

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COUNTY OF CARVER

In the Matter of the Dangerous Dog
Designation for a Male Yellow Labrador
(Toby)

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

This matter came before Chief Administrative Law Judge Raymond R. Krause pursuant to a Notice and Order for Hearing dated April 11, 2012, and signed by Patrick J. W. Conness.

Patrick J.W. Conness, Assistant Carver County Attorney, appeared on behalf of the County of Carver (the County). Judith Marie Mechtel (the owner) appeared on behalf of the dog in question without counsel. Jason Mechtel appeared as a witness. The County's exhibits 1- 3 were accepted into evidence without objection.

STATEMENT OF THE ISSUES

1. Whether the Male Yellow Labrador (Toby) has met the criteria for designation as a Dangerous Dog, pursuant to Minn. Stat. § 347.54 and Carver County Ordinance § 92.06.
2. Whether the proper designation for Toby is Dangerous or Potentially Dangerous pursuant to Carver County Ord. Ch. 92.

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

FINDINGS OF FACT

1. Toby is a seven-year-old male yellow Labrador that resides with its owner Judith Mechtel at 8375 County Road 32, New Germany, Minnesota. This residence is also a working farm. There is no physical fence or enclosure to keep the dogs within the property boundaries.¹
2. Toby is neutered and has up-to-date rabies vaccinations.² Toby has never attacked any other animals, is not trained to fight, to be aggressive or trained to

¹ Testimony of Judith Marie (J.M.) Mechtel.

² Ex. 2, pg. 3.

hunt.³ The owner has installed an “invisible fence” and has employed “shock collars” in an attempt to train her dogs to stay in the yard. These efforts have been only partially successful due to mechanical failures and by-passers who disrupt training either by attempting to make friendly contact with the farm’s ponies and dogs, or by provoking the dog by shouting and making aggressive moves within its sight while the dog is on the owner’s property.⁴

3. Toby has never attacked or threatened persons coming to visit the Mechtels nor has he attacked or threatened delivery persons or utility persons who have come onto the property. Toby’s general demeanor is friendly and non-aggressive.⁵

4. On June 6, 2011, a complaint was filed by Catherine Ruschmeier with the Carver County Sheriff. The complaint alleged that Toby chased her while she was riding her bicycle past the farm. The complaint stated that Toby bit the shoe of Ms. Ruschmeier and made a puncture mark on the heel of the shoe. Ms. Ruschmeier was not injured but was afraid to ride past the farm again. When the animal control officer visited the residence to discuss the matter with the owner, the dogs, including Toby were in the yard and approached the officer in a friendly manner. Toby demonstrated no aggression at this time.⁶

5. An incident report was written by the animal control officer and sent to the owner.⁷

6. On October 24, 2011, a report was made to the Carver County Sheriff that a dog bite incident was in progress. A deputy and the animal control officer responded to the call and found Jeffrey Meulners in the road. He alleged that while riding his bicycle past the farm, a large white dog came out to the road and “grabbed him by the left shoe and pulled him off his bicycle.” Meulners stated that the dog continued to pull him until it lost its grip and he placed his bicycle between himself and the dog. There was a puncture mark on the complainant’s shoe, however, he was not injured.⁸

7. The animal control officer went to the farm and found Toby in the yard. They were able to take Toby by the collar and secure him to a pole in the yard without incident. Later, the officer spoke with the owner. The owner stated that the “invisible fence” was broken that day and her son must have let the dog out accidentally.⁹

8. The animal control officer explained the Dangerous and Potentially Dangerous Dog ordinance to the owner. The animal control officer stated that “the dog

³ Test. of Jason Mechtel.

⁴ Test. of J.M. and Jason Mechtel.

⁵ *Id.*

⁶ Ex. 1.

⁷ Ex.1.

⁸ Ex. 2.

⁹ *Id.*

will most likely be deemed potentially dangerous. But the designation of the dog will be discussed and a final decision for a designation of her dog would be mailed to her.”¹⁰

9. On March 23, 2012, the owner received a notice from the Carver County Animal Control Authority that Toby was being designated as a dangerous dog. The notice contained the procedures necessary for registering the dog with the County.¹¹

10. The owner timely appealed the designation and the hearing was set on for April 16, 2012.¹²

11. On April 11, 2012, David Hemze, Carver County Administrator, delegated the power to act as an independent hearing examiner to the Office of Administrative Hearings pursuant to Carver County Ord. § 92.07 (C)(3).

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Pursuant to Carver County Ord. § 92.07 C, and Minn. Stat. Ch. 14, this matter is properly before the ALJ.
2. Carver County complied with all necessary notice provisions.
3. A Dangerous Dog is defined as any dog that has:
 - a. Without provocation, inflicted substantial bodily harm on a human being on public or private property;
 - b. When unprovoked, engaged in any attack on any person under circumstances which indicated a danger to personal safety;
 - c. Killed a domestic animal without provocation while off the owner’s property;
 - d. Been found to be potentially dangerous, and after the owner has received notice that the dog is potentially dangerous, the dog aggressively bites, attacks, or endangers the safety of humans or domestic animals;
 - e. When unprovoked, has bitten one or more persons on two or more occasions; or

¹⁰ *Id.*

¹¹ Ex. 3.

