

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR CARVER COUNTY

In the Matter of the Appeal by
Jeffrey Scott Franz of the Potentially
Dangerous Dog Designation for a Male
Collie/Shepard Mix (Baloo)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION, AND ORDER**

This matter came on for a contested hearing before Administrative Law Judge Ann O'Reilly on October 13, 2015. The hearing record closed at the end of the hearing.

Patrick J.W. Conness, Assistant Carver County Attorney, appeared on behalf of Carver County (County). Gregory J. Joseph, Joseph Law Office PLLC, appeared on behalf of Jeffrey Scott Franz (Appellant).

STATEMENT OF THE ISSUES

Should Appellant's dog, Baloo, be designated a potentially dangerous dog pursuant to Carver County Ordinance §§ 92.06, 92.07, and Minn. Stat. § 347.50 (2014)?

SUMMARY OF THE DECISION

The County has established by a preponderance of the evidence that Baloo, when unprovoked, inflicted a bite on a human on public or private property. Accordingly, the potentially dangerous animal designation made by the County on or about July 23, 2015, is hereby **AFFIRMED**.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Deborah and Andrew Tollefson live with their four children and dog named Lutzen at 8800 Sunset Trail in Chanhassen.¹ Lutzen is a Labrador/St. Bernard mix.²

¹ Testimony (Test.) of Deborah Tollefson; Exhibits (Exs.) 2 and 3.

² Test. of D. Tollefson.

2. Jeffrey Franz is a neighbor of the Tollefsons who resides at 8950 Sunset Drive.³ Mr. Franz owns two dogs, Baloo and Khali.⁴ The dogs are German Shepard/Collie mixes.⁵ Baloo is a male dog and is approximately 1.5 years old.⁶ Khali is a female dog and is slightly older than Baloo.⁷ Baloo weighs between 60 and 70 pounds.⁸ Mr. Franz adopted the dogs from Fairyland Rescue, an animal rescue organization.⁹ Both dogs are up-to-date on their rabies vaccinations and microchipped.¹⁰

3. Mr. Franz has a gated property and a fenced yard, with a gate that can be manually opened.¹¹

4. On at least four occasions prior to May 29, 2015, Mr. Franz's dogs have gotten out of their fenced yard and have come onto the Tollefsons' property.¹²

5. On the morning of May 29, 2015, Ms. Tollefson noticed Mr. Franz's two dogs were in her yard.¹³ Ms. Tollefson's own dog, Lutzen, was outside in the Tollefsons' back yard.¹⁴ Ms. Tollefson observed Baloo and Khali barking aggressively at Lutzen with the hair on their backs raised.¹⁵ Ms. Tollefson went out onto her deck and called Lutzen back into the house.¹⁶

6. Fearing that her neighbor's dogs could be hit by a car or could run away, Ms. Tollefson decided to try to guide the dogs back to Mr. Franz's yard.¹⁷ Rather than approach the dogs, Ms. Tollefson got into her car with her own dog and drove slowly to Mr. Franz's property, as Baloo and Khali followed her car.¹⁸ Ms. Tollefson had done this once before and had successfully gotten the dogs to follow her back to their own yard.¹⁹

7. Ms. Tollefson drove slowly down Sunset Trail toward Franz's property with Baloo and Khali following behind her.²⁰ She parked in the middle of the road alongside

³ Test. of D. Tollefson.

⁴ Test. of D. Tollefson; Test. of Jeffrey Franz.

⁵ Test. of J. Franz.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Ex. 4.

¹¹ Test. of D. Tollefson.

¹² *Id.*; Ex. 4.

¹³ Test. of D. Tollefson.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

a utility truck that was parked near Mr. Franz's driveway.²¹ Ms. Tollefson's car was approximately 30 feet from Franz's property and in the public roadway.²²

8. Ms. Tollefson exited her car with the intention of walking up to Franz's gate and letting Baloo and Khali into the yard.²³ However, as she stepped in front of her car and onto the grassy area between the road and Mr. Franz's fence, Baloo and Khali began to circle her in an aggressive manner.²⁴ The dogs then attacked Ms. Tollefson unprovoked, biting at her legs, tearing her sweatpants, and dragging her to the ground.²⁵ Ms. Tollefson managed to get up, but the dogs bit her leg and knocked her to the ground again.²⁶ Ms. Tollefson screamed for help and ultimately managed to crawl back into her car on the passenger side.²⁷ The entire attack took less than one minute.²⁸

