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CINDY A. HOFNER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Kenneth Hetrick,

Appellant,

v.

Ohio Department of
Agriculture,

Appellee.

*
* Case No. 15 CV 447
*
*
* JUDGE REEVE KELSEY
*
* JUDGMENT ENTRY
* WILDLIFE SHELTER
* PERMIT
*

Kenneth Hetrick has owned dangerous wild animals (“DWA,” R.C. 935.01(C)) at his home for 40 years. He serves on the Wood County Dangerous Wild Animal Response Team. He has never had an animal escape from his property, nor has he experienced a situation where a person was bitten or scratched by one of his DWA. Mr. Hetrick holds a Class C Exhibitor’s license granted by the United States Department of Agriculture under the Animal Welfare Act, which he has had since 1989. His license for 2015 was approved after an inspection by the USDA on August 28, 2014. Inspections by the USDA are unannounced and very thorough. Mr. Hetrick was trained in chemical immobilization of animals in 1996 and has anesthetized many animals. Mr. Hetrick has a long-standing relationship with his veterinarian, Dr. Carstensen, who cares for his DWA.

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In Muskingum County in 2011, the owner of 56 DWA released all of his animals and committed suicide. As a result of these events, R.C. Chapter 935 was enacted effective September 5, 2012.

There are two components to the Act. First, each DWA must be registered and microchipped. R.C. 935.04. Second, the owner of the DWA must determine whether the owner qualifies as a wildlife shelter, rescue facility, wildlife sanctuary, wildlife propagation facility, or qualifies for one of several exemptions available under the Act.

On October 22, 2012, Mr. Hetrick complied with the registration requirements of R.C. 935.04. Mr. Hetrick, in consultation with Dr. Carstensen did not microchip six of his 11 DWA as the process of microchipping the DWA could have been dangerous to their health.

Many owners of DWA opposed this law believing it to be unconstitutional. They challenged the law in federal court. The law was ultimately upheld. *Wilkins v. Daniels*, 744 F.3d 409 (6th Cir.2014). Counsel for the litigants advised the litigants not to seek registration under R.C. Chapter 935 while the litigation was pending. After the Sixth Circuit Court of Appeals decision was filed on March 4, 2014, the litigants considered whether or not to appeal the decision to the United States Supreme Court. They ultimately decided not to.

After the dust had settled on the litigation, Mr. Hetrick decided that he should form a rescue facility. Toward that end he filed his application to obtain a rescue facility permit on October 17, 2014. Dominic D'Urso, a dangerous wild animal

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inspector for the ODA, testified that it was his impression that Dr. Melissa Simmerman, Assistant State Veterinarian and Assistant Chief of the ODA Division of Animal Health, viewed Mr. Hetrick's application as a joke as the ODA would never approve Mr. Hetrick's application. Proceedings before Hearing Examiner Andrew Cooke, May 11, 2015, p. 105-106.

It is not ODA's policy to inspect an applicant's DWA facility. Record of Proceedings, Record #7, p 141. In fact, the ODA's first inspection of many of the wildlife shelters occurred seven to 12 months after the permit had been granted. In cases where violations of ODA's regulations were found, the permit holders were given multiple chances to bring their facilities into compliance. See Appendix A, Inspection of Wildlife Shelters.

Contrary to its policy, ODA decided to inspect Mr. Hetrick's facility. While a typical inspection involves only one or two ODA inspectors, the ODA assembled a team of about six inspectors for Mr. Hetrick's facility. Proceedings before Hearing Examiner Andrew Cooke, May 11, 2015, p. 100, 108. It was Mr. D'Urso's view that the purpose of the ODA inspection "was to seek out any further evidence that we could use to justify the confiscation of his animals." *Id.* at p. 107, 127-128. Mr. Hetrick cooperated with the representatives from ODA. The inspection was conducted on November 7, 2014.

Mr. D'Urso stated, "the overall psychological stability of the animals was good. Most of them were in good health except for Leo the lion. He was geriatric, later in life. * * * They had good weight. Their fur looked good. Their stool looked

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good, and they were relatively, I don't want to say personable to anthropomorphize, but they were – they gave off friendliness.” *Id.* at p. 113-114. Mr. D’Urso noted there were several regulatory violations with respect to the facilities, but none of the violations adversely affected the health and welfare of the animals or posed a threat to neighboring people. *Id.* at p. 113-127. *See* Appendix B, Comparison of Inspection Reports.

