

August 26, 2020

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V20010811-A20012282**

DONALD UDHUS AND VALERIE KERN

Animal Services Enforcement Appeal

Activity no.: A20012282

Appellants: **Donald Udhus and Valerie Kern**

[REDACTED]
Lake Forest Park, WA 98155

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

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served a violation notice asserting that Donald Udhus and Valerie Kern's dog, Annie, was running at large. Mr. Udhus appealed. After hearing the witnesses' testimony, studying the exhibits admitted

into evidence, and considering the parties' arguments and the relevant law, we deny the appeal.

Background

2. In March 2020, Joe Wallace filed a complaint that Mr. Udhus' dog (Annie) was off leash on March 9. Ex. D9 at 001-02. He submitted pictures. Ex. D9 at 004-05. He called Animal Services again, asserting the dog was loose in the street on March 21. Exs. D6, D7. The following day, Animal Services warned Mr. Udhus about Annie running at large, but did not issue a violation notice at that time. Ex. D6.
3. On June 17, Mr. Wallace called in another complaint that the dog was again out. Later that day, Animal Services served a violation notice asserting that Annie was running at large. Ex. D3. Mr. Udhus appealed, stating that he did not believe Annie was off his property on June 17. Ex. D3. We went to hearing on August 12.
4. Mr. Wallace testified that June 17 was just one incident out of multiple where he had seen Mr. Udhus' dog out on the street and roaming the area. As to how he determined it was the Udhus dog, he noted that he had seen the dog out maybe a half dozen times this year, and that when he shoed it, it returned to the Udhus property. He has not seen it out since June 17 [the date Animal Services served its violation notice].
5. Mr. Udhus did not contest that the dog shown in the March pictures was Annie, but notes that the spot on the street she is standing is just 20 feet or so off the corner of his property. He works on his property all the time with Annie, and Annie is not out of control. He cares for his dog and would not let her run loose. When Animal Services came out in March, he had a down barrier fence, which he reinstalled the next day. He makes every attempt to be a responsible owner. The photo does not prove that Annie was not under his voice control.
6. On rebuttal, Mr. Wallace explained that the dog had come off the street and trespassed on his property on prior occasions. He submitted the March 9 photo not to show the extent of where the dog was roaming, but only to identify the dog. He has seen Mr. Udhus' fence; it is only construction-type, temporary fencing, and at one point he watched the dog slide under the fence. On June 17, Mr. Wallace was on his property when he saw the dog in the street. He did not see anyone in the vicinity or hear anyone controlling the dog. Even after he shouted, he heard no human responses to his yells.
7. Mr. Udhus contends that Animal Services has not proven the violation. He observed that Annie very well could have been under his control on June 17.

Legal Standard

8. Our role is to decide whether, on June 17, Annie was "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," with "under control" meaning "the animal is either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being

the cause of physical property damage when off a leash or off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.

9. In doing so, we do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. 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.

Analysis

10. We find that Annie was off the Udhus property on June 17. That is not the end of the inquiry; an unleashed dog off its property is not a violation if an owner or other handler has the dog under competent voice or signal control. Here, when Mr. Wallace observed the dog in the street, he did not see anyone in the vicinity (no signal control) or hear anyone actually controlling (voice control) the dog. Even after he shouted, no human was around to respond to his yells.
11. We have consistently interpreted the above code to require active, not theoretical control. Mr. Udhus was nowhere near Annie at the time Mr. Wallace observed her off her property. Animal Services has met its burden of showing that Annie was running at large on June 17, being off her property and not under competent control.
12. Mr. Wallace noted that while Annie had been loose a half-dozen times without supervision earlier in 2020, she had not been loose since Animal Services served its June 17 violation notice. So, the steps Mr. Udhus had taken in the two months leading up to our hearing appear to be helping. He will need to stay vigilant, but things seem on the right track.

DECISION:

We deny Mr. Udhus’s appeal.

ORDERED August 26, 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 *September 25, 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 AUGUST 12, 2020, HEARING IN THE APPEAL OF VALERIE KERN, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V20010811-A20012282

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Donald Udhus, Shelby Russell, and Joe Wallace. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	Notice of violation no. V20010811-A20012282, issued June 17, 2020
Exhibit no. D3	Appeal, received June 25, 2020
Exhibit no. D4	RASKC investigation report no. A20012282
Exhibit no. D5	Online Complaint form of June 17, 2020 incident by Joe Wallace, dated July 1, 2020
Exhibit no. D6	RASKC investigation report no. A20010061
Exhibit no. D7	Voicemail from Joe Wallace, March 21, 2020
Exhibit no. D8	RASKC investigation report no. A20005279
Exhibit no. D9	Complaint with photos from Joe Wallace, dated March 9, 2020
Exhibit no. D10	Map of subject area

DS/jo

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CERTIFICATE OF SERVICE

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DONALD UDHUS AND VALERIE KERN

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 August 26, 2020.



Jessica Oscoy
Office Manager

Kern, Valerie
Hardcopy

Russell, Shelby
Regional Animal Services of King County

Wallace, Joe
Hardcopy