

Minutes

Hearing Committee Minutes of 10/25/17

Location: Committee Room
C-11, Tom Davies
Square

Commencement: 6:01 PM

Adjournment: 8:21 PM

Councillor Signoretti, In the Chair

Present Councillors Signoretti, Kirwan, Sizer, Cormier, Reynolds

City Officials Brendan Adair, Manager of Security and By-law; Melissa Laalo, By-law Coordinator - Animal Care and Control; Philip Smyth, By-law Enforcement Officer; Kristen Newman, Deputy City Solicitor/Deputy City Clerk; Renée Stewart, Clerk's Services Assistant

Declarations of Pecuniary Interests and the general nature thereof

None declared

Public Hearings

1 Vicious Dog Appeal - ACR 754470

The Hearing Committee Adjourned and the Public Hearing was Opened to deal with the following application.

Report dated October 3, 2017 from the General Manager of Corporate Services regarding Vicious Dog Appeal- ACR 754470.

Eric Foerter and Opal Guilbeault, the appellants, were present.

Brendan Adair, Manager of Security and By-law, outlined the report.

Brendan Adair, Manager of Security and By-law, stated that they are concerned at the possibility of a similar incident occurring again. The dog jumped over the fence into the neighbouring property. There were items next to the fence that the dog used to jump over. The fence is low with multiple items near it that the dog can use to jump over. During a follow-up later on with the victim, the investigating officer did not see anything that would stop this from occurring again. He further stated that one of the requirements of the Animal Control

By-law is that the dog is to be leashed. He stated that no one was negligent in the matter but nothing has changed from the time the incident happened. The lack of mitigation leaves them with doubt that it will not happen again.

Philip Smyth, By-law Enforcement Officer, stated that the dog jumped over a four (4) foot fence. When he returned to investigate further, in July, there was a flower pot near the fence that the dog could use to jump over the fence that remained at the same height. Therefore, there was nothing stopping the dog from doing this again. He further stated that the dog was inside on the day he came to investigate and was two (2) and a half years old at the time of the attack.

Brendan Adair, Manager of Security and By-law, stated that they have not received any follow-up from the Prosecutors office and he is not sure of the outcome of the trial. He further stated that the By-law for deeming a Vicious Dog does not specify that it needs to be a fatal attack. The attack just needs to be an unprovoked attack. The By-law department investigates all type of attacks but they pay close attention to those that happen without provocation to provide community safety.

Mr. Foerter stated that they had asked for a hearing and spoke to By-law Enforcement about taking removing conditions from the vicious dog notice. After speaking to Paul Denniston in the By-law Department, they were advised that none of the stipulations of the By-law could be taken away without going through the Hearing Committee process. He feels as though the By-law department gave them the run around and wasted their time. He further stated that the report mentioned four (4) wounds on the victim dog but he is certain there was only two (2) wounds.

Philip Smyth, By-law Enforcement Officer, stated that there were (2) wounds on the outside of the left leg and there was two (2) on the inside of the left leg. They were unable to view the wounds on the inside of leg because the dog was in pain.

Mr. Foerter stated he has a statement from a technician at the hospital, stating that there were only two (2) wounds.

Brendan Adair, Manager of Security and By-law, stated that they are not trying to measure how many wounds there were. They are trying to determine that there was an attack that occurred without provocation. He further stated that can only go by the information that they have.

Mr. Foerter stated that his intent was to bring to light the mistakes that were made during the investigation. During an interview he stated that there has been much provocation between the two (2) dogs over some time. The dogs have been barking at each other through the fence. He does not believe that his dog was looking to kill, the dog went for dogs legs which would indicate play. He also believes that the vicious dog By-law is a catch all which many dogs would fall under. He has a letter from his veterinarian stating that she does not believe his dog to be vicious. He further stated that he does not see how this By-law is benefiting the community.

Ms. Guilbeault stated that she believes that this was an unfortunate incident but that the City should have someone who specializes in animal behavior to deem a dog vicious as opposed to relying solely on testimony.

Mr. Foerter stated that his dog has never been involved in any other incidents. They have multiple animals and have not had issues with their animals or any other dogs in the

neighbourhood.

Ms. Guilbeault stated that the incident could have occurred because her dog was never properly introduced to "Bear" the neighbouring dog. She stated that they owned their dog Blizzard for two (2) and a half years at the time of the attack. Their dog has anxiety and is often afraid of going for walks. The stipulations of the By-law are worsening these issues. She also stated that they willingly covered the cost of the veterinarian bills for the victim dog.