As of the November 7, 2014 inspection, according to Dr. Simmerman, the ODA was still considering Mr. Hetrick’s application for a rescue permit.

By letter dated January 22, 2015, the ODA proposed to deny Mr. Hetrick’s application for a rescue facility permit.

On January 28, 2015, the ODA arrived at Mr. Hetrick’s facility to confiscate the animals. Mr. Hetrick did not permit the ODA onto his property. ODA then petitioned this court for a warrant to enter upon Mr. Hetrick’s property to seize his DWA. Ron Cordial, head ODA enforcement agent, misrepresented to the court, “But, basically the caging that the animals are in, the conditions that the animals were kept in, some of them were kept together in small cramped areas.” Transcript of the Warrant to Search Proceedings, January 28, 2015, p. 8. *See* Appendix B. Mehek M. Cooke’s letter of January 22, 2015, never referred to “small cramped areas.” Mr. D’Urso testified that “most of the enclosures were at least twice, if not more times the minimum required square footage per animal * * *.” Proceedings before Hearing Examiner Andrew Cooke, May 11, 2015, p. 114.

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Even though Mr. Hetrick registered his DWA, filed a rescue facility application, and permitted the November 7, 2014 ODA inspection, Mr. Cordial again misrepresented to the court, "Mr. Hetrick has not cooperated from day one." Transcript of the Warrant to Search Proceedings, January 28, 2015, p. 9. The warrant was granted. Even though Mr. Hetrick's rescue facility application was pending, the ODA confiscated Mr. Hetrick's animals.

Mr. Hetrick later determined that he could qualify as a wildlife shelter and filed an application for a wildlife shelter permit on March 9, 2015. On March 23, 2015, Ms. Cooke sent Mr. Hetrick a letter in which she proposed to deny his application for a wildlife shelter permit. Ms. Cooke based the proposal on (1) the untimely filing of the application and (2) the failure to microchip certain of Mr. Hetrick's DWA even though Dr. Carstensen felt that microchipping those animals could be dangerous to their health. The ODA stated, "There is no medical exception or contraindication for this requirement." Exhibit A to Order No.: 2015-301, attached to Mr. Hetrick's Notice of Appeal.

Mr. Hetrick requested a hearing on the proposal, which was held before Hearing Officer Andrew P. Cooke. Mr. Cooke on July 10, 2015, recommended that Mr. Hetrick's application be denied. He based his decision on (1) the untimely filing of the application, (2) the failure to microchip certain of Mr. Hetrick's DWA, and (3) the failure to file a complete application. Exhibit C to Order No.: 2015-301, attached to Mr. Hetrick's Notice of Appeal.

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Mr. Hetrick, through counsel, filed objections to Hearing Officer Cooke's findings of fact and conclusions of law. Exhibit E to Order No.: 2015-301, attached to Mr. Hetrick's Notice of Appeal. After a thorough review of Hearing Officer Cooke's report and after careful consideration of all of the evidence before him, David T. Daniels, Director of the Ohio Department of Agriculture, adopted the findings and denied Mr. Hetrick's application for a wildlife shelter permit. Order No.: 2015-301, attached to Mr. Hetrick's Notice of Appeal.

This action is the appeal of Director Daniels's order dated August 7, 2015, denying Mr. Hetrick's application for a wildlife shelter permit. In administrative appeals this court must consider the entire administrative record and such additional evidence that this court has admitted. After considering the record and additional evidence, this court must first determine whether the ODA in some meaningful manner considered and appraised all the evidence before it to justify its decision. *State ex rel. Sigler v. Lubrizol Corp.*, 136 Ohio St.3d 298, 2013-Ohio-3686, 995 N.E.2d 204, ¶ 15.

The court must also consider whether the order (1) is supported by reliable, probative, and substantial evidence and (2) is in accordance with law. "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. "Substantial" evidence is evidence with some weight; it must

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have importance and value. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St.3d 570, 589 N.E.2d 1303 (1992).