9. Andrew Cotton, a utility worker, was working across the street from Mr. Franz's house at the intersection of Sunset Trail and Lyman Boulevard (County Road 18) when he heard Ms. Tollefson screaming and saw the dogs knock her to the ground.²⁹ Mr. Cotton grabbed a shovel and started walking towards Ms. Tollefson just as she managed to get into her car and drive away.³⁰ The dogs saw Mr. Cotton approaching and began advancing toward him in an aggressive manner.³¹ Mr. Cotton stopped his approach and slowly walked backwards toward Lyman Avenue where he had been working.³² The dogs did not follow him.³³

10. Ms. Tollefson drove in reverse all the way back to her own driveway.³⁴ Bloodied and shaken, Ms. Tollefson parked her car in the garage and cried out to her husband for help.³⁵ Mr. Tollefson then drove Ms. Tollefson to the emergency room to obtain medical treatment for her wounds.³⁶

²¹ *Id.*; Ex. 3.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Exs. 3 and 4.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Test. of D. Tollefson.

³⁵ *Id.*

³⁶ *Id.*

11. At the hospital, Ms. Tollefson was examined by a doctor and given a tetanus shot.³⁷ Because it was determined that the dogs were current on their rabies vaccinations, Ms. Tollefson did not need to undergo rabies shots.³⁸

12. Ms. Tollefson sustained several bites and bruises to her legs as a result of the attack.³⁹ The injuries included two large bites to her left calf and a contusion on her right thigh.⁴⁰ One of the bites on her lower left leg resulted in a quarter-size puncture wound that required five sutures.⁴¹

13. Carver County Sheriff's Deputy James Horvath investigated the dog bite incident.⁴² As part of his investigation, Deputy Horvath spoke with the Tollefsons and Mr. Franz.⁴³ During his conversation with Deputy Horvath, Franz stated that it was likely Baloo bit Ms. Tollefson because Baloo "had nipped" at another person in the past.⁴⁴

14. Deputy Horvath cited Mr. Franz with violating Chanhassen's ordinance prohibiting animals running at large.⁴⁵

15. Prior to the May 29, 2015 attack, Mr. Franz was aware that his dogs had gotten out of his fenced yard on several occasions.⁴⁶ On one particular occasion, Mr. Tollefson complained to Mr. Franz about Baloo and Khali escaping from Mr. Franz's yard and coming onto the Tollefson's property.⁴⁷

16. After the attack on May 29, 2015, Mr. Franz called his veterinarian and a dog trainer for advice on training his dogs.⁴⁸ Mr. Franz is working with both dogs to stop their nipping, charging, and barking behaviors.⁴⁹ Mr. Franz also purchased remote electric collars for both dogs, which allow Mr. Franz to slightly shock the dogs if they exhibit bad behaviors.⁵⁰ In addition, Mr. Franz has purchased a wireless "invisible" fence that he intends to install inside the perimeter of his yard to stop the dogs from

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*; Ex. 4.

⁴⁰ *Id.*

⁴¹ Exs. 4 and 5.

⁴² Ex. 4.

⁴³ Ex. 4.

⁴⁴ Ex. 4.

⁴⁵ Exs. 1 and 4. (See Chanhassen City Code § 5.19).

⁴⁶ Test. of J. Franz; Ex. 4.

⁴⁷ Test. of Andrew Tollefson.

⁴⁸ Test. of J. Franz.

⁴⁹ *Id.*

⁵⁰ *Id.*

getting too close to the fence.⁵¹ However, Mr. Franz cannot install the wireless fence until the County completes its planned road construction nearby.⁵²

17. The Tollefsons have not seen Franz's dogs outside of their fenced yard since May 29, 2015. However, the dogs still charge Mr. Franz's fence and bark aggressively when someone walks or drives slowly past the yard.⁵³ Ms. Tollefson has made several video recordings of the dogs charging the fence and barking aggressively as cars or people pass by.⁵⁴

18. Based on its investigation, the Carver County Sheriff's Office determined that Baloo was a "potentially dangerous dog," as defined by Carver County Ordinance § 92.06.⁵⁵ By letter dated July 23, 2015, the Carver County Sheriff's Office notified Mr. Franz that Baloo had been designated a potentially dangerous dog because he bit a person without provocation.⁵⁶ The letter directed Mr. Franz to:

- have a microchip implanted in Baloo, pursuant to Carver County Ordinance § 92.09;
- provide a copy of a current Rabies Certificate from his veterinarian;
- keep the dog in a "proper enclosure" or restrained by a chain or metal leash under the control of a responsible person 18 years of age or older at all times that the dogs is outdoors and not inside a proper enclosure.⁵⁷

19. The letter further informed Franz of his right to appeal the potentially dangerous dog designation.⁵⁸

20. On August 10, 2015, Franz pleaded guilty to a petty misdemeanor charge of Animal Running at Large and was fined \$100.⁵⁹

21. On September 11, 2015, Carver County Community Service Officer Hayley Mattil spoke with Ms. Tollefson on the telephone.⁶⁰ Ms. Tollefson informed Ms. Mattil that a neighbor named Mark Undestad had been bitten by Baloo last winter.⁶¹ Ms. Mattil called Mr. Undestad and he stated that one day during the prior winter, he

⁵¹ *Id.*

⁵² *Id.*

⁵³ Test. of D. Tollefson.

