

RECEIVED
PIERCE CO. AUDITOR
DEC 29 2017

BEFORE THE PIERCE COUNTY HEARING EXAMINER

IN RE THE APPEAL OF THE DANGEROUS ANIMAL DECLARATIONS RE: "LAURENITIS,LJ, ZERO, AND LEXI"	FINDINGS OF FACT AND CONCLUSIONS OF LAW
-------------------------------------------------------------------------------------------------	--------------------------------------------

THIS MATTER came before Deputy Hearing Examiner, Michael M. McCarthy, on Thursday, November 30 2017 upon an appeal of Dangerous Animal Declarations re: "Laurenitis, LJ, Zero, and Lexi" issued by Pierce County Animal Control Officer (ACO) Cassin on September 23, 2017. All witnesses were sworn and the Deputy Hearing Examiner observed the demeanor and heard testimony of the witnesses, examined the exhibits admitted into evidence, reviewed the Administrative Record, considered the arguments of the parties, and hereby makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Pierce County established the following facts by a preponderance of the evidence:

- 1) Darryl Burgess and Jason Owens reside at 15514 116th St. E., Puyallup WA 98374.
- 2) Mr. Owens is the owner of a gray and white, male pit bull, named "Laurenitis," a blue and white, male pit bull, named "LJ," a blue and tan, female pit bull, named "Zero," and a brindle, female pit bull, named "Lexi."
- 3) Mr. Owens is the owner of a business located at the above address named RCO Ent. Inc.

1 4) He placed an order with Pure Diesel Power, a business located in Wisconsin, using
2 his business name. That order was to be delivered by UPS.

3
4 5) Kevin Backlund is a driver for UPS. On September 13th, 2017 he was dispatched to
5 Mr. Owens' home/ business.

6 6) Mr. Backlund was a credible witness and this Examiner found no reason to question
7 his testimony.

8 7) There was no warning regarding dogs in Mr. Backlund's UPS DIAD machine
9 (commonly referred to as a scanner). On the date in question he approached Mr. Owens'
10 property and did not see Mr. Owens' heavily obscured and unreasonably small beware of
11 dog sign (County Exhibit 8). Per UPS protocol, he honked his horn while approaching
12 the residence and rattled the cyclone fence that surrounds the property to announce his
13 presence to any animals. He observed that there were no signs of animals (bowls, toys,
14 or excrement.)

15
16 8) Mr. Backlund then entered the property through the man gate located to the east of the
17 driveway (County Exhibit 2). When he was approximately 75 feet onto the property he
18 saw a Beware of Dog sign. When he turned around, he was surrounded four pit bulls
19 who had approached him in silence. Without provocation, all four animals attacked at
20 once.

21 9) After a lengthy fight, he called 911 and Battalion Chief Steven Goodwin of Orting
22 Fire and Rescue arrived. Mr. Backlund was bleeding severely and had "A dog hanging
23 off of him." Chief Goodwin then drove through and over the fence to access Mr.
24 Backlund because he feared for his life. After securing Mr. Backlund in his vehicle,
25

1 Chief Goodwin took him to paramedics who were waiting down the street, who then
2 transported him to Good Samaritan Hospital in Puyallup WA.

3
4 10) Mr. Backlund suffered severe injuries as a result of the attack. There was no dispute
5 from Mr. Owens' attorney as to the severity of Mr. Backlund's injuries.

6 11) Private Investigator, Richard Austring, testified that he "spoke to a manager at Pure
7 Diesel Inc." who told him "there was a note with Mr. Owens' order that said, no
8 signature required; do not go through gate." Mr. Austring further testified that he found
9 the number that he called through a Google search. He did not supply any evidence of
10 this conversation or the alleged note on the order. "Evidence including hearsay evidence,
11 is admissible if in the judgment of the Examiner, it is determined to be the kind of
12 evidence reasonably relied upon which reasonably prudent persons are accustomed to
13 rely upon." The Rules of Procedure for Hearings Pierce County 1.08B. Although this
14 Examiner finds no reason to doubt Mr. Austring himself, his testimony is not of the kind
15 reasonably relied upon by a prudent person and the source of his testimony is not reliable,
16 thus his testimony cannot be reasonably afforded any credibility. Further, in the event
17 that Mr. Austring was speaking with a Manager from Pure Diesel Inc., they had
18 substantial reason to misrepresent the truth due to their own liability in any civil matter.

19
20 12) On the date in question, "Laurentis, LJ, Zero, and Lexi" participated in an attack
21 with another animal which resulted in the infliction of severe injury on a human being
22 without provocation. Further, Mr. Backlund was not a trespasser. He was on Mr.
23 Owens' property for the purpose of delivering a parcel to Mr. Owens' business and was
24 present for Mr. Owens' benefit.
25

CONCLUSIONS

1) The Hearing Examiner has jurisdiction to consider and decide the issues presented pursuant to Pierce County Code (PCC) 1.22.080(B)(2)(b).

