

Appeal No.: 3429 001 /2015
Hearing Date: 06 May 2015

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: B. FARR
PANEL MEMBER: R. KERBER
PANEL MEMBER: C. MAH
PANEL MEMBER: L. MULDER
PANEL MEMBER: Z. ORDMAN

BETWEEN:

ALISHA ALEXANDER

Appellant

-and-

CITY OF RED DEER
INSPECTIONS & LICENSING

The City

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*).

The Appeal was heard on the 6th day of May, 2015, in the City of Red Deer Council Chambers, within the province of Alberta.

DECISION SUMMARY:

Based on evidence submitted in writing and at the hearing, the Board CONFIRMS the *Aggressive Dog Designation*, as issued on April 9, 2015, by Inspections & Licensing at the City of Red Deer.

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. 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.”
5. The *Dog Bylaw* states, “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)).
6. The Policy includes a “behavior assessment chart,” with 6 levels, to be referred to in evaluating a dog for aggressive behavior.

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:
 - (a) the dog has been involved in more than three incidents evaluated to be at Level 1;
 - (b) the dog has been involved in more than two incidents evaluated to be at Level 2 or 3; or
 - (c) the dog has been involved in an incident evaluated to be at Level 4.

BACKGROUND

8. By decision dated April 9, 2015, the Inspections & Licensing Manager of the City of Red Deer, Alberta ("the City") issued a decision to declare a male husky dog ("Hudson"), to be an Aggressive Dog. This decision was made in accordance with *City Dog Bylaw No. 3429/2009* and Council Policy #6118-C Aggressive Dog Designation (the "Policy").
9. On April 10, 2015, the Red Deer Appeal and Review Board ("the Board") received an appeal from Alisha Alexander ("the Appellant"), together with the applicable filing fee, opposing the designation of Hudson as an Aggressive Dog.
10. The Inspections & Licensing Manager of The City of Red Deer, Alberta ("the City"), was provided with notice of the appeal on April 10, 2015.
11. Notice of Hearing was sent to the parties on April 15, 2015. The parties exchanged disclosure as prescribed on the Notice of Hearing; copies of disclosure were provided to the Clerk of the Board.

PRELIMINARY MATTERS

12. Neither party raised an objection to any Board member hearing the appeal.
13. Neither party raised any procedural/preliminary concerns.
14. No objections were raised to proceeding with the hearing.

15. Hearing Attendees

The City:

Erin Stuart, Acting Manager, Inspections and Licensing

Witness: Courtney St. Louis, mother of bite victim ("Witness #1")
Courtney's son ("the child")

Alberta Animal Services ("AAS")

Officer Jeff Cox

Appellant:

Alisha Alexander accompanied by her husband Shane Alexander

EXHIBITS

16. The Chair confirmed the following hearing Exhibits:
 - A.1- Hearing Agenda, Appeal Form, and Notice of Hearing
 - B.1, B.2, B.3 – Hearing submissions of the City
 - C.1, C.2, C.3, and C.4 – Hearing submissions of the Appellant

ISSUES

17. Does the Level 4 Aggressive Dog designation apply to the husky dog, named Hudson, which is subject to this Appeal? The Board must either confirm or revoke the designation based on the evidence submitted by the parties.

