

May 26, 2022

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

SUBJECT: Regional Animal Services of King County file no. V22012921-A2200806

**DWAYNE AND MEAGAN HAWKES**  
Animal Services Enforcement Appeal

Activity no.: A22000806

Appellants: **Dwayne and Meagan Hawkes**  
[REDACTED]  
Renton, WA 98058  
Telephone: [REDACTED]  
Email: [REDACTED]

King County: Regional Animal Services of King County  
*represented by Chelsea Eykel*  
Regional Animal Services of King County  
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FINDINGS AND CONCLUSIONS:

Overview

1. Dwayne and Meagan Hawkes appeal 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 sustain the violations but reduce the penalty.

### Background

2. On February 16, 2022, Animal Services issued Dwayne Hawkes a violation notice for his dog, Glory, trespassing, and for his other dog, Tank, trespassing, qualifying as vicious, and needing to be confined. Ex. D7. The notice listed March 13 as the deadline by which Animal Services had to receive the Hawkes' appeal.
3. Animal Services received the Hawkes appeal on March 15. Animal Services moved to dismiss the appeal as untimely. We held a motion hearing on April 13.
4. Per KCC 1.02.120, where the otherwise applicable due date is a weekend (and March 13 was a Sunday), that day does not count. Thus, the actual due date was Monday, March 14. Still, Animal Services did not receive her appeal until March 15, which would normally be fatal. For when “a person fails to timely deliver the appeal statement..., the office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the department...becomes final and unreviewable.” KCC 20.22.080.H. However, the facts here represent one of the few exceptions to that bar we have consistently recognized.
5. The former examiner code treated mail as received the third day after mailing. KCC 20.24.090.A (2007). Under that law, the appeal statement was due 21 days after the decision was issued, plus 3 days for mailing, i.e. at the 24-day mark. KCC 20.24.090.C (2007). In 2016, the code was streamlined to make it a straight 24 days, regardless of how an agency issues a decision (mail or hand delivery) or how a would-be appellant gets the appeal statement to the agency (mail, email, or hand delivery). KCC 20.22.080.B. The code change contemplated that the effective window might increase (for example, a recipient handed a notice would essentially get an extra three days to respond), but it did not contemplate reducing the effective window. So, where a would-be-appellant gets an appeal to the carrier at or before the 21-day mark, we have treated such appeals as timely, even if the agency does not receive it by day 24.
6. Here, UPS processed Ms. Hawkes' appeal on March 11, three days before the actual March 14 due date. Thus, we determined that we had jurisdiction to hear the appeal, despite Animal Services not receiving the appeal until March 15.
7. We went to a hearing on the merits on May 12.

### Hearing Testimony

#### *Testimony of Kari Whisman*

8. Kari Whisman testified that on February 15 she had her dog in his dog run, which is fenced off from the rest of the yard she shares with Gail Anderson. She heard some unusual barking from the yard, so she looked out the window. Ms. Whisman saw a large white dog [Tank] hovering over her dog run.
9. Ms. Whisman brought her dog into the house, then returned to the yard. She also noticed a black dog [Glory] in the yard. Ms. Whisman told the dogs to go home, but they

continued to run around the yard. Glory then left the yard, and Ms. Whisman was able to get Tank to leave the yard through the side gate. Ms. Whisman went back inside.

10. However, about five minutes later, Ms. Whisman looked outside and saw both dogs back in her yard, chasing Ms. Anderson's chickens. Ms. Whisman took some photos and videos of the dogs. Ex. D3. Ms. Whisman noted that Tank was leading the chase of the chickens, with Glory just following Tank.
11. Glory ran out of the yard, through some loose fence boards, but Tank got a hold of one of the chickens. Ms. Whisman kicked Tank a few times, but he did not release the chicken. She then hit Tank with a big stick, causing him to release the chicken. Ms. Whisman put that chicken in a storage bin in the house. Ex. D4 at 001. The chicken's guts were hanging out, and there was blood on her hands. Ms. Whisman then called the chickens' owner, Gail Anderson.
12. Ms. Whisman went outside again and yet again saw Tank circling the chicken coop. Ms. Whisman then called 911. Ms. Whisman found another chicken in the back corner of the yard. Ms. Anderson arrived about that time. Ms. Whisman used her leg to block Tank, who was very interested in the chicken. Tank jumped up a few times on Ms. Whisman to try to get the chicken from her. Ms. Anderson helped block Tank. Tank continued to run around the yard when Animal Services arrived. An elderly man then came into the yard and said his dog was out.

