot-tall fence consisted of 6 feet of wood paneling with 2 feet of lattice trim on the top.

13. The fence only encircled part of the Defendants' side or rear yard and not the entire perimeter. A photo of the fence was attached to the Infraction as Exhibit 1.

14. Huxley Code of Ordinances section 165.37(1) provides for fences and walls for side and rear yards as follows:

No fence or wall shall exceed six feet in height, except in M-1 and R-4 Districts, where fences may not exceed eight feet in height. However, fences not to exceed eight feet in height are permitted along the property line in any residential (R) District that immediately abuts an M-1 or C-1 or C-2 District or the right-of-way of a federal or State highway.

15. Accordingly, Defendants' fence was a non-conforming structure. See Huxley City Code § 165.05(41).

16. On August 10-11, 2020, a powerful derecho swept across the State of Iowa causing significant damage to personal property, trees, and fences.

17. During this storm, more than 50% of Defendants' fence was destroyed.

18. Huxley Code of Ordinances section 165.09(2) provides:

Where a lawful structure exists at the effective date of adoption or amendment of this Zoning Ordinance that could be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

....

2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter.

19. After the fence was destroyed, Plaintiff informed Defendants that they needed a permit to rebuild the fence and could not rebuild the fence to a height of 8 feet.

20. Defendants applied for a fence permit and was approved for a 6-foot fence. The fence permit was attached to the Infraction as Exhibit 2.

21. However, despite Plaintiff's warnings and having a permit for only a 6-foot fence, Defendants ignored Plaintiff and the permit limitation, and rebuilt their fence at a height of 8 feet.

22. The rebuilt fence is in violation of Huxley Code of Ordinances section 165.37.

23. The aforementioned constitutes a violation of the Huxley Code of Ordinances, which is a municipal infraction. See Huxley Code § 3.01.

24. To date, Defendants have failed to abate the violations as required by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Written Application for Default Judgment against Defendants, Everett A. Ihle and Shirley M. Ihle, is GRANTED.

IT IS FURTHER ORDERED that Defendants shall immediately abate the non-conforming fence by removing it or otherwise bringing it into compliance with the six-foot height restriction set forth in Huxley Code of Ordinances section 165.37(1).

IT IS FURTHER ORDERED that if Defendant fails to immediately abate their violation of the Ordinances, the City of Huxley, Iowa, is authorized to abate and correct the violations, including removal of the non-confirming fence, and the City's costs for abatement or correction of the violation shall be entered as a personal judgment against the Defendants, jointly and severally, and assessed against the Defendants' property where the violations occurred.

IT IS FURTHER ORDERED that Defendants are enjoined from further violating the Huxley City Code of Ordinances.

IT IS FURTHER ORDERED that Defendants pay a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) for a First Offense, as provide in section 3.03(1)(A) of the Huxley City Code of Ordinances, and judgment is hereby entered for the civil penalty against the Defendants.

IT IS FURTHER ORDERED that Defendants shall pay the court costs herein.

Defendants are notified that pursuant to Iowa Code section 364.22(10)(b) if Defendants willfully violates the terms of this Order, Defendants may be found in contempt of court and punished accordingly.

SO ORDERED.

E-FILED

HUCICI008100 - 2021 NOV 15 01:26 PM
CLERK OF DISTRICT COURT

STORY
Page 5 of 5



State of Iowa Courts

Case Number
HUCICI008100

Case Title
THE CITY OF HUXLEY IAVEVERETT A. & SHIRLEY M.

Type:

IHLE
ORDER FOR JUDGMENT

So Ordered

Kimberly Voss-Orr, Magistrate
Second Judicial District of Iowa

Electronically signed on 2021-11-15 13:26:46

From: [Eric J. Eide](#)
To: [Matt O'Hollearn](#)
Subject: FW: City of Huxley v. Ihle
Date: Tuesday, June 14, 2022 2:52:23 PM
Attachments: [image001.gif](#)
[image002.gif](#)
[image003.gif](#)
[image004.gif](#)
[Everett Ihle Fence.pdf](#)

Matt,

See below. I mis-entered your email address the first time. Eric

From: Eric J. Eide <>
Sent: Tuesday, June 14, 2022 2:42 PM
To: 'matt.ohollearn@brickgentry.com' <matt.ohollearn@brickgentry.com>
Subject: City of Huxley v. Ihle

Matt,

I asked Mr. Ihle to try and arrange for his own fence shortening - and he contacted a local guy (see attached estimate). I was hoping you would allow Mr. Ihle to proceed this way rather than via the contractor selected by the City. I would respectfully request 30 days to complete- based on the lead-team I see on the estimate.

Sincerely, Eric

Eric J. Eide
Attorney at Law
T: [\(515\) 956-3919 \(direct\)/\(515\) 956-3900 \(main\)](#)
F: [\(515\) 956-3990](#)
E: eeide@nyemaster.com



1416 Buckeye Avenue, Suite 200
[Ames, IA 50010](#)
www.nyemaster.com



NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, then delete it. Thank you.

EXHIBIT 2

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

HUXLEY

Plaintiff

VS

SHIRLEY MAE IHLE
EVERETT ARNOLD IHLE

Defendant

02851HUCICI008100

ORDER

The Court is in receipt of the Resistance filed by the City of Huxley. Upon review of the Resistance and the evidence and information provided, the Court finds that its previous order issued today at 10:14am should be withdrawn.

IT IS THEREFORE ORDERED that the hearing set for August 15, 2022 is canceled and the stay issued earlier today is withdrawn. The parties may proceed accordingly.