To the extent the ODA's decision is based upon the ODA's construction of a state or federal constitution or statute, this court must undertake review of the construction independently. *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 613 N.E.2d 591 (1993).

Wildlife Shelter Permit Process

"A person that possesses a registered dangerous wild animal in this state on October 1, 2013, that wishes to continue to possess the dangerous wild animal on and after January 1, 2014 * * * shall apply for a wildlife shelter permit * * *." R.C. 935.05. The application must include:

"(1) [t]he name, date of birth, address, social security number, and federal employer identification number, if applicable, of the applicant; (2) [i]f different from the information [given above], the name and address of the location where each dangerous wild animal will be confined; (3) [a] description of each dangerous wild animal, including the scientific and common names, the name that the applicant has given the animal, the animal's sex, age, color, and weight, and any distinguishing marks or coloration that would aid in the identification of the

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animal; (4) [t]he identification number of the microchip that is implanted in each dangerous wild animal and the frequency of the passive integrated transponder contained in the microchip as required in section 935.04 of the Revised Code; (5) [p]roof of financial responsibility as required in division (D) of this section; (6) [e]xcept as otherwise provided in this section, proof that the applicant has at least two years of experience in the care of the species of dangerous wild animal or animals that are the subject of the application. If an applicant cannot provide such proof, the applicant shall pass a written examination regarding the care of dangerous wild animals that is established and administered in accordance with rules; (7) [a] plan of action to be undertaken if a dangerous wild animal escapes; (8) [p]roof that the applicant has established a veterinarian-client relationship as described in section 4741.04 of the Revised Code with regard to each dangerous wild animal; [and] (9) [a]ny additional information required in rules. R.C. 935.05(B)(1)-(9).

Even though the ODA has some discretion under R.C. 935.06(A)(1)-(10), it is the policy of the ODA to issue a wildlife shelter permit when all the paperwork described above has been filed. Record of Proceedings, Record #7, p. 131.

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The permit holder must file for annual renewals not “later than the first day of December of each year * * *.” R.C. 935.06(D). There is no explicit statutory procedure or penalty applicable to a person who possessed a DWA on October 1, 2013, and failed to apply for a permit. See, for example, R.C. 935.99, which provides for criminal penalties for violations of other portions of the Act.

Statutory Construction of R.C. Chapter 935

The ODA’s primary basis for denying Mr. Hetrick’s application for a wildlife permit is that Mr. Hetrick possessed his DWA without a wildlife permit. The second basis was Mr. Hetrick’s failure to microchip several of his DWA when the process of microchipping could have imperiled the animals’ health.

There is no factual dispute. It is the ODA’s position that, as a matter of construction, R.C. Chapter 935 forever bars any Ohioan who owned dangerous wild animals on October 1, 2013, but failed to file an application for a wildlife shelter permit before December 31, 2013, from obtaining a wildlife shelter permit.

It is further the ODA’s position that, as a matter of construction, R.C. Chapter 935 bars any Ohioan who possesses dangerous wild animals, and who fails to microchip the animals for any reason, whatsoever, from obtaining a wildlife shelter permit.

This court must give due deference to the ODA’s resolution of evidentiary conflicts, but the ODA’s resolution is not conclusive. *Haj-Hamed v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 06AP-351, 2007-Ohio-2521, ¶ 16. But in

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this case, this court is obligated to construe the law on its own to determine whether the ODA's decision is in accordance with the law. *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 613 N.E.2d 591 (1993).

R.C. 935.05(A) states, "A person that possesses a registered dangerous wild animal in this state on October 1, 2013, that wishes to continue to possess the dangerous wild animal on and after January 1, 2014, and that does not intend to propagate the animal shall apply for a wildlife shelter permit under this section." Yes, Mr. Hetrick possessed registered DWA in Ohio on October 1, 2013. Yes, Mr. Hetrick wishes to continue to possess the DWA on and after January 1, 2014. And yes, Mr. Hetrick applied for a wildlife shelter permit.

R.C. 935.99 provides for criminal offenses for various violations of the Act:

(A) Whoever violates division (A), (B), (C), (E), (F), or (G) of section 935.18 of the Revised Code [prohibition on the sale or auction of animals] is guilty of a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(B) Whoever violates division (D) of section 935.18 of the Revised Code is guilty of a felony of the fifth degree.

