

November 29, 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 no. **V21012492-A21004433**

TONY LEE

Animal Services Enforcement Appeal

Activity no.: A21004433

Appellant: **Tony Lee**

[REDACTED]
Shoreline, WA 98133

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Tony Lee appeals a Regional Animal Services of King County (Animal Services) violation notice related to his dog, Buddy. 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 deny his appeal.

Background

2. On September 5, Animal Services issued Tony Lee a notice of violation for his dog running at large, being on public property not under control, qualifying as vicious, and needing to be contained. Ex. D8. Mr. Lee timely appealed on September 22. Ex. D10.
3. In our pre-hearing order, we observed that Shoreline does not have an on-public-property-not-under-control violation. SMC 6.30.010. Thus, we dismissed that portion of the notice. We went to hearing on the remaining items on November 11, 2021.

Hearing Testimony

Zoe Noble Testimony

4. Zoe Noble testified that on September 3 she took her springer spaniel on a walk, on a leash. Ms. Noble had been living with her mother-in-law for two months and, at the time, was unfamiliar with the neighborhood. She and her dog walked down a hill to an intersection. She saw the dog, which she later learned was Buddy, across the street, about 200 feet away from her, near his residence and sniffing some bushes. Ms. Noble noticed that Buddy was not on a leash.
5. Ms. Noble observed that when Buddy saw her dog, Buddy's ears perked up. He started coming toward them. Ms. Noble thought about trying to leave the area, but she could not retreat the way she came, as the hill was very steep. Buddy kept trotting towards them. She remembered a dog trainer once saying that dogs can sense when people are anxious, so she tried to stay calm and kept saying "nice dog" to the approaching dog.
6. Ms. Noble explained that she was behind Cooper when Buddy approached him. They started to sniff each other and were face-to-face. Cooper was just standing there when almost immediately, she heard an "rrrrrr" sound from one of the dogs (she was not sure which). Cooper did not lunge; she held him tight. But then Buddy came around and bit the back of Cooper's neck/shoulder area. Buddy released, but then bit down on Cooper again. Cooper responded.
7. The dogs were circling each other, biting at each other. Ms. Noble reached down to get Cooper away. But Buddy got Cooper's neck and took Cooper to the ground. She saw Buddy slightly lift Cooper off the ground, and Cooper is 75 pounds. Buddy was trying to shake his head back and forth like a rag doll.
8. Cooper's eyes rolled back in his head, and this propelled Ms. Noble into "full mama mode." Ms. Noble grabbed Buddy's collar to try to stop him from shaking Cooper back and forth. Her fingernail was ripped off in the process. This was not working, so Ms. Noble started screaming, as she looked for something to hit Buddy with to get him to release Cooper's head. Buddy was in full attack mode and was not releasing Cooper.
9. Mr. Nienhuis came out of his house and yelled at Buddy to go home. Buddy released Cooper and headed towards his house. Ms. Noble does not remember herself or Mr. Nienhuis hitting Buddy; Ms. Noble was traumatized.

10. Another lady, Debbie, who had been out walking, came to Ms. Noble and helped her, because there was a lot of blood. Ex. D5. Ms. Noble, Debbie, and Mr. Nienhuis looked Cooper over and did not see open hanging flesh, only blood marks, as Cooper had long fur.
11. Debbie told Ms. Noble that Mr. Lee came out to ask if the dog was okay and that Debbie had replied to Mr. Lee that it seemed like the dog was okay but that the woman [Ms. Noble] was bit. Mr. Lee did not come back outside.
12. Debbie and Mr. Nienhuis walked Ms. Noble back to her house and helped bandage her finger. Ms. Noble called her vet, who told her to clean Cooper's wounds and monitor Cooper's behavior. Three days later, Cooper was lethargic and had a huge abscess infection under his neck. Cooper would not eat or drink.
13. Ms. Noble called five vets to try to get Cooper in, but it was Labor Day, so places were either closed or full. Finally, Pilchuck Veterinary Hospital accepted Cooper for treatment. Cooper needed surgery because the wound had become infected. Cooper had tubes put in for drainage. Ex. D6. The hospital told Ms. Noble that she would need to see her regular vet for everything else. Her vet later removed Cooper's tubes and stitches.

