

Appeal No.: 3429 001/2012
Hearing Held: 08 August 2012

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: R. MOISEY
PANEL MEMBER: P. MCGREGOR
PANEL MEMBER: G. LEASAK
PANEL MEMBER: B. FARR
PANEL MEMBER: D. WYNTJES

BETWEEN:

JOHN COLEMAN

Appellant

And

CITY OF RED DEER
INSPECTIONS & LICENSING

Respondent

I. FACTS / OVERVIEW:

- A. The Appellant is the owner of a brown/white Pitbull named Chevy.
- B. Alberta Animal Services ("AAS") has 3 complaints on file relating to Chevy – the first on September 9, 2009, for running at large, the second on November 3, 2009, for running at large and the third on April 22, 2010, for running at large and exhibiting threatening behavior towards a person.
- C. According to Council Policy #6118-C "threatening behavior" is behavior that creates a reasonable apprehension of a threat of physical injury and may include growling, lunging, snarling or chasing in a menacing fashion.
- D. Section 15(3) of Bylaw No. 3429/2009 (the "Dog Bylaw") states that "after evaluating the report...the Inspections & 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 a person."
- E. Section 18 of the Dog Bylaw provides that "An Owner may apply...for a revocation of an Aggressive Dog designation if the Owner and the Aggressive Dog has not been convicted of any offences under this Bylaw for a continuous period of three years."

- F. On May 15, 2012, AAS responded to a dog attack/bite incident involving Chevy and a Burmese/Collie named Joey. Subsequently, AAS made a request to the Inspections & Licensing Manager of the City of Red Deer (the Manager) to have Chevy designated as an Aggressive Dog.
- G. In response to the request from AAS, on June 18, 2012, the Manager issued a notice designating Chevy as a Level 5 Aggressive Dog.
- H. On June 22, 2012, the Appellant filed an appeal opposing the designation.

2. EVIDENCE

RESPONDENT

Council Policy 6118-C sets out the criteria used to determine and designate a dog as aggressive. The Respondent provided to the Board the following excerpt from the behaviour assessment chart in Council Policy 6118-C:

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.

'Severe Injury' is defined 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".

The Respondent stated that AAS was notified of an incident on May 12, 2012, that involved a dog attacking another dog. AAS investigated the incident and subsequently issued a report to the City of Red Deer. The AAS report outlined that the dog involved in the incident was a male brown and white Pitbull named Chevy that belonged to the Appellant.

The AAS report also included four witness statements. The witness statements indicate that Chevy was running at large when he attacked Joey, who was being held on a leash. All four witness statements specifically spoke to how difficult it was and how long it took before Chevy could be removed from Joey. Photographs of the wounds inflicted on Joey were presented to the Board along with a photograph that the Respondent indicated shows Chevy after the attack with hair and blood in and around his mouth.

Upon questioning from the Board, the Respondent advised that the term "repeated attack" as set out in the Level 5 description does not mean that there are different attacks on separate occasions; rather it means that multiple bites occur in the same attack.

The Respondent stated that while they commend the steps that the Appellant has taken since May 12th to prevent any future attacks, the decision to designate Chevy as an Aggressive Dog was based on the May 12th incident, not the actions of the Appellant after the fact.

To further support their case, the Respondent brought before the Board one individual who resides in the neighbourhood to provide oral evidence as to Chevy's aggressive nature.

APPELLANT

The Appellant did not dispute that the May 12th incident occurred or that it was his dog Chevy that inflicted the wounds on Joey. The Appellant stated that he was not at home when the incident took place; however, upon his return home and learning what had occurred, he contacted Joey's owners to let them know he was willing to pay the vet bill.

It is the Appellant's position that what occurred on May 12th was a result of Chevy acting territorial, not aggressive. The Appellant asserted that during the time he has owned Chevy he has never had any problems with Chevy behaving aggressively. In support of this, a letter from the Veterinary Hospital that Chevy has been a patient of since October 28, 2009, stating that there has not been "any behavior concerns while working with Chevy" and a letter from Chevy's Groomer stating that "he is a very good boy" were presented to the Board.

In response to the previous incidents involving Chevy running at large, the Appellant pointed out that Chevy did not harm any animal or person.

The Appellant stated that while he does not believe that Chevy is aggressive; he takes the May 12th incident very seriously and as such has taken the following steps to ensure that it does not happen again:

- a) obtaining behavioral training;
- b) made an appointment to have Chevy neutered;
- c) fence has been fixed to prevent Chevy from escaping; and
- d) plans on purchasing a metal enclosure.

The Appellant stated that the only reason Chevy was running at large on May 12th was because his roommate left the house door open. To prevent this from occurring in the future, it is his intention to ensure that Chevy is locked in an enclosure whenever he is away from home.

To further support his case, the Appellant brought before the Board his roommate and father to provide oral evidence as to Chevy's non-aggressive nature.

3. DECISION

Section 17(3) of the Dog Bylaw grants this Board the authority to revoke or confirm an Aggressive Dog designation. The Board does not have the authority to make an alternate order. In other words, if the Board finds that an Aggressive Dog designation is warranted, any and all of the relevant Dog Bylaw requirements would apply – the Board can not determine that some requirements are necessary in a particular case and others are not.

The evidence before the Board is that Joey received five bite wounds and required nine staples. As the Appellant did not dispute this evidence or the assertion that it was Chevy that inflicted the wounds on Joey during the May 12th incident, the only issue that needs to be determined in this case is whether the Aggressive Dog designation was warranted.

As previously outlined, the test for determining an Aggressive Dog designation is found in section 15(3) of the Dog Bylaw which states that "after evaluating the report...the Inspections & 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 a person".

The Board has reviewed the behaviour assessment chart in Council Policy 6118-C, specifically the Level 4 and 5 descriptions. Taking into consideration the written and oral evidence presented relative to the injuries inflicted, the veterinarian's report, the Animal Services Statement, the witness statements and photographic evidence, the Board find that Joey sustained a 'severe injury' as defined in the Dog Bylaw and that there was a "concerted, repeated attack".

The Board heard conflicting oral evidence as to whether or not Chevy has an aggressive nature. Given the Board's finding regarding the Aggressive Dog designation, as outlined below, the Board did not find it necessary to make a determination as to Chevy's nature beyond the May 12th incident.

The Board acknowledges that the Appellant is remorseful and has voluntarily taken some steps to mitigate the chances of such an event occurring in the future; however, these steps are not relevant to the May 12th incident. The severity of the injuries inflicted, as well as the fact that it was a "concerted, repeated attack" has convinced the Board that an Aggressive Dog designation is warranted.

MOVED by P. McGregor, seconded by B. Farr that the appeal be denied. The designation is confirmed.

CARRIED UNANIMOUSLY

Dated at the City of Red Deer, in the Province of Alberta this 21 day of August, 2012 and signed by the Chair on behalf of all five panel members who agree with this decision.



R. Moisey, Chair
Red Deer Appeal & Review Board

APPENDIX "A"

EVIDENCE PRESENTED AT THE HEARING AND CONSIDERED BY THE BOARD

- Exhibit "A" Agenda
- Exhibit "B" Reproduction of Illegible Witness Statement
- Exhibit "C" Appellants' Additional Submission