

October 19, 2021

**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. **V21012366-A21003506**

BERNHARD WIESER

Animal Services Enforcement Appeal

Activity no.: A21003506

Appellant: **Bernhard Wieser**

[REDACTED]
Redmond, WA 98053

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
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. Bernhard Wieser appeals a Regional Animal Services of King County (Animal Services) violation notice. 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 find that Animal Services has not quite met its burden of proof.

Background

2. On July 20, 2021, Animal Services cited Bernhard Wieser for his dog running at large. Ex. D4. Mr. Wieser appealed. Ex. D9. We went to hearing on October 6. The complainants did not participate in the hearing.

Hearing Testimony

3. Sergeant Chelsea Eykel testified that the complainants, Sarah Braly and David Phillips, chose not to participate in the hearing because they did not want conflict with the Wiesers and because Mr. Wieser assured them that he would be installing an electric fence for Princess Buttercup.
4. Bernhard Wieser testified that on July 19 he was walking his dog, Princess Buttercup. Atypically, he decided to walk her off leash. Buttercup was about sixteen feet, or two cars lengths, ahead of him. He never lost sight of Buttercup; however, when they rounded the corner, there was poor visibility. As soon as he saw the neighbors, who were about two properties away, he called Buttercup, who stopped. He put on her leash. He noticed that the neighbors had stopped and started to walk backwards, which he thought was strange. He proceeded on his walk.
5. Mr. Wieser emailed, and later met up with, Mr. Phillips after he spoke with Animal Services. Ex. A5. Mr. Wieser believes the initial complaint is not credible because it states behaviors which his neighbors have never seen. He believes that there was enough distance between him and Ms. Braly for Buttercup to respond to his verbal command, which he believes satisfies under verbal control.

Legal Standards

6. Animal Services asserts that Princess Buttercup was “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,” with “under control” itself including “so as to be restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.
7. 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

8. One of the letters Mr. Wieser submitted from a neighbor noted that Princess Buttercup came off the property towards another dog, running around the people and jumping up and down. Ex. A3 at 010. That is the essence of running at large, but that was a *different* day. Another neighbor described events with Princess Buttercup coming out to greet them, before her owners would retrieve her. Ex. A3 at 013. That too sounds very much

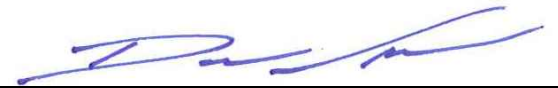
like being off the property and approaching a bystander. But our question is whether Princess Buttercup was *again* running at large on July 19. And July 19 was its own event with its own specific facts.

9. Turning to the specifics of July 19, sometimes running at large cases are provable without a witness—say a dog running photographed through traffic with no caretaker in sight. This one is not, because Mr. Wieser was at least in the vicinity of his dog, making the specifics all-important.
10. Ms. Braly’s complaint is short of details of exactly who was where, when, and distances between both Mr. Wieser and Princess Buttercup and also between Princess Buttercup and the complainants. Ex. D2. Mr. Phillips’ follow-up email does not provide much in the way of specifics. Ex A3 at 007. He notes they no longer believe Princess Buttercup to be a threat, but it is short of details of exactly who was where, when, on July 19.
11. Even Mr. Weiser’s testimony was unclear, as he stated Princess Buttercup was 16 feet or two-car lengths away. Those estimates are not the same. We take judicial notice that the average car is between 15 and 16 feet long, so two car lengths would be almost double the 16-foot estimate.
12. In sum, reading through the file and listening to Mr. Weiser’s testimony, we are not convinced that Princess Buttercup was under control on July 19. However, Animal Services bears the burden of proving a *lack* of control. And without eyewitness testimony from Ms. Braly and Mr. Phillips, Animal Services has not done so here.

DECISION:

We GRANT Mr. Weiser’s appeal.

ORDERED October 19, 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 *November 18, 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 OCTOBER 6, 2021, HEARING IN THE APPEAL OF
BERNHARD WIESER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE
NO. V21012366-A21003506**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel and Bernhard Wieser. 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 July 19, 2021 incident by Sarah Braly, dated July 19, 2021
Exhibit no. D3	RASKC investigation report no. A21003506
Exhibit no. D4	Notice of violation no. V21012366-A21003506, issued July 30, 2021
Exhibit no. D5	Proof of Service
Exhibit no. D6	Email from Mr. Wieser to Animal Services, dated August 2, 2021
Exhibit no. D7	Email from Mrs. Braly to Animal Services, dated August 2
Exhibit no. D8	Email from Mrs. Braly to Animal Services, dated August 4
Exhibit no. D9	Appeal
Exhibit no. D10	Map of subject area

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

Exhibit no. A1	Declaration of events
Exhibit no. A2	Statement from Phillips
Exhibit no. A3	Notice of Appeal
Exhibit no. A4	Email to Sergeant Anderson
Exhibit no. A5	Email conversation between Mr. Wieser and Mr. Phillips

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012366-A21003506**

BERNHARD WIESER

Animal Services Enforcement Appeal

I, Lauren Olson, 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 October 19, 2021.



Lauren Olson
Legislative Secretary

Braly, Sarah
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Wieser, Bernhard
Hardcopy