Dave Nienhuis Testimony

14. Dave Nienhuis testified that on September 3 he was working from home. He heard a commotion outside. He knew it involved dogs, but he could not fully hear what was going on. He then heard screaming, so he ran out of his house and around the corner towards the noise.
15. He observed two dogs and Ms. Noble going in circles. Buddy was on top of [Cooper], clamped down hard and shaking Cooper. It was really scary. Mr. Nienhuis yelled at Buddy, who ran away about twenty feet.
16. Buddy was still worked up and in an aggressive posture. Mr. Nienhuis positioned himself between Ms. Noble and Buddy. When Ms. Noble turned around to attend to her dog, Buddy charged back towards them. Mr. Nienhuis yelled at Buddy to go home, and Buddy then ran off.
17. Mr. Nienhuis was concerned for Ms. Noble, because she was completely white, could not speak, and there was a lot of blood. He tried to calm her down. Debbie and John came to help out. There was blood on Cooper's neck, which was clearly punctured. Mr. Nienhuis was concerned because Buddy was still out and there were other people walking dogs. Mr. Nienhuis did not witness the interchange between Debbie and Mr. Lee, but Debbie relayed the interaction.
18. Mr. Nienhuis does not know Mr. Lee, but he knows Buddy. While in his fenced yard, Buddy is interested in dogs that walk by. On about five occasions Mr. Nienhuis has seen Buddy running loose in the neighborhood. In those instances, Buddy just seems to be excited to be free. Mr. Nienhuis has tried to approach Buddy while he is out, but Buddy

is skittish and runs away. Prior to this incident, Mr. Nienhuis had never seen Buddy act aggressively, but Buddy is a scary looking dog.

John Hirayama Testimony

19. John Hirayama testified that he heard screaming outside. He came out but did not see the dog or the fight. He saw Ms. Noble with her dog, both bloody, walking up the hill.
20. Mr. Hirayama contacted Animal Services. He had previously seen two pit bulls out in the neighborhood before, and they scared his daughter. He thought maybe it was one of those that was involved in the incident with Ms. Noble.

Tony Lee Testimony

21. Tony Lee testified that Buddy is a nice dog. He will approach other dogs because he likes to play.
22. Mr. Lee has never met Debbie and he did not talk to her the day of the incident. Mr. Lee did not observe the incident, and he did not know that it happened. He was home that day, but he did not hear any screaming. Mr. Lee assumes Buddy went up to the other dog wanting to play. Based on Ms. Noble's testimony, it seemed like both dogs did not like each other since both dogs bit. Buddy got bumps on his head.
23. Mr. Lee blamed Cooper's abscess on Ms. Noble not cleaning the wound. Animal Services has never met Buddy; if it had it would have seen that Buddy is not vicious. Ms. Noble did not notify him of the incident. Buddy is able to jump his four-foot fence to go play with other dogs. Buddy will then jump the fence to come back into his yard. Buddy weighs 65 pounds. Mr. Lee paid the running at large fine. He requests a reduction of the viciousness fines because he does not think Buddy meets the code criteria.

Legal Standards

24. Was Buddy running at large, which covers "Any dog at large not accompanied by its owner, whether licensed or not, within the city of Shoreline," with "at large" meaning "that an animal is off the premises of the owner and not under the control of the owner by leash; provided, that an animal within an automobile or other vehicle of its owner shall be deemed to be upon the owner's premises"? SMC 6.30.010.A.2; SMC 6.05.020.G. Mr. Lee does not challenge that.
25. Does Buddy qualify as "vicious," which SMC 6.05.020.JJ defines as "having 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. SMC 6.30.010.A.7 declares as a nuisance, "Any 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"? Mr. Lee disputes this.

26. Mr. Lee questions whether Buddy was provoked. The “provocation” inquiry in animal jurisprudence “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’” *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction be relatively proportional to the victim’s act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792. And although provocation is typically an affirmative defense, *Patterson v. New York*, 432 U.S. 197, 202–03 (1977), because lack of provocation is part of the definition (KCC 11.04.020), where the issue is raised in an appeal statement Animal Services bears the burden of showing, by a preponderance of the evidence, the lack of legal provocation.
27. 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

