

RED DEER APPEAL AND REVIEW BOARD DECISION

CHAIR: M. Kartusch
PANEL MEMBER: R. Boerger
PANEL MEMBER: V. Foster
PANEL MEMBER: C. Mah
PANEL MEMBER: G. Paradis

BETWEEN:

Chelsey Campbell
Represented by Geoff Rowe

Appellant

- and -

THE CITY OF RED DEER
Represented by Amy Fengstad, Inspections & Licensing
& Brendan Dzioba – Legal Counsel for the Respondent

Respondent

This decision pertains to an appeal to the Red Deer Appeal and Review Board in respect of The City of Red Deer, Bylaw No. 3429/2009, *Dog Bylaw* (September 21, 2009) and Council Policy #6118-C *Aggressive Dog Designation Policy* (referred to as the Dog Bylaw and the Policy).

The Appeal was heard on the 30th day of July, 2020 via Zoom Online Video Conference.

DECISION:

Based on the evidence submitted in writing and presented at the hearing, The Red Deer Appeal and Review Board CONFIRMS the Aggressive Dog Designation for Diesel, a Staffordshire Bull Terrier (Owned by the Appellant), as issued on July 7, 2020, by the Inspections & Licensing Department of The City of Red Deer.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD

1. The Red Deer Appeal and Review Board (referred to as the Board) is established by The City of Red Deer, Bylaw No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible.

2. None of the Parties had any objection to the constitution of the Board. There were no conflicts identified by the Board Members.
3. There were two preliminary matters raised for the Board.

Preliminary Matter #1 – Jurisdiction

The Respondent

4. The Respondent stated that the Notice of Appeal indicates that the Appellant will be raising issues relating to the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*, specifically sections 7, 8, 11 and 12 of the *Charter of Rights and Freedoms* (referred to as the Charter).
5. The Respondent stated that jurisdiction of the Board is derived from the following:
 - Section 17(1) of the Dog Bylaw provides that the Owner of a Dog that has been designated as an Aggressive Dog may appeal that designation.
 - Section 16(1)(d) of the Appeal Boards Bylaw authorizes the Board to hear and to make decisions on appeals from the Dog Bylaw.
 - Section 17(3) of the Dog Bylaw provides that the Board may either revoke or confirm the Aggressive designation.
6. The Respondent stated that the Board does not have the jurisdiction to consider whether the provisions of a City bylaw conflict with the Charter or not. Challenges to the validity or constitutionality of bylaws must be brought through the court system.

The Appellant

7. The Appellant stated that she objects to the validity of the dog bylaw based on the Charter challenge regarding section 7, 8, 11 and 12 of the Charter, which therefore, would make the Charter challenge pertinent to the Appeal before the Board.
8. The Appellant further stated that it is his intent to refer to human rights as they pertain to the appeal at hand and that he would not raise them as an issue for which the Board is to make a decision.

The Board

9. The Board agrees with the Respondent regarding the jurisdiction of the Red Deer Appeal and Review Board as it relates to the Aggressive Dog Designation as stated above. The Board finds the matters related to the Charter could not be considered for this appeal because the Board does not have jurisdiction to consider issues related to the Charter.

Preliminary Matter # 2

The Appellant

10. The Appellant stated that he did not have sufficient time to prepare a response to late submissions from the Respondent. The late submissions were filed with the Board and provided to the Appellant the afternoon of July 29, 2020.
11. The submissions were: redacted medical records of the Victim pertaining to the incident with regards to a Dog named Diesel which is the subject matter of this Appeal and a written statement from the father of the Victim.
12. The Appellant requested the Board adjourn to allow sufficient time to review the documents. Alternatively, he asked that the late submissions be excluded entirely.

The Respondent

13. The Respondent advised that the medical records were referenced in the initial submission but were received late (Exhibit B.1 page 3). The Respondent added that he had no objection to excluding the medical records or the written statement from the Victim's father. The information contained in the records was added to provide the details of the injuries and to support the pictures that were contained in their initial disclosure package. Additionally, the Victim's father was online for the Appeal, and available to provide a verbal statement in the appeal hearing.
14. The Respondent objected to an adjournment to review documents as he did not believe the documents were contentious.