#### *Testimony of Gail Anderson*

13. Ms. Anderson testified that Ms. Whisman called her and told her about the dogs in their yard. Ms. Anderson called 911 and asked if she could shoot the dog. The 911 operator said Animal Services was on their way. Ms. Anderson got home and saw Glory and Tank in the yard running around. Ms. Whisman had a hold of Tank, and Glory ran through the fence at full speed. It appeared that the dog knew how to get through the fence. One of the baby chickens was huddling in the corner of the yard. Ms. Whisman got the chicken while Ms. Anderson tried to block Tank. The Hawkes parents and Animal Services arrived.
14. Tank had torn the chicken's guts out. Ms. Anderson tried to bring the chicken to a vet, but she could not find a vet that took chickens. The chicken died later that day. A total of three chickens were missing. Ms. Anderson believes that the chicken (later found in a neighbor's yard) flew over the fence because it was traumatized. Ms. Anderson does clip her chickens' wings.
15. The Hawkes are not her immediate neighbor. Before this incident, Ms. Anderson believed that the fence with her immediate neighbor [the Kaleiwaheas] was secure. The dogs were able to get into her yard by pushing on fence boards, boards she only discovered during the incident were loose. She has part of her yard enclosed with chicken wire.
16. About two weeks after the February 15 incident, Ms. Anderson saw the dogs, a few streets away, with people in someone's yard, as she drove by.

17. Ms. Anderson's neighbors, Shirley and Cory, told her they had a ring camera video, but they could not find the recording from the day of the incident.

*Testimony of Meagan Hawkes*

18. Meagan Hawkes testified that she acknowledges Tank hurt Ms. Anderson's chicken. Ms. Hawkes agrees that what happened to the chickens was tragic. Ms. Hawkes believes that Tank did not purposefully kill the chicken, but he wanted to play with it. She saw no blood on Tank that day. Ms. Hawkes looked into training Tank, but she could not find training to stop a dog from attacking chickens.
19. Ms. Hawkes does not believe Tank is vicious. When Ms. Whisman hit and kicked Tank, he did not attack her. Tank has never attacked anyone or other dogs. Tank is four years old, and the Hawkes got him two years ago. When they got him, he was malnourished. The Hawkes have done a lot of training with Tank.
20. Ms. Hawkes does not know how the dogs got out of the yard on the day of the incident; she looked for a hole in the fence and could not find one. Ms. Hawkes has done everything in her power to keep her dogs in her yard. She has secured a smaller area in her yard with chicken wire for the dogs. She is working on replacing the fence in the next few months. Tank has not been off her property without a leash since the incident. When Ms. Hawkes brings the dogs on walks, they are always on a leash.
21. There are other dogs in the neighborhood that look like Tank. The dog in exhibit A7 has a different collar and is heavier than Tank.
22. Ms. Hawkes has not been to the Anderson property. Ms. Anderson came to Ms. Hawkes with a bill. Ex. A1 at 003. Ms. Hawkes asked Ms. Anderson if she had a chicken coop, and Ms. Anderson said she did not have one.

*Testimony of Aleni Mang*

23. Aleni Mang testified that she does not believe that Tank is vicious. Tank was doing what is natural to a dog. Ex. A3.

*Testimony of Wesley Henry*

24. Wesley Henry testified that Tank has never been aggressive towards his dog, Maddy. Tank will leave his cats alone too. Ex. A5.

*Testimony of Tyson Kaleiwahea*

25. Tyson Kaleiwahea testified that he has had frequent interactions with Tank. He has never seen Tank be aggressive or vicious towards anyone or anything.
26. Mr. Kaleiwahea is the neighbor who shares the fence with Ms. Anderson. When he heard Animal Services and another person on the other side of the fence say the boards were not secured, Mr. Kaleiwahea put a board across the fence that. Ex. A2.

*Testimony of Gigih Satya*

27. Gigih Satya testified that he regularly walks Tank. Tank is curious when he meets dogs, but he never growls or shows teeth or any aggression towards anything. Ex. A4.

Legal Standards

28. Did Glory and Tank trespass on February 15, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K? (This is not disputed.)
29. Does Tank qualifies as vicious, defined 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,” with the violation itself framed as, “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,” KCC 11.04.020.BB; .230.H? (This is hotly disputed.)
30. 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*Events of February 15*

31. Only two witnesses—Ms. Whisman and to a lesser the complainant, Ms. Anderson—observed the February 15 altercation.
32. We found Ms. Whisman credible. She did not appear to overplay anything about the altercation, nor did she seem to embellish or dramatize. She told a consistent story that matches the physical evidence here. We found her testimony likely accurate.
33. Our only hesitation in adopting Ms. Whisman’s version of events is, counter-intuitively, Ms. Anderson. Normally, a complainant *supports* Animal Services’ case. Yet Ms. Anderson seemed scattered, from quips about shooting dogs, to theories about neighbor videos, to a scattershot accounting of events. For example, when we drilled down on what she observed about Tank’s February 15 behavior, she noted that she was not sure what the Tank was doing and she did not really recall. And while at first she seemed certain that, two weeks after the attack she saw Tank and Glory a few blocks away, at a different neighbor’s house, when we probed, she agreed that she only observed that for a second or two as she drove by. In sum, we gleaned little of value from her testimony.

