

BURLINGTON, VERMONT
CHITTENDEN COUNTY, SS.

IN RE: Complaint Regarding Vicious Dog
“Moose”

BURLINGTON POLICE COMMISSION
ANIMAL CONTROL COMMITTEE

FINDINGS, CONCLUSION, AND ORDER

I. BACKGROUND

1. This matter came before the Animal Control Committee (Committee), a sub-committee of the Burlington Police Commission, for a hearing via zoom on March 6, 2024, on a complaint submitted to the Committee by 5 (five) households in and around the vicinity of Roseade Parkway (the Neighbors) regarding the behavior of a dog (Moose) owned by Roseade Parkway resident, Diane Wheeler. It is properly before the Committee pursuant to its authority by virtue of Burlington City Ordinance (BCO) Chapter 5, Section 27. Presiding over the hearing was Committee Chair Shakuntala Rao; also in attendance were Commissioners Jessica Oski and Mary Cox. Acting as counsel to the Committee was Assistant City Attorney Hayley McClenahan; Clerk for the Committee was Police Department Executive Manager Shannon Trammell.
2. Present at the hearing and acting as the prosecuting animal control officers regarding the complaint were Burlington Police Department Community Service Officers Sterling, Moore, and Hisson. Deputy Chief of Operations Wade Labrecque was also present and gave information to the Committee. Assistant City Attorney Erik Ramakrishnan acted as counsel to the Department. Present for the Neighbors and offering information to the Committee were Llu Mulvaney-Stanak; Jennifer Moore and David Nacmaine; and Alex Weinhagen, all of Roseade Parkway; and, Jennifer and Dominic Aloï of Lopes Avenue.
3. Present for Respondent and offered information to the Committee was registered dog owner Diane Wheeler (Owner), Carol Wheeler, Diane Wheeler’s mother who also resides with and cares for Moose, and an associate of the Wheelers, identified as Deborah.
4. Before the Committee is whether Moose is a vicious dog as defined by BCO Chapter 27, Section 13(e); and if so, what if any order is necessary to protect the public.

II. FINDINGS OF FACT

5. Diane Wheeler is the registered owner of Moose, an approximately sixty-five (65) pound male brindle mix. Ms. Wheeler and Moose reside at 30 Roseade Parkway, along with Carol Wheeler, Ms. Wheeler's mother. Moose is validly licensed with the City until April 2025, including being up to date on rabies vaccination.
6. The Roseade Parkway area is a residential neighborhood. The lots are of the size to be expected in a semi-urban environment and relatively close together. Roseade Parkway backs up to the section of North Avenue that is highly travelled and in close proximity to shopping and other services.
7. Moose has been residing in the Wheeler household since early 2023 or late 2022. Ms. Wheeler informed the Committee that Moose was abused before he came to live with the Wheelers. She described Moose as a "trauma dog" and indicated that there were special ways of approaching and interacting with Moose that were necessary to prevent reactivity.
8. In early 2023 when Moose first came to live with the Wheelers, the Burlington Police Department responded to the Wheeler residence on at least two occasions to address concerns with Moose. In January 2023, CSO Young responded to the Wheeler residence for a report of Moose being at-large and barking. He issued a warning to Ms. Wheeler at that time. The next occasion was in February 2023, where CSO Towne responded for a similar report. The CSO issued Ms. Wheeler a municipal ticket, citing the City's prohibition on dogs at large.
9. Additionally, in late January or early February 2024, CSOs Moore and Hisson responded to the Wheeler residence to provide Ms. Wheeler a copy of the Neighbors' complaint and the associated notice of hearing. The CSOs informed that Ms. Wheeler did not appear to think Moose being at-large was "a big deal".
10. Between approximately March 2023 and December 2023, the Neighbors had encounters with Moose in the area of Roseade Parkway off of the Wheeler property, ranging from aggressive behavior (including barking and charging) to physical contact. The Committee in particular takes note of the following interactions between the Neighbors and Moose during this timeframe:
 - a. Alex Weinhagen informed the Committee that on one occasion, he was walking his two dogs on leashes on the street out front of the Wheeler home and that Moose and Ms. Wheeler were out front on the sidewalk. Moose was not on a leash. Ms. Wheeler invited him over to introduce the dogs. Moose ended up biting one of his dogs. Mr. Weinhagen knew at the time that there was an aggressive dog in the neighborhood but did not know it was Moose. He stated he would not have gone over had he known. Ms. Wheeler replied that while Moose was not on a leash she had him by either the collar or scruff.

