

May 10, 2023

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V22013672-A22005561**

**WENDY AND JOEL JEZEK**

Animal Services Enforcement Appeal

Activity no.: A22005561

Appellant: Wendy and Joel Jezek  
*represented by* **Dave Carson**  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. Wendy and Joel Jezek appeal a viciousness designation for their dog, Lokai. After hearing testimony, studying the exhibits, and considering the arguments and the relevant law, we find that while Lokai bit a visitor without sufficient provocation, Lokai nonetheless does not meet the criteria for a viciousness designation. We therefore grant their appeal.

### Preliminary Matters

#### *Background*

2. On October 21, 2022, Regional Animal Services of King County (Animal Services) issued violation notice V22013672-A22005561 to Ms. Jezek for her dog, Lokai, qualifying as vicious and needing to be confined. Ex. D2. Through counsel, Ms. Jezek appealed on November 9. Ex. D12. We held pre-hearing conferences on December 9, 2022, and January 13, 2023.

#### *Expert Witnesses*

3. In advance of our April 26, 2023, hearing, we issued a March 20, 2023, prehearing notice. As to possible expert witnesses, it ordered (underscore in original):

By **April 12, 2023**, each party shall email to each other and to [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov) a list of any expert witnesses the party plans to call. Include the name, mailing address, email address, telephone number, and qualifications of each expert, along with a summary of each expert's expected testimony.

By **April 19, 2023**, each party shall email to each other and to [hearingexaminer@kingcounty.gov](mailto:hearingexaminer@kingcounty.gov) the same information for any rebuttal expert witnesses.

4. On April 12, the Jezeks' counsel identified Megan Mesloh as an expert to discuss dog provocation. Counsel did not include the required mailing address, email address, telephone number, and qualifications, nor did he include a summary of her expected testimony. Animal Services did not identify any expert witnesses, only listing the complainant and the responding officer as potential testifiers.
5. The following day we responded to counsel, quoting the required information for an expert witness. Later that day, counsel replied that, "The [Appellant] will be striking the Expert Witness Megan Mesloh." He did not request an extension of the April 12 deadline or provide any other information in his reply, such as wanting to find a different expert witness.
6. Six days later, and a week after the April 12 deadline, counsel listed Garret Stevens as an expert witness. We denied the late submittal. We clarified that because Animal Services did not list the responding officer as an expert witness, the officer would be limited to testifying to the factual observations an average (lay) person could make and would not be allowed to offer any testimony based on specialized training, technical knowledge, or experience.
7. At the outset of our hearing, counsel added an argument that he thought he needed a rebuttal witness because he erroneously believed that Animal Services intended to call the responding officer as an expert witness. That is a little odd, because Animal Services had not included the required mailing address, email address, telephone number, and

qualifications of each expert, or summary of the expert’s expected testimony that would correspond with an expert witness. But we take it at face value. Yet it also means there was no harm, no foul: counsel apparently thought he needed a rebuttal expert witness to counteract Animal Services’ expert witness, when in reality there was no Animal Services expert witness to rebut. We re-denied the request.

### *Pictures*

8. Animal Services timely submitted its exhibits on April 12. Among those 36 pages were four pictures of wounds to Mr. Holmes’ hand. Exs. D5–D8. Counsel did not tackle that at the time or by the April 19 deadline for any rebuttal. Instead, he waited until less than an hour and a half before start of our April 26 hearing to file a motion to exclude the photographs, asserting that they were not the same photographs Animal Services had turned over in 2022. Animal Services’ attorney was unable, on such short notice, to investigate or present much of a response related to records.
9. “Discovery in the examiner process is not designed to duplicate the robust pre-trial discovery common to civil litigation.” Exam. R. IX.A. We did not order discovery here, and Animal Services met our exhibit deadline. The two touchstones of procedural due process are notice reasonably calculated to inform interested parties of an action against them, and a meaningful opportunity to be heard. *Johnson v. City of Seattle*, 184 Wn. App. 8, 18, 335 P.3d 1027, 1033 (2014). Counsel had Animal Services’ exhibits two weeks before the hearing. Nor was this a scenario where, for example, after asserting that Lokai “bit [Mr. Holmes] on the hand and wrist breaking the skin” (exhibit D12 at 004), Animal Services threw a curveball and sent pictures of injuries on some *other* part of Mr. Holmes body.
10. Counsel’s argument that “It comes down to acting in a manner that is not trial by ambush” is accurate, but not in the way he intended. Counsel waited two weeks to ambush Animal Services with a motion just before the hearing started. Ours was not a scenario where, for example, counsel had had to wade through thousands of pages of documents and might have, even with diligent preparation, only been able to catch something at the 11<sup>th</sup> hour. Instead, Animal Services sent 40 pages in 2022 and 36 pages two weeks before the hearing; it took us less than an hour total to study all those. There was no excusable neglect justifying waiting to file a motion until the point Animal Services’ attorney would be unable to track down the discrepancy or the sequence of what Animal Services received and sent and when. We denied the motion.

