

Appeal No.: 3429 001 2018
Hearing Commenced: October 11, 2018

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: Petra Kitteringham
PANEL MEMBER: Karen Howley
PANEL MEMBER: Tyler Lacoste

BETWEEN:

CHEYANNE RENTZ
Represented by Jeremy McRae & Don Rentz

Appellant

and

CITY OF RED DEER
Represented by Keegan Rutherford, Brownlee LLP
Erin Stuart, Inspections & Licensing Manager

City Authority

DECISION:

The Board has no jurisdiction to hear the appeal filed in opposition of an Aggressive Dog Designation issued on a female Bullmastiff dog named Jersey (owned by Cheyenne Rentz). The appeal is dismissed.

JURISDICTION AND ROLE OF THE BOARD

1. The Red Deer Appeal & Review Board (the Board) is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under any City bylaw and in particular, arising from The City of Red Deer, Bylaw No. 3429/2009, *Dog Bylaw* (September 21, 2009).
2. None of the parties had any objection to the constitution of the Board.

3. The Board considered two preliminary issues: timeline to file the appeal; and nonpayment of the appeal filing fee.

Timeline to File the Appeal

4. With regard to the timeline to file the appeal, the Parties agreed that the designation letter, although dated August 31, 2018, was served on the Appellant on September 04, 2018. The Appellant had 14 days to file an appeal as noted in the designation letter. The appeal was filed on September 18, 2018.
5. Based on the submissions of both Parties, the Board finds that the timeline to file an appeal is a non-issue.

Non Payment of Appeal Filing Fee

6. The City Authority spoke to this matter, stating that s. 17(5)(b) of the *Appeal Boards Bylaw* provides that an appeal or a review is commenced by mailing or delivering a Notice of Appeal or a Request to Review and paying the applicable \$75.00 filing fee.
7. The City Authority submitted that because the filing fee was not paid, the appeal was not properly commenced. When asked to interpret the omission of the word ‘and’ between s. 17 (5)(a) and s. 17(5)(b):

(5) An appeal or a review is commenced by: <ol style="list-style-type: none">(a) Mailing or delivering to the Clerk of the Board at Red Deer City Hall a Notice of Appeal or a Request to Review in the form established by the Board from time to time,(b) By paying the applicable fee:<ol style="list-style-type: none">(i) Filing Fee: Seventy-Five (\$75.00) dollars; and(ii) When required by the Board to be advertised: Seventy-Five (\$75.00) dollars.

the City Authority stated that notwithstanding the absence of the word ‘and’ the correct interpretation would be that both the Notice of Appeal and the filing fee are required to commence an appeal. This is based on the premise that if subsections (a) and (b) were reversed it would be nonsensical to accept the fee in the absence of a Notice of Appeal.

8. The Appellant stated that due to personal reasons, she is not able to pay the filing fee, but would be able to the following day, when in receipt of anticipated income.

9. The Appellant acknowledged that the lack of fee invalidates the appeal but argued that the right of appeal is a fundamental right that should not hinge on a fee.
10. The Board recessed to consider the positions of the Parties and review the *Appeal Boards Bylaw* and upon reconvening found that the applicable fee is required to commence an appeal.
11. The Board recognized the Appellants submission and personal circumstances and empathized with it. However, the Board is confined by the legislation. The Board has no authority to waive the fee and therefore has no jurisdiction to hear the merits of the appeal.

CLOSING:

12. For the reasons detailed above, the application is dismissed.

Dated at the City of Red Deer, in the Province of Alberta this 16 day of October, 2018 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.

P. Kitteringham

P. Kitteringham, Chair
Red Deer Appeal & Review Board