

December 14, 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. **V21012540-A21004381**

ROGER NOYES

Animal Services Enforcement Appeal

Activity no.: A21004381

Appellant: **Roger Noyes**

[REDACTED]
Vashon, WA 98070

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. Regional Animal Services of King County cited Roger Noyes for three violations related to his dog, Atlas. The violation notice was 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 overturn the trespass (as

it is not clear whether Atlas was on private property before he accosted Mr. Putnam), overturn the habitually threatening (as there is only sufficient evidence of one instance of threatening behavior), and sustain the running at large (as Atlas was off his premises and not under sufficient control).

Background

2. On September 22 Animal Services issued a notice of violation to Roger Noyes for his dog, Atlas, running at large, trespassing, and threatening persons in public. Ex. D4. Erin Dyer filed an appeal on Mr. Noyes' behalf on October 14. Ex. D7. Our prehearing order set the initial exhibit due date for November 17 (i.e., two weeks before the December 1 hearing), and set the final exhibit due date for November 24 (i.e., one week before the hearing).
3. Animal Services timely sent us and Mr. Noyes its staff report by November 17, but requested an extension to noon the following day to submit photographs of the incident location. We granted that, and Animal Services sent us and Mr. Noyes the photographs the following a.m. Ex. D9. However, at the December 1 hearing, Mr. Noyes objected to those photographs being admitted, even though Animal Services submitted these 13 days before the hearing, one day after the deadline for initial submissions, and six days before the final deadline for exhibits. We overruled his objection.
4. Apparently unaware of the inconsistency in what he was asking (given his vociferous objection to an exhibit arriving a full 13 days before the hearing), at our hearing—and a week after the final deadline for exhibit submittals—Mr. Noyes sought to submit exhibits showing the property line. We denied this request. We similarly denied Animal Services' request to have the responding officer on an earlier incident involving Atlas testify, because the officer did not witness the prior incident and because the warning issued was not an appealable order.

Hearing Testimony

Testimony of Stewart Putnam

5. Stewart Putnam testified that on September 1 he was walking home from a friend's house on the boardwalk, heading south.¹ As he approached his stairs to ascend to his home, Atlas suddenly appeared. He concluded that Atlas had arrived on the boardwalk from the Putnam property because of how abruptly Atlas appeared, right next to the Putnam stairs; he did not see Atlas on the beach. The boardwalk is privately owned, but neighbors and their guests walk down the boardwalk freely; there are no gates or keys.
6. Mr. Putnam took the photographs in exhibit D9. He placed a pink buoy/fender to depict where Atlas was, at the intersection of Mr. Putnam's stairs and the boardwalk. Ex. D9. Exhibit D9-001 is a photograph of his stairs and exhibit D9-002 is a photograph of where he was walking to try to get to his stairs.

¹ At times witnesses referred to the walkway along the top of the flat bulkhead as the "bulkhead" and at other times the "boardwalk." We will refer to it as "boardwalk" for consistency's sake.

7. Mr. Putnam continued to calmly walk down the boardwalk. Atlas did not move more than a few steps. Mr. Putnam attempted to shoo Atlas away with his voice and by waving his arms, so Mr. Putnam could get home. Instead, Atlas reset himself.
8. Mr. Putnam continued to walk. Atlas growled, raised his hackles and crouched down. It did not seem like Atlas wanted to play. Based on how Atlas was looking at him, Mr. Putnam thought Atlas was sizing him up to bite him. Mr. Putnam was about twenty to thirty feet away from Atlas. Mr. Putnam was on the border of his property and the neighbor's property.
9. Mr. Putnam picked up a piece of broken bulkhead/rock and skidded it along the boardwalk towards Atlas. It skidded past Atlas and lodged itself under the boat. Ex. D9-002. Atlas then ran away towards the Noyes residence. Mr. Putnam thought he had scared Atlas enough that he was no longer concerned about Atlas coming back. There is one house in between the Noyes and Putnam residences.
10. Mr. Putnam did not notice anyone at the Noyes residence until he threw the rock. As Mr. Putnam was walking towards his steps after throwing the rock, he heard Mr. Noyes say that he was being aggressive. Mr. Noyes came to Mr. Putnam's residence and told him that if he hurt Atlas, Mr. Noyes would hurt him.
11. Prior to this incident, Mr. Putnam recalled a time in July or August when he was walking on the boardwalk. He heard a commotion on the neighbor's porch. Atlas came from that porch and ran past him. Atlas was growling and looked hostile. They passed face on. Atlas focused on Mr. Putnam for a bare moment in passing. Mr. Putnam thought about grabbing Atlas and made a vague motion to try to grab him, but Atlas was already gone. Atlas clearly did not want to be grabbed. Mr. Putnam did not want to escalate the situation.
12. Mr. Putnam has lived in his current residence for about three years. He has lived in the area for about 50 years. Over those 50 years, he has seen many dogs on the beach and kept many dogs himself. It used to be a very agrarian area. Dogs used to run free, but not anymore. Mr. Putnam is not afraid of dogs, and in over the 50 years living in the area, Atlas strikes him as a uniquely dangerous dog.

