

March 11, 2020

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

King County Courthouse  
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Seattle, Washington 98104  
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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19010071**

**PATRICK ROTH**

Animal Services Enforcement Appeal

Activity no.: A19007872

Appellant: **Patrick Roth**

Black Diamond, WA 98010

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County  
*represented by Shelby Russell*  
Regional Animal Services of King County  
21615 64th Avenue S  
Kent, WA 98032  
Telephone: (206) 263-5968  
Email: [raskcappeals@kingcounty.gov](mailto:raskcappeals@kingcounty.gov)

**RECOMMENDATIONS/DECISION:**

Department's Recommendation:

Deny appeal

Examiner's Decision:

Deny appeal

**FINDINGS AND CONCLUSIONS:**

1. Animal Services cited Patrick Roth for his Great Danes, Alex and Dazzle, trespassing, running at large, and—in the Dazzle's case—being vicious. Mr. Roth belatedly appealed.

2. Animal Services moved to dismiss the appeal as untimely. Mr. Roth challenged the sufficiency of the service. At the time of our January 29 motion hearing, Animal Services had not produced sufficient proof that the notice was posted “on the front door of the living unit of the owner or person with right to control the animal if the owner or person is not home.” KCC 11.04.260.D.3. Thus, we denied Animal Services motion to dismiss. Animal Services later submitted legible proof showing that service was properly posted and thus that dismissal for untimeliness would have been warranted. Ex. 2 at 002, 005. *See also In re Marriage of McLean*, 132 Wn.2d 301, 306-309, 937 P.2d 602 (1997) (“due process does not require proof of actual receipt of the mail by the addressee,” and if the legislature “had intended to require evidence of actual delivery, it could have said so expressly”). We still provided Mr. Roth with his day in court.
3. At our February 26 hearing on the merits, Thomas Barrett testified that he has seen Dazzle and Alex running loose—either on the street or on the Barrett property—approximately a half dozen times. He recalled an incident when he walked them back to Mr. Roth’s after they escaped. (Exhibit 10 is a picture from that day.) He chatted then with Mr. Roth about the hole in Mr. Roth’s fence that had allowed the dogs to escape. Mr. Roth told him that he would fix it. That was August.
4. The fence was not fixed on November 2. On that day, Mr. Barrett was on his roof, cleaning off moss, while his wife and family dog were on ground-level, with their dog leashed to their car. Mr. Barrett’s attention was drawn from the roof when heard kids screaming at Dazzle and Alex. (He was quick to point out that the dogs were not actually threatening the kids, only that the kids were scared by their presence.)
5. Mr. Barrett explained that when Dazzle and Alex first came onto his property on that day they just sniffed his dog. But then Dazzle bit his dog on the ear and on the throat, before his wife could finish dragging it to safety. Exhibit 7 shows the bites.
6. Mr. Barrett does have cameras on his property, but they were not pointed in the direction of the attack. Mr. Barrett produced a picture he received from another neighbor showing the Roth dogs in the street on November 11. Ex. 14. Mr. Barrett has not seen the dogs loose since.
7. Mr. Roth asserted that it was all hearsay, and that the original investigating officer said she would be issuing a warning. He believed the Barretts pressured the officer to serve an actual violation. His dogs are not vicious, and he has since fixed the fence. He came back to his theme that he was told he would get a verbal warning and that the Barretts must have pressured the officer and adding that because a different officer issued the violation notice, we should dismiss the appeal.
8. 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. The main question we address is today is whether Animal Services has proven that Dazzle qualifies as “vicious,” namely that Dazzle:

performed the act of...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

and “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.” KCC 11.04.020.BB; .230.H.

