

January 24, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V18008820**

STEVE SPRINGMEYER

Animal Services Enforcement Appeal

Activity no.: A18005478

Appellants: **Steve and Dominique Springmeyer**
3026 127th Avenue NE
Bellevue, WA 98005
Telephone: (425) 882-7752
Email: dospring@hotmail.com

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
21615 64th Avenue S
Kent, WA 98032
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Grant appeal in part, deny appeal in part

EXAMINER PROCEEDINGS:

Hearing Opened:	January 9, 2019
Hearing Closed:	January 9, 2019

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice on Steve Springmeyer, asserting that two of his dogs, Winky and Lucy, were running-at-large when they accosted neighbor Joyce McIntyre and her leashed dog Tank, and that Lucy then attacked and injured Tank. Mr. Springmeyer did not appeal the running-at-large violations, but did appeal Lucy's viciousness designation. Although Lucy injured Tank and would qualify as a "potentially dangerous dog" under the state's classification, by the narrowest margin we conclude that Lucy does not qualify under the County's "viciousness" classification.

Background

2. Many of the facts are not in dispute. On October 27, Ms. McIntyre was walking her dog, Tank, on a leash on the opposite side of the street from the Springmeyer house. Mr. Springmeyer came out of the house and walked his three dogs, also leashed, to his car. After Lucy got in the car, Mr. Springmeyer removed her leash.
3. There is some dispute as to which of the two small Springmeyer dogs (pictured in Exhibit 8) instigated the altercation. Ms. McIntyre said the grey dog charged across the street at them, while the small white one stayed in the car. The gray one was identified at hearing as Dess, with the small white one as Winky. Mr. Springmeyer testified that it was definitely Winky who instigated things, while Dess stayed in the car. Animal Services cited Winky, not Dess, for running-at-large. Ms. McIntyre appears to have misremembered which of Mr. Springmeyer's small dogs was the instigator.
4. As Mr. Springmeyer was getting Winky into the car, Winky spotted Tank and bolted; his leash slipped out of Mr. Springmeyer's hand. Winky stopped a few feet from Ms. McIntyre and Tank. Ms. McIntyre described Winky barking and scaring her and Tank, but not anything further. Events went south, however, after Mr. Springmeyer grabbed Dess and left the car area to retrieve Winky. This allowed Lucy to exit the vehicle and run across the street.
5. According to Ms. McIntyre, Lucy came at Tank, jumped on him, and started biting at his face and neck. Mr. Springmeyer had a different version: Lucy and Tank each assumed dominant stances, and snarled and barked at each other, but Lucy did not bite Tank. Ms. McIntyre testified that she pulled Lucy off Tank. Mr. Springmeyer did not recall Ms. McIntyre grabbing Lucy, although he acknowledged he first focused on corralling

Winky. Mr. Springmeyer thought he was the first to grab Lucy. In any event, he was able to pull Lucy away from the scene. It all happened in a few seconds.

6. After the dogs were separated, Ms. McIntyre and Mr. Springmeyer both checked Tank and agreed they saw no physical sign of injuries. However, after Mr. Springmeyer had driven off with his dogs and Ms. McIntyre had walked Tank a couple blocks, she noticed a few drops of blood on Tank's right eye. By that night, the eye was half-swollen and drooping. Ms. McIntyre took Tank to the vet, who examined Tank and found, "No obvious facial wounds," but diagnosed "Dog bite—wound, Corneal abrasion," which she estimated at 1–2 mm. Ex. 4.
7. Animal Services issued a violation notice citing Winky and Tank for running-at-large and declaring Lucy vicious. Ex. 6. Mr. Springmeyer timely appealed, challenging the viciousness designation but not the running-at-large violations.

Analysis

8. Unless directed to by law—and no special directive applies to today's case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears "the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed." KCC 20.22.080.G; .210.
9. The code allegedly violated, KCC 11.04.230.H, deems a nuisance:

Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises.

