

**DECISION OF THE SNOHOMISH COUNTY
HEARING EXAMINER**

Hearing Examiner's Office
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Subject: **Appeal from a Notice and Declaration of Potentially Dangerous Dog**

Gordon Sivley
Hearing Examiner

File No.: 13-518353

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

Appellant: Peggy Riedel

(425) 388-3538
FAX (425) 388-3201

Respondent: License and Animal Control Services Division,
Snohomish County Auditor's Office, Vicki Lubrin, Manager

DECISION DATE: November 15, 2013

DECISION SUMMARY: The Appeal is **SUSTAINED**.

A. BACKGROUND INFORMATION

1. **The Record.** The official record for this proceeding consists of the Exhibits entered into evidence in this case (Exhibits 1 through 26) along with the Hearing Log of the testimony presented at the hearing. The entire record was admitted into evidence and was considered by the Examiner in reaching the decision herein.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. **Parties of Record.** The Parties of Record are set forth in the Parties of Record Register.
3. **Public Hearing.** The Hearing Examiner held an appeal hearing on November 13, 2013 at 9:00 AM. Witnesses were sworn, the parties were heard, and exhibits were entered into the record at the hearing. Notice of the appeal hearing was provided as required by Chapter 2.02 SCC. Vicki Lubrin, Licensing Manager, appeared on behalf of Snohomish County Auditor's Office. The Appellant, Peggy Riedel, appeared *pro se*.

B. FINDINGS OF FACT

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. The Examiner finds that proper public notice of the open record hearing on this appeal was provided by the Hearing Examiner's Office as required by the County Code. (Exhibit 3)
2. Appellant, Peggy Riedel, is the owner of a female German Shepherd dog named "Sheba". Appellant resides in unincorporated Snohomish County at 2128 258th Street NE, Arlington, Washington. (Exhibit 1)
3. September 25, 2013, Snohomish County Animal Control Officer Angela Rench issued a Notice and Declaration of Final Determination of Potentially Dangerous Dog as to Sheba based on SCC.

9.01.030(18)(1)(a). (Exhibit 6) Officer Rench issued the Declaration based on her investigation arising out of a complaint received by Animal Control from Dan Short, the former son-in-law of the Appellant. Notice of the Declaration was served on John and Peggy Reidel by the Auditor. (Exhibit 6)

4. Ms. Riedel timely appealed the Determination of Potentially Dangerous Dog. (Exhibit 1)
5. An open record hearing on the above-captioned appeal was held on November 13, 2013. Appearing for the Appellant was Peggy Riedel. Appearing on behalf of Snohomish County was Vicki Lubrin, Animal Control Manager and Officer Angela Rench.
6. In his witness statement (Exhibit 8), Mr. Short indicated that on August 30, 2013, he went to the Reidel's house to pick up his children for the weekend. He stated that when he got out of his vehicle, Sheba ran up to him, barking. Mr. Short indicated that when he put his hand down for Sheba to smell him, the dog barked and jumped back several feet. Mr. Short then walked past Sheba toward the house door and the dog then ran behind him and bit him on the left leg above the knee on the inner thigh. Mr. Short stated that the dog charged him again and he stepped toward the dog and yelled at it to keep it back.
7. A photograph, Exhibit 9 clearly shows the bite injuries.
8. In her appeal statement (Exhibit 1), Ms. Riedel stated that immediately after the bite incident, when he was at her front door to pick up the children, Mr. Short told her that when he pulled his vehicle into the driveway, Sheba was barking at him and that he exited the vehicle and then aggressively scared the dog into the wooded area next to the house. It was after this, as Mr. Short continued toward the house, that Sheba ran up behind him and bit him.
9. In a sworn statement, Bethany Flatum, Ms. Riedel's daughter, stated that she was in Ms. Riedel's house when the incident occurred and she overheard Mr. Short indicate to Ms. Riedel that when he got out of his car, he stomped his foot "to spook Sheba away" and the dog ran into the wooded area on the side yard. This occurred before Mr. Short continued toward the porch and Sheba came back up to him and bit him.
10. In both a written sworn statement (Exhibit 20) and in his oral testimony at the hearing, Ms. Riedel's son, Tanner Riedel indicated that he had a phone conversation with Mr. Short after the incident in which Mr. Short again stated that he stomped his foot to scare Sheba off when she came up to him barking and that this occurred before the dog returned and bit him as he continued toward the house.
11. While there is somewhat conflicting evidence as to what actions Mr. Short took toward Sheba immediately before the biting incident, the Examiner finds that Mr. Short took action to try to scare the dog off and that she ran a short distance away into a wooded area before returning and biting Mr. Short.
12. Officer Rench testified in rebuttal that "provocation" would consist of causing physical harm or tormenting a dog or being unlawfully on property and that a person charging at or stomping a foot toward a dog would not amount to provocation.
13. While the Examiner finds, as Officer Rench testified, that physical harm or tormenting a dog could provoke the dog into biting, the Examiner also finds that displaying aggression toward a dog by charging at it and/or stomping a foot so as to scare the dog away could reasonably be expected to provoke a dog into biting, especially when the dog is on its home "turf."

