

November 23, 2021

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. V21012195 and V21012458

SUE [REDACTED]*

Animal Services Enforcement Appeal

Activity no.: A21002762 and A21002792

Appellant: Susan [REDACTED]
represented by Scott [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Mari Isaacson
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*Appellant and her son were victims of a serious crime resulting in conviction and prison. At their request, and to ensure their anonymity and safety, we redact their identifying information and refer to them only by their first names.

FINDINGS AND CONCLUSIONS:Overview

1. Sue appeals an Animal Services of King County (Animal Services) notice of violation for her dog, Dozer, running at large, qualifying as vicious, and needing to be confined. 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 the violations and confinement order, but we significantly reduce the penalties and provide a future opportunity for removing Dozer's viciousness designation.

Background

2. Animal Services issued Sue a notice of violation. Ex. D3. Sue timely appealed. Ex. D7. On August 19, Sue notified us that she had retained counsel. We held a prehearing conference on September 21.
3. On November 2, Sue notified us that due to financial strains she would no longer be represented by an attorney. We went to hearing on November 4 with Sue's son, Scott, assisting her. We closed the record on November 8.

Hearing Testimony*Testimony of Marianne Lee*

4. Ms. Lee lives directly across Susan and Scott. On June 16, Ms. Lee and her 13-year-old daughter were walking their 14-pound dog, Chewy, on a retractable leash, kept at about five to six feet in length. Chewy was calmly walking and not barking. They heard quick footsteps coming from behind, and a 150-pound Great Dane [Dozer] passed her, grabbed Chewy by the rib cage, and started shaking him "like a rag doll." Chewy was up in the air screaming. Ms. Lee kicked Dozer and he dropped Chewy. Chewy was laying on the ground, crying and unable to move, but there was no blood.
5. Ms. Lee got in between the dogs, and Dozer began lunging repeatedly at Ms. Lee, as she pushed him back while yelling, "No!" Ms. Lee believes that even though Dozer was coming right at her, instead of around her, Dozer's primary target was Chewy, not her.
6. Ms. Lee stated that Scott came out from his home and got Dozer away. Sue also came out, crying and apologizing. Ms. Lee took Dozer to the vet and was told to watch for spinal damage. Ex. D6. Chewy was bruised. Ex. D5-004. Ms. Lee also suffered scrapes to her hands and bruises but did not seek medical care. Ex. D5-004. She attributed her scabs to burns from the leash, but the bruising to continuously pushing Dozer away. Later, she filed a complaint with Animal Services. Ex. D2.
7. Ms. Lee walks Chewy in the mornings and evenings, at least twice a day, and always on leash. Prior to the June 16 incident, she has witnessed Dozer running loose at least three times a year and has even taken him back to Sue's home. Sometimes Dozer snarls behind the window when Ms. Lee and Chewy cross in front of Sue's home.

8. Ms. Lee and Sue have been friends for over ten years. However, after the incident the relationship has been strained. Ms. Lee posted a statement on Nextdoor reflecting on the June 16 incident, but she did not include any names or mention the street name because Ms. Lee wanted to try to continue their relationship. Ex. D8.

Testimony of Steve Lee

9. Prior to June 16, Mr. Lee occasionally texted Scott when Dozer has been out loose. Mr. Lee has noticed that Dozer comes up against the fence, snarling and barking, when people walk by with their dog.
10. On June 16, Mr. Lee was visiting Sue and Scott, as they have been friends over ten years. He recalled that Dozer was not in the home that day. While visiting, they all heard continuous screaming. Scott immediately bolted out. Sue and Mr. Lee followed. Mr. Lee did not witness the incident, only the aftermath.
11. On June 18, Mr. Lee witnessed Dozer loose again and texted Scott. He has not seen Dozer since. Ex. D5-005.

Testimony of Daniel Nygaard

12. Mr. Nygaard lives around the corner from Sue. He has lived in the neighborhood for over fifteen years and is very familiar with Dozer. Mr. Nygaard has helped corral Dozer on a semi-regular basis and has notified Sue and Scott after each escape. Dozer seems to escape without his owners' knowledge.
13. On June 16, Mr. Nygaard was outside cleaning his driveway, when he heard about fifteen seconds of continuous screaming. In response, he walked up the street and saw Sue and Mr. Lee coming from Sue's residence, approaching the scene. At that point, Mr. Nygaard felt it was none of his concern and went back home.
14. On November 3, Mr. Nygaard was walking his dog, Annie, past Sue's residence and saw Dozer attempting to lunge at them over the top of their fence. Annie was very frightened.

Testimony of Sue

15. Sue testified that in response to the June 16 incident, they had Dozer neutered. Unfortunately, Dozer became very ill after the surgery, and they have incurred about \$6,500 in vet bills. She has spent a total of over \$15,000 as a result of the June 16 incident, including buying a muzzle and an e-collar for Dozer, installing an extra tall gate, padlocks on the fence, and professional training. Exs. A1-A17. Dozer is now in intermediate classes, but due to his illness he has not been attending trainings.
16. Sue hopes that Dozer will not need any more surgeries, because she can no longer afford the vet bills. She is worried she may have to put him down. In regard to the Nextdoor

statement posted by Ms. Lee, Sue rejects the statement that Dozer attacked a retriever. Ex. A18.