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(C) Whoever violates division (C) of section 935.29 of the Revised Code [violation of a local ordinance governing DWA] is guilty of a minor misdemeanor. Each day of continued violation constitutes a separate offense.

Nowhere does possession of DWA without a permit constitute a criminal offense.

At any time from January 1, 2014, to March 23, 2015, Director Daniels could have sought to enjoin Mr. Hetrick from possessing his DWA without a permit. R.C. 935.24(A) provides that “[t]he attorney general, upon request of the director of agriculture, shall bring an action for injunction against any person who has violated, is violating, or is threatening to violate this chapter or rules.” This section also provides for the assessment of civil penalties against the violator. Director Daniels did not opt for this course of action.

Director Daniels, immediately after January 1, 2014, shall cause an investigation to be conducted if he has reason to believe that a DWA is possessed by a person who has not been issued a wildlife shelter permit. R.C. 935.20(A)(1). For purposes of the investigation, Director Daniels *may* order the transfer of the animals to another facility. R.C. 935.20(A). There is nothing in the administrative record indicating when Director Daniels commenced the ODA’s investigation of Mr. Hetrick’s possession of DWA. But, pursuant to Director Daniels’s investigation, the ODA confiscated Mr. Hetrick’s animals on January 28, 2015, without notice.

The court finds there is no statutory authority for the proposition that a person who possessed registered DWA in Ohio on October 1, 2013, and who failed to

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apply for a wildlife shelter permit before January 1, 2014, is barred from applying for and receiving a wildlife shelter permit.

The second basis for denying Mr. Hetrick's application for a wildlife shelter permit is his failure to microchip several of his DWA. Mr. Hetrick registered his DWA pursuant to R.C. 935.04(A). R.C. 935.04(D) states, "A person that registers a dangerous wild animal under this section shall have permanently implanted in the dangerous wild animal a microchip at the time of registration." This is an unconditional obligation.

Dr. Carstensen determined that the process of microchipping several of Mr. Hetrick's animals could be dangerous to their health. The veterinary staff of the ODA could have worked with Dr. Carstensen to determine whether there was a procedure for microchipping the animals that would be less threatening to their health. The ODA could have investigated the medical hazards of microchipping animals with fragile health and sought an appropriate legislative solution to this problem. They did neither.

Instead the ODA denied Mr. Hetrick's application for a wildlife shelter permit on the basis that Mr. Hetrick failed to take a course of action that would have imperiled the health of his animals.

It is the ODA's policy to issue a wildlife shelter permit when all the paperwork described in R.C. 935.06(A)(1)-(10) has been filed. Record of Proceedings, Record #7, p. 131. The ODA "is and has been committed to working with Ohio's

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dangerous wild animal owners.” Record of Proceedings, Record #28, p. 848. Therefore, denial of Mr. Hetrick’s application for a wildlife shelter permit due to his failure to microchip several of his animals for medical reasons was unlawful.

Due Process and Equal Protection

Assuming that R.C. Chapter 935 gives the ODA the discretion to deny a wildlife shelter permit to a person who owned DWA on October 1, 2013, failed to apply for a wildlife shelter permit before January 1, 2014, and subsequently filed a complete application for a wildlife shelter permit, the issue is then whether the ODA’s denial of Mr. Hetrick’s application and the attendant confiscation of his animals deprived Mr. Hetrick of due process and equal protection of the law.

A statute, while constitutional on its face can, as applied to a particular set of facts, be unconstitutional. *Ruble v. Ream*, Fourth Dist. Washington No. 03CA14, 2003–Ohio–5969, ¶ 17, citing *Belden v. Union Cent. Life Ins. Co.*, 143 Ohio St. 329, 55 N.E.2d 629 (1944), paragraph four of the syllabus. “A statute may be unconstitutional as applied if the government selectively enforces it in violation of equal protection rights.” *State v. Sturbois*, Fourth Dist. Athens No. 09CA12 & 09CA13, 2010–Ohio–2492, ¶ 23. In *Yick Wo v. Hopkins*, 118 U.S. 356, 373–374, 6 S.Ct. 1064, 30 L.Ed. 220 (1886), the Supreme Court explained:

[t]hough the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as

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practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

Some element of purposeful or intentional discrimination must be shown. *Snowden v. Hughes*, 321 U.S. 1, 8-9, 64 S.Ct. 397, 88 L.Ed. 497 (1944).