- b. Mr. Weinhagen also stated that on another occasion, after this encounter, he again observed Moose not leashed on the sidewalk in front of the Wheeler residence. Ms. Wheeler replied that Moose was in training with a certified trainer during that incident but did not dispute he was unleashed. Mr. Weinhagen also stated that one morning during this time period, his family saw Moose on their doorstep, looking in through their door barking, without the Wheelers present.
 - c. Llu Mulvaney-Stanak informed the Committee that a neighbor, David Kirk, made a Facebook post stating that he had been bitten by a loose dog and that based on the description in the post, Mx. Mulvaney-Stanak believed that loose dog to be Moose. The Facebook post has since been deleted and the bite remains unconfirmed as attributable to Moose.
 - d. David Nacmaine stated that one night he was out walking in the area Roseade Parkway area and that Moose approached him, alone and not leashed, lunging at him. Mr. Nacmaine stated that he has experience on dealing with dogs and was able to diffuse the encounter, but had concerns about what would have happened had he had a dog with him or if Moose had approached a child in that manner.
11. These incidents culminated in an interaction on December 13, 2023 between Moose and Hugo, Jennifer and Dominic Aloï's dog. Mr. Aloï was walking Hugo on a leash in the Roseade Parkway area near the Wheeler residence; Moose was not restrained and was running in the street. Ms. Wheeler was present and was able to get ahold of Moose to introduce the dogs; however upon introduction, Moose bit Hugo resulting in four (4) puncture marks to Hugo. Mr. Aloï did not realize the extent of the injury until he and Hugo got home. Hugo had to be taken to the vet as a result and was placed on antibiotics to treat the punctures. Ms. Aloï showed two (2) pictures of the wound to the Committee and stated that the vet had been particularly concerned about one of the punctures, given how puffy it was. Ms. Aloï informed that the vet had to shave the wounded area to treat it.
12. In response to information offered regarding the bite to Hugo, Ms. Wheeler replied that a vet had told her that it is not a true bite unless muscle had been hit, and that a puncture does not qualify as a bite. DC Wade Labrecque was a K-9 handler for the Burlington Police Department for seven (7) years prior to his current role and informed the Committee on different types of dog bites, stating that police dogs are trained to bite in and hold as opposed to tear, and if it breaks the skin, it is a bite.
13. Ms. Wheeler indicated that she has taken some actions to improve Moose's behavior and to exercise better control over him:
- a. Ms. Wheeler had installed an electric garage door open to be able to close the garage door more quickly to prevent Moose from escaping;
 - b. Ms. Wheeler has been socializing Moose with a police emotional support dog in St. Albans to work on his social skills;
 - c. Ms. Wheeler has employed the use of an electric collar on Moose when he is outside; and

- d. Ms.Wheeler has employed the services of a trainer to work with Moose.
14. The Wheelers do not have a fenced yard, and the Committee heard no information about plans or ability to put one in. Ms.Wheeler stated that a fence was not needed because of the electric collar. Moose does run down to the edge of the Wheeler property to chase squirrels. He was also allowed by the Wheelers to run to the home of one neighbor because she liked him and would give him treats, but that neighbor has since passed away. Ms.Wheeler told the Committee that Moose has had past trauma with a muzzle and that they cannot muzzle him for that reason.
15. In addition to interactions with Moose, several Neighbors informed the Committee of the atmosphere that has been created in the neighborhood since Moose's arrival. Mx. Mulvaney-Stanak informed the Committee that their young child is afraid to go to the area of the street where Moose lives, and that the neighborhood does not currently feel safe with Moose in the vicinity. Jennifer Moore informed the Committee that she has owned reactive dogs in the past and that many steps can be taken to manage reactivity, including muzzling and a fenced yard, and that those steps have not been taken by the Wheelers. Mr. Weinhagen stated that the Neighborhood is one in which people, kids, and pets walk on the sidewalks in front of each other's homes, and that Moose is not suited to have this activity going on regularly in front of his territory.

III. CONCLUSIONS

16. Moose is a mixed breed male canine and is therefore a dog within the meaning of BCO 5-13(b). Accordingly, his care and keeping is subject to all of the requirements as enumerated by Burlington City Ordinance related to dog ownership in the City, including but not limited to proper licensing, vaccination, and compliance with the City's prohibition on dogs at-large. See BCO 5-15; 14.
17. Upon receiving a written complaint by the Neighbors that Moose is vicious, the Committee properly scheduled a hearing on the facts of such complaint to determine whether or not Moose is in fact a vicious dog as defined by BCO 5-13(e). See BCO 5-27(b). A dog is vicious if it attacks or bites a person or other domestic pet while the dog is off the premises of the owner or keeper, and the person or pet attacked or bitten requires medical attention. BCO 5-13(e).
18. One of the dogfights in particular requires the Committee to conclude that Moose is vicious. That is the dogfight involving the Alois's dog, Hugo, on December 13, 2023, which resulted in a vet visit, shaving of the affected area, and a course of antibiotics. This occurred on the street and off of the Wheeler property. Further, the Committee concludes that the four (4) puncture marks inflicted by Moose on Hugo qualify as a bite within the meaning of the Ordinance and is not persuaded by the purported muscle tear distinction.
19. Additionally, the Committee heard extensive testimony from the animal control officers and the Neighbors regarding a pattern of aggressive, intimidating, and at times, violent behavior of Moose over an approximately one-year period. As detailed above, this included instances of barking, charging, being at-large on the street, sidewalk, and at least on one occasion, on a

neighbor's doorstep. This also included at least two dogfights and one unconfirmed instance of a bite of a person. The Committee takes note of Moose's concerning behavior over this timeline and finds credible the Neighbor's statements that the neighborhood does not feel safe with Moose's presence.

