

Meeting #: SC-16/2019 - Muzzle Order Appeal
Date: Monday, April 29, 2019
Time: 4:30 pm
Location: Town of Pelham Municipal Office - Council Chambers
20 Pelham Town Square, Fonthill

Members Present Marvin Junkin
Mike Ciolfi
Lisa Haun
Bob Hildebrandt
Ron Kore
Marianne Stewart
John Wink

Staff Present Nancy Bozzato
Teresa Quinlin

Others Present Samantha Ellis, SPCA Officer
Ryan Huurman, SPCA Officer
T. Young, Owner
D. and I. Boychuk, Victim
Witnesses and Interested Citizens
Media

1. Call to Order and Declaration of Quorum

Noting that a quorum was present, the Mayor called the meeting to order at approximately 4:33 p.m.

2. Approval of the Agenda

Moved By Mike Ciolfi

Seconded By Ron Kore

BE IT RESOLVED THAT the agenda for the April 29, 2019, Muzzle Order Appeal Special Meeting of Council be adopted as circulated.

Carried

3. Disclosure of Pecuniary Interest

There were no pecuniary interests disclosed by any of the members present.

4. Purpose of the Meeting

Mayor Junkin reviewed the purpose of the meeting and the outline of the agenda/meeting process.

5. Statement and Evidence of Animal Control Officers

The Clerk administered Oaths to all parties who would provide evidence to the hearing.

Officer Huurman read into the record the statement from the Society for the Prevention of Cruelty to Animals (SPCA), which was provided by the victim, Mrs. Boychuk. The Officer also noted the photographic evidence provided by the victim. Mrs. Boychuk offered no additional comments at this time.

Council asked if there have been any previous incidents with this particular animal. The Officer advised that the dog is a large breed, Bull Mastiff, weighing approximately 175 pounds and he was not aware of any previous incidents involving this dog. He did not comment on the aggressiveness of this breed, noting that upbringing and training dictates how aggressive a dog will be.

It was noted that in the occurrence report, the victim is noted to have approached the dog without asking permission to pet the dog, however the statement provided by the victim did not indicate any attempt at interaction.

In response to a question, Mrs. Young stated that the dog was leashed on the property.

Mrs. Boychuk advised that she did not approach the dog but was passing by the property on her daily walk.

In response to a question by Council, Officer Ellis stated that on average, if a dog is approached from behind is it normal to become aggressive. Officer Ellis noted that a dog will often protect the pack member and could become aggressive while not provoked.

6. Statement and Evidence of Owners

Mrs. Young submitted a Niagara Regional Police Service report dated April 25, 2019, and correspondence from her veterinarian, marked as Exhibit A by the Clerk.

Mrs. Young believed that the victim did nothing wrong, stating that her dog was relieving himself from just having returned from an errand in the family car. The victim walked up behind the dog and when the dog turned around she asked if the dog was aggressive. Mrs. Young stated that the dog is not aggressive by nature.

Council noted that in the report it states the victim walked up and without asking permission, reached out to pet the dog. Mrs. Young stated that she was walking behind the dog and the dog turned, the victim asked if he was friendly and the dog reacted to her with aggression. She noted that she was always raised to ask if a dog is friendly before petting it. Officer Huurman advised Council how the

evidence was provided to him by both Mrs. Boychuk and Mrs. Young, noting that the two accounts are conflicting.

Mrs. Young had the dog leashed, stating she always has the dog leashed when they leave the house. She explained that it is their habit to let the dog relieve himself when he gets out of the car. The dog does not get walked often, but prefers a car ride and roaming their back yard. She stated that she has three children, ages 19, 15 and 11. There has been no aggression shown to the children.

The leash is approximately four feet in length. The dog is normally confined to the fenced back yard and is not often leashed as they do not often go for walks. She clarified that the victim did not ask first if she could pet the dog.

Mrs. Boychuk indicated that she did not have any questions at this time but requested the opportunity to provide her statement.