The Board

15. The Board considered the positions of both Parties. The Board denied the request for an adjournment and determined that the late submissions would not be considered by the Board and they would be excluded from the record.

ISSUES

16. Does the Level 4 Aggressive Dog designation apply to the Dog (referred to as Diesel) subject to this Appeal? The Board must either confirm or revoke the designation based on the evidence submitted by the Parties.

LEGISLATION & POLICY

17. The legislation governing municipalities in the Province of Alberta is the *Municipal Government Act*, RSA 2000, c. M-26 (the "MGA"). The MGA provides that a Council may pass bylaws for municipal purposes respecting wild and domestic animals and activities in relation to them (s. 7(h)).

18. Council of The City of Red Deer passed the Dog Bylaw, for the purpose of regulating and controlling dogs within The City of Red Deer, Alberta. They also established the Policy to set out the criteria to be used when determining if a dog is aggressive.
19. 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)).
20. Section 2 of the Policy 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.
21. The Policy includes a “behavior assessment chart,” with 6 levels to be referred to when 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 behaviour 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 dog’s 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 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 as described in the Policy is “any physical injury to another domestic animal or a person, caused by a dog or aggressive dog, that results in broken bones or lacerations requiring sutures or cosmetic surgery.”*

BACKGROUND

22. On June 22, 2020, the Respondent contacted Alberta Animal Services (a contracted service) to enforce the Dog Bylaw.
23. On June 30, 2020, an Aggressive Dog Designation Report issued by Alberta Animal Services was received by the Respondent with a recommendation to designate Diesel as aggressive.

24. On July 7, 2020, an aggressive dog designation was served on the Appellant by Alberta Animal Services.
25. On July 8, 2020, the Appellant filed a Notice of Appeal. On July 14, 2020, a Notice of Hearing was sent to the Parties.
26. The Board entered into evidence the following documents:
 - A1 Hearing Materials – 9 pages
 - B1 Respondent Submission filed July 23, 2020 – 60 pages
 - C1 Appellant Submission filed July 23, 2020 – 45 pages (PDF and PowerPoint Presentation)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Respondent

27. On June 22, 2020, Alberta Animal Services received a report of a serious dog attack on an 11 year old (referred to as the Victim) at 34 Springfield Avenue, Red Deer Alberta. The Victim had received multiple lacerations and puncture wounds to the face, a broken tooth and three other compromised teeth from the dog attack.
28. On June 22, 2020, Alberta Animal Services attended the residence of the Appellant at 34 Springfield Avenue. The officer informed the Appellant a file related to the incident involving Diesel was under investigation by Alberta Animal Services following the report of a dog attack resulting in injuries to a person.
29. Alberta Animal Services advised that the Appellant was aware of the incident as she was at home at the time. The Appellant was provided a witness statement to complete if she was willing to do so.
30. On June 24, 2020 Alberta Animal Services received an email containing 37 photos of the Victim. The photos were taken at the hospital and depicted the injuries received as a result of the incident.
31. On June 25, 2020 Alberta Animal Services attended the residence of the Victim and received a written witness statement, as well as a verbal statement from the Victim. The Victim stated that she had attended the Appellant's residence multiple times prior to the attack and has never had an issue with Diesel.
32. The same day, Alberta Animal Services also attended the residence of the Appellant. The Appellant was shown the photos depicting the extent of the injuries received by the Victim. Alberta Animal Services stated that the Appellant was provided an opportunity to submit a written statement of the incident. The Appellant chose not to provide a witness statement and the Board was provided the written notes from this meeting contained in Exhibit B1 pages 47 – 56.
33. Alberta Animal Services determined the incident involving Diesel to be a Level 4 Dog Bite Classification as per the Policy. The Appellant was informed of this classification and advised that due to the severity of the injuries, a report would be submitted to the Respondent recommending Diesel be designated as an aggressive dog.