### Hearing Testimony

#### *Testimony of Kyle Holmes*

11. Kyle Holmes testified that he has been an Amazon delivery driver for a year and a half. On October 15, 2022, Mr. Holmes went to the Jezek property to deliver a package. His work device instructed him to deliver the package to the residence. The delivery was from Mr. Jezek’s Amazon account, and (unlike Ms. Jezek’s account) there were no delivery notes.

12. It was seven at night and pitch-black outside when Mr. Holmes pulled into the driveway. He got out of his vehicle and quickly headed around the parked cars and towards the lit, backside of the house. He heard heavy breathing and then noticed a dog [Lokai] charging him. There was no warning. Lokai latched onto Mr. Holmes' left hand and shook it. Mr. Holmes took a swing at Lokai and dropped the package. Lokai grabbed the package, shook it, and dropped it. Lokai was snapping at Mr. Holmes' legs when the owner [Ms. Jezek] appeared. Ms. Jezek called for Lokai, and he went inside the house. The attack lasted around fifteen seconds. Mr. Holmes did not recall a second, little dog that night.
13. Ms. Jezek approached Mr. Holmes and asked who he was. He said he was the Amazon delivery driver. Mr. Holmes showed Ms. Jezek that there were no notes on the Amazon account that placed the delivery. After Mr. Holmes spoke with the Jezeks and dispatch, he left. Mr. Holmes did not get medical treatment. He described the injury as mainly superficial, though it left a little scar.
14. Mr. Holmes has delivered to the Jezek property since the incident. Ms. Jezek's account has a note instructing the driver to deliver the package by the sign at the beginning of the property. When Mr. Holmes delivered to the property post-incident, he saw the sign and box on the Jezek driveway by the road. Ex. A3. Mr. Holmes did not see the sign or box the night of the incident because it was not well lit. He does not recall a gate on the property.
15. Mr. Holmes generally starts his shift at ten in the morning. Amazon now has a "paw print" program on its accounts to notify delivery drivers about dogs on the property. However, Amazon added this feature only after the October incident; it was not up and running at the time of the incident. When Mr. Holmes approaches a house for a delivery at night, he heads for the lit side of the house. The training Mr. Holmes' received from Amazon about dogs is that when you enter a gate, you make noise to alert the dog that you are there.

*Testimony of Wendy Jezek*

16. Wendy Jezek testified that on the night of the incident she put the chickens in their coop while Mr. Jezek headed home. Ms. Jezek and the dogs were heading towards the house, reaching the outer edge of the concrete back patio, when suddenly Mr. Holmes appeared from between the cars. It was very dark and there were no lights. She saw Lokai playing with the package. Ms. Jezek did not see Lokai bite or jump on Mr. Holmes. Ms. Jezek called both of her dogs back, and they quickly went into the house. Mr. Holmes said Lokai bit the package out of his hand. Ms. Jezek asked who Mr. Holmes was. Ms. Jezek asked if Mr. Holmes needed help or wanted Lokai's shot record.
17. Ms. Jezek's property is fenced and gated. Their gate was open the night of the incident because they had just had guests over. They normally keep the gate closed.
18. The black signs that say, "Do Not Trespass" and "Beware of Dog" posted on the inside of the gate (for when the gate is left in the open position) were in place in October. After the incident they posted the yellow "Dogs on Premises" sign on the gate. Ex. A2. And after the incident the Jezeks also added a blue bin, sign, and light by the gate for

packages. There is a small door for delivery drivers to open to deliver a package into the blue box by the gate. Ex. A3.

