

March 11, 2020

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

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19010172**

**COLLEEN CURMI**

Animal Services Enforcement Appeal

Activity no.: A19008204

Appellant: **Colleen Curmi**

[REDACTED]  
Kirkland, WA 98033

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  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice and compliance order, designating Colleen Curmi's dog, Boyfriend, as vicious and setting out requirements for keeping him in the County. Ms. Curmi timely appealed. 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 uphold Boyfriend's viciousness designation but significantly reduce Ms. Curmi's penalty.

Testimony

2. On September 21, Ms. Curmi walked Boyfriend in Bridal Trails State Park (Park). She had him on a leash. She recognized that horses have the right-of-way, and she dutifully pulled Boyfriend to the side whenever horses passed. They made it back to the car without incident. However, as she put Boyfriend in her parked car, Boyfriend pushed past her and took off. Ms. Curmi gave chase, but Boyfriend ran much faster. It took Ms. Curmi a few minutes to catch up.
3. At that same time, Anne Wharton was in the Park's riding arena, watching her daughter riding her horse in the warm up ring. Ms. Wharton heard a commotion, and saw Boyfriend come out of woods. At first her horse was oblivious, as the daughter took him over jumps. But as Boyfriend zeroed in on her horse, the horse tried to protect himself, rearing up as Boyfriend tried to get at him. Ms. Wharton did not hear Boyfriend do any growling or snarling. Ms. Wharton started running to her daughter.
4. As she did, Ms. Wharton saw Boyfriend jump up and hit the horse's right chest area under the armpit. Recognize that her adrenaline was pumping as she scanned the scene, it appeared to Ms. Wharton that Boyfriend bit the horse and hung on for a split second. Approximately 30 people tried to catch Boyfriend and stop him.
5. Ms. Curmi arrived and was also trying to grab Boyfriend. She heard people yelling, horses whinnying, and saw Boyfriend jumping at the horse. Ms. Curmi was encouraging people to kick Boyfriend and get him out there. By Ms. Curmi's estimation, it took them about 10 to 15 minutes to catch Boyfriend. She agreed with Ms. Wharton's assessment that Boyfriend was not growling; she thinks Boyfriend was playing. She did not see Boyfriend bite the horse, and she noted that Boyfriend has never bitten before.
6. Ms. Curmi accepted responsibility, paying the \$565 vet bill. She has never taken Boyfriend back to that park or to any other place with horses. Boyfriend has been a challenge—an anxious rescue dog she has spent thousands of dollars training. She now buckles Boyfriend in every time he is in a car. Ms. Curmi has followed all the retention requirements in Animal Services' order, including moving to a spot with a secured, fenced-in backyard.
7. Ms. Curmi discussed an October 2018 incident where her roommate had taken Boyfriend to the Park. On that day, Boyfriend apparently broke loose from the extendable leash the roommate had him on and ran at a horse and rider, resulting in the rider falling off the horse and hitting her head, damaging her helmet. Ex. 13 at 003. Ms. Curmi emphasized that she was not aware of those facts until much later; if she had, she would not have taken Boyfriend back to the Park in September 2019. She noted that she does not, for example, take Boyfriend to Marymoor's off leash area because she recognizes that Boyfriend plays too rough.

### Analysis

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 question we tackle is whether Boyfriend qualifies as “vicious,” that is, whether he:
 

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

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. We start by noting that Ms. Curmi is an extremely responsible dog owner. She was doing all that she could before the incident, spending thousands training Boyfriend, and avoiding situations like Marymoor where she recognized that Boyfriend could spell trouble. On September 21, she controlled Boyfriend during their walk; it was simply an accident that Boyfriend got away from her as she put him back in the car. She chased after Boyfriend and encouraged people to kick Boyfriend to get him away from the horses. She accepted responsibility, paid the vet bill, and even moved to a place with a fenced-in yard. She has not taken Boyfriend back to the Park or to Marymoor.
10. However, a viciousness designation is not a proxy for an owner’s lack of (or exercise of) care. The focus of such a hearing is on the dog, not on the owner. Boyfriend either meets the above code language or he does not.
11. Similarly, as the code dictates, the meaning of the word “vicious” in our animal control context is broader than the word’s everyday usage—which might be “mean–spirited or deliberately hurtful; malicious.” We found Ms. Curmi credible, and her assessment that Boyfriend is a sweet dog who thought he was playing on September 21 is not only not disputed by Ms. Wharton but *seconded*; Ms. Wharton also noted that Boyfriend was not barking and growling and seemed to think it was all a game. *See also* Ex. 12 at 003. But, malice is not a prerequisite; we analyze whether Boyfriend meets the code criteria for viciousness, not whether Boyfriend is a mean dog.
12. The only real factual dispute is whether Boyfriend bit Ms. Wharton’s horse or only scratched him. We fully accept that Ms. Curmi did not see Boyfriend bite. Ms. Wharton did, although she was very measured in assessing her own testimony, noting that a bite is what it looked like to her, but recognizing that adrenaline was coursing through her at the time.
13. Reviewing the other evidence, and having reviewed hundreds of (alleged) vicious dog cases, we conclude it was a bite. While conceivable that Boyfriend’s nails could tear through horsehide, the puncture and gash marks look much more like a bite than a nail