Testimony of Scott

17. Dozer is his dog. Dozer was not attempting to kill Chewy; if Dozer had been, Chewy would have had puncture wounds. Two days after the incident, Dozer ran loose towards the dog park and saw a small dog, but only sniffed it before continuing to play with other dogs. And Scott was able to call Dozer back home that day.
18. Scott takes responsibility and commits himself to take better precautions. He has installed lock pads in his home and changed door handles to doorknobs (as Dozer had been able to open handles). He has been training Dozer, walking him with his e-collar, walking along other friends with their dogs, and training Dozer not to jump on the fence. Scott has seen dramatic improvements. Dozer is better classified as “reactive” than “aggressive.”

Testimony of John Warner

19. Mr. Warner lives around the corner from Sue. He has lived there since 1973 and has a 55-pound Dalmatian named Tigger. Mr. Warner recalls his first walk with Tigger in September 2011. He was walking in front of Sue’s home, when Tigger rubbed against the fence and Dozer, who was in his backyard, became very agitated. In his walks with Tigger, he noticed that Dozer’s agitated behavior continued, even barking from the window when they passed by.
20. Mr. Warner also recalls walking with Tigger mid-morning in spring 2020. As they passed Sue’s residence, he heard a sound on his right. Dozer was there with his mouth open, lunging at the back of Tigger’s head. Mr. Warner’s first reaction was put himself between the dogs. In the process he ended up flat on his back, laying on the street.
21. Dozer stopped and backed off. Sue’s son came out to grab Dozer and apologized profusely. Sue’s husband also apologized and gave Mr. Warner \$100 worth of dog goodies. Mr. Warner did not have any scrapes or damages at the time. However, three months later, when he went to the doctor, the doctor told him his chest scan showed that one of his ribs was healing well; Mr. Warner recalled no other incidents, other than the one with Dozer, that could have broken his rib.
22. In summer 2020, Mr. Warner saw Dozer out loose again. Sue was a block from her house looking for him. Mr. Warner does not walk Tigger near Sue’s residence anymore, due to the safety risk.

Legal Standards

23. In V21012195, Animal Services asserts that Dozer qualifies as “vicious” being defined as, “performing the act [on June 16] 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,” with “[a]ny 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” qualifying as a nuisance. BMC 8.04.060.BB, .300.H. Sue disputes this.

24. In V21012458, Animal Services asserts that on June 18, Dozer ran at large again, this time qualifying as a vicious dog at large. BMC 8.04.300.I. Sue does not dispute that Dozer was running at large on June 18, but if we overturn the V21012195 viciousness designation, then the correct violation descriptor for June 18 would be a second running-at-large, and not a vicious dog running at large.
25. 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.B.

Analysis

26. While it might have felt that way to Ms. Lee, we do not find that Dozer was attempting to kill Chewy on June 16. If he had been, it is hard to fathom how he did not leave any tooth marks. Still, Dozer picked up a tiny dog, shook him like a doll, injuring Chewy in the process. And more than a quick seize-and-retreat, Dozer continued to try to get at Chewy, as Ms. Lee attempted to intervene. The continued nature of that fury, not to mention trying to go through Ms. Lee and putting her at risk as well, makes it all the more grave.
27. And June 16 was not a complete 180 for a dog that typically ignored passing dogs and just had a bad moment one day. Setting aside the alleged incident with the retriever—which is only hearsay—three witnesses described Dozer’s agitation as dogs would walk past, including lunging at the fence. And Dozer came out into the street and tried to bite Tigger’s head.
28. Perhaps, as Scott explained, Dozer is better characterized as reactive and not aggressive. But whether he responded out of aggression or something else, the results, as Chewy discovered, were similar. In no way do we discount the tremendous steps Sue and Scott have taken since June 16 to prevent a repeat performance, a topic we return to below. But on our facts today, Animal Services has proven that, more likely than not, Dozer performed an unprovoked vicious act and constitutes a danger.
29. Sue pointed to our decision in *V21012033-Huynh* as warranting reversal here. But *Huynh* was factually and procedurally distinct.
 - Factually, appellant’s dog “Scooby came up and seized [complaint’s dog’s] Brody’s head. Scooby did not really shake or pick up Brody, but had his head over Brody’s

neck and head area.”¹ That sharply contrasts with Dozer actually picking up Chewy and violently shaking him.

- Procedurally, the complainant there made some “jaw-droppingly ridiculous” statements trying to cut off a non-English-speaking complainant from due process; we sanctioned the complainant by tossing out the viciousness violation, rather than waste more time listening to him. In response to Animal Services’ objection that we were putting the public at risk in doing so, we observed that the case against Scooby was “not overwhelming” and that it was not clear that we would have found that Scooby constituted a danger. So, it was not that seizing a dog but not shaking or picking it up was necessarily insufficient to prove a viciousness designation, merely that it was not so overwhelmingly vicious as to warrant continuing proceedings in light of that complainant’s behavior. And again, Dozer actually picked up another dog and shook it.