19. At the time of the incident, there were no delivery notes on Mr. Jezek’s Amazon account. Ms. Jezek assumed notes were associated with an address, not with a specific account. (Her account already had delivery notes.) Since the incident, Ms. Jezek has added a note to every Amazon account in her house.
20. Lokai has never bit anyone before. Lokai behaves well with other people, including their grandchildren. Lokai has never attacked their cat or chickens. Lokai does not have professional training, but Ms. Jezek and her daughter have trained him.

*Testimony of Joel Jezek*

21. Joel Jezek testified that he was in his house when he heard Mr. Holmes truck pull in. Mr. Jezek looked out the window and saw Mr. Holmes quickly walk through the cars and head to the back patio. Mr. Holmes was between the cement and the bench. Ex. A6. Mr. Jezek saw Lokai jump up to grab the package. Ms. Jezek told Lokai to go inside, and he quickly did. Mr. Jezek then came outside. The incident lasted only five to six seconds. Mr. Jezek believes Lokai mistook Mr. Holmes for Mr. Jezek, and Lokai just jumped up to grab the package.
22. Lokai has scratched Mr. Jezek in the past when they play. Lokai destroys all his toys. When Lokai puts a bite on something, you can tell. Lokai weighs around 100 pounds. Mr. Jezek has never seen Lokai be aggressive. Lokai gets along with other dogs and strangers.

Legal Standards

23. Does Lokai qualify as vicious, meaning “[h]aving 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 “[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”? KCC 11.04.020.BB; .230.H.
24. 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

25. We found Mr. Holmes credible. He did not attempt any hyperbole or exaggeration, volunteering that Lokai’s bite was mainly superficial. That is completely consistent with the photos, which show some cut marks and bruising from where Lokai’s jaws pushed

down, but not much else. While we think Mr. Jezek’s account that the altercation lasted five to six seconds is probably more accurate than Mr. Holmes’ 15 seconds account, that is not really a credibility issue. Most witnesses have enormous difficulty accurately estimating the duration of an event, and they invariably *overestimate* the amount of time it took.<sup>1</sup>

26. Counsel spent a fair amount of time essentially victim-blaming Mr. Holmes; it was not an effective approach. Mr. Holmes was doing nothing more than his job, delivering a package Mr. Jezek requested. And while *Ms.* Jezek’s account contained delivery instructions, at the time *Mr.* Jezek’s did not, nor had Amazon instituted the “paw print” program. Moreover, this is not a tort suit, where concepts like a plaintiff’s contributory or comparative negligence take front and center stage, but rather a question of whether *Lokai* meets the above-quoted criteria for a viciousness designation.
27. Lokai’s bite to Mr. Holmes only meets the definition of “vicious” if it was “without provocation.” KCC 11.04.020.BB. “[T]he question of what conduct constitutes provocation is primarily a question of whether [Mr. Holmes’s] actions would be provocative to the dog.”<sup>2</sup> It focuses on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.<sup>3</sup> And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.<sup>4</sup>
28. While an average dog might have responded to the presence of a stranger at night with a charge and aggressive snarling, Mr. Holmes’ presence on the property would not have caused the average dog to bite him. It was a disproportionate response (a topic we return to below). Lokai meets the definition of “vicious.” KCC 11.04.020.BB.
29. However, the violation itself is framed as “[a]ny animal that has exhibited vicious propensities [which Lokai did on October 15] *and* constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises”? KCC 11.04.230.H (emphasis added). An unprovoked bite is *typically* enough to satisfy the danger criteria; after all, what is better evidence that a dog constitutes a danger than proof that, given some set of circumstances not arising to legal provocation, a dog will actually bite or attack a person or pet? However, we interpret a statute so as not to make a term meaningless. *Chelan Basin Conservancy v. GBI Holding Co.*, 190 Wn.2d 249, 264, 413 P.3d 549 (2018). So, there must be some subset of cases where a dog who exhibited vicious behavior will *not* be adjudged to constitute a danger. Thus, in select appeals we

