

Appeal No.: 3429 002 /2016
Hearing Date: 19 April 2016

RED DEER APPEAL & REVIEW BOARD DECISION

BETWEEN:

ROYCE BORDES (ANGELS 'N' PAWS)	Appellant
-and-	
CITY OF RED DEER INSPECTIONS & LICENSING	The City

Hearing Attendees

The Board:

Chair: G. Marks
Panel Member: K. Howley
Panel Member: C. Mah
Panel Member: D. Wyntjes
Panel Member: Z. Ordman

Clerks:

Carlee Mulder, Board Clerk
Julie Hindbo, Appeals Coordinator
Samantha Rodwell, Deputy City Clerk

Board's Legal Counsel:

Jennifer Sykes

The City of Red Deer:

Development & Licensing Supervisor, Angie Keibel
Licensing/Permit Inspector, Shelly Van Someren
Inspections & Licensing Manger, Erin Stuart
License/Permit Inspector, Stephanie Gramlich
Enforcement & Buildings Supervisor, Darin Sceviour

Alberta Animal Services ("AAS"):

Officer Jeff Cox
Sargent Duane Thomas
Officer Kevin Duval
Erica Coomber

Appellant:

Royce Bordes (CEO/ Founder: Angels n Paws) via teleconference

This decision pertains to an appeal to the Red Deer Appeal and Review Board in respect of the City of Red Deer *Dog Bylaw* No. 3429/2009 and Council Policy #6118-C (Aggressive Dog Designation).

DECISION SUMMARY:

The Board finds, that based on the consideration of preliminary matters, the Appellant, Royce Bordes, provided enough evidence to support the claim of ownership of the dog “Teddy”; however, because the appeal was not filed within the 14-day timeline, the Board does not have jurisdiction to hear the Appeal.

JURISDICTION AND ROLE OF THE BOARD

1. The legislation governing municipalities in the Province of Alberta is the *Municipal Government Act*, RSA 2000 c M-26 (MGA). The MGA provides that a council may pass bylaws for municipal purposes respecting wild and domestic animals (s 7(h)).
2. The Red Deer Appeal and Review Board is established by City of Red Deer, Bylaw No. 3487/2012, *Appeal Boards Bylaw*. The duty and purpose of the Red Deer Appeal and Review Board is to hear and make decisions on appeals for which it is responsible under any city bylaw and in particular, for this appeal, under the *Dog Bylaw (Appeal Board Bylaw, s 17(3)(b))*.

CITY OF RED DEER – APPLICABLE BYLAW and POLICY

3. Council of the City of Red Deer passed the City of Red Deer Bylaw No. 3429/2009, *Dog Bylaw*, for the purpose of regulating and controlling dogs within the City of Red Deer, Alberta (“the City”).
4. The *Dog Bylaw* states:
 - i. The Inspections and Licensing Manager may designate a Dog as an Aggressive Dog if he or she determines that the Dog has caused or is likely to cause damage, injury, or death to another domestic animal or person (s. 15(3)).
 - ii. The Inspections and Licensing Manager may order that a Dog or Aggressive dog be euthanized, provided he or she is satisfied that the Dog or Aggressive Dog constitutes a continuing danger to persons or domestic animals and cannot be rehabilitated (s. 16(1)).
5. Council of the City established the Aggressive Dog Designation Policy (#6118-C) to “set out the criteria the City will use to determine and designate a dog as aggressive.”
6. The Policy includes a “behavior assessment chart,” with 6 levels, to be referred to in evaluating a dog for aggressive behavior, as follows:

Level	Description
1	Dog growls, lunges, and/or snarls. Chases a person in a menacing fashion. No teeth touch skin. Mostly threatening behavior toward a person.
2	Teeth touch skin but no puncture of the skin. May have red mark/minor bruising. A minor injury to a person.