¹² *Id.*

- f. Been or will be used, trained, or encouraged to fight with another animal; or whose owner has in their custody or possession any training apparatus, paraphernalia, or drugs used to prepare such dog for fighting with another animal.
4. A Potentially dangerous Dog is defined as any dog that:
 - a. When unprovoked, inflicts a bite on a human or domestic animal on public or private property;
 - b. 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
 - c. Has a known propensity, tendency, or disposition to attack unprovoked, causing injury or otherwise threatening the safety of humans or domestic animals.

5. Pursuant to Carver County Ord. § 92.07 (C)(6), the hearing officer may uphold or reject the determination made by the County and may affirm or modify the conditions recommended by the Animal Control Authority.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

Based upon these Conclusions, the Administrative Law Judge **REJECTS** the determination that the dog Toby is a Dangerous Dog and **ORDERS** that:

1. The Male Yellow Labrador (Toby) is hereby designated a Potentially Dangerous Dog; and
2. The dog shall be micro chipped in accordance with Carver County Ord. § 92.09; and
3. The dog shall 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 that it is outdoors and not in a proper enclosure; and
4. The owner shall post the property where the dog resides with a warning symbol that children understand, containing written notice and warning that a potentially dangerous dog is present on the property. Such signs shall conform to the requirements set forth in Minn. Stat. § 347.51, subd. 2(a) and Carver County Ord. § 92.08 (L)(4); and

5. The owner shall annually provide proof of up-to-date rabies vaccination.

Dated: April 23, 2012

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Digitally recorded

NOTICE

Pursuant to Carver County Ord. § 92.07C (6), this Order is the final decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Carver County Ord. § 92.07 C (7).

MEMORANDUM

This case presents a situation in which a dog that is generally non-aggressive and friendly has a decided penchant for chasing bicyclers and in two instances has bitten the shoes of bicyclers. The question to be resolved is what the proper designation for this dog should be and what requirements should be placed upon the owner to ensure that further incidents do not occur.

The County Animal Control Authority has made a determination of "Dangerous Dog." This designation carries with it severe and very costly consequences for both the dog and the owner. There are six criteria for the designation. The only criterion that may fit the facts in this case is that the dog attacked two persons under circumstances which indicate a danger to personal safety. The dog has not attacked any domestic animals on or off the owner's property. The dog has not inflicted substantial bodily harm to anyone. The dog is not used for or trained for fighting. The dog has not bitten anyone's person. Only shoes have been bitten.

Finally, the dog has not been previously determined to be a Potentially Dangerous Dog. The report of the animal control officer is clear that she was warning the owner that the dog *might* be so designated in the future but that determination was yet to be made.¹³ Consequently, no proper notice of designation or notice of the right to appeal a designation of Potentially Dangerous Dog was provided to the owner.

On the other hand, the dog does clearly meet the criteria for a Potentially Dangerous Dog. The testimony indicated that there is a tendency for this dog to chase

¹³ See Finding of Fact No.8.

bicyclers and to nip at them even if unprovoked. Second, the dog has chased or approached two bicyclers on public streets in an apparent attitude of attack.

Bicyclers have every right to ride the public byways without being chased or attacked by dogs. Strangers have no way of knowing whether a dog is really harmless or is attacking. Being chased by an unknown dog can have serious safety implications even if the rider is not bitten. Avoiding the approaching dog can cause a cyclist to lose control and fall or swerve into traffic. This cannot be allowed to continue.

The owner's remedies of training, invisible fencing, and shock collars have not worked. Therefore, the County has the duty to impose conditions on the owner and her dog. Because the dog has very limited issues and does not appear to be a danger to persons other than passing bicyclers, the balanced response is to ensure that the dog is enclosed or under immediate control. Imposition of significant fines and the threat of confiscation or euthanasia should be reserved for dogs that more clearly present a threat that lesser sanctions cannot resolve.

Since the actions of the dog more clearly fall within the criteria for a Potentially Dangerous Dog, the ALJ rejects the County's determination of Dangerous Dog. However, that is not to excuse the behavior of the dog or its owner. By designating Toby as a Potentially Dangerous Dog, the County through this Order is imposing conditions upon the owner that must be adhered to. Violation of the terms of this Order can result in the heavier penalties imposed by the designation of Dangerous Dog.

The owner appears to be a responsible person who cares for her animals. She must demonstrate that responsibility and caring by protecting her dog and the general public. The best way to do that is by adhering to the conditions set in this Order.

R. R. K.