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<sup>1</sup> See, e.g., [https://books.google.com/books?id=uBIAU24-qsoC&pg=PA30&lpg=PA30&dq=witnesses+overestimate+time&source=bl&ots=xzT0DFzVu\\_&sig=ACfU3U3oBGLp6ZKp0dvJjRjiTGeZA2UITQ&hl=en&sa=X&ved=2ahUKFwjatsfdq-TpAhVcPn0KHfTICwYQ6AEwCnoECAGQAQ#v=onepage&q=witnesses%20overestimate%20time&f=false](https://books.google.com/books?id=uBIAU24-qsoC&pg=PA30&lpg=PA30&dq=witnesses+overestimate+time&source=bl&ots=xzT0DFzVu_&sig=ACfU3U3oBGLp6ZKp0dvJjRjiTGeZA2UITQ&hl=en&sa=X&ved=2ahUKFwjatsfdq-TpAhVcPn0KHfTICwYQ6AEwCnoECAGQAQ#v=onepage&q=witnesses%20overestimate%20time&f=false)

<sup>2</sup> *Stehl v. Dose*, 83 Ill. App. 3d 440, 443, 403 N.E.2d 1301, 1303 (1980).

<sup>3</sup> *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)).

<sup>4</sup> *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.


have found extenuating circumstances such that we have overturned a viciousness designation even after an unprovoked bite or attack.

30. This is one of those cases. We have seen the brutal results when a pit bull much smaller than Lokai's 100 pounds bites with any conviction. And while the scenario Lokai faced on October 15—an unannounced stranger on the property in the dark—was not legal provocation, it is substantially different than Lokai biting a stranger in a public space or a day-time visitor. Given the minor bite, the rapid speed Lokai retreated, the lack of any other evidence (other than those half-dozen seconds) of aggression, and the steps the Jezeks have already taken to prevent harm to a future delivery person, we find that Animal Services has not quite shown that Lokai constitutes a danger.

**DECISION:**

We reverse Lokai's viciousness designation and the associated compliance order and monetary penalties

ORDERED May 10, 2023.



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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 9, 2023*. 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 APRIL 26, 2023, HEARING IN THE APPEAL OF WENDY &  
JOEL JEZEK, REGIONAL ANIMAL SERVICES OF KING COUNTY  
FILE NO. V22013672-A22005561**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Kyle Holmes, Dave Carson, Wendy Jezek, and Joel Jezek. 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	Notice of violation no. V22013672-A22005561, issued October 21, 2022
Exhibit no. D3	Online Complaint form of October 15, 2022, incident by Kyle Holmes, dated October 17, 2022
Exhibit no. D4	RASKC investigation report no. A22005561
Exhibit no. D5	Photograph
Exhibit no. D6	Photograph
Exhibit no. D7	Photograph
Exhibit no. D8	Photograph
Exhibit no. D9	Photograph
Exhibit no. D10	Photograph
Exhibit no. D11	Photograph
Exhibit no. D12	Appeal, received November 9, 2022

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

Exhibit no. A1	Receipt from A Pet Clinic of Kent
Exhibit no. A2	Photograph Defendant’s Property’s Gate
Exhibit no. A3	Photograph Defendant’s Property
Exhibit no. A4	Photograph Defendant’s Property
Exhibit no. A5	Photograph Defendant’s Property
Exhibit no. A6	Photograph of Lowki with Faith
Exhibit no. A7	Photograph of Lowki on trail
Exhibit no. A8	Photograph of Lowki with ball
Exhibit no. A9	Video of Lowki on patio
Exhibit no. A10	Video of Lowki w/ Lola the dog
Exhibit no. A11	Video of Lowki at track w/ other dogs
Exhibit no. A12	Amazon Delivery Drive Safety Training Video



May 10, 2023

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V22013672-A22005561**

**WENDY AND JOEL JEZEK**  
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 10, 2023.



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Lauren Olson  
Legislative Secretary

**Carson, Dave**

Carson Law Group  
Hardcopy

**Holmes, Kyle**

Hardcopy

**Isaacson, Mari**

Prosecuting Attorney's Office

**Jezek, Wendy/Joel**

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