

Appeal No.: 3429 002 /2014  
Hearing Date: 14 January 2015

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: B. FARR  
PANEL MEMBER: Z. ORDMAN  
PANEL MEMBER: C. MAH  
PANEL MEMBER: P. KITTINGHAM  
PANEL MEMBER: L. MULDER

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BETWEEN:

MELANIE SEHN

Appellant

-and-

CITY OF RED DEER  
INSPECTIONS & LICENSING

The City

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This is 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 14<sup>th</sup> day of January, 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 December 8, 2014, 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 (MGA), c M-26. 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 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.

8. The City may order euthanasia of a dog if:
  - (a) the aggressive dog has been involved in any additional incidents at levels 3, 4, or 5;
  - (b) the aggressive dog is involved in an incident evaluated to be at Level 5 or 6.

## **BACKGROUND**

9. By decision dated December 8, 2014, the Inspections & Licensing Manager of the City of Red Deer, Alberta ("the City") issued a decision to declare a brindle colored, male pitbull dog, hereinafter referred to as "Jackson" 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").
10. On December 17, 2014, the Red Deer Appeal and Review Board (the Board) received an appeal from Melanie Sehn (the "Appellant"), together with the applicable filing fee, opposing the designation of Jackson as an Aggressive Dog.
11. The Inspections & Licensing Manager of The City of Red Deer Alberta was provided with notice of the appeal.
12. The City provided a disclosure package to the Appellant on January 8, 2015. This submission is included in the Hearing Materials within Exhibit A.

## **PRELIMINARY MATTERS**

13. Neither party raised objection to any Board member hearing the appeal.
14. Neither party raised any procedural or preliminary concerns, nor had any objection to the hearing proceeding.
15. The Hearing Materials Packet was marked as Exhibit A.

### **16. Hearing Attendees**

Inspections & Licensing:

Howard Thompson, Manager and Erin Stuart, Supervisor, appeared on behalf of the City

Witnesses: Charlene Cullen, Jordan Dash, Adrienne Dash, and Tyler Love

Alberta Animal Services

Officer Duane Thomas and Officer Emilie McKimm

Appellant:

Melanie Sehn

## **ISSUES**

17. Does the Level 4 Aggressive Dog designation apply to the pitbull, named Jackson, 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 A), which summarizes the decision to apply the Aggressive Dog designation.
19. The City referred to Alberta Animal Services file #67519 (within Exhibit A), which contains an investigation report summarizing incidents pertaining to the dog, Jackson.

The report includes a summary of the investigation related to two incidents on October 21 and 23, 2014 at the Three Mile Bend off leash dog park, in Red Deer, Alberta (the “dog park”). The report also includes a review of a previous incident in May 2014 at the same dog park.

Included in the report, are related witness statements, and copies of two violation tickets that were issued to Melanie Sehn as the registered owner of Jackson. The tickets describe charges as follows:

- (i) October 21, 2014 – Under s. 13.1(a) of the *Dog Bylaw*, for dog biting, attacking, and causing minor injury to another domestic animal.
  - (ii) October 23, 2014 – Under s. 14(1)(a) of the *Dog Bylaw*, for Dog causing severe injury to another domestic animal.
20. The City further referred to Exhibit A copies of veterinary invoices and receipts, confirmation of registered dog tag # 4362, and photographs of the injuries sustained by two husky dogs, Akeeta (female) and Hudson (male), both owned by witnesses Charlene Cullen and Tyler Love.

21. At the hearing, the City called four witnesses who provided verbal testimony:

- i. **Witness #1: Charlene Cullen:** On October 21, 2014, the witness was walking with her two young children and two huskies at the dog park. The witness stated that her huskies were attacked by Jackson, who was attacking the abdomen of the female husky and the neck of the male husky. Some yelling and commotion followed while the Appellant attempted to get control of Jackson. The witness saw the Appellant leave the park quickly with Jackson, and left with the hatch of her vehicle up, so the witness could not see the license plate.
- ii. **Witness #2: Jordan Dash:** On October 21, 2014, the witness was walking in the park with her sister (Adrienne) when they heard a commotion and saw a pitbull attacking some husky dogs. The witness was scared for her small dogs and yelled at the owner of the pitbull to leave the park. The pitbull attacked one of the huskies again, and more yelling and swearing followed. The owner of the pitbull left quickly and drove away with hatch of her vehicle up, so the witness could not see the license plate.
- iii. **Witness #3: Adrienne Dash:** On October 21, 2014, the witness was walking dogs with her sister (Jordan). There were people yelling at a lady to grab her pitbull who was attacking some huskies. The witness stated the owner of the pitbull did not have a leash, and others in the area told her it was the same dog that had attacked dogs in the park before. The witness tried to follow the pitbull owner to her car to get a license plate to report it to the police, but she drove away with the hatch of her vehicle up, so the witness could not see the license plate.

- iv. Witness # 4: Tyler Love: On October 23, 2014 the witness went to the park with Charlene Cullen (witness #1) who was worried about another attack. About two minutes into the walk, their husky dogs went around a corner and they heard the dogs growling and yelping and also heard someone yelling "Jack", which led the witness to believe it was the same dog. The witness saw Jackson on top of his female husky attacking its stomach area, and the husky was flailing its legs to get Jackson off. The witness later noticed a puncture wound on the inside of the huskies back leg. The Appellant grabbed Jackson and put him on a leash. The witness stated that Jackson did not show any aggression to him and licked his hand. The witness exchanged words with the Appellant who was apologetic. The witness watched the Appellant go to her car and got the license plate number of her car. The identity of the dog was confirmed by witness #1, who stated it was the same dog and owner that was involved in the October 21, 2014 incident.
  