Testimony of Roger Noyes

13. Roger Noyes testified that in July he was at his neighbor's house when his son let Atlas out from the porch. Atlas came over to the neighbor's deck. The neighbor's dog growled, and both dogs were biting at each other through the screen door. Mr. Putnam came charging onto the deck and grabbed Atlas's hind quarters. Mr. Noyes told Atlas to go home, which he did. Mr. Putnam walked away.
14. After Mr. Noyes received the warning notice from Animal Services regarding the July incident, he removed Atlas from the situation, and no longer allows Atlas to go to work with him.

15. Mr. Noyes testified that in September he was on the porch, watching his son and Atlas playing on the beach. Mr. Noyes saw a rock come flying across the boardwalk and land close to his son, who then started screaming. That brought his awareness to Mr. Putnam standing on the boardwalk. Mr. Noyes called for Atlas to come inside, which he did. Mr. Noyes went to Mr. Putnam’s house afterwards.

Legal Standards

16. Animal Services asserts that Atlas was trespassing on September 1, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K.
17. Animal Services asserts that Atlas “habitually snaps, growls, snarls, jumps upon or otherwise threatens persons lawfully using the public sidewalks, streets, alleys or other public ways.” KCC 11.04.230.G.
18. Finally, Animal Services asserts that Atlas was also running at large on September 1, “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 “restrained from approaching any bystander or other animal” when “off the premises of the owner.” KCC 11.04.020.W, .AA; .230.B.
19. 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

Credibility

20. We carefully scrutinize a complainant’s testimony for embellishment, either purposefully or simply that, in the heat of an altercation and with adrenaline flowing, we have observed witness accuracy drop precipitously after a threat appears and the recipient’s focus dramatically narrows. Yet there was nothing about Mr. Putnam’s testimony that gave us any pause or seemed to lay it on at all thick.
21. Mr. Putnam did not overplay anything about either the July or September interactions. For July, he did not say that, as Atlas retreated from the altercation on the neighbor’s property, Atlas snarled or lunged at him, only that Atlas focused on him for a bare moment as Atlas passed him by. For September, he did not described Atlas as charging or lunging, only as growling, raising hackles and crouching down. In sum, we found Mr. Putnam credible and his testimony likely accurate.
22. Conversely, there was nothing credible about Mr. Noyes’ presentation. Given how painstakingly Mr. Noyes belabored, on an almost frame-by-frame basis, Mr. Putnam’s

testimony, expecting Mr. Putnam to recall precise angles, distances, objects, and event sequences, Mr. Noyes offered a shockingly sparse level of detail about September. (That was in keeping with his double-standard approach to Animal Services submitting an exhibit 13 days before the hearing as being too late, while feeling entitled to try to submit his own exhibit at the hearing itself.)

23. Mr. Noyes came across as combative, defensive, trapped in corner, and feeling the need to lash out. It is possible he had nothing to hide about either the July or September incidents, and what we observed was just a high-conflict personality bleeding through that had nothing to do with Atlas. We do not discount the possibility that he was telling the truth and he just did not know how to communicate his perspective in a persuasive manner. But we decide fact questions on a more-probable-than-not standard. And we found Mr. Putnam’s testimony significantly more likely to be truthful than Mr. Noyes’.
24. The credibility gap between the two men was most acute in relation to the July event. Mr. Noyes claimed that Mr. Putnam—who was too slow and indecisive to even grab at Atlas as Atlas passed him—“ran up the stairs” on property of another, to try to break up a dog fight when he had no interest in either dog, and grabbed Atlas’s hind quarters? And then Mr. Noyes neglected to add this important fact about Mr. Putnam’s aggressive behavior in the appeal statement? And then Mr. Putnam, whom Mr. Noyes accused of lying about “everything,” and who would have had a strong interest in showing that Atlas had engaged in other threatening behavior, passed up a golden opportunity to manufacture a version of the July altercation with the neighbor that would cast Atlas in a bad light, and instead acknowledged both that he did not actually see anything Atlas did while on the neighbor’s property and that Atlas just passed him by on the boardwalk? Again, anything is theoretically possible, but Mr. Noyes could hardly have been less effective if he tried.