3	Puncture wounds to the skin, no more than ½ the length of the canine tooth; one to four puncture holes from a single bite. No tearing or slashing of the skin. Probable bruising. A minor injury.
4	One to four holes from a single bite; one hole deeper than ½ the length of the canine tooth, typically with a contact or punctures from more than just the canines only. Deep tissue bruising, tears, and/or slashing wounds. Dog usually clamped down and held, shook, or slashed the victim. A severe injury*. Also, an attack that results in the death of another domestic animal.
5	Multiple bites at Level 4 or above. A concerted, repeated attack. A severe injury.*
6	Any bite resulting in the death of a human.

*A “severe injury” is described in the *Dog Bylaw* as “any physical injury to another domestic animal or person caused by a Dog or Aggressive Dog that results in broken bones or lacerations requiring sutures or cosmetic surgery.”

7. The Policy (#2) states “The City may designate a dog as aggressive if:
 - i. the dog has been involved in more than three incidents evaluated to be at Level 1;
 - ii. the dog has been involved in more than two incidents evaluated to be at Level 2 or 3; or
 - iii. the dog has been involved in an incident evaluated to be at Level 4.

BACKGROUND

8. A decision dated March 15, 2016, and issued by the Inspections & Licensing Manager of the City of Red Deer, Alberta (“the City”) designated a red nose Pitbull Terrier (Teddy), to be an Aggressive Dog and ordered Teddy to be euthanized, pursuant to the City *Dog Bylaw* No. 3429/2009 and Council Policy #6118-C Aggressive Dog Designation (the “Policy”).
9. On April 6, 2016, the Red Deer Appeal and Review Board (the Board) received an appeal from Royce Bordes (the Appellant), with the applicable filing fee, opposing the Aggressive Dog Designation and the Euthanization Order of Teddy.
10. The Inspections & Licensing Manager of the City of Red Deer, Alberta (The City) was provided with notice of the appeal on April 6, 2016.
11. Notice of Hearing was sent to the parties on April 8, 2016.

PRELIMINARY MATTERS

12. Neither party raised an objection to any Board member hearing the appeal.
13. The Appellant did not raise any preliminary concerns.
14. The City raised two preliminary matters pertaining to jurisdiction:
 - i. Whether the appellant has standing ‘as the “owner”’ of Teddy; and
 - ii. Whether the appeal was filed within the permitted time period.

CONSIDERATION OF PRELIMINARY MATTERS

15. The Board must rule on the following matters prior to considering the appeal:
- i. Is the Appellant an owner as defined in section 3(13) of the City *Dog Bylaw No. 3429/2009*? The answer to this question determines if the Appellant has standing to file the appeal as only an owner has standing to file an appeal.
 - ii. Was the appeal filed within the legislated fourteen day time period from the date the notice of the order was received by the Appellant? The subject appeal must be filed within fourteen day time period as provided in section 17 of the City Appeal Board Bylaw No. 3487/2012 from the date notice was received.

The City Position – Ownership of the Dog

16. Section 17 of the City of Red Deer Dog Bylaw, states that the owner may appeal the Aggressive Dog Designation or Euthanization Order.
17. Section 3 (13) of the Dog Bylaw defines owner as;
- i. Named as owner on the Dog Tag application;
 - ii. In possession or control of the Dog; or
 - iii. In possession of the property where a Dog appears to reside, temporarily or permanently.
18. Avril Powers and Thomas Lahey had custody of Teddy from April 5 to April 7, 2016.
19. The Appellant, was a previous owner of Teddy, and had arranged for the microchip to be placed in Teddy's ear.

The City Position – Timeline for Appeal

20. An appeal must be received within 14 days of notification as per s. 17 of the Appeal Board Bylaw, which says;
- (7) Where there is no time frame set out in the MGA or subordinate legislation, the Notice of Appeal must be received by the Clerk at Red Deer City Hall within (14) days of the date the Appellant was notified of the issue to which an appeal is sought.
21. The Aggressive Dog Designation and Euthanization Order that was sent on March 15, 2016, The City detailed that March 29, 2016 would be the deadline to file the appeal.
22. Avril Powers had custody of Teddy at the time of the incident, submitted an appeal. and later withdrew the appeal.

