January 30, 2018

**OFFICE OF THE HEARING EXAMINER**
**KING COUNTY, WASHINGTON**
King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

# REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V17007639**

**LAURA MOORE-MUELLER**
Animal Services Enforcement Appeal

Activity no.: A17009418

Appellant: **Laura Moore-Mueller**
30913 East Lake Morton Drive SE
Kent, WA 98042
Telephone: (253) 630-5998
Email: plgnsmm@comcast.net

King County: Regional Animal Services of King County
*represented by* **Chelsea Eykel**
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 375-1044
Email: raskcappeals@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

| | |
|---|---|
| Department's Preliminary Recommendation: | Deny appeal |
| Department's Final Recommendation: | Deny appeal |
| Examiner's Decision: | Deny appeal in part; grant appeal in part |

EXAMINER PROCEEDINGS:

| | |
|---|---|
| Hearing Opened: | January 24, 2018 |
| Hearing Closed: | January 24, 2018 |

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

Background

1. On May 5, 2017, as Carol Bonner was walking her leashed dogs along the opposite side of the street from the Moore-Mueller property, the Moore-Mueller's dog, Raider, allegedly charged-off the property in an aggressive manner and threatened her dogs. Ex. 8 at 002–03. Ms. Bonner filed a complaint, noting that May 5 was not the first time that Raider had left his property, crossed the street and confronted her dogs. *Id.* Animal Services issued a warning. Ex. 9.

2. On November 22, 2017, Ms. Bonner filed another complaint, alleging that Raider again came off the property, crossed the street, and accosted her dogs. Ex. 3. Animal Services issued a Notice of Violation and Order to Comply (NVOC) to the Laura Moore-Mueller, alleging that Raider was both running at large and vicious. Ex. 5. Ms. Moore-Mueller timely appealed. Ex. 6.

3. "Running at large," is defined as "off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control" and "under control" itself including the need to be "restrained from approaching any bystander or other animal" when "off the premises of the owner." KCC 11.04.020.W, AA; .230.B. Ms. Moore-Mueller did not challenge this violation.

4. The more serious allegation, that Raider is "vicious," is defined as:

> Having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.

KCC 11.04.020.BB. And KCC 11.04.230.H declares as a nuisance, "Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal's premises or lawfully on the animal's premises." Ms. Moore-Mueller challenged this violation.

Witnesses

5. According to Ms. Bonner's complaint, filed the day of the November 22 altercation, Raider "ran the length of the driveway across the street barking and growling. He grabbed the back leg of my dog. My dog turned around and growled at him and he let go." Ex. 3 at 003. Ms. Bonner wrote that a woman (later identified as Ms. Moore-Mueller's daughter) "was calling him but he was not listening."

6. At hearing, Ms. Bonner volunteered that Raider did not bite down hard on her dog's leg, more just grabbing it and releasing it as soon as she yelled at Raider and her dog growled in response to having its leg seized. Ms. Bonner emphasized that her dog had no obvious injury. Her concerns were Raider's increasing aggression—i.e. the first two times Raider accosted her dogs, Raider did not use his teeth—and wanting to be able to walk around the lake without being confronted.

7. Ms. Moore-Mueller testified that she has been taking care of Raider while her son is serving overseas in our military. She noted that Raider attended dog obedience training when he was young. They have since been working on basic commands like "sit" and "come"; she observed that as dogs gets older, they tend to forget their initial obedience training. She described Raider as well behaved and gentle. As to the May incident, she had just gotten Raider and was not aware at the time that he would leave the property. She then installed the gate.

8. Ms. Moore-Mueller explained that she did not tell her daughter about the May warning notice from Animal Services, so that word would not filter back to, and worry, her son. She did inform her daughter of the need to close the gate. She asserts that Raider was on voice control on November 22 and came when called. She thinks Raider has gotten better and did not bite or growl. She apologized for events and the distress this has caused Ms. Bonner.

9. Ms. Moore-Mueller's daughter, Naomi Eide, testified that she was present on November 22, finishing up a play date for her daughter. As the car transporting her daughter's playmate left, Ms. Eide went out to shut the gate behind the car. As she was about halfway up the driveway, Raider ran past her to "check out" Ms. Bonner and her dogs. Ms. Eide called Raider's name twice, and he returned. Raider did not bark or growl. In her written recollection written soon after the event, she noted that Raider "ran up and sniffed [Ms. Bonner's] dog's rear." In her testimony, however, she asserted that Raider did not get close enough to Ms. Bonner's dog to bite.

Analysis

10. Unless directed to by law—and no special directive applies to today's case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears "the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed." KCC 20.22.080.G; .210.

11. We have not infrequently overturned viciousness designations because something about the complainant's version was just not adding up, whether embellishment or simply a questionably objective perception of reality.[1] Conversely, we found Ms. Bonner credible. She did not overplay her hand. She volunteered (meaning not on cross-examination or on our probing) that Raider did not so much bite down hard on her dog's leg as more seize it and then let go. Her testimony was completely consistent with her written statement.

[1] *See, e.g.*, https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20april/V17006547_Masciocchi.ashx?la=en at ¶¶ 27–34.

12. We did not find Ms. Eide as credible as Ms. Bonner. Ms. Eide's testimony that Raider did not bark or growl is inconsistent with the vast majority of descriptions we have entertained in our hundred or so vicious dog appeals in the last year and a half, where a dog running to another dog (even if just totally friendly and wanting to play) is described as letting out some sort of bark (even if just joyful, excited yips).[2] More importantly, her testimony that Raider did not get close enough to Ms. Bonner's dog to bite is impeached by her written statement that Raider "ran up and sniffed [Ms. Bonner's] dog's rear."