2) Pursuant to PCC 6.07.010(A) and based upon a review of the Administrative Record and testimony presented, ACO Cassin had reasonable belief to support the issuance of the Dangerous Animal Declarations for "Laurentis, LJ, Zero, and Lexi".

3) Pursuant to PCC 6.07.020, Jason Owens, owner of "Laurenitis, Lj, Zero, and Lexi" filed a timely appeal of the Dangerous Animal Declaration.

4) When an animal owner submits an appeal of a Dangerous Animal Declaration, the burden is upon Pierce County Animal Control to prove, by a preponderance of the evidence, that the animal is either dangerous or potentially dangerous as defined in PCC 6.02.010 and that the exclusions contained in PCC 6.07.010 do not apply.

5) PCC 6.02.010 provides the definition for a "Dangerous Animal":

"Dangerous Animal" is any animal that:

- A) inflicts severe injury on or kills a human being without provocation; or
- B) inflicts severe injury on or kills an animal without provocation; or
- C) has been previously found to be potentially dangerous, the owner having received notice of such and the animal again bites, attacks, or endangers the safety of humans or other animals.

"Severe injury" means any physical injury which results in broken bones or disfiguring lacerations.

6) Section 6.02.010 of PCC provides the definition for "provocation":

"Provoke" or "Provocation" means to intentionally torment, agitate, or harass an animal prior to the attack, chase, or menacing behavior. "Provoke" or "Provocation" does not include actions taken to defend oneself, other humans, animals, or property.

7) The definition of "Dangerous Animal" in Section 6.02.010 of the PCC contains an exception to the provocation element:

Provocation exception; an animal is a dangerous animal when it enters onto private property without the consent of the owner or occupant and inflicts severe injury on or kills a human or animal regardless of provocation.

8) There is no evidence that “Laurenitis, LJ, Zero, and Lexi” were provoked in any way prior to attacking.

9) Section 6.07.010 of the PCC provides for exclusions from a Dangerous or Potentially Dangerous Animal declaration as follows:

Exclusions: An animal shall not be declared dangerous or potentially dangerous if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing or attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

10) Exclusions contained in PCC 6.07.010(B) are not applicable in this case because Mr. Backlund was invited onto the property for the purpose of serving Mr. Owens’ business, and was thus not a trespasser.

11) PCAC established, by a preponderance of evidence, that on September 13, 2017, “Laurenitis, LJ, Zero, and Lexi” inflicted severe injury on Mr. Backlund without provocation and participated in an attack with another animal.

12) The Dangerous Declarations re: “Laurenitis, LJ, Zero, and Lexi” issued by ACO Cassin are hereby upheld.

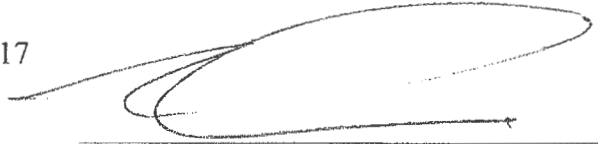
DECISION

The Dangerous Declarations re: “Laurenitis, LJ, Zero, and Lexi” issued by ACO Cassin are hereby upheld and the appeal of animal owners Darryl Burgess and Jason Owens are hereby denied. Mr. Owens must obtain Dangerous Animal Permits from the Pierce County Auditor’s

(6) 55922.18

1 Office and comply with all ownership requirements of a Dangerous Animals set forth in Pierce
2 County Code.
3

4 DATED this 29th day of December, 2017



5
6 **Michael M. McCarthy**
Deputy Pierce County Hearing Examiner

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(7) 55922.18

Dianna Byrd

From: mc-assistant <mc-assistant@mchlawoffices.com>
Sent: Friday, December 29, 2017 1:45 PM
To: Dianna Byrd
Cc: Patrick Cassin; Brian Boman; Mike Sommerfeld
Subject: Decision re: Appeal of Dangerous Animal Declaration of Laurenitis, LJ, Lexi and Zero
Attachments: Laurenitis, Lexi, LJ and Zero DA Appeal.pdf

Hello,

Attached please find Mr. McCarthy's Findings of Fact and Conclusions of Law in the above-referenced matter. A hard copy is being sent today via legal messenger.

Please let me know if there is anything further you need.