scratch. Exs. 8-10. That was also the assessment of the veterinarian who examined the horse and concluded he suffered bite wounds. Ex. 7 at 002.

14. We note, however, that our finding that Boyfriend actually bit the horse is not critical to our determination here. The definition lists biting, but only as an *example* of what it means to perform an act “endangering the safety of any person, animal or property.” Boyfriend went at the horse without what the law would deem provocation, gashed and injured the horse with either his teeth or claws, and endangered the safety of both the horse and his rider. He constitutes a threat to the safety of persons and their property.
15. We are not unsympathetic to Ms. Curmi’s concerns that a viciousness designation could eventually lead to Boyfriend being removed from her care. The failure to comply with the terms set in Animal Services’ December 19 compliance order can lead to a dog’s removal. *See* KCC 11.04.290.A.3. But we have not interpreted that as a strict liability provision. Where a person is dutifully putting in the place all the terms of compliance and something goes wrong once, that has not resulted in removal—not unless the dog, say, escaped and bit again.
16. So, for example, one of the compliance terms requires restraining Boyfriend when Boyfriend is taken off his property, on a leash no longer than eight feet, and with a competent person handling Boyfriend at all times. If that restriction had been in place on September 21, we would not have interpreted Ms. Curmi as having failed to comply with that term: Ms. Curmi was competent to handle Boyfriend, had him on regulation leash while they walked, and was attending to him at all times. He just happened to slip past her while she was getting them both into the car to go home.
17. We have every expectation that Ms. Curmi will continue to be dutiful in meeting those compliance requirements and that Boyfriend will live out his life in King County, with Ms. Curmi. But for purposes of today, we have to decide whether Boyfriend meets the code standard listed and analyzed above. And Animal Services has met its burden of showing that Boyfriend qualifies as “vicious.”
18. We do, however, significantly reduce the penalty. Ms. Curmi is about as nonculpable an owner as we have encountered. Even on a strictly monetary basis, she voluntarily paid a vet bill costing more than the \$500 penalty that accompanies a viciousness violation. We have never outright eliminated the penalty for a violation, but we think a significant reduction, down to a \$50 penalty that is the lowest penalty assessment in Animal Services’ toolbox, KCC 11.04.035.C.1.A, is appropriate.

#### DECISION:

1. We DENY Ms. Curmi’s appeal as to Boyfriend’s a viciousness designation and his terms for compliance.
2. We REDUCE the \$500 penalty to \$50.

ORDERED March 11, 2020.



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 COLLEEN CURMI, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V19010172

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Shelby Russel, Anne Wharton, and Colleen Curmi. 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. V19010172, issued December 19, 2019                                   |
| Exhibit no. 3  | Appeal, Received January 13, 2020   |
| Exhibit no. 4  | RASKC investigation report no. A1900820401  |
| Exhibit no. 5  | Online Complaint Form of September 20, 2019 incident by Anne Wharton, dated December 18, 2019 |
| Exhibit no. 6  | Email from Aaron Siegrist, dated December 18, 2019  |
| Exhibit no. 7  | Equine Innovative Medicine veterinary bill and report, dated September 21, 2019               |
| Exhibit no. 8  | Photograph of injury  |
| Exhibit no. 9  | Photograph of injury  |
| Exhibit no. 10 | Photograph of injury  |
| Exhibit no. 11 | E-Mail from Clayton Marcheen, dated November 18, 2019   |
| Exhibit no. 12 | Park ranger report for incident no. 19090124  |
| Exhibit no. 13 | Park ranger report for incident no. 19100065  |
| Exhibit no. 14 | Map of parcel   |

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19010172**

**COLLEEN CURMI**  
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

**Curmi, Colleen**  
Hardcopy

**Michelle, Anne**  
Hardcopy

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