POSITION OF THE PARTIES

The City Position

18. The City referred to the report contained in its disclosure submission (within Exhibit B.1). The report summarizes their decision to apply the Aggressive Dog designation.
19. The City referred to AAS file #67983 (within Exhibit B.1), which contains an investigation report summarizing incidents pertaining to Hudson.
- The report confirms that the name and address of the owner and matches that of the Appellant. The report also confirms that the Appellant was issued a City of Red Deer dog tag #3820, and the dog described under that number matches the dog that is at issue.
 - The report includes a summary of the AAS investigation of an incident that occurred on March 3, 2015, at the address of the Appellant. Under s. 14(1)(b) of the *Dog Bylaw*, a charge was issued on March 20, 2015 to the registered owner of Hudson, for “a dog causing severe injury to a person.”
 - The report also includes a review of a previous incident and resulting warning that was issued January 28, 2014, to Appellant. Included in the report are related witness statements and medical reports.
20. At the hearing, the City called two witnesses who provided verbal testimony:
- i. Witness #1: Courtney St. Louis (mother of the injured child):
 - On March 3, 2015, the witness was walking with her preschool son (the child) near the address of the Appellant. The witness stated that there was a dog within the fence at the address of the Appellant, and the dog was barking as they walked on the sidewalk outside the fence.
 - There was a place on the fence where the dog was able to have its head and paws sticking up over the fence, but it was no longer barking and appeared calm.
 - At the time of the incident, the child was about a foot or more away from the fence at the place where the dog’s head was looking out from the fence. As the child raised his hand, the animal suddenly reached out and bit the child’s hand.
 - The witness screamed and pushed the dog off the child’s hand. There appeared to be no one at the home of the Appellant, so the witness carried the child away calling for help. The child’s hand was bleeding.
 - A neighbor came out to help and called 911. The child was taken to the hospital in an ambulance, received surgery with stitches for about two hours, and remained in the hospital for two days following the incident.

ii. Witness #2: AAS Officer Cox:

- On March 3, 2015, Officer Cox received a phone call from Constable Rockwell of the RCMP informing him that a child had been bitten by a dog and subsequently taken to the hospital.
- Officer Cox went to the hospital and spoke to the Witness #1. No pictures were taken of the injury at this time because the child's hand was wrapped up at the request of the surgeon.
- While at the hospital, Officer Cox obtained a witness statement and consent to obtain medical records from Witness #1.
- As noted in his investigation report; Officer Cox left the hospital and went to the address of the Appellant. At this time, photos were taken of the scene where the incident had occurred; a photo was taken of the dog peering over the fence where a portion of board had broken off. The officer noticed blood on the ground outside the fence.
- A few days later, Officer Cox spoke with the Appellant at her residence and informed her of the incident and resulting injury. The Appellant's dog license had expired at time, but this was obtained shortly after; no violation ticket was given for this infraction.

21. In response to questions from the Board, Officer Cox confirmed that the previous incident from January 28, 2014, had been reported by Alberta Public Health and recorded by AAS. The incident was not serious and the bite victim did not want to take any further action at that time.
22. The City stated that following the previous incident on January 28, 2014, the owner was issued a warning along with a recommendation to fix the fence so the dog could not come into contact with the public.
23. The City referred to The *Dog Bylaw*, s 11, which describes requirements for containing an Aggressive Dog. In response to questions from the Board, the City confirmed that this section applies to animals already designated as aggressive.
24. The City explained that the incident on March 3, 2015, was assessed based on the investigation and report from AAS, and the injury that resulted.
25. The City recited sections of the *Dog Bylaw*, ss 15(3) and 2(18):
26. Based the criteria within the behavior assessment chart in the Policy, Hudson has been involved in an incident evaluated to be at Level 4. Based on the AAS investigation and report and in accordance with the *Dog Bylaw* and the Policy s 2(c), the City declared Hudson to be an Aggressive Dog.

Appellant Position

27. The Appellant submitted that the Aggressive Dog designation should not be applied based on Hudson's overall behavior as supported by her evidence and on efforts to secure the existing fence along with plans to build a new fence. The Appellant is concerned that the designation is very restrictive for Hudson and believes the incident was provoked by the victim.
28. The Appellant stated that the location of her home is near a school and there are many children passing by and bothering their two dogs, one of which is Hudson. The Appellant stated that on two occasions, she phoned the City to report concerns about kids getting aggressive and throwing things into the Appellant's yard.