Kirsten Hofgaard, Legal Assistant
McCarthy & Causseaux, P.S.
10th & I Building
902 S. 10th St.
Tacoma, WA 98405
(p) 253-272-2206
(f) 253-272-6439



Pierce County

(8) 55922118

PierceCountyAuditor.org
pcauditor@co.pierce.wa.us

Auditor's Office

- Julie Anderson**
Pierce County Auditor
- Cindy Hartman**
Deputy Auditor
- Georgia Cookson**
Assistant to the Auditor
- Mary Schmidtke**
Fiscal Manager
- Michael Rooney**
Elections Manager
- Damon Townsend**
Elections Supervisor
- Casey Kaul**
Recording/Licensing Manager
- Jill Munns**
Recording Supervisor
- Michelle Redfield**
Licensing Supervisor
- Brian Boman**
Animal Control Supervisor

December 29, 2017

9171 9690 0935 0168 4871 39

Sent via regular and certified mail

Michael Austin Stewart, Attorney at Law
1105 Tacoma Ave South
Tacoma, WA 98402

RE: Owens/Burgess DA Appeal Hearing

Dear Jason Owens/Darryl Burgess:

Enclosed is the Hearing Examiner's decision **upholding the declaration** of the dogs "Laurenitis, LJ, Zero, & Lexi" as Dangerous. Within twenty **(20)** calendar days of the date of the written decision (**by January 18, 2018 at 4:30pm**), you must:

- Relinquish "Laurenitis, LJ, Zero, & Lexi" to Pierce County Animal Control, or
- Purchase a permit and conform to the standard of owning a Dangerous Animal as specified by the Pierce County Code, chapter 6.07.

Should you fail to obtain a permit and conform to the standard of owning a Dangerous Animal, the County is authorized to seize, impound and hold your dog for a period of not more than five days before their destruction.

Sincerely,

Dianna Byrd
Animal Services
(253) 798-7387

Enclosures: "Laurenitis, LJ, Zero, & Lexi" Hearing Examiner Findings



Pierce County

PierceCountyAuditor.org
pcauditor@co.pierce.wa.us

(9) 55922.18

Auditor's Office

December 29, 2017

9171 9690 0935 0168 4871 46

Sent via regular and certified mail

Davis Law Group
2101 4th Ave, Suite 1030
Seattle, WA 98121

RE: Owens/Burgess DA Appeal Hearing

Dear Jason Owens/Darryl Burgess:

Enclosed is the Hearing Examiner's decision **upholding the declaration** of the dogs "Laurenitis, LJ, Zero, & Lexi" as Dangerous. Within twenty **(20)** calendar days of the date of the written decision (**by January 18, 2018 at 4:30pm**), you must:

- Relinquish "Laurenitis, LJ, Zero, & Lexi" to Pierce County Animal Control, or
- Purchase a permit and conform to the standard of owning a Dangerous Animal as specified by the Pierce County Code, chapter 6.07.

Should you fail to obtain a permit and conform to the standard of owning a Dangerous Animal, the County is authorized to seize, impound and hold your dog for a period of not more than five days before their destruction.

Sincerely,

Dianna Byrd
Animal Services
(253) 798-7387

Enclosures: "Laurenitis, LJ, Zero, & Lexi" Hearing Examiner Findings

Julie Anderson
Pierce County Auditor

Cindy Hartman
Deputy Auditor

Georgia Cookson
Assistant to the Auditor

Mary Schmidtke
Fiscal Manager

Michael Rooney
Elections Manager

Damon Townsend
Elections Supervisor

Casey Kaul
Recording/Licensing
Manager

Jill Munns
Recording Supervisor

Michelle Redfield
Licensing Supervisor

Brian Boman
Animal Control
Supervisor

(10) 55922.18



Pierce County

PierceCountyAuditor.org
pcauditor@co.pierce.wa.us

Auditor's Office

December 29, 2017

9171 9690 0935 0168 4871 22

Sent via regular and certified mail

- Julie Anderson**
Pierce County Auditor
- Cindy Hartman**
Deputy Auditor
- Georgia Cookson**
Assistant to the Auditor
- Mary Schmidtke**
Fiscal Manager
- Michael Rooney**
Elections Manager
- Damon Townsend**
Elections Supervisor
- Casey Kaul**
Recording/Licensing Manager
- Jill Munns**
Recording Supervisor
- Michelle Redfield**
Licensing Supervisor
- Brian Boman**
Animal Control Supervisor

DARRYL BURGESS
15514 116TH ST E
Puyallup, WA 98374

RE: Owens/Burgess DA Appeal Hearing

Dear Jason Owens/Darryl Burgess:

Enclosed is the Hearing Examiner's decision **upholding the declaration** of the dogs "Laurenitis, LJ, Zero, & Lexi" as Dangerous. Within twenty **(20)** calendar days of the date of the written decision (**by January 18, 2018 at 4:30pm**), you must:

- Relinquish "Laurenitis, LJ, Zero, & Lexi" to Pierce County Animal Control, or
- Purchase a permit and conform to the standard of owning a Dangerous Animal as specified by the Pierce County Code, chapter 6.07.

Should you fail to obtain a permit and conform to the standard of owning a Dangerous Animal, the County is authorized to seize, impound and hold your dog for a period of not more than five days before their destruction.

Sincerely,

Dianna Byrd
Animal Services
(253) 798-7387

Enclosures: "Laurenitis, LJ, Zero, & Lexi" Hearing Examiner Findings