Appellant Position – Ownership of the Dog

23. The dog, Teddy, was pulled out of a shelter in the United States and was placed the Appellants care and possession in October of 2010. During this time, the Appellant paid for all veterinary needs; including shots, neutering and implanting a microchip set with her personal information.
24. After the health inspections were complete, Teddy was sent to Canada. Karen Sawyer of Angels n Paws, a rescue partner in Alberta took Teddy in late 2010. At that point in time, Karen Sawyer verbally took on all responsibilities of the dog, Teddy.
25. A verbal agreement was initiated, that if Teddy required help or needed to be re-homed, that he would be returned back to the Appellant's care and possession.
26. In 2010, the Angels n Paws organization was not in operation, therefore there was no formal written contract for Teddy.
27. Current procedure of the Angels n Paws organization, is to have a written contact with all rescued dogs and their new owners. The contract says that if an issue or situation were to arise that a dog required help, the dog would be returned to the Angels n Paws organization.
28. The Appellant was notified of the issues with Teddy because her information remained on the microchip. Alberta Animal Services contacted the Appellant when Teddy came into their care, using the information on the microchip.
29. It is the responsibility of new owners to change the information on the chip, however Angels n Paws requests that their information remain on the chip so that the organization knows the location of the rescued dogs.

Appellant Position – Timeline for Appeal

30. On March 16, 2016, the Appellant received information that Teddy was in trouble. It was not until Avril Powers had contacted the Appellant, that she became aware of the Aggressive Dog Designation and the Euthanization Order.
31. The Appellant wanted to help Teddy, and paid the appeal fee to enable Avril Powers to file an appeal; Avril Powers later withdrew this appeal on April 1, 2016.

BOARD FINDINGS

Ownership of the Dog

The Board finds that:

32. The Appellant was an owner at the time of the appeal pursuant to the definition of "owner" in section 3(13)(b) of the Dog Bylaw 3429/2009, which states:
 - (13) "Owner" means the owner of a Dog or Aggressive Dog and includes any person or persons:
 - (b) In possession or control of, or having charge of, any Dog or Aggressive Dog , excluding any person who has found a Dog or Aggressive Dog and has taken

control of it for the purpose of relocating its owner and/or turning it over to an Animal Control Officer;

33. The Appellant proved to “have charge of” Teddy by initializing a verbal agreement with Karen Sawyer, (the first owner of Teddy after the Appellant), that stated that Teddy would be returned to the Appellant if Teddy had any issues.
34. The Appellant is identified as owner of Teddy from the implanted microchip, which remained in the Appellant’s name.
35. The Appellant demonstrated ‘taking charge’ of Teddy by taking the necessary steps when receiving notification of Teddy’s situation. These steps include the Appellant paying for the filing fees for her own appeal and Avril Powers appeal.
36. There was not significant evidence brought forth to demonstrate that the Appellant did not have charge of Teddy.

Timeline

The Board finds that:

37. The Appellant was informed by Animal Services, Officer Thomas, on March 8, 2016 of Teddy’s behavioral issues. On March 15, 2016, an Aggressive Dog Designation and Euthanization Order had been issued by the City of Red Deer, to Avril Powers. On March 18, 2016, the Appellant received an email from Avril Powers.
38. The Appellant stated that she received notice of the Euthanization Order on March 21, 2016. Between the dates of March 21, 2016 and March 23, 2016, the Appellant was making arrangements with Avril Powers to file an appeal. Avril Powers filed an appeal on March 23, 2016, with the Appellant paying for the cost of filing the appeal.
39. Although the Appellant paid for the first appeal, that appeal was filed and withdrawn by Avril Powers. Therefore, the first appeal is not before the Board for consideration.
40. The Appellant was provided with notification of the Aggressive Dog Designation and Euthanization Order no later than March 21, 2016. Accordingly, the deadline for the Appellant to file her appeal was on April 4, 2016.

BOARDS DECISION (Majority)

Based on the evidence before it:

41. The Board finds that the Appellant was an owner of Teddy, at the time the appeal was filed. Therefore, the Appellant has standing for this appeal.
42. The Board finds that the appeal was not filed within 14 days of the Appellant receiving notice of the Euthanization Order.

43. The Board finds that it does not have jurisdiction to hear the appeal filed by the Appellant, as the Appellant failed to file within the 14 day period requirement

Dated at the City of Red Deer, in the Province of Alberta this 2nd day of May, 2016.