20. Upon a conclusion that a dog is vicious, the Committee is empowered to make an order concerning the dog necessary to protect the public. *See* BCO 5-27(b). "Such order may include, but is not limited to, any of the following: confinement in a secure enclosure or other similar restriction, muzzling adoption, or destruction in a humane manner. In addition, the animal control committee may revoke the privilege of any owner to keep, harbor or have custody of any animals while in the city and that no new privileges be granted." *Id.*
21. The Committee seeks to make such an order only as stringent as necessary to protect the public. The Committee heard credible information about the multiple opportunities the Owner has had to address the issues with Moose. The Owner was put on notice twice by warning and then citation by the Police Department regarding having the dog at large; yet, the dog continued to be off leash and at large on many occasions thereafter.
22. Further, the Owner has taken some steps to address Moose's unsafe behavior, including engaging the services of a trainer, attempting to socialize him, and use of further restraint measures through the garage door and an electric collar. However, even after these measures were employed, Moose was still able to inflict a bite on another dog that required vet attention. Despite these efforts, Moose's behavior is still unacceptable in a residential setting.
23. In terms of more strict options for physical containment outlined in the Ordinance, which the Committee would ordinarily consider, the Owner has already indicated that muzzling is not an option for Moose and fencing is not able to be considered. Even if these options could be employed, the Committee is not confident they would be sufficient to protect the public given Moose's temperament and history, as well as the dense nature of the neighborhood. The Committee is sympathetic to the challenges that come with owning a dog with a past history of abuse. However and unfortunately, given the repeated and serious nature of the incidents and the remaining options available, the Committee concludes that removing Moose from the Wheeler residence is necessary to protect the public and that no other less severe measure will be sufficient.

ORDER

24. Accordingly, the Committee makes the following order pursuant to BCO 5-27:
 - a. The Owner must rehome Moose from the Wheeler residence on Roseade Parkway within thirty (30) days of the date of this order; and
 - b. Moose must be relocated to a home or facility that can adequately manage his behavioral needs. At a minimum, such location must be able to securely contain Moose such that he cannot roam off of the premises of home or facility; and

- c. The Burlington Police animal control officer(s) is directed to offer support to the Wheelers in rehoming Moose, including suggesting or contacting humane societies, rescues, or individuals known to the officer(s) to be capable of providing assistance in rehoming Moose; however, ultimately, it is up to the Owner to find an appropriate future home for Moose; and,
- d. The City Clerk is directed to revoke Diane Wheeler's licensure of Moose to be effective thirty (30) days from the date of this order. The Clerk's Office shall send notice to Diane Wheeler of such revocation. The City Clerk may not grant any new privilege to license Moose to Diane Wheeler or Carol Wheeler; and
- e. During the thirty (30) day rehoming period, the following precautions must be taken regarding Moose's care and keeping:
 - i. Moose must be contained to the Wheeler property at all times when in the area of Roseade Parkway. Moose shall not be walked, exercised, or otherwise taken off of the Wheeler property in the area of Roseade Parkway or surrounding streets. Moose is permitted to be transported by secure vehicle to a secluded area for purposes of being exercised and must remain on a leash or lead at all times.
 - ii. While outside of the home on the Wheeler property, Moose must be under direct supervision of a capable adult and on a leash or lead. This requirement applies anytime Moose is in the yard, curtilage, porch, deck, patio, open garage, or any other non-secure space adjacent to the Wheeler home. An electric collar is not a sufficient replacement for this requirement.

-Signature page follows-

Dated at Burlington, Vermont this 13th day of March, 2024.

IT IS SO ORDERED.

/s/ Shakuntala Rao*

Shakuntala Rao, Chair
Animal Control Committee
Burlington Police Commission
Duly Authorized

*electronically signed by Assistant City Attorney Hayley McClenahan with permission of Shakuntala Rao

**Failure to abide by this Order is a violation of BCO 5-27(d) and is punishable by a fine of up to five-hundred dollars (\$500.00). You have a right to appeal this Order to the Chittenden Superior Court pursuant to Vermont Rule of Civil Procedure 75 within thirty (30) days of the date of this Order.