C. CONCLUSIONS OF LAW

1. The Examiner has jurisdiction to hear this appeal pursuant to Chapter 2.02 SCC and SCC 9.12.101.
2. In this proceeding, the director of the animal control agency and animal control officers have the burden of proving the dog declared potentially dangerous falls within the definition of SCC 9.01.030(18)(1)(a), which burden shall be met by a preponderance of the evidence. SCC 9.10.030(3)
3. Pursuant to SCC 9.01.030(18)(1)(a), a "Potentially Dangerous dog" means any dog that,
"... (1) when unprovoked: (a) bites a human or bites a domestic animal...."
4. The key question in this case is whether the Respondent has proven by a preponderance of the evidence that Sheba was unprovoked when she bit Mr. Short. The evidence is somewhat conflicting as to what occurred immediately before the biting incident. However, the Examiner cannot conclude, from the evidence presented, that the Respondent has met its burden of proving that the bite was unprovoked within the meaning of that term in SCC 9.01.030(18)(1).
5. The Examiner therefore concludes the Respondent has not proven by a preponderance of the evidence that Sheba is a potentially dangerous dog within the meaning of SCC 9.01.030(18)(1)(a).
6. The Examiner concludes that the Auditor did not properly issue the Notice and Declaration of Potentially Dangerous Dog as to Sheba and that the appeal of the Notice and Declaration of Potentially Dangerous Dog should be sustained.

Any finding of fact that should be declared a conclusion of law, and vice versa, is adopted as such.

DECISION

The appeal is sustained. The Notice and Declaration of Potentially Dangerous Dog is dismissed.

Decision issued this 15th day of November, 2013.



Gordon Sivley, Hearing Examiner

EXPLANATION OF RECONSIDERATION and APPEAL PROCEDURES

The Decision of the Hearing Examiner is final and conclusive with right of appeal to the Superior Court. However, reconsideration by the Examiner may also be sought by one or more Parties of Record as provided by SCC 9.12.101. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 2.02 SCC and the respective Examiner Rules of Procedure.

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 3000 Rockefeller Avenue, M/S #405, Everett WA 98201, on or before **November 25, 2013**. There is no fee for filing a Petition for Reconsideration. **Reconsideration is filed under SCC 2.02.170 and requires that the petitioner for reconsideration "shall mail or otherwise provide a copy of the petition of reconsideration to all parties to the appeal on the date of filing."**

The petition for reconsideration does not have to be in any special form but must:

- (a) Contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any;
- (b) Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
- (c) State the specific grounds upon which relief is requested;
- (d) State the relief requested; and,
- (e) Where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Examiner exceeded the Examiner's jurisdiction;
- (b) The Examiner failed to follow the applicable procedure in reaching the Examiner's decision;
- (c) The Examiner committed an error of law;
- (d) The Examiner's findings, conclusions and/or conditions are not supported by the record; or
- (e) New evidence is discovered which could not reasonably have been produced at the appeal hearing and which is material to the decision.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 2.02.170. Please include the County file number in any correspondence regarding this case.

Appeal within the meaning of that term in SCC 9.01.030(18)(1).

This decision of the Hearing Examiner is final and conclusive and, if reconsideration is not first sought, is reviewable by an action for Writ of Review filed in Snohomish County Superior Court within 21 days of the date of this decision. For more information about appeals to Superior Court, please see Chapter 7.16 RCW, Chapter 2.02 SCC, Chapter 9.12 SCC and applicable court rules or consult with your attorney.

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. [SCC 2.02.195(2)] Please include the county file number in any correspondence regarding this case.

Staff Distribution:

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