29. Following the January 28, 2013 incident, the Appellant put “Dog on Premises” signs on the outside of the fence and installed plywood around the fence perimeter on the inside to prevent public from putting their hands inside the fence.
30. The Appellant referred to Exhibit C.1 containing a summary of their report related to the incident.
 - On the day of the incident on March 3, 2015, the Appellant returned home at approximately 11:45 or 11:50 a.m. and proceeded to take her children from her vehicle to the house.
 - At this time, she let her two dogs out, unsupervised for about five minutes while she attended to her children in the house.
 - She then put the dogs back in containment, but did not see the incident take place and was not aware that any incident or injury had occurred.
31. The Appellant referred to additional letters of support contained within Exhibit C.1. These letters include two letters from third parties describing Hudson’s behavior and personality, and one letter from a Certified Master Trainer. The letters speak to the general personality and behavior of Hudson in various circumstances.
32. The Appellant provided a copy of an estimate for fence materials contained within Exhibit C.2. The Appellant’s husband advised that they intend to replace the fence as soon as weather conditions and necessary permits allow. In the meantime, they have further secured the perimeter of the fence with additional bracing and have repaired the hole from the broken board.
33. Within Exhibit C.3, the Appellant provided 6 pages of photos showing the condition of the fence; the photos were taken after the March 3, 2015 incident. The photos show the signs posted on the outside of the fence, the plywood installed on the inside of the fence, and the area containing the broken board (that has since been boarded up), where the incident took place.
34. The Appellant presented video footage demonstrating Hudson’s behavior in various circumstances. In response to questions raised pertaining to the videos, the Appellant confirmed that family members were present when the videos were taken.
35. As noted in their summary within Exhibit C.4, the Appellant believes the Aggressive Dog designation has been wrongfully placed on Hudson.
36. The Appellant does not disagree that her dog bit the child in question, but based on the arguments, the character references, and the video footage presented, she requests that the Board reconsider the Aggressive Dog designation.

BOARD FINDINGS

37. The Board finds that both parties both agree that Hudson bit the child, and that the bite caused the injury described in the medical reports within Exhibit B.1.
38. The Board further finds that the incident resulted in a severe injury to a person (the child) requiring surgery and stitches.

39. The Board considered the Appellant's arguments and Exhibits and finds that the behavior of a dog outside of the incidents at issue is not relevant to the Aggressive Dog designation. The designation is based on a dog's behavior in the given incident, not on behavior before or after an incident.
40. The Board finds that whether the incident occurred beyond the fence boundary or whether it was provoked is not relevant to the application of the Aggressive Dog designation. The *Dog Bylaw* requires the owner of an animal to be responsible for the conduct of his or her pet, regardless of whether it is in its yard or in a public place, such as a park.
41. The Board acknowledges that the City refers to the *Dog Bylaw*, s 11, as a useful tool to determine appropriate containment options where no other requirements or guidelines are in place. The Board finds that following the January 28, 2014 incident, recommendations were made to improve the fence, but the fence improvements were not sufficient to prevent the incident on March 3, 2015.
42. The Board finds that Hudson did inflict physical injury causing damage to a person, and that the injury qualifies as a "severe injury", as defined in the Dog Bylaw.
43. The Board further finds that the "severe injury" as determined in the circumstances of this case comply with the description of "level four aggressive behavior" as set out in the Policy; thus, the Board finds the designation was appropriately applied in this case.

DECISION

44. Based on the evidence before it, the Board finds that the *Dog Bylaw* and the Aggressive Dog Designation Policy #6118-C were appropriately applied.
45. The Board CONFIRMS the Aggressive Dog designation based on the evidence presented.

Dated at the City of Red Deer, in the Province of Alberta this 19th day of May, 2015.



Bill Farr, Chair
Red Deer Appeal & Review Board

APPENDIX “A”

LIST OF EVIDENCE PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

Exhibit “A” - Agenda and Hearing Materials Packet, including Appeal Form and the Notice of Hearing.

Exhibits “B.1, B.2, B.3” – Hearing submissions of the City.

Exhibits “C.1, C.2, C.3, C.4” - Hearing submissions of the Appellant.