And KCC 11.04.020.BB defines "vicious" as:

having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.
10. It is not coincidental that this is the last decision we have written on our latest rounds of hearings, nor that we are issuing it at the end of the final afternoon of the last day of our 10-business-day clock. Even though there is no question that Lucy caused Tank's injury, this case is really close to the line. It was the rare case where we left the hearing room unsure which way we would rule, and the even rarer case where despite mulling it over for the last two weeks, no clear answer crystallized.
11. Ours would be an easy call were we operating under the state's default system, with its two designations. While the state's "dangerous dog" classification is stricter than the

county’s “viciousness” standard and not relevant here,¹ the state’s “potentially dangerous dog” standard is easier to meet than the county’s “viciousness” standard. A “potentially dangerous dog” designation, RCW 16.08.070(1), covers:

any dog that when unprovoked: (a) [i]nfllicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or [(c)] any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

Lucy approached Ms. McIntyre in a menacing fashion and apparent attitude of attack, attacked Tank (as the term “attack” is commonly used in animal jurisprudence), and caused him injury. Lucy would qualify as a “potentially dangerous dog.” Yet that is not the classification system the county uses. Lucy is either “vicious” or she is nothing.

12. “Attack” in animal parlance typically something *less* than an actual bite. *See, e.g., Matter of Brooks v. Hemingway*, 107 Misc. 2d 190, 192, 433 N.Y.S.2d 551 (1980) (an “attack need not culminate in the ultimate hostile contact...the bite”); *Matter of LaBorie v. Habes*, 52 Misc.2d 768, 679, 277 N.Y.S.2d 70 (1967) (“Actual biting is unnecessary to an ‘attack’”). Yet there is something nonstandard about our code. Read in the usual dog jurisprudence context, where an attack means something less than an actual bite, “biting a human being or attacking a human being or domesticated animal without provocation” is nonsensical. A dog merely “attacking” another animal qualifies as “vicious,” while the dog actually “biting” that other animal does not? That equates to saying attempted battery is a crime while actual battery is not. Our code only has internal cohesion if the drafters meant “attack” as something *more* violent than just a bite.
13. Putting it all together, the case is a close one. The veterinarian’s notes are somewhat inconclusive; she diagnosed “Dog bite—wound, Corneal abrasion,” but also “No obvious facial wounds.” If Lucy bit Tank’s eye, would that not have been an obvious facial wound? Although we found Ms. McIntyre generally more credible than Mr. Springmeyer, she misidentified one of the two dogs involved in the incident, which gives us some pause. Finally, we have a code where “attack” seems to be setting a higher standard than the common use of that term in animal jurisprudence.
14. In the end, we remain stuck at the tipping point, without a firm and definitive conclusion. If Mr. Springmeyer bore the burden of proof of showing that Animal Services’ designation was incorrect, that would be fatal to his appeal. Yet because Animal Services bears the burden of proof and cannot quite meet it, we grant his appeal.

¹ A “dangerous” dog designation kicks in when the dog “kills a domestic animal” or “inflicts severe injury on a human being,” with “severe injury” being one resulting in “broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.” RCW 16.08.070(2)–(3).

DECISION:

1. Mr. Springmeyer’s appeal of Lucy’s viciousness designation is GRANTED.
2. Mr. Springmeyer shall pay the remaining \$100 for the running-at-large violations to Animal Services by **March 25, 2019**.

ORDERED January 24, 2019.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *February 25, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

MINUTES OF THE JANUARY 9, 2019, HEARING IN THE APPEAL OF STEVE SPRINGMEYER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18008820

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Chelsea Eykel, Joyce McIntyre, Steve Springmeyer, and Dominique Springmeyer.

The following exhibits were offered and entered into the record:

- | | |
|---------------|--|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. 2 | Online complaint form of October 27, 2018 incident by Joyce McIntyre, dated October 30, 2018 |
| Exhibit no. 3 | RASKC investigation report no. A18005478 |
| Exhibit no. 4 | Seattle Veterinary Specialists/BluePearl medical record of Tank, dated October 28, 2018 |
| Exhibit no. 5 | Aerial photograph of neighborhood and photographs of property |
| Exhibit no. 6 | Notice of violation no. V18008820, issued November 7, 2018 |
| Exhibit no. 7 | Appeal, received November 24, 2018 |
| Exhibit no. 8 | Photograph of dogs |

DS/ld

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008820**

STEVE SPRINGMEYER
Animal Services Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 24, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Eykel, Chelsea

Regional Animal Services of King County

McIntyre, Joyce

Hardcopy

Springmeyer, Steve/Dominique

Hardcopy