28. Mr. Hirayama noted that what prompted him to file the complaint was the thought that Buddy was one of the pit bulls who had been involved in an altercation prior to September 3. However, there is no evidence that Buddy was one of those dogs. Mr. Hirayama did not actually see the September 3 altercation, nor was there any testimony linking Buddy and the pit bulls seen in the neighborhood on an earlier occasion.
29. Mr. Lee complains that Animal Services did not come and meet Buddy before it declared Buddy vicious, and that if it had, the Animal Services officer would have seen that Buddy was not vicious. That is an understandable sentiment, but it ultimately misses the point. We have no doubt that if an Animal Services officer had visited, Buddy would have responded just fine. Indeed, Mr. Nienhuis noted that Buddy was not aggressive to him, either in past times where Buddy got loose, or even after he interrupted Buddy’s attack on Cooper. And Ms. Noble clarified that Buddy was not aggressive towards her. A visit would have told us next to nothing about what happened on September 3 or about whether Buddy meets the above code criteria.
30. We carefully scrutinize a complainant’s testimony for embellishment, either purposefully or simply that, in the heat of an altercation and with the adrenaline flowing, the complainant may become less than objective. Yet there was nothing about her testimony that gave us any pause or seemed to lay it on at all thick.
- Ms. Noble did not, for example, claim that Buddy charged at Cooper, snarling and barking and baring his teeth, only that he “trotted” towards them.
 - She did not blame Buddy for making the first “rrrrrr,” volunteering she was not certain who the initial sound came from.

- She did not claim that Cooper remained a passive victim; instead, she noted that after Buddy bit Cooper twice, Cooper fought back.
- She did not ascribe the bite she received trying to break up the altercation—a bite that caused her hand to bleed profusely (exhibit 5)—to Buddy; she allowed that it could have been Cooper, and she was clear that, if it was Buddy, Buddy was not attacking her personally.
- Her testimony that Buddy did not merely seize Cooper, but tried to shake and twist him, was backed up by Mr. Nienhuis, who volunteered the same information.
- When Mr. Lee testified that Buddy had returned from the altercation with a cut, Ms. Noble took responsibility, volunteering that it could have come from Cooper responding to Buddy's initial bites or from her trying to get Buddy off Cooper.

In sum, we found Ms. Noble very credible and her testimony persuasive.

31. Analyzing the altercation, while an unleashed Buddy did not charge at the leashed Cooper, it was Buddy who started the violence. Rather than back off when the tension escalated, Buddy circled around Cooper and bit the back of Cooper's neck/shoulder area, not once but twice. After Cooper responded to Buddy biting him, Buddy got Cooper's neck again and took Cooper to the ground.
32. Not content to merely immobilize Cooper, Buddy tried to shake Cooper's head back and forth like a ragdoll. A shake and twist is serious, and can lead to tearing and real injury; it goes far beyond a back-off nip. And he continued on, even as Ms. Noble struggle to stop his attack. And even after Mr. Nienhuis got Buddy to initially retreat to a safe distance, Buddy was not finished. Buddy tried to come back again at Cooper, forcing Mr. Nienhuis to again intervene.
33. We have little trouble concluding that Buddy performed a vicious act, grossly disproportionate to any provocation, on September 13 and constitutes a danger.
34. Moving forward, Mr. Lee acknowledged that Buddy is able to hop his existing, approximately four-foot fence. As the compliance order notes, if Mr. Lee wants to have Buddy in the yard without Mr. Lee present with him at all times, Mr. Lee will have to increase the fence to six feet and ensure the gate is padlocked. Ex. D8

DECISION:

1. As Shoreline does not have an on-public-property-not-under-control violation, we dismissed that item.
2. Mr. Lee did not challenge the running-at-large violation, and that is sustained.

3. We deny Mr. Lee’s appeal as to the viciousness violation and compliance order.

ORDERED November 29, 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 29, 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 10, 2021, HEARING IN THE APPEAL OF TONY LEE, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012492-A21004433

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Zoe Noble, Dave Nienhuis, John Hirayama, and Tony Lee. 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	Email from John Hirayama, dated September 3, 2021
Exhibit no. D3	RASKC investigation report no. A21004433
Exhibit no. D4	Online Complaint form of September 3, 2021 incident by Zoe Noble, dated September 4, 2021
Exhibit no. D5	Photograph of injuries to Ms. Noble and her dog
Exhibit no. D6	Vet records
Exhibit no. D7	Bite Quarantine Notice
Exhibit no. D8	Notice of violation no. V21012492-A21004433, issued September 5, 2021
Exhibit no. D9	Proof of Service
Exhibit no. D10	Appeal, received September 22, 2021
Exhibit no. D11	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012492-A21004433**

TONY LEE

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 November 29, 2021.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Hirayama, John

Hardcopy

Lee, Tony

Hardcopy

Nienhuis, Dave

Hardcopy

Noble, Zoe

Hardcopy