Garfield Marks, Chair
Red Deer Appeal & Review Board

APPENDIX "A"

DISSENTING OPINIONS OF THE BOARD

We support the first preliminary jurisdictional issue that the Appellant, Royce Bordes, has standing to lodge an appeal with a unanimous decision of the Board.

DISSENT - Submitted by Board Members; Z. Ordman and D. Wytjies

We dissent the decision taken by colleague members of the Board on the second issue of whether the appeal was received in time. We believe the Board should have jurisdiction to hear the appeal for the following reasons.

The Appellant, Royce Bordes from the California Rescue Agency Angels N Paws, had adopted Teddy under her name, and was under the impression that Teddy was fine and had a home in Canada. Teddy had been in Red Deer for two days with Avril Powers. Teddy previously lived in the Brooks area, and had no Red Deer license. We were told by the Appellant that she had not been kept informed of Teddy's status as per a verbal agreement from the pet adoption. The Appellant was notified from Avril Powers, the Red Deer owner, via a voicemail on March 16th and an email on March 18, 2016, which informed her that Teddy attacked another dog; and that the City had issued a ticket on March 15, 2016 from an incident on March 7, 2016.

The Appellant returned Avril Powers call and understood that Teddy had already been euthanized. The Appellant and Officer Thomas connected on March 8, 2016 and she was informed that Teddy was not euthanized, but was not told that Teddy was Designated as Aggressive, and instead was told that there was "just a serious incident". The Appellant stated that she learned about the City's Aggressive Designation around March 20, 2016. When questioned on knowing about the Euthanization Order, the Appellant stated March 21, 2016.

An Aggressive Dog Designation and Euthanization Order had been issued by the City of Red Deer on March 15, 2016 to Avril Powers.

Avril Powers submitted an appeal on March 23, 2016. In conversation between Avril Powers and the Appellant, the Appellant said "we will pay for that" and paid the first appeal with her credit card.

With dates, information and responses to questions during the teleconference appeal hearing and during questioning of dates of the Appellants testimony, there was uncertainty of when she was fully informed about the City's orders including Teddy's Euthanization Order. We found that her testimony was unclear with numerous dates provided; those dates being March 18th, 21st and 23rd.

It was unclear whether any partial or complete notice was provided to the Appellant by the City. It appeared that notice was provided only to Avril Powers. Conversations with the Appellant were verbal and no direct notification was provided. No evidence was brought forth showing that the City of Red Deer directly attempted to contact the Appellant as an interested party, regarding the Aggressive Dog Designation and the Euthanization Order.

We, the dissenting Board Members, are not confident in the dates provided by the Appellant nor the conclusion that the appeal date was missed. We did not hear any evidence from the City of the Appellant being outside the 14-day appeal jurisdiction.

We submit the City did have sufficient knowledge of the Appellant's status as owner/charge due to the microchip and her payment of the appeal at first instance. We failed to see where the City made attempt to notify her fully regarding the Euthanization Order.

It was unclear if the Appellant understood the timelines of the date of appeal. We acknowledge that the Appellant was party to the first appeal with her telephone conversations with Avril Powers. When the first appeal was withdrawn by Avril Powers on April 1, 2016, the Appellant believed her co-sponsorship of the first appeal would carry on, including the fact that she paid for the first appeal and was party to the appeal. The appeal was still active and there was no indication it was properly withdrawn.

Regarding the second appeal that the Appellant, Royce Bordes filed; it was the Appellant's position that the first appeal was still active, however due to unauthorized withdrawal of the first appeal, she tried to remedy this by resubmitting and filling a second appeal on April 6, 2016. When her second appeal was filed, she believed it would merely carry on from the first appeal. We also submit that if the Appellant, Royce Bordes, was party to the first appeal, the first appeal is still active.

We submit that the Appellant acted in good faith that the appeal would continue based upon her co-sponsorship in the first appeal and her interest in the dog.

We, the dissenting members, believe the Appellant submitted her appeal within the timelines and the Board has jurisdiction to hear the appeal.