Mr. Foerter stated that the dogs often sniffed around for each other. Recently they have been running up and down the fence barking and growling at each other. They got into a routine of keeping Blizzard and Bear apart. He stated that the By-law Officers only intent was to see that there was no provocation for the dog to attack. Their dog has never chased any other dogs. He stated that they have two dogs: one (1) medium size female German Sheppard "Mocha" and "Blizzard" who is 100 pounds male. He was outside with the dog when it jumped the fence. He further stated that when the dog jumped over the fence he went immediately after him. The only people who were there was the owner of Bear, Alison, and the roofer. He stated that the allegation that five (5) people needed to separate the dogs is false. He also stated that Courtney Houle had stated that the dog had jumped over the fence and bit people previously. He believes this is a lie. He stated that the By-law department took her testimony as the truth and she never saw the incident occur. He stated that the statements are not true because if his dog had bit them they would have immediately complained. He has evidence from his veterinarian saying that his dog is not vicious. This is the same veterinarian that took care of the dog who was attacked.

Brendan Adair, Manager of Security and By-law, stated that as part of an investigation they take objective statements. The intent is not to characterize a person or a dog. But more to protect what could happen in the future. He firmly believes that the dog attacked without provocation. The dog that was attacked was lying on the deck. There has been a question that perhaps it was play and not an attack. There was one dog not participating, and it took many people to break up the altercation. This is not a decision they take lightly as they realize the implication on the dog and owners. They do believe that the stipulations within the By-law allow for exercise and socialization.

Tanya Pallot, concerned citizen, asked how a dog is designated vicious. She inquired if one incident is enough to have a dog designated vicious or does the incident have to be severe. She works as a volunteer for Pet Save and is concerned that a dog that they have put for adoption has been deemed vicious. They go through vigorous testing to make sure that the dogs are adoptable. Those who have special needs are placed with specific people. This is a dog that Pet Save had deemed adoptable. She does not see how the dog can be deemed vicious for one incident.

Catarina Guilbeault, daughter of the appellants, stated that her parents have installed a six (6) foot tall fence to stop an attack from happening again. She does not understand why the dog needs to be deemed vicious now that this fence is in place. The two dogs have not had any attempt at socialization. They bring Blizzard out for walks with their other dogs. The neighbour's dog stays in the backyard therefore they did not socialize. Blizzard sometimes barks at other dogs and is strong when her father is holding him. They walk very often and come into contact with many dogs and there has not been any other incident where the dog has acted out.

Mr. Foerter stated that there were workers walking around and setting up for the roofing around Ms. Hughes' entrance. Alison and her dog were the only ones in the backyard. He

believes something got Blizzard's attention that got him to walk over and jump the fence.

Brendan Adair, Manager of Security and By-law, stated that the By-law department gets calls regularly for dog attacks. He estimates they receive about one (1) phone call per week. It is followed up by an investigation to deem whether or not the dog is vicious. Roughly five to ten a year are given vicious dog notices.

Melissa Laalo, By-law Coordinator - Animal Care and Control, stated that they do not have documentation of whether rescue dogs are more prone to this type of behaviour. They have been advised by other municipalities that SAFER tests are not always accurate, therefore it is difficult to determine.

Philip Smyth, By-law Enforcement Officer, stated that there is no other evidence than what was provided to the Committee. Based on the statement from Alison Hughes, the owner of Bear, they were sitting on her deck and she was knocked down by the dogs during the commotion. Her father provided a statement saying it took four (4) of them to remove the dog. He further stated that Alison's home has a fenced in backyard. The gate to this backyard is in very close proximity to what they use as their main entrance.

Brendan Adair, Manager of Security and By-law, stated that the Vicious Dog designation does not have a time period, it is in effect for the entirety of the dog's life.

The Chair asked whether there was anyone in the audience who wished to speak in favour or against this application and seeing none:

The Public Hearing concerning this matter was closed and the Hearing Committee resumed in order to discuss and vote on the application.

The following resolution was presented:

Option Three:

HC2017-07 Kirwan/Cormier: THAT the City of Greater Sudbury reverse the finding of the Licence Issuer that the Dog is a vicious Dog, pursuant to Section 33 (1)(a) of By-law 2017-22.

YEAS: Councillors Reynolds, Cormier, Kirwan and Signoretti.