Trespass

25. Mr. Putnam acknowledged that he did not actually see how Atlas came to confront him on the boardwalk in September. His inference that Atlas came from the stairs leading down from the Putnam residence is certainly plausible. However, there are also stairs leading up from the beach to the boardwalk at the precise location where Mr. Putnam first saw Atlas on the boardwalk. Ex. D9 at 002. So, Mr. Putnam’s conclusion is not the only reasonable inference the evidence allows.
26. Moreover, we cannot recall upholding a trespass violation where we did not have either testimony from someone actually seeing the animal on private property or something like a doorbell cam capturing the animal there. We are reluctant to uphold a trespass violation based on mere inference, where there is another plausible explanation (i.e., Atlas came up the stairs from the beach). We overturn the trespass violation.

Meaning of “Public” and “Premises”

27. The other two violations relate to whether Atlas was off his “premises” and threatened someone lawfully using a “public way.” Here, the testimony showed that the boardwalk is “public,” in that owners of all the waterfront properties along the boardwalk (or their

invited guests) may legally walk the boardwalk, but “private” in that uninvited members of the general public may not walk it.

28. Our facts are thus similar to past appeals involving spots like common areas in an apartment complex or a private road providing shared access to multiple homes. While being “private” in the context of not being open to uninvited members of the public, in past appeals we have consistently ruled that an animal loose in a common area or shared private road was off its “premises,” and that a resident threatened in such an area was threatened while lawfully using a “public” way. So, Atlas on the shared boardwalk would, if the other criteria are met, qualify for both violations.

Habitually Threatening

29. The code is a strange beast. For a “vicious” violation, the citation carries a \$500 penalty, places somewhat onerous containment requirements on the owners, and leaves the animal subject to removal if those containment terms are not followed. Yet a single event can be (and often has been) sufficient to sustain a viciousness designation. However, for a lesser “threatening”—a simple \$50 penalty with no onerous terms or threat of removal—the code requires that the threatening behavior be “habitual” to uphold the violation. That seems a bizarre juxtaposition; one would think that the more severe violation would have the more exacting requirements. However, we interpret the codes “as they are written, and not as we would like them to be written.” *Brown v. State*, 155 Wn.2d 254, 268, 119 P.3d 341 (2005). At least two threatening events are necessary to uphold a KCC 11.04.230.G violation.
30. The September event Mr. Putnam described qualifies as one of those. As Mr. Putnam lawfully used a public way (the boardwalk), Atlas threatened him, blocking his path, not responding to Mr. Putnam’s attempts to shoo him away, and responded by growling, raising his hackles, and crouching down. Atlas threatened a person lawfully using a public way that day.
31. However, the July event was different. Mr. Putnam did not actually see the altercation up on the neighbor’s porch, only seeing Atlas as Atlas came down on the boardwalk and tried to run past him. While Atlas growled and looked hostile, Atlas only focused on Mr. Putnam for a bare moment in passing. We do not find that qualifies as threatening behavior. Thus, without a second threatening event, Animal Services has not proven its case.

Running at Large

32. Mr. Noyes complained that there was nothing other than hearsay evidence supporting Animal Services’ case. Hearsay is “a statement, *other than* one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Evid. R. 801(c) (emphasis added). That contention has legs for the July event—where Mr. Putnam could only testify to the aftermath and not to what Atlas actually did on the neighbor’s property. However, Mr. Putnam’s testimony (under oath and subject to cross-examination) at our hearing about what he observed in September

was decidedly not “hearsay.” And again, we found Mr. Putnam’s testimony far more credible than Mr. Noyes’.

33. On September 1, Atlas was off the Noyes property and not under the control enough to be restrained from approaching a bystander. We sustain the running at large violation.

DECISION:

1. We grant Mr. Noyes’ appeal as to the trespass and habitually threatening violations.
2. We deny Mr. Noyes’ appeal as to the running at large violation.

ORDERED December 14, 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 *January 13, 2022*. 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 DECEMBER 1, 2021, HEARING IN THE APPEAL OF ROGER NOYES, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012540-A21004381

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Stewart Putnam, and Roger Noyes. 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 September 1, 2021 incident by Stewart Putnam, dated September 1, 2021
- Exhibit no. D3 RASKC investigation report no. A21004381
- Exhibit no. D4 Notice of violation no. V21012540-A21004381, issued September 22, 2021
- Exhibit no. D5 Online Complaint form of July 21, 2021 incident by Denise Dion-Scoyni, dated July 29, 2021
- Exhibit no. D6 RASKC investigation report no. A21003659
- Exhibit no. D7 Appeal, received October 14, 2021
- Exhibit no. D8 Map of subject area
- Exhibit no. D9 Photographs

DS/lo

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21012540-A21004381**

ROGER NOYES

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 December 14, 2021.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Noyes, Roger

Hardcopy

Putnam, Stewart

Hardcopy