Huynh thus sheds little light on our factual and procedural scenario.

30. While Dozer did get out again in the immediate aftermath (two days after the attack), the steps Sue and Scott have taken since to prevent a repeat have been off-the-charts. Sue and Scott have purchased muzzles, put in interior gates, converted door levers (which Dozer could open) to door handles, and added fencing and padlocks. Exs. A1-A5. They neutered Dozer, which can help prevent a repeat, as neutered males are less likely to bite than unneutered males. Ex. A6.² And they have been training him, both professionally and domestically. Ex. A7. Those efforts have two implications.
31. For today, we find a dramatic penalty reduction is in order. They have spent so much money trying to correct Dozer’s behavior and prevent a repeat, it seems vindictive to saddle them with significant fines.
32. And for the future, most of the items like fences, muzzles, gates, padlocks, door handles are geared to keep a vicious dog from again endangering people or their pets. None of those measures change the fact that Dozer constitutes a danger, they only reduce the opportunities for Dozer to act on that and do more harm. However, Sue and Scott have neutered Dozer and are training him; that combination bears the potential to alter Dozer so that someday he may no longer constitute a danger.
33. Change may be hard to gauge, but again it was not like June came out of left field. Three witnesses testified that Dozer repeatedly grew enraged and jumped at the fence in response to dogs merely passing by, and Dozer previously escaped and went after a dog being walked in the street (Tigger). But neutering and training have the potential to create a permanent change in Dozer, such that lifting Dozer’s viciousness designation might someday be appropriate. We will provide that opportunity.

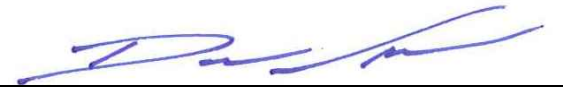
¹ See https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/Jul%202021/V21012033_Huynh.ashx?la=en.

² Cynthia A. McNeely & Sarah A. Lindquist, *Dangerous Dog Laws: Failing to Give Man’s Best Friend a Fair Shake at Justice*, 3 J. Animal L. 99, 107 at n.112 (2007) (unneutered males estimated to be 2.6 times more likely to bite than neutered males).

DECISION:

1. We uphold the violations from V21012195 and V21012458 and Dozer’s confinement order.
2. We reduce the total penalties to \$150.
3. At any point after September 6, 2022, Sue or Scott may provide proof to Animal Services that Dozer’s viciousness designation is no longer warranted. If Animal Services disagrees, Sue or Scott may request us to re-examine the designation.

ORDERED November 23, 2021.



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 *December 23, 2021*. 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 NOVEMBER 4, 2021, HEARING IN THE APPEAL OF SUE
[REDACTED], REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NOS.
V21012195-A21002762 AND V21012458-A21002792**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Scott [REDACTED], Marianne and Steve Lee, Susan [REDACTED], and John Warner. 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	Online Complaint form of June 16, 2021 incident by Marianne Lee, dated June 17, 2021
Exhibit no. D3	Notice of violation no. V21012195-A21002762, issued June 17, 2021
Exhibit no. D4	RASKC investigation report no. A21002762
Exhibit no. D5	Photographs and letter from Marianne Lee
Exhibit no. D6	Vet records for Chewie
Exhibit no. D7	Appeal, received July 14, 2021
Exhibit no. D8	Nextdoor posting from Marianne Lee, submitted November 8, 2021

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

Exhibit no. A1	Muzzle receipt
Exhibit no. A2	Photograph of confinement gate and receipt
Exhibit no. A3	Photographs of doorknob replacement and receipt
Exhibit no. A4	Photographs of locked padlocks on backyard fencing, cross bars, and fence reinforcement
Exhibit no. A5	Invisible fence estimate
Exhibit no. A6	Neuter certificate for Dozer
Exhibit no. A7	KC pet license and receipt
Exhibit no. A8	Training collar receipt
Exhibit no. A9	Vet record for Chewie
Exhibit no. A10	Invoices from five private training sessions with Ruben Shinderuk
Exhibit no. A11	Summary of Ruben Shinderuk
Exhibit no. A12	Basic Obedience Class receipt
Exhibit no. A13	Intermediate Obedience Class receipt
Exhibit no. A14	Online class descriptions of training classes
Exhibit no. A15	Handouts from five-week Basic Obedience Group Class
Exhibit no. A16	Photographs of Dozer
Exhibit no. A17	Declaration of Ruben Shinderuk, submitted November 1, 2021
Exhibit no. A18	Nextdoor full posting, submitted November 8, 2021

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V21012195 and V21012458**

SUE [REDACTED]*

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 November 23, 2021.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

██████, Susan

Hardcopy

Isaacson, Mari

Prosecuting Attorney's Office

██████, Scott

Hardcopy

Lee, Marianne/Steve

Hardcopy

Shinderuk, Ruben

Warner, John