State laws must be applicable to all persons under like circumstances and not subject people to an arbitrary exercise of power. *Conley v. Shearer*, 64 Ohio St.3d 284, 288, 595 N.E.2d 862 (1992). *And see Fagan v. Boggs*, Fourth Dist. Washington No. 10CA17, 2011-Ohio-5884, ¶ 21-24.

This court finds that all persons under like circumstances are all Ohioans who owned DWA on October 1, 2013, and applied for wildlife shelter permits in order to retain possession of their animals. The court also finds that Ohioans who own DWA have a protected property interest in their animals. *State v. Cowen*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 846, ¶ 9.

First, the ODA granted some permit applications filed after January 1, 2014, but denied Mr. Hetrick's. See Appendix C, Consideration of Late Wildlife Shelter Permit Applicants. The ODA stated in February 2014 that it was trying to work with all owners of DWA to get them in compliance with the law. Record of Proceedings, Record #36, p. 876-878. As late as October 17, 2014, the ODA is on record as being committed to working with Ohio's DWA owners to bring them into compliance with the law. Record of Proceedings, Record #28, p. 848-850.

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Second, the ODA made several material misrepresentations to this court on January 28, 2014, when it sought the warrant to search Mr. Hetrick's facility. The ODA represented to this court that Mr. Hetrick kept his animals in small, cramped areas when they were in cages at least twice the required square footage. See Transcript of the Warrant to Search Proceedings, January 28, 2015, p. 8; and Appendix B. The ODA represented to this court that Mr. Hetrick had not cooperated "from day one" when he had registered his animals, filed for the wildlife shelter permit, and permitted the ODA to inspect his facility and animals on November 7, 2014. See Transcript of the Warrant to Search Proceedings, January 28, 2015, p. 9.

The ODA materially distorted the findings from its November 7, 2014 inspection. "Fresh water available to the animals" became "green-colored with debris present." Fresh-smelling meat became meat with a "pungent odor" indicating it was "spoiled." Some easy fixes to bring Mr. Hetrick's facility into regulatory compliance became "significant safety concerns regarding the construction of [the] facility and [the] ability to prevent the escape of [the] animals." See Appendix B.

What Mr. Hetrick thought was a routine inspection by the ODA on November 7, 2014, was, in reality, a scouting expedition so the ODA could be prepared to seize and confiscate Mr. Hetrick's animals on January 28, 2015.

From one ODA employee's observation, Dr. Simmerman never intended to give Mr. Hetrick a chance. She treated his rescue facility application as a joke and never intended to give it a fair review. Proceedings before Hearing Examiner Andrew Cooke, May 11, 2015, p. 105-106.

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It is beyond cavil that the ODA worked hand-in-hand with most DWA owners to help them obtain wildlife shelter permits and bring their animal holding facilities up to code. Several wildlife shelter permits were granted after the December 31, 2013 deadline. Many animal holding facilities were not in compliance with regulations for up to a year or longer after their wildlife shelter permits had been granted. But the ODA looked at Mr. Hetrick with “an evil eye and an unequal hand.”

The court finds that ODA purposefully and intentionally discriminated against Mr. Hetrick when it denied his wildlife shelter permit application.

This court has considered the entire record in this case and the additional evidence admitted before the court.

IT IS ORDERED that the order of David T. Daniels, Director of the Ohio Department of Agriculture, dated August 7, 2015, denying Appellant Kenneth Hetrick’s wildlife shelter permit is vacated.

IT IS ORDERED that David T. Daniels, Director of the Ohio Department of Agriculture, shall issue Appellant Kenneth Hetrick a wildlife shelter permit for 2016.

IT IS ORDERED that Appellant Kenneth Hetrick shall have 30 days from the filing of this order to file his application for a renewal of his wildlife shelter permit for 2017.

IT IS ORDERED that David T. Daniels, Director of the Ohio Department of Agriculture, shall return all of Appellant Kenneth Hetrick’s dangerous wild animals to Appellant before 5:00 p.m. on Tuesday, November 29, 2016.