⁵⁴ Exs. 4, 6.

⁵⁵ Ex. 4.

⁵⁶ *Id.*

⁵⁷ Ex. 4.

⁵⁸ *Id.*

⁵⁹ Ex. 1. (See Chanhassen Code of Ordinances § 5.19.)

⁶⁰ Ex. 4.

⁶¹ *Id.*

saw Khali running loose in the neighborhood.⁶² He decided to return Khali to the Franz home.⁶³ When he approached Franz's fenced back yard with Khali, he heard Baloo growling inside the fenced area.⁶⁴ As Mr. Undestad leaned over the fence to unlock the gate, Baloo jumped up and bit his elbow.⁶⁵ Because Mr. Undestad was wearing a heavy winter coat, he was not injured.⁶⁶

22. Franz filed a timely request for an appeal of Baloo's potentially dangerous dog designation and this matter was heard on October 13, 2015, pursuant to Carver County Ordinance § 92.07(C).⁶⁷

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The County and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 347.50 (2014), and Carver County Ordinance § 92.07(C).

2. The Appellant received due, proper, and timely notice of his right to a hearing, as well as of the time and place of the hearing.

3. The County has complied with all procedural requirements of Chapter 92 of the Carver County Ordinances and law.

4. The Appellant's appeal of the Notice of Potentially Dangerous Dog Designation was timely, and this matter is, therefore, properly before the Administrative Law Judge.

5. Minnesota state law and Carver County Ordinance § 92.06 define "potentially dangerous dog" as any dog that:

- (1) When unprovoked, inflicts a bite on a human or domestic animal on public or private property;
- (2) When unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Ex. 7.

- (3) Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.⁶⁸

6. “Provocation” is defined to mean “an act that an adult could reasonably expect may cause a dog to attack or bite.”⁶⁹

7. Carver County Ordinance § 92.06 defines “unprovoked” as “[t]he condition in which the dog is not purposely excited, stimulated, agitated, or disturbed.”

8. The County animal control authority shall designate a dog “potentially dangerous” if, following an investigation of a dog attack incident and a review of all reports, the animal control authority determines there is a preponderance of evidence that the dog acted in a manner described in Carver County Ordinance § 92.06.⁷⁰

9. In an appeal of a Potentially Dangerous Dog Designation, the County has the burden to demonstrate by a preponderance of the evidence that the dog is potentially dangerous pursuant to state law or Carver County Ordinance §§ 92.06 and 92.07.⁷¹

10. The County has demonstrated by a preponderance of the evidence that Baloo is a potentially dangerous dog, as defined by County Ordinance or state law. Accordingly, the County’s Potentially Dangerous Dog designation is **AFFIRMED**.

11. Pursuant to Carver County Ordinance § 92.07(D), owners of dogs determined to be potentially dangerous are subject to the following requirements:

- (1) Any dog determined to be potentially dangerous shall be microchipped in accordance with § 92.09;
- (2) The owner of a dog may be required to complete an approved dog obedience class within a designated period of time and provide proof of completion to the Animal Control Authority;
- (3) The dog may be required to be kept in a proper enclosure, or restrained by chain or leash not to exceed six feet in length, and/or muzzled, and under the control of a responsible person 18 years of age or older at all times it is outdoors and not inside a proper enclosure;
- (4) The owner may be required to post the property where the dog resides with a warning symbol that children can understand, containing a written notice and warning that a potentially dangerous

⁶⁸ Minn. Stat. § 347.50, subd. 3, and Carver County Ordinance § 92.06. The parties stipulate that only subpart 1 of the definition applies in this case.

⁶⁹ Minn. Stat. § 347.50, subd. 8.

⁷⁰ Carver County Ordinance § 92.07.

⁷¹ Carver County Ordinance § 92.07(C)(5).

dog is present on the property. Such signs shall conform to the requirements set forth in Minn. Stat. § 347.51, subd. 2(a) and County Ordinance § 92.08(L)(4).

- (5) The owner may be required to show proof of up-to-date rabies vaccination and, if required, licensing;
- (6) The dog may be required to wear, at all times, a tag or marker identifying it as a potentially dangerous dog;
- (7) The dog may be required to be sterilized within 30 days of the owner receiving notice.