NAYS: Councillor Sizer.

CARRIED

Recess

At 7:21 p.m. the Committee recessed.

Reconvene

At 7:30 p.m. the Committee reconvened.

2 Order to Remedy Appeal - ACR 726860 (91 Logan Street, Sudbury)

The Hearing Committee Adjourned and the Public Hearing was Opened to deal with the following application.

Report dated October 3, 2017 from the General Manager of Corporate Services regarding Order to Remedy Appeal- ACR 726860 (91 Logan Street, Sudbury).

Grazia Cloutier, the appellant and Joe Mastroianni, her representative were present.

Brendan Adair, Manager of Security and By-law, outlined the report.

Brendan Adair, Manager of Security and By-law, stated that the garage displayed on the right in the photo is situated on the property of 93 Logan. He further stated that the property at 93 Logan benefits from the retaining wall.

Mr. Mastroianni stated that this issue started in 2006, three By-law officers that assessed the property issued orders to the owner of 93 Logan. His father got a minor survey back in 2006, and Ms. Whittaker, the current By-law Enforcement Officer, stated that it did not help determine who owned the wall. His father had a string in place to show that the wall was moving. The previous owner at 93 Logan was also advised that he had to cut the fence they had built. He stated that the issues that they had with the owner in 2006 such as the maintenance of the yard are the same they are having now. His father, in 2006, had offered to pay half to fix the retaining wall which the owner at the time did not agree with. The owner then built a fence which is not overly structurally sound. He does not understand why the information has changed from 2006, when it was determined that the wall was the property of 93 Logan. He stated the retaining wall is not on his mother's property. The owner of 91 has no benefit of the retaining wall and the garage at 93 Logan would fall without it.

Brendan Adair, Manager of Security and By-law stated that the owner of 93 Logan attempted to appeal the notice but did not follow through with the required fee. He does not believe there is an open admission of ownership of the wall on the 93 Logan side. Currently, they are trying to determine the order on this specific property at 91 Logan.

Ward Councilor Signoretti stated that the appellants do not want to have to take down the retaining wall. They simply don't believe they own the retaining wall. They want the responsibility to go to 93 Logan.

Brendan Adair, Manager of Security and By-law, stated that they work very hard to mitigate where they can. There may be something contributing to the wall shifting. However, it shows as being right down the property line. They have two (2) property owners indicating that they do not own the wall. It is only when they cannot achieve a resolution or determine from the survey ownership of the retaining wall that they bring the matter before the Hearing Committee. He further stated that they provide a timeline to remove, repair or replace the wall. Unless they see some level of compliance they would not extend the allotted time but they can extend should they see compliance. Otherwise, they would uphold the order and go forward with necessary actions.

Kristen Newman, Deputy City Solicitor/Deputy City Clerk, stated that the question before the Committee is if they choose to uphold the order for the owner of the 91 Logan property.

Ward Councillor Signoretti stated that this property is in his ward and he realizes the issues that the By-law department had with this case. Staff has done the work they needed to but it was still questionable.

The Chair asked whether there was anyone in the audience who wished to speak in favour or against this application and seeing none:

The Public Hearing concerning this matter was closed and the Hearing Committee resumed in order to discuss and vote on the application.

The following resolution was presented:

Option Three:

HC2017-08 Sizer/Kirwan: THAT the City of Greater Sudbury rescind the Property Standards Order to Remedy issued to the Owner of 91 Logan Street, Sudbury, ON, pursuant to Section 15.3(3.1)1 of the Building Code Act.

YEAS: Councillor Reynolds, Cormier, Kirwan and Signoretti.

NAYS: Councillor Sizer (Abstain)

CARRIED

3 Taxi Licence Appeal - ACR 773602

The following resolution was presented:

HC2017-09 Sizer/Kirwan: THAT the City of Greater Sudbury accepts the Appellant's email of October 24, 2017 advising that he wishes to withdraw his appeal.

CARRIED

Matters Arising from the Closed Session

Matters Arising from the Closed Session was not required.

Addendum

No Addendum was presented.

Civic Petitions

No Civic Petitions were submitted.

Question Period and Announcements

No Questions were asked.

Notices of Motion

No Notices of Motion were presented.

Adjournment

Reynolds/Sizer: THAT this meeting does now adjourn. Time 8:21 p.m.

CARRIED

Kristen Newman, Deputy City
Solicitor/Deputy City Clerk