34. Ultimately, Ms. Anderson’s lack of credibility does not alter our initial evaluation of Ms. Whisman’s testimony. We find, more likely than not, that:

- on February 15 Tank and Glory trespassed into Ms. Anderson’s yard;
- Ms. Whisman was initially able to scare the dogs away;
- after she went back inside, the dogs returned and went after Ms. Anderson’s chickens, with Glory following Tank’s lead;
- as Ms. Whisman confronted the dogs, Glory retreated, but Tank continued, seizing a chicken;
- even with Ms. Whisman kicking Tank, he would not let go of that chicken;
- only when Ms. Whisman hit him with a big stick did Tank relent, and not before he opened the chicken’s guts;
- when Ms. Whisman returned from taking the fatally-injured chicken inside, Tank was circling the chicken coop;
- after Ms. Whisman corralled another loose chicken, she had to use her leg to block Tank, who jumped on her multiple times in an attempt to get that chicken; and
- Tank continued to run around the coop.

*Applying Those Facts to the Legal Standard*

35. There seems to be some confusion about what is meant by “vicious” in an animal appeal. In normal parlance, we speak of “vicious” as meaning malicious or spiteful or morally depraved. However, the legal standard we apply is quoted above in paragraph 29. Under the definition that controls our decision, there are no elements related to whether the animal did unnatural acts or did something with malicious intent, only whether the animal performed acts endangering someone or something and, if so, whether it constitutes a danger to the safety of persons or property.

36. The KCC 11.04.020.BB analysis is a little more nuanced in scenarios where the victims are chickens, because chickens do not—as counterintuitive as it seems—qualify as a “domesticated animal” under the current version of the code.<sup>1</sup> So Tank killing a chicken does not qualify as attacking a “domesticated animal.” However, attacking a domesticated animal is only an example (“including, but not limited to”) of behavior “endangering the safety of any person, animal or property of another.” Tank endangered the safety of the chicken Ms. Whisman used her body to shield Tank from, if not of Ms.

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<sup>1</sup> Although a chicken is a domesticated animal in the common sense of the word, a not unusual backyard pet even in very urban areas, including some apartment rooftops, KCC 11.04.020.G defines a “domesticated animal” as “a domestic beast, such as any dog, cat, rabbit, horse, mule, ass, bovine animal, lamb, goat, sheep, hog or other animal made to be domestic.” We have analyzed, at great length, why, under the canons of statutory construction, that definition was not written in a way to cover chickens. [https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2022/Feb%202022/V22013090\\_Lu.ashx?la=en](https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2022/Feb%202022/V22013090_Lu.ashx?la=en)

Whisman's own safety as he pounced at her to get at the chicken. And Tank did more than endanger the safety of the other chicken; he opened its guts and killed it. Tank meets KCC 11.04.020.BB's definition of "vicious," of having performed an act endangering the safety of any person, animal, or property.