34. Alberta Animal Services served a violation ticket on the Appellant, for the offence of “*Owner of a dog causing severe injury to a person (s. 14(1)(b) of the Dog Bylaw)*”. The Appellant was advised at that time that a witness statement from the Appellant would not impact the violation ticket issued.
35. On July 7, 2020 the Respondent determined that Diesel was involved in a Level 4 incident, as per Council Policy, causing severe injury to a person. This designation was based on the report of Alberta Animal Services and the photographs of the Victim’s injuries. Both the report and materials can be found in Exhibit B1 herein.
36. In a verbal statement to the Board, the Victim provided her account of the incident. The Victim stated that she was in the Appellant’s backyard sitting on a lawn chair eating a treat. The Appellant went into the home, Diesel came closer to the Victim and lunged for the treat and bit her face. The Victim stated that she did not tease Diesel.
37. In a verbal statement to the Board, the Victim’s father spoke to the character of his daughter, stating that he was not present for the incident. He stated that the Victim is an 11 year old girl, who is never in trouble, and is a good student with good grades. He stated she has been around dogs for most of her life and was involved in professional training with both of her own dogs.
38. The Victim’s father described the injuries sustained, stating that surgery was required to repair the damage. He also stated that the Victim has 3 scars on her face, and will require future surgery and dental work. He advised that in his opinion, the injury was a bite and that he hopes it will not happen again.

The Appellant:

39. The Appellant stated that Diesel is a 10 year-old Staffordshire Bull Terrier with back problems that make him unable to jump. The Appellant’s agent argued that Diesel is a kind, loving dog that has been around kids without issue his entire life and has never shown any sign of aggression prior to the incident.
40. The Appellant stated that she is not disputing that the incident occurred, but she is disputing the events that led to the incident. It is her belief that the decision to designate Diesel as aggressive was made without the Respondent having all of the relevant information.
41. The Appellant stated that Alberta Animal Services attended her home where she offered to show Alberta Animal Services where the incident occurred and to introduce him to Diesel to gauge his temperament. The offers were refused.
42. The Appellant agreed that Alberta Animal Services provided a blank witness statement to be completed. However, the Appellant stated that Alberta Animal Services advised that most people do not complete the statement as it may be used against them in future proceedings. At that point, the Appellant choose not to complete the statement and sought legal advice.
43. On June 25, 2020 the Appellant contacted Alberta Animal Services to submit a written statement prepared on the advice of legal counsel.

44. The Appellant stated that Alberta Animal Services attended her home and showed her photos depicting the Victim's injuries and advised her that a violation ticket would be issued to her as owner of Diesel.
45. The Appellant stated she tried to explain that Diesel was provoked but Alberta Animal Services refused to consider any statements. The Appellant attempted to give her written statement to Alberta Animal Services but it was refused so she placed it on the step for the officer to take.
46. The Appellant stated that she was advised by Alberta Animal Services that witness statements do not make a difference to the violation ticket or the designation of the aggressive dog. The Appellant stated she was also told by Alberta Animal Services chances of successfully defending the violation ticket and aggressive dog designation were zero.
47. The Appellant argued that Alberta Animal Services issued the violation ticket and recommended the aggressive dog designation prior to having all of the information. The Appellant stated that not all witnesses were interviewed and the incident was not properly investigated.
48. The Appellant felt there was no point to her written statement since it appeared the incident was already adjudicated upon and indefensible. The Appellant also stated that she felt intimidated by Alberta Animal Services and that Alberta Animal Services had a pre-conceived bias.
49. The Appellant offered her recollection of the events to the Board. She stated that 4 children were in the backyard and Diesel was located near the fence. Two of the children were having a treat while sitting on lawn chairs, while the other two were on the trampoline. The Appellant went inside for only a few minutes when the Victim and the Appellant's daughter came into the kitchen with injuries to the Victim.
50. The Appellant also relayed statements made by the children who witnessed the incident that the Victim had been teasing Diesel with her treat. The Appellant checked the wound, contacted the Victim's mother, and then contacted the Victim's father who picked up the Victim a few minutes later.
51. The children told the Appellant that Diesel was uninterested in the girls, but the Victim coaxed him over with the treat. Once Diesel was closer, the Victim put the treat near the dog, said "no" and put the treat towards her mouth. Diesel then lunged for the treat and made contact with the Victim.
52. The Appellant reiterated that Diesel's health issues prevent him from jumping and stated that this supports the children's statements.
53. The Appellant stated that she has since taken proactive measures including having a behavioral assessment of Diesel conducted by Paws Unleashed. The Appellant played the video of the assessment for the Board's consideration. The video depicts Diesel's temperament.
54. The Appellant also consulted many local trainers and animal support groups, reached out to multiple city officials in regard to procedural issues of the investigation, as well as the need for neutral fair treatment to all parties in an investigation.