9. Mr. Roth did not focus much of his defense—either in his appeal statement or at hearing—on the altercation itself or whether that met the legal standard for a viciousness designation. Ex. 4. Instead, he fixated on the Animal Services investigator apparently telling him initially that he would only get a warning. Even accepting that Mr. Roth heard correctly, and that Animal Services initially seemed willing to let a bite to the throat slide, that does not change our analysis. Our hearings are *de novo* (“anew”). We give Animal Service’s determinations no deference, and Animal Services bears the burden of proof. The flipside of us not giving Animal Services’ determinations deference is that what Animal Services said or did or thought or knew prior to issuing a notice, or whether there could have been a different avenue for addressing an issue, usually is not relevant.
10. In the past we have chided Animal Services for what seemed like an overreach, such as when two dogs have been involved in an unprovoked attack on another dog or a person, and Animal Services designates both dogs as vicious, even when the evidence shows that only one dog did the actual biting. In such instances we have uniformly reversed the designation against the non-violent dog, ruling that mere aggressiveness and proximity are insufficient and that there is no guilt by association.
11. Conversely, here Animal Services paid attention to the nuance. It properly gave Alex only a viciousness warning, not an actual viciousness designation, as only Dazzle bit the Barrett dog. Animal Services also held back and only issued a warning for running-in-packs, even though on November 2 Alex and Dazzle were “a group of two or more animals running upon either public or private property not that of its owner...and...not restrained or controlled.” KCC 11.04.020.R, .230.O.
12. Mr. Roth’s other main point was that he believes Animal Services’ case is all hearsay. Hearsay generally is a statement made outside the hearing room, offered for the truth of what it asserts. Mr. Roth’s assessment was accurate at the beginning of the hearing. Indeed, almost any statement in any administrative record the agency submits to us is hearsay. But the hearsay ended when Mr. Barrett was sworn in and gave his eyewitness testimony, under oath and subject to cross-examination, about what he observed on November 2.
13. Mr. Roth did point to Mr. Barrett’s connection with the homeowners’ association, and the bad blood that exists between Mr. Roth and the homeowners’ association. Exs. 13-17. An incentive for Mr. Barrett to embellish something and get at Mr. Roth would go to Mr. Barrett’s credibility. And Animal Services’ case rises and falls largely on Mr. Barrett’s credibility.

14. We found Mr. Barrett credible. He did not try to embellish. He volunteered that Mr. Roth’s dogs were not threatening the kids. He did not assert that Dazzle and Alex charged onto his property in a terrorizing manner, but that only after they sniffed did Dazzle turn violent. He made it plain that Alex took no part in the violence. He did not exaggerate the extent of his dog’s wounds. And his testimony was consistent with the photographic evidence.
15. In the final analysis, we find Mr. Barrett’s testimony accurate. Thus, after hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, we conclude that Dazzle attacked a domesticated animal without provocation and constitutes a danger to at least the Barrett’s dog, when off the Roth property. Dazzle qualifies as “vicious” under the pertinent code standard.
16. The other two violations follow. After the dogs escaped Mr. Roth’s yard on November 2 they were “running at large,” meaning “off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control.” KCC 11.04.020.W; .230.B. And they then entered upon the Barrett’s property, without the Barretts’ permission. KCC 11.04.230.K.

## DECISION

1. We DENY Mr. Roth’s appeal.

ORDERED March 11, 2020.



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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 *April 10, 2020*. 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 FEBRUARY 26, 2020, HEARING IN THE APPEAL OF  
PATRICK ROTH, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V19010071**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russell, Thomas Barret, and Patrick Roth. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

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	Notice of violation no. V19010071, issued November 17, 2019
Exhibit no. 3	Appeal, received 12/16/2020
Exhibit no. 4	Appeal, received 2/5/2020
Exhibit no. 5	RASKC investigation report no. A1900787201
Exhibit no. 6	Online Complaint Form of 11/2/2019 by Amy Barrett on 11/2/2019
Exhibit no. 7	E-Mail from Barrett to Pets, with photographs of injury
Exhibit no. 8	E-Mail from Barrett to Pets and Goldstone
Exhibit no. 9	E-Mail from Barrett to Goldstone
Exhibit no. 10	Photograph of a dog in the street
Exhibit no. 11	E-Mail from Barrett to Goldstone
Exhibit no. 12	E-Mail from Barrett to Goldstone (11/5/2019)
Exhibit no. 13	Letter from HOA regarding Noise complaints (4/7/2016)
Exhibit no. 14	E-Mail from Barrett to Goldstone (11/13/2019)
Exhibit no. 15	Photograph of dogs at large
Exhibit no. 16	Photograph of dogs at large
Exhibit no. 17	E-Mail from Barrett to Goldstone (11/13/2019)
Exhibit no. 18	Photograph of fence
Exhibit no. 19	Photograph of Notice
Exhibit no. 20	Map of parcels

DS/JO

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19010071**

**PATRICK ROTH**  
Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 March 11, 2020.



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Jessica Oscoy  
Legislative Secretary

**Barrett, Amy**  
Hardcopy

**Roth, Patrick**  
Hardcopy

**Russell, Shelby**  
Regional Animal Services of King County