IT IS ORDERED that the Ohio Department of Agriculture is responsible for all costs incurred in the care, confinement, and transportation of Appellant Kenneth Hetrick's dangerous wild animals from January 28, 2015, until the date they are returned to Mr. Hetrick's possession.

Cost of this action are charged to the appellee.

**Judgment for court costs
rendered to Wood County**

11/21/16
Date



Judge Reeve Kelsey

Clerk to furnish copy to counsel of
record and unrepresented parties

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**APPENDIX A
INSPECTION OF WILDLIFE SHELTERS**

Cyril Vierstra	New Applicant: Wildlife Shelter Permit	Filed December 20, 2013; permit granted February 12, 2014; routine inspection November 6, 2014 (violations found); re-inspection December 17, 2014 (violations found); re-inspection January 30, 2015 ("All previous violations corrected.")	Primary enclosure for Spider Monkeys is constructed of 12 gauge chain link fence (at least 9 gauge required). Primary enclosure for Spider Monkeys is 36 sq. ft. With 6 ft. high roof. (64 sq. ft. is minimum).	Record of Proceedings, Record #7, p. 166-167; Record of Proceedings, Record #33; Proceedings before this Court, February 4, 2016, p. 26-30; Exhibit WW.
John A. Chua	New Applicant: Wildlife Shelter Permit	Filed December 30, 2013; permit granted June 19, 2014; routine inspection October 6, 2014 (violations found); re-inspection December 24, 2014 ("All previous violations corrected.")	Window on primary enclosure (house) is cracked on both layers and repaired with tape. Needs to be replaced and/or re-enforced. No signage on property entrance. No signage on primary enclosure.	Proceedings before this Court, February 4, 2016, p. 31-33; Exhibit TT2.
Jeffrey L. Fitzgerald	New Applicant: Wildlife Shelter Permit	Filed December 31, 2013; permit granted September 10, 2014; routine inspection September 9, 2014 (violations found); re-inspection December 12, 2014 (violations found); second re-	Fencing not secured on outside of primary enclosure posts. Primary enclosure roof is not contiguous. Primary enclosure posts are less than 3" diameter steel.	Proceedings before this Court, February 4, 2016, p. 33-37; Exhibit TT3.

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		inspection in 2015; facility still non-compliant		
Javier C. Perez	New Applicant: Wildlife Shelter Permit	Filed November 20, 2013; permit granted March 4, 2014; routine inspection July 23, 2014 (violations found); re-inspection September 5, 2014 ("All violations corrected.")	Primary enclosure has no secondary enclosure. Enclosure not equipped with a safety entrance. No signs posted on premises. Primary enclosure is not roofed.	Proceedings before this Court, February 4, 2016, p. 37-40; Exhibit TT4.
Janice Post	New Applicant: Wildlife Shelter Permit	Filed December 30, 2013; permit granted March 13, 2014; routine inspection November 1, 2014 (violations found); re-inspection November 13, 2014 ("All previous violations corrected.")	Corner of secondary enclosure comes in contact with corner of primary enclosure. Inappropriate signage on property entrance. No signage on primary enclosure.	Proceedings before this Court, February 4, 2016, p. 40-41; Exhibit TT5.
Troy Fish & Game	New Applicant: Wildlife Shelter Permit	Filed December 27, 2013; permit granted August 7, 2014; routine inspection September 29, 2014 (violations found); re-inspection December 29, 2014 ("All previous violations corrected.")	Chain link fence is not secured on the inside of the primary enclosure posts.	Proceedings before this Court, February 4, 2016, p. 41-43; Exhibit TT6.
Autumn Skoczen	New Applicant: Wildlife Shelter Permit	Filed December 23, 2013; permit granted April 4, 2014; routine inspection December 15, 2014 (violations found); re-inspection December 29, 2014 (violations found);	Primary enclosure roof is not of suitable strength to contain the animal within. Secondary enclosure is less than 8' in both distance from primary and height from ground.	Proceedings before this Court, February 4, 2016, p. 44-46; Exhibit VV1.