12. Under Carver County Ordinance § 92.07(C)(6), the Administrative Law Judge may affirm or modify the conditions recommended by the Animal Control Authority.

13. Upon written request of the owner, the Animal Control Authority or Administrative Law Judge may review the status of a dog that has been determined to be potentially dangerous if a period of two years has passed without any further incidents of violations and may use discretion in determining whether any conditions that have been ordered are still required.⁷² The owner is responsible for the cost of such review.⁷³

Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. The potentially dangerous dog designation made as to Appellant's dog Baloo is **AFFIRMED**.

2. The Appellant shall complete the County's potentially dangerous dog registration form and file it with the Carver County Sheriff within 14 days of this decision.⁷⁴

3. Along with the registration form, Appellant shall also provide evidence that he has complied with the following requirements:⁷⁵

- (1) Appellant shall provide proof that Baloo has been microchipped in accordance with § 92.09;

⁷² Carver County Ordinance § 92.07(C)(9).

⁷³ *Id.*

⁷⁴ Carver County Ordinance § 92.07(C)(10).

⁷⁵ *Id.*

- (2) Appellant must complete a dog obedience course with Baloo and Khali within 90 days of this Order and provide proof of completion to the Animal Control Authority;
- (3) Appellant must ensure that Baloo, Khali, and any other dogs he owns or may, in the future own, are kept within his fenced-in yard or restrained by chain or leash, and under the control of a responsible person 18 years of age or older at all times they are outdoors;
- (4) Appellant shall not allow his dogs to remain outdoors in his yard unless there is an adult over the age of 18 years old at home and supervising the dogs; and
- (5) Appellant shall ensure that his dogs are current on all rabies vaccinations at all times.

4. Appellant shall provide a copy of this Order, along with proof that he is in compliance with all of the terms this Order (except term #2, related to a dog obedience course), when he registers Baloo with the Carver County Sheriff within 14 days of this Order. Because Appellant cannot complete a full dog obedience course within 14 days, he shall provide proof of completion of such course to the Carver County Sheriff when such course is completed. If the completion of the course requires more than 90 days, as long as Appellant provides proof of timely enrollment, he shall be allowed up to 120 days to complete the course.

5. Pursuant to Carver County Ordinance §§ 92.07(C) and 92.99, failure by Appellant to comply with the requirements of this Order and Carver County Ordinance ch. 92 shall be guilty of a misdemeanor with penalties as provided under Minnesota Law.

Dated: October 21, 2015

s/Ann C. O'Reilly

ANN O'REILLY
Administrative Law Judge

Reported: Digitally Recorded; No transcript prepared

NOTICE

Pursuant to Carver County Ordinance § 92.07(C), the decision of the Administrative Law Judge is final without any further right of administrative appeal. An aggrieved party may obtain review of this decision by petitioning the Minnesota Court of

Appeals for a Writ of Certiorari not more than 30 days after service of the Administrative Law Judge's written decision.

MEMORANDUM

Minnesota state law and Carver County Ordinance define a "potentially dangerous animal" as an animal that has:

- (1) when unprovoked, inflicts bites on a human or domestic animal on public or private property.
- (2) when unprovoked, chases or approaches a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack; or
- (3) has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.⁷⁶

The parties stipulate that only subpart 1 of this definition applies in this case.

The County demonstrated by a preponderance of the evidence that Mr. Franz's dog Baloo attacked and bit Ms. Tollefson, unprovoked, on public or private property. The uncontested facts established that when Ms. Tollefson exited her car after driving to the Franz property, she was surrounded and then attacked by Baloo and Khali. The dogs dragged her to the ground and bit her several times. Ms. Tollefson sustained serious injuries, including bites and bruising to her legs. One of those bites required five stitches. There is no evidence in the record that Ms. Tollefson provoked the dogs in any manner. Therefore, the County has shown that Baloo meets the definition of a "potentially dangerous dog" within the meaning of Minn. Stat. § 347.50, subd. 3, and Carver County Ordinance § 92.06.

As Appellant is no doubt aware, maintaining a dog that has the potential to bite humans or other animals carries significant risks and legal obligations. Mr. Franz is strongly urged to take all necessary precautions, including a new latch on his gate and the installation of an "invisible" fence, to ensure that the dogs are never again able to escape their fenced-in yard. In addition, the dogs cannot be in the yard without an adult present in the home to ensure that the dogs remain within the fenced-in property. The dangers and potential liabilities are simply too great if the dogs are able to escape again.

A. C. O.

⁷⁶ Minn. Stat. § 347.50, subd. 3; Carver County Ordinance § 92.06.