37. Turning to whether Tank constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises, we acknowledge that testimony and letters (exhibits A2 through A5) are uniform and consistent: no one ever observed Tank being aggressive or threatening to people, other dogs, or cats, and Tank is actively friendly. But that is not what Ms. Whisman, and more pointedly Ms. Anderson's chickens, experienced. Tank's behavior went far beyond that of other dogs even in cases where we have *upheld* a viciousness designation for a dog attacking neighbors chickens.
38. In most similar situations, the chicken-attacking dog's behavior matches Glory's. Once an attack is interrupted, the dog scampers off, ending the altercation. That is not by itself dispositive; where the damage is already done we may, depending on the specific facts of the case, sustained the viciousness violation. But one common theme is that the attack almost always ends as soon as the owner comes out and starts yelling at the dog; human vocal intervention is enough to disrupt the predatory drive.
39. Tank's behavior was at the opposite end of the spectrum. Even after Ms. Whisman scared them off the first time, Tank returned and went after the chickens. Ms. Whisman was easily able to get Glory to retreat, but Tank continued his assault, seizing a chicken right in front of Ms. Whisman and opening the chicken's guts. He would not let go of his prey *even as Ms. Whisman kicked him*, only relenting when she hit him with a big stick. That behavior alone placed Tank on the far end of predation spectrum. But he was not done.
40. He only momentarily stopped his assault, for when Ms. Whisman returned from taking the fatally-injured chicken inside, Tank continued circling the chicken coop. And as Ms. Whisman corralled another loose chicken, she had to use her body to shield the chicken from Tank's ongoing assault. Tank jumped on Ms. Whisman multiple times, trying to get at that chicken—extremely rare and troubling behavior. And as Ms. Anderson joined the fray, Tank still did not retreat, but continued to menace the chickens.
41. We have entertained 700-plus animal appeals. In all those, we can only recall one scenario involving the same relentless level of predation in the face of people actively attempting to stymie an attack.<sup>2</sup> Ms. Whisman screamed at, and even kicked and later had to hit Tank, to get him to stop his attack. And still later he went at a second chicken as Ms. Whisman had to use her body to fend off Tank's repeated attempts to get that chicken. While dog-attacking-chickens cases are often close calls, this one is not. Tank may not pose a danger to people (at least to people not holding what Tank perceives of

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<sup>2</sup> Ms. Hawkes believes Tank was only playing with the chickens. That is not what the weight of the evidence shows, and any play time was over long before Ms. Whisman had to hit him with a stick, but even if agreed with Ms. Hawkes's assessment, it would not change our conclusion that Tank endangered the safety of, and constitutes a danger to, those chickens. The codes cited in paragraph 29 do not contain a motive inquiry.

his prey) or other dogs or cats. Yet Tank clearly constitutes a significant danger to Ms. Anderson's chickens. We sustain his viciousness designation.

*Penalty amount*

42. The normal penalty for a viciousness violation is \$500. But we think a significant penalty reduction is in order here. There is no indication that, based on Tank being uniformly non-aggressive, the Hawkes should have had any inkling that Tank would go to the extreme lengths he went to on February 15, or that the Hawkes had any heightened duty to contain him before then. And there is no evidence that February 15 was part of some prior pattern of Tank getting loose anyway.
43. Moreover, the only evidence that Tank was out after February 15 was Ms. Anderson's testimony that, as she drove by and only glanced for a second or two, she thought she saw Tank and Glory engaging in the yard with more distant neighbors on a different block. Even if Ms. Anderson was a more credible witness, her drive-by glance would not hold up against Ms. Hawkes' credible testimony that since they received the confinement order they have been following its prescription and that Tank has not been off the property except on a leash.

DECISION:

We sustain the running-at-large violations (\$50 a piece) and Tank's viciousness designation, but we reduce the penalty associated with the viciousness violation from \$500 to \$150, meaning the total penalty due is \$250, not \$600.

ORDERED May 26, 2022.



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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 *June 27, 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 MAY 12, 2022, HEARING IN THE APPEAL OF DWAYNE  
AND MEAGAN HAWKES, REGIONAL ANIMAL SERVICES OF KING COUNTY  
FILE NO. V22012921-A2200806**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Kari Whisman, Gail Anderson, Meagan Hawkes, Aleni Mang, Wesley Henry, Tyson Kaleiwahea, and Gigih Satya. 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 February 15, 2022 incident by Gail Anderson, dated February 16, 2022
Exhibit no. D3	Photograph of dogs trespassing
Exhibit no. D4	Photograph of injured bird
Exhibit no. D5	Video of broken fence
Exhibit no. D6	RASKC investigation report no. A22000806
Exhibit no. D7	Notice of violation no. V22012921-A2200806, issued February 16, 2022
Exhibit no. D8	NVOC mailing/tracking history
Exhibit no. D9	Appeal, received March 15, 2022
Exhibit no. D10	Map of subject area

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

Exhibit no. A1	Letter from Hawkes
Exhibit no. A2	Letter from Tyson Kaleiwahea
Exhibit no. A3	Letter from Aleni Mang
Exhibit no. A4	Letter from Gigih
Exhibit no. A5	Letter from Wesley Henry
Exhibit no. A6	Letter and email from Gail Anderson
Exhibit no. A7	Rebuttal Letter from Hawkes

DS/lo

May 26, 2022

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V22012921-A2200806**

**DWAYNE AND MEAGAN HAWKES**  
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 May 26, 2022.



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Lauren Olson  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Hawkes, Dwayne/Meagan**

Hardcopy

**Henry, Wesley**

**Kaleiwahea, Tyson**

**Kari Whisman, Gail Anderson**

Hardcopy

**Mang, Aleni**

**Satya, Gigih**