		second re-inspection unknown.	Primary enclosure is constructed of chain link fencing smaller than 12 gauge.	
Cinda Bame	New Applicant: Wildlife Shelter Permit	Filed December 30, 2013; permit granted February 14, 2014; attempted inspection September 17, 2014; re-inspection November 19, 2014 (violations found); re-inspection violations found; subsequent re-inspection unknown.	The height of the secondary enclosure is less than eight feet in some places. The primary enclosure's area is considerably less than six hundred square feet.	Proceedings before this Court, February 4, 2016, p. 46-50; Exhibit VV2.
Teresa Bullock	New Applicant: Wildlife Shelter Permit	Filed December 16, 2013; permit granted March 27, 2014; routine inspection October 6, 2014 (violations found); re-inspection November 7, 2014 ("All previous violations have been corrected. No violations remain.")	Locking mechanism on chute from primary enclosure to enrichment area is not of suitable strength.	Proceedings before this Court, February 4, 2016, p. 50-51; Exhibit VV4.
Amy Workman	New Applicant: Wildlife Shelter Permit	Filed January 6, 2014; permit granted April 4, 2014; routine inspection September 18, 2014 (violations found); re-inspection November 3, 2014 (violations found); re-inspection November 18, 2014 ("All previous violations have been corrected. No violations remain.")	Exposed fiberglass insulation in the primary enclosure causes a potential safety hazard to the DWA contained within. Window coverings in primary enclosure are not equivalent in strength / security to 9 gauge wire mesh.	Proceedings before this Court, February 4, 2016, p. 51-53; Exhibit VV5.

**APPENDIX B
COMPARISON OF INSPECTION REPORTS**

<p>Letter from Mehek M. Cooke, Chief Legal Counsel for the ODA, January 22, 2015, proposing to deny Mr. Hetrick's application for a rescue facility permit. Exhibit A to the Notice of Appeal in 2015 CV 446.</p>	<p>Testimony of Dominic D'Urso, ODA's dangerous wild animal inspector. Proceedings before Hearing Examiner Andrew Cooke, May 11, 2015</p>
<p>"[T]he Department has significant safety concerns regarding the construction of your facility and your ability to prevent the escape of your animals."</p> <p>Multiple cages were observed to have chains and padlocks disengaged/unlocked.</p> <p>The chain link fencing on all but two enclosures is secured on the outside of the fence posts instead of inside the posts.</p> <p>"The hinge pins on many of the gates were installed in the same direction allowing for the gates to be lifted easily * * *"</p> <p>Tigers could stand on top of housing units and jump out of cages.</p> <p>The enclosure with a black leopard and a tiger does not have a full primary fence, a full secondary fence, a security entrance, or a roof. Cantilever fencing was not continuous, not completely electrified, and not at a 45 degree angle.</p> <p>All secondary enclosures were located four feet or closer to the nearest primary enclosure.</p>	<p>"Most of the enclosures were at least twice, if not more times the minimum required square footage per animal, but some of them had inadequacies such as no roof or the chain link fencing would be on the wrong side of the post, such as things like that. * * * Those are relatively easy fixes. Switching the chain link to the other side of the post is time consuming but not that difficult, really." Proceedings before Hearing Examiner Andrew Cooke, May 11, 2015, p. 114-115.</p> <p>"I noted that some of the enclosures did not have man-made installed artificial barriers, but I did not mark that non-compliant because it says, 'includes a dig barrier unless the floor of the primary enclosure is concrete, bedrock or another impervious material appropriate for the animal in the enclosure.' And considering there was a lot of exposed bedrock and there was no evidence of any animals digging through that bedrock, I did not mark them non-compliant for that, but I noted there was not an artificial barrier." <i>Id.</i> at p. 115.</p> <p>"I did note that there was some exposed sheet-metal edges on some of the dens for the animals, which just coming from my zoo experience, we try to I guess</p>

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The department was unable to verify if the primary enclosures had dig barriers present.

The bobcat enclosure did not contain a shift cage.

kind of make our enclosures somewhat like padded rooms, you know, try not to allow them ever get hurt on anything, but I didn't see any wounds on any animals from such edges, but I did note it. * * * It's an easy fix * * *." *Id.* at p. 116.