22. The City stated that further to the October 21, 2014 incident, both huskies were injured and subsequently treated by a vet on October 22, 2014 and reports are included in Exhibit A. The injuries included puncture wounds to the right hind leg of the female husky and an injury to the male husky's eye.
  
23. The City stated that further to the October 23, 2014 incident, the female husky had a laceration that required sutures on its right hind leg.
  
24. Based on the Alberta Animal Services report, the City declared Jackson to be an Aggressive Dog using the criteria in the behavior assessment chart within the Policy.
  - (i) Jackson has been involved in more than two incidents evaluated to be at Level 2 or 3; and
  - (ii) Jackson has been involved in an incident evaluated to be at Level 4.
  
25. The Respondent advised that Officer Duane Thomas, and Officer Emile McKimm from Alberta Animal Services were present and available for questioning. Neither party elected to question the Officers. The Board Panel questioned the Officers to confirm the standard investigation process.

### **Appellant Position**

26. The Appellant provided a submission containing a summary of the recent events along with a report from a dog trainer and other third party letters supporting the Appellant's position that Jackson is not an aggressive dog. This submission was marked as Exhibit B.
  
27. The Appellant clarified that the co-owner of the dog is Wayne Chamberlin, not William as noted incorrectly in Exhibit A materials.
  
28. The Appellant expressed concern that she was never interviewed as a witness nor given an opportunity to speak to these events at all, prior to the hearing.
  
29. Regarding the prior incident on May 26, 2014, the Appellant stated that Jackson had a collision with another dog and there was no attack involved. The owner of the other dog was concerned about a possible hip injury to their dog. The Appellant confirmed that Wayne offered to pay the vet and followed through with this offer. There was no attack or biting, only a collision.

30. Regarding the October 21, 2014 incident, the Appellant did not see the start of the incident as she was visiting with another dog owner at the park. The Appellant became aware of that Jackson was involved in a dog fight and tried to discipline her dog. The Appellant stated that she was confused, stressed, fearful and terrified due to about five or six women who were yelling and swearing at her. The Appellant left the park quickly with the hatch of her vehicle up so these women would not get her license plate number. The Appellant admitted the situation was not handled well due to stress, which also led to her taking time off work.
31. Regarding the October 23, 2014 incident, the Appellant stated that she witnessed the start of the incident which occurred when Jackson approached another dog (one of the two huskies from the October 21, 2014 incident), who was in a crouching position. The Appellant stated that she saw the other dog bite Jackson in the face and a dog fight ensued.
32. The Appellant stated that Jackson is a high energy, friendly but immature, and energetic large dog (about 80 pounds in weight), and was dominant in the fight on October 23, 2014. The Appellant stated that her dog, Jackson, has been involved in other dog fights, but attributes Jackson's behavior to naturally defending himself rather than being aggressive.
33. The Appellant was not aware that any dogs were injured following either incident. She became aware of the October 21, 2014 injuries during discussions with Tyler Love (witness #4) at the time of the October 23, 2014 incident. She further became aware of the October 23, 2014 injuries, including the husky requiring sutures, when she received the enforcement tickets and fines. The Appellant offered to pay for any vet bills, and followed through with this, but expressed concern that she was also charged for de-wormer and wishes to have this reimbursed plus 5% tax.
34. The Appellant stated that she desires to be a responsible pet owner and has hired a trainer for Jackson with sessions ongoing. She is no longer taking Jackson to the dog park.
35. The Appellant referred to a report from Jackson's trainer along with letters from other third parties supporting her position that Jackson is not an aggressive dog, all contained in Exhibit B.

## **BOARD FINDINGS**


36. The Board finds that the Appellant confirmed her dog, Jackson (also referred to as Jack), was involved in the incident on May 26, 2014 as well as the dog fights which occurred on October 21 and 23, 2014 at the dog park. This was acknowledged by the Appellant's at the hearing and in her submission within Exhibit B.
37. The Board finds that as a result of the incidents which occurred on October 21 and 23, 2014 at the dog park, the huskies were injured as evidenced in Officer McKimm's report, containing witness statements, documentation of veterinary treatments, and photographs included within Exhibit A.
38. The Board considered the Appellant's concern in regard to having the opportunity to be interviewed or heard prior to the appeal. The Board finds that the appeal hearing has afforded the Appellant a full opportunity to prepare and offer a defense against the allegations, which are the subject of this appeal.

39. The Board considered the evidence submitted by the Appellant in Exhibit B, and finds that the behavior of the dog outside of the incidents subject to this appeal is not relevant to the Aggressive Dog designation. The designation is based on the *Dog Bylaw* and Council Policy 6118-C.
40. The Board finds that Jackson inflicted physical injury to a domestic animal that qualifies as a minor injury on two occasions (May 26 and October 21<sup>st</sup> 2014). As a result, the designation of an aggressive dog is appropriate in this case.
41. The Board further finds that Jackson inflicted a "severe injury" as defined in the *Dog Bylaw* to another domestic animal on October 23<sup>rd</sup> 2014. As a result, the designation of an aggressive dog is further confirmed as appropriate in this case.

### **DECISION**

42. The Board finds, based on the evidence before it, that the *Dog Bylaw* and the Aggressive Dog Designation Policy 6118-C were appropriately applied.
43. 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 19<sup>th</sup> day of January, 2015.



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Z. Ordman, Vice-Chair

**Red Deer Appeal & Review Board**

## **APPENDIX "A"**

### **EVIDENCE PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD**

- Exhibit "A"      Agenda and Hearing Materials Packet, including Appeal Form, Notice of Hearing, and The City of Red Deer submission.
- Exhibit "B"      Appellants' additional submission.