13. Ms. Mueller-Moore's assertion that Raider was under voice control shows some level of denial. The very definition of "under control" is that a dog be under sufficient voice control "so as to be restrained from approaching any bystander or other animal" when "off the premises of the owner." KCC 11.04.020.BB. Even assuming for a moment that when Raider ran across the street to Ms. Bonner and her dogs, he only "ran up and sniffed [Ms. Bonner's] dog's rear," and did not actually grab Ms. Bonner's dog, Raider was in no sense "under control."

14. Our analysis thus turns on whether, under Ms. Bonner's version of events, Raider qualifies as "vicious."

15. As noted above, the definition of vicious includes "biting a human being or attacking a human being or domesticated animal." KCC 11.04.020.BB. As we have written in previous decisions, this is an odd word choice. In the animal arena, "attack" is understood as meaning something *less* than an actual bite. *See, e.g.*, *Matter of LaBorie v. Habes*, 52 Misc.2d 768, 679, 277 N.Y.S.2d 70 (1967) ("Actual biting is unnecessary to an 'attack'"). Read in this light, KCC 11.04.020.BB makes no sense: a dog merely "attacking" another animal qualifies as "vicious" while the dog actually "biting" that other animal does not? That sounds analogous to saying attempted battery is a crime while actual battery is not.

16. KCC 11.04.020.BB has more internal cohesion if the drafters meant "attack" as something *more* violent than just a bite, *i.e.*, a dog even just nipping a person (let alone a full-on *attack* of that person) would qualify, while a dog merely nipping another animal would not qualify—the dog would actually have to full-on *attack* the other animal to qualify. That reading eliminates an otherwise internal inconsistency in our code. Ms. Bonner's testimony that Raider seized her dog's leg but did not really bite down hard falls short of an "attack" on a domesticated animal.

17. Intentionally or not, Animal Services' closing statement nailed it on the head: Raider is "potentially vicious." This was Ms. Bonner's concern too, that contrary to Ms. Moore-Mueller's assessment that Raider is "getting better," Raider is actually becoming more aggressive: the first two times Raider confronted her and her dogs, Raider did not actually make contact; by November, Raider was seizing her dog's leg in his jaws.

18. The state system has a designation for such dogs, namely "potentially dangerous,"

[2] Often the argument at hearing is whether the dog issued an exuberant, greeting kind of bark, or more of an aggressive, threatening snarl.

> any dog that when unprovoked: (a) [i]nflicts bites on a human or a domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or [(c)] any dog with a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals.

RCW 16.08.070(1) (italics added). Raider would meet that definition. However, under the County rules we apply, a dog is either vicious or it is not. And under the facts as Ms. Bonner described them, Raider does not meet the viciousness definition.

19. This is not to discount or minimize Raider's troubling behavior. Ms. Moore-Mueller noted that the training he had as a puppy might wear off; it certainly appears that this is the case. We agree with Ms. Bonner's assessment that if the dog Raider picked to accost was not as well trained as Ms. Bonner's dogs, the altercation could easily have escalated into something more violent; this likely would have resulted in us sustaining a viciousness designation against Raider. Ms. Moore-Mueller would be well advised to get Raider some professional training, more tightly control Raider's egress from the property, and more closely manage Raider's interactions with other dogs, so that Raider does not later earn a viciousness designation.

DECISION:

1. Ms. Moore-Mueller's appeal is DENIED as to the running at large violation. Ms. Moore-Mueller shall pay the $50 to Animal Services by March 1, 2018.

2. Ms. Moore-Mueller's appeal is GRANTED as to the viciousness designation.

ORDERED January 30, 2018.

David Spohr
Hearing Examiner

## NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *March 1, 2018.* Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

**MINUTES OF THE JANUARY 24, 2018, HEARING IN THE APPEAL OF LAURA MOORE-MUELLER, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V17007639**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Chelsea Eykel, Carolyn Bonner, Laura Moore-Mueller, and Naomi Eide.

The following exhibits were offered and entered into the record:

| | |
|---|---|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner for file no. V17007639 |
| Exhibit no. 2 | RASKC investigation report no. A17009418 |
| Exhibit no. 3 | Online complaint form of November 22, 2017 incident by Carolyn Bonner, dated November 22, 2017 |
| Exhibit no. 4 | Statement of Naomi Eide, dated November 22, 2017 |
| Exhibit no. 5 | Notice of violation no. V17007639, issued November 25, 2017 |
| Exhibit no. 6 | Appeal, received December 5, 2017 |
| Exhibit no. 7 | RASKC investigation report no. A17003938 |
| Exhibit no. 8 | Online complaint form of May 5, 2017 incident by Carolyn Bonner, dated May 6, 2017 |
| Exhibit no. 9 | Warning notice no. V17006874, dated May 5, 2017 |
| Exhibit no. 10 | |
| | A. Photograph of property |
| | B. Photograph of property |

DS/ed

January 30, 2018

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## CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V17007639**

**LAURA MOORE-MUELLER**
Animal Services Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED January 30, 2018.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

**Bonner, Carolyn**
Hardcopy

**Eide, Naomi**
Hardcopy

**Eykel, Chelsea**
Regional Animal Services of King County

**Moore-Mueller, Laura**
Hardcopy