55. The Appellant argued that the alternate guidelines speak to the intent of the impact: bite versus impact trauma and that due to the biological design of dogs, consideration must be given to trauma resulting from impact. The Appellant stated that typically impact trauma does not cause any significant bruising or swelling as there is no intention of the dog to close the jaw.
56. The Appellant believes that the injuries sustained by the Victim support impact trauma caused by accidental contact rather than an intentional bite. The Appellant referred the Board to pictures of the Victim found in Exhibit B1 p. 26 – 36, that show the injury at its worst, and pictures provided in Exhibit C1 p. 15 of the Victim 5 days later. He argued that the difference in the photographs proves there was little or no muscular damage or bruising.
57. The Appellant stated that the order to designate Diesel as aggressive was delivered to their home but left at the door and not properly served. The Appellant also found discrepancies between what was left at the door and what was submitted by the Respondent in their package to the Board. Further, the Appellant stated that they were not provided with the Policy or the Notice to Appeal form.
58. In closing, the Appellant requested the Board revoke the Aggressive Dog Designation. Diesel has been a kind family dog that has never shown any aggression or had prior incidents. This was an unfortunate accidental contact.

FINDINGS AND REASONS

59. The Board heard the Appellant confirm their dog Diesel was involved in the incident on June 22, 2020 and accepts that Diesel was responsible for it.
60. The Board acknowledges the Victim was the only witness in attendance at the appeal and accepts her testimony. The Appellant was not a witness and the 3 underage youths witnesses were not present at the appeal.
61. The Appellant provided injury guidelines from another source, Dr. Sophia Yin, which the Appellant believes were the guidelines on which the Policy was drafted. The qualifications in the guidelines at level 3 and 4 of the Council's Policy state "no more than half the length of the dog's canine tooth", and "one hole deeper than half the length of the canine tooth" sequentially. The applicable guideline is the Council's Policy in this Appeal and any reference to other guidelines cannot be considered by the Board due to the restrictions of the Board's jurisdiction, as outlined in preliminary matter #1 herein.
62. Through questioning, the Board confirmed that the classification of Aggressive Dogs found in the Policy is individually based; meaning progression through each level is not required to determine the classification.
63. The Level 4 Dog Bite Classification was clearly demonstrated through the pictorial evidence of the wounds to the Victim by Diesel, as well as the statements and dental information provided within Exhibit B1. Based on this evidence, and the definition as defined in the Dog Bylaw and Policy for "Severe Injury", the Board finds the classification to be accurate.

64. The Board gave little weight to the Appellant's argument that Diesel was provoked, as evidence to that effect was not provided. The witnesses that were present, were not in attendance at the hearing; therefore, the information could not be confirmed. Nevertheless, the Bylaw and the Policy do not speak to provocation of a dog.
65. The Board agrees that a determination of a Level 4 incident, pursuant to the Council Policy, must be based on the injuries that occurred and the subsequent medical attention and surgeries that were required as a result of the injuries.
66. The Board finds that the Appellant's argument regarding the lack of investigation by Alberta Animal Services to be a procedural matter. Notwithstanding any procedural matters related to the investigation, the Board was presented with sufficient evidence to confirm the Level 4 Aggressive Dog Designation for Diesel.
67. The Board finds that based on the Dog Bylaw, the Policy, the evidence presented and the wounds inflicted by Diesel on the day of the incident, an Aggressive Dog Designation is warranted. The Board also finds the Inspections & Licensing Manager exercised appropriate discretion to make the determination of this designation.

CLOSING:

68. Based on the evidence submitted in writing and presented at the hearing, the Board CONFIRMS the Aggressive Dog Designation for Diesel, a Staffordshire Bull Terrier (Owned by the Appellant), as issued on July 7, 2020, by the Inspections & Licensing Department of The City of Red Deer.

Dated at the City of Red Deer, in the Province of Alberta, this 13th day of August, 2020 and signed by the Chair on behalf of all five panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



Lori Stubbard on behalf of :
Michael Kartusch, Chair
Red Deer Appeal and Review Board