If you need assistance to participate in court due to a disability, call the disability coordinator at (641) 421-0990 or information at <https://www.iowacourts.gov/for-the-public/ada/>. Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**



State of Iowa Courts

Case Number
HUCICI008100

Case Title
THE CITY OF HUXLEY IAVEVERETT A. & SHIRLEY M.
IHLE
Type: OTHER ORDER

So Ordered

Kimberly Voss-Orr, Magistrate
Second Judicial District of Iowa

Electronically signed on 2022-07-14 15:23:12

From: [Everett A Ihle](#)
To: [Matt O'Hollearn](#); eeide@nymaster.com
Subject: I have removed the two-foot lattice off the top of my 6ft Fence.
Date: Friday, July 15, 2022 9:51:33 AM

Everett Ihle 306 Oak Blvd Huxley, Iowa 50124 515-203-0173

Rita or anyone from the great city of Huxley can stopped by any time for an inspection.

--
Everett A Ihle
Ihle Transport Inc
MC: 189273 USDOT: 260093
PO Box 160 Huxley, Iowa 50124
800-373-2360

From: [Rita Conner](#)
To: [Colleen Huber](#); [Amy Kaplan](#); [Jim Nervig](#); [Matt O'Hollearn](#)
Subject: RE: Huber Fencing - 306 Oak Blvd Fence Permit
Date: Thursday, October 7, 2021 1:32:33 PM
Attachments: [21.09.17.FSC Civil Citation.pdf](#)
[21.09.29.FSC ROS.PDF](#)

Hi Colleen,

The City's attorney filed a municipal infraction on the fence height at this address on September 17 and it was served on Mr. Ihle the following day. Matt, has there been a response from Mr. Ihle?

Rita Conner
City Administrator
City of Huxley
515 North Main Avenue
Huxley, Iowa 50124
rconner@huxleyiowa.org
O 515-597-2561 ext.200
C 515-988-2174

From: Colleen Huber <colleen@huberfencing.com>
Sent: Thursday, October 7, 2021 12:46 PM
To: Amy Kaplan <akaplan@huxleyiowa.org>; Jim.Nervig@brickgentrylaw.com; Rita Conner <rconner@huxleyiowa.org>; Colleen Huber <colleen@huberfencing.com>
Subject: Huber Fencing - 306 Oak Blvd Fence Permit

Good afternoon,

I had inquired about this situation earlier, where Everett Ihle at 306 Oak Blvd, in Huxley Iowa had requested Huber Fencing to put in an 8 ft fence for him. During the permit process I received the following documentation (attached) from the city of Huxley, and from Mr. Nervig on the planning and zoning regulations in Huxley and that an 8 ft fence was not an option and that we could go no higher than 6 feet.

Huber Fencing relayed that information to Mr. Ihle, and he told us that he would find someone else to do it. Which I didnt think would be possible due to the permitting process being the same for all contractors.

However, Mr. Ihle at 306 Oak Blvd has an 8 foot fence today.

I inquired about this situation on August 17, 2021 with Amy Kaplan and I was told that Mr. Ihle had a permit for a 6 foot fence and installed an 8 foot fence, though the city of Huxley was in the process of handling this situation.

It is October 7th and Mr. Ihle still has an 8 foot fence.

Mr. Ihle's neighbor, Jan Halverson at 707 Timberlane, also had an 8 foot fence and had hired Huber Fencing to replace her fence with a new 8 ft fence. We

told her what Huber Fencing knew about the fence regulation and that when we removed her 8 foot fence we could only replace it with a 6 foot fence. Huber Fencing completed this install for Jan Halverson with a 6 foot fence.

As a certified contractor in the state of Iowa and where we install fences in 38 different municipalities, of which we follow fence regulations in all of these different locations. It is frustrating to see this situation of Mr. Ihle and that Jan Halverson and every other Huxley resident that we have installed fences for have followed the city of Huxley fence regulations except for Mr Everett Ihle.

Please advise if the code for the fence height has been modified in the city of Huxley or what has been modified to allow this fence to remain in place.

Thank you,
Jerry and Colleen Huber

Colleen Huber
Customer Care Manager/ Co-Owner
Huber Fencing

colleen@huberfencing.com
515-215-2889

Please leave a review
[Huber Fencing Review](#)

www.huberfencing.com



From: [Rita Conner](#)
To: [Colleen Huber](#); [Jim Nervig](#); [Amy Kaplan](#); [Matt O'Hollearn](#)
Subject: RE: Huber Fencing - 3306 Oak Blvd - Ihle
Date: Wednesday, November 10, 2021 2:45:47 PM

Thank you Colleen, for the reminder. Our attorney just contacted me on this to advise of the timeframe. I will talk with staff now.

Rita Conner
City Administrator
City of Huxley
515 North Main Avenue
Huxley, Iowa 50124
rconner@huxleyiowa.org
O 515-597-2561 ext.200
C 515-988-2174

From: Colleen Huber <colleen@huberfencing.com>
Sent: Tuesday, November 9, 2021 11:01 AM
To: Rita Conner <rconner@huxleyiowa.org>; Jim.Nervig@brickgentrylaw.com; Amy.Kaplan@huxleyiowa.org
Subject: Huber Fencing - 3306 Oak Blvd - Ihle

Good morning all -

Thank you for the information on the city's review and judgement to have the 8 ft fence at Everett and Shirley Ihle's residence of 306 Oak Blvd reduced to 6ft.

However, we are past the October 18th date, and as an active business in Huxley who installs many fences in the area, we see Ihle's fence is still up and there has not been any changes.

Can you share any update for us please?
Thank you
Jerry and Colleen Huber

Colleen Huber
Customer Care Manager/ Co-Owner
Huber Fencing

colleen@huberfencing.com
515-215-2889

Please leave a review
[Huber Fencing Review](#)

www.huberfencing.com