



HATCH MCCLELLAND MOORE
CRIMINAL LAW

August 10, 2017

Deborah R. Hatch *
Morgan E. McClelland
Sandra M. Christensen-Moore

VIA COURIER

Parkland County Council
53109A Highway 779
Parkland County, AB T7Z 1R1

Dear Sir/Madam:

Re: Podolak, Michael – Declaration of Vicious Dog
Appeal to Council in relation to Declaration dated July 28, 2017 (Enforcement Services)
Our File: 000323/DRH

I enclose herewith for service upon yourselves the Without Prejudice Appeal with respect to the above-noted matter. I look forward to hearing from you, and thank you for your consideration.

I remain,

Yours very truly,

HATCH MCCLELLAND MOORE

Per:

Deborah R. Hatch

/dh
Enclosure

Please call or email if you have any questions or need more information.

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**IN THE MATTER OF A WRITTEN APPEAL
OF A DECLARATION DATED JULY 28, 2017
DEEMING A DOG VICIOUS
BEFORE THE PARKLAND COUNTY COUNCIL:
WITHOUT PREJUDICE SUBMISSIONS**

Summary of Facts

1. On July 28, 2017 Mr. Michael Podolak was served with a letter indicating that the dog Koko has been deemed vicious pursuant to Section 1.2(u) of the Parkland County Animal Control Bylaw. The declaration is stated to be based on the fact that on May 30, 2017, Koko chased and attacked a person "at or near your rental property," biting the person "near your residence at the rental property..." It is further alleged that the biting occurred "without provocation".
2. No hearing was held prior to the declaration being made.
3. The bite occurred on Mr. and Mrs. Podolak's property, and the person who was bitten did not have permission to be on his property. The trespasser's parents, who lease property on the Podolak's land, had permission to reside on their section, but had been informed previously to call Mr. Podolak or his wife if anyone wished to come on to the property so that they could put Koko on a leash. The Podolaks understood that the renters kept the Podolak's phone numbers in their kitchen, and they had previously called the Podolaks when they wanted to invite someone onto the property. That agreement was a part of the arrangement whereby the Podolaks leased the part of the property which the lessors occupied to them. Up until May 30, 2017, that arrangement had been respected.

4. On May 30, 2017, the woman who was bitten came onto the Podolak's property uninvited, and neither she nor the lessors attempted to call either Mr. or Mrs. Podolak to seek consent.

5. The properties in question are rural, and in recent years, they and nearby properties have been subject to numerous break & enters. One nearby property had trespassers approach, claiming they were a film crew, though they were unable to present credentials and they departed swiftly when confronted. Another property nearby was victimized by three break & enters within the span of approximately a week.

6. The Podolaks have 4 young children, and worry for their safety in a rural area which has been subjected to repeated attempts to trespass and the commission of various crimes in that context. Koko is a guard dog, and a "Beware of Dog" sign was posted at the property on the date in question.

Reasons for Appeal

- I) **The declaration is contrary to the principles of natural justice and fairness**
- II) **There was no authority pursuant to the Animal Control Bylaw to issue a Vicious Dog Declaration**

Argument

- I) **The declaration is contrary to the principles of natural justice and fairness**

7. A County decision-maker, acting in a quasi-judicial capacity, is required by law to act fairly, providing procedural fairness and natural justice. A determination which has an impact on a party must occur having heard representations from both sides. Hearings serve this function, with both sides able to present and argue their positions. A municipal body "must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything": *Haugen v Camrose (County)* 1979 ALTASCAD 75 (CanLii).

8. When addressing a by-law "which involves a conflict of interests between private individuals who are affected, the council...acts in a quasi-judicial capacity and its preliminary investigations *and all subsequent proceedings* ought to be conducted in a judicial manner, with fairness to all parties concerned": *Re Howard and Toronto (City)*(1928) CanLii 427 (ONCA)(emphasis added).

9. As Koko was declared a Vicious Dog without any hearing, the Podolaks were denied natural justice and fairness, and the declaration ought to be overturned on that basis, or alternatively, Section 7 of the Bylaw, which allows such a declaration to be made in the absence of any hearing whatsoever, ought to be struck.

II) There was no authority pursuant to the Animal Control Bylaw to issue a Vicious Dog Declaration


10. The bite occurred on the Podolak's land. That fact is not in dispute. Section 7 of the Bylaw states that a dog "shall not be declared vicious if it attacks or bites a trespasser on the property of its owner, or property controlled by him/her." The bite occurred on the Podolak's property, and on property which was controlled by them.

11. The person who was bitten was not authorized to come onto the property, and in fact it was understood that any persons who wished to enter the property would call first in order to obtain consent and so that the necessary steps would be taken. Entry onto the property was not authorized. Section 7 of the Bylaw explicitly addresses this very circumstance, and provides that there is no jurisdiction nor authority to declare a dog vicious in such circumstance.

Relief Sought

12. It is respectfully submitted that this Honourable Council should allow this appeal, and cancel the Vicious Dog Declaration immediately.

All of Which is Respectfully Submitted, this 9th day of August, 2017.



Deborah R. Hatch
Counsel for the Appellant