"I noted that some of the secondary enclosures were less than eight feet away from the primary enclosures. * * * It was not a safety concern to me but it was a concern with what the way it fell in regards to the code. * * * [T]hey were the right height, they were just closer than recommended by our law. * * * [The reason for the secondary enclosure is] [t]o act as a second barrier in case there were ever an escape of an animal and also to protect the animal from the public and the public from their own curiosity." *Id.* at p. 117.

"* * * I noted that the single male tiger Obey by himself had over four times the minimum square footage for the enclosure. I noted that that same tiger, Obey's enclosure was strong enough but the tiger could potentially jump from the top of the shelter to reach the top of the cage. * * * That's an easy fix." *Id.* at p. 118.

"I marked that some of the cantilever fencing was 45 degrees at some points, which is what the law requires, but at some points it was also vertical, so there was an issue with the cantilever fencing not actually meeting up to the way I interpreted the regulations. * * * It is definitely fixable, yeah. I did mark that one animal did not have a shift cage, but I believe that animal was not required to have one anyway. I marked

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	<p>that the cantilever fencing on the enclosure up against the house that included a tiger and a leopard, I marked that the cantilever fencing was not continuous, not completely electrified, and not at the correct angle from the vertical." <i>Id.</i> at p. 124-125.</p> <p>These items could be fixed.</p>
<p>"The water receptacles had obvious green-colored water with debris present."</p>	<p>"I noted there was some muddy standing water, which would kind of coincide with the type of year it was and the fact that there was very minimal draining due to the bedrock underneath. I did note that some of the animals, their water buckets had some grime built up on the inside of the bucket but the water looked fresh and I marked that the water was green and dirty in their enrichment pools, but I don't consider that a primary water receptacle since it's enrichment and there was fresh water available to the animals." <i>Id.</i> at p. 118-119.</p>
<p>"Meat provided to the animals during the visit which was pulled directly from the refrigeration unit had an obvious pungent odor present indicating it was spoiled."</p>	<p>"I remember seeing a lot of horse meat in there in five-gallon buckets. * * * It had an odor. It smelled like meat. Yes, it smelled like meat. It smelled like a butcher shop. * * * It did not smell spoiled." <i>Id.</i> at p. 112-113.</p>
<p>"The roofs of the shelters in many cages consisted of tin sheets with exposed sharp edges which could cause harm to animals brushing up against them."</p> <p>"There were also electrical outlets and cords connected to the enclosures in such a way that the animals within could pull the cords out and harm themselves."</p>	<p>"Once again, I noted exposed edges of sheet-metal on a shelter roof." <i>Id.</i> at p. 118.</p>

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The male lion, "Leo," was observed to be ataxic. This condition is possibly due to medical or nutritional problems.

"I noted that the overall psychological stability of the animals was good. Most of them were in good health except for Leo the lion. He was geriatric, later in life. He had hock sores and sores on his hips * * *." *Id.* at p. 113-114.

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**APPENDIX C
CONSIDERATION OF LATE WILDLIFE SHELTER PERMIT APPLICANTS**

Barbara Ann Korn	New Applicant: Wildlife Shelter Permit	Filed March 30, 2014; application supplemented April 14, 2014; permit granted June 19, 2014; routine inspection September 19, 2014.	Record of Proceedings, Record #7, p. 184-185; Record of Proceedings, Record #22, p. 772-792.
Robert M. Beals	Applicant: Wildlife Shelter Permit	Filed March 29, 2014; permit granted June 20, 2014; routine inspection September 26, 2014 (violations found); re-inspection October 30, 2014 ("All previous violations have been corrected.")	Record of Proceedings, Record #7, p. 185-186; Record of Proceedings, Record #22, p. 793-808.
Pamela J. White	New Applicant: Wildlife Shelter Permit	Filed April 7, 2014; permit granted April 18, 2014; routine inspection September 23, 2014 (violations found); re-inspection October 7, 2014 ("All previous violations have been corrected. No violations found.")	Record of Proceedings, Record #7, p. 186-187; Record of Proceedings, Record #22, p. 809-829.
Michael Stapleton	New Applicant: Wildlife Shelter Permit	Filed March 21, 2014; found to be incomplete and returned April 22, 2015.	Record of Proceedings, Record #7, p. 170-174; Record of Proceedings, Record #37, p. 879-880.

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