7. Witness Statements, If Any

Mrs. Boychuk addressed Council and stated that she did not ask if the dog was friendly, noting that she would never approach any dog relieving itself no matter the size of the dog. She stated that she did not ask if the dog was friendly or put out her hand. The dog was leashed with a thin black leash and Mrs. Young was unable to control the dog after the dog bit her hand, which resulted in an additional bite to her thigh. She stated that while parts of the Owner statement are accurate, she stressed that she did not ask if the dog was friendly and did not reach to pet the dog.

Officer Huurman and Mrs. Young did not have any questions of Mrs. Boychuk.

In response to Questions by Council:

Mrs. Boychuk responded that she has seen the dog in the window, and out front under the control of Mr. Young. Mrs. Boychuk walks every day and sees many dogs. She felt that the owner did not have proper control of the dog. Although it may be the first time for this dog to show aggression, she stressed that she and her husband are not asking that the dog be put down but she did not know what triggered the attack and was fearful the dog would attack someone else in the future, perhaps a child.

When asked if she would do anything differently she indicated she would not. She walks on a regular basis and does not pet dogs while on a walk. She is a runner and does not stop to pet the dogs during her runs either. Although she continues to take the same route, she would not cross in front of this dog if it were outside but rather, she would go to the other side of the street to avoid it.

Braden Young, son of the owner stated that his mother backed into the driveway and asked him to get the pizza from the car so she could take the dog to relieve himself, or alternatively for him to take the dog while she took the pizza in the house. He watched his mom take the

dog, and witnessed the dog turn and attack and walk away. His mother called to him to take the dog into the house.

Mr. Boychuk noted that in the police report it states the dog lunged and Mrs. Young could not control the dog and it subsequently bit Mrs. Boychuk on the thigh. He displayed photographs of the injuries sustained by Mrs. Boychuk. He noted that the police report does not reference Braden Young as a witness.

Mrs. Boychuk noted that in neither the SPCA nor Mrs. Young reported her son as a witness. She saw him in the house, not in the car at the time.

Mrs. Young advised that he was on the other side of the truck and confirmed that he was questioned by Officer Brown of the Niagara Regional Police. Mrs. Young stated that she yelled to him to come and get the dog when it attacked the victim. In terms of controlling the dog, Mrs. Young said the leash makes it difficult to hold the dog back in such a small space.

Mrs. Boychuk questioned why the dog was able to lunge and bite her when it was leashed and as such, should have been controlled. Mrs. Young then questioned if all dogs should then be muzzled through this logic.

Mrs. Boychuk stated that not every dog needs to be muzzled but once a dog bites it should be muzzled, to ensure it does not happen again. She stated that she was sorry it happened but the fact is that it happened and she was injured. Mrs. Young advised the dog has never previously shown aggressive behavior.

Braden Young indicated he can control the dog better than his mother, and he described how he is able to do this. He stated the way he controls the dog is to hold the leash close to the collar, which he finds effective given the dog's size. Mrs. Young advised that in her training they have been advised to hold the dog closer. Normally, the collar on the dog is a chain with tags, but when on leash a choke chain or prong collar is on the dog.

The SPCA, with regard to the Muzzle order, advised that a muzzle would be required whenever the dog is on public property, including a sidewalk, public event, dog park, etc. When the dog is confined on private property the dog would not need to be muzzled, but an attack could still happen. However, the Officer noted that a sidewalk is public property and thus the dog should be muzzled when on a sidewalk. The Officer noted that this would apply when the dog is relieving itself at the pole as the sidewalk is on public property.

Mrs. Young described this action as a "treat" to allow him to relieve on the pole after a car ride, so to change the behavior would be difficult, but could be done.

In response to a Council question, Mrs. Young advised that obedience training was conducted in their home with the dog.

The SPCA Officer advised that when they receive a report of a dog biting or attacking, particularly with the severity of this incident, it would be negligent not to enforce the by-laws of the Town and order that the dog be muzzled. He stated that if they did not issue the muzzle order and the dog later attacked a small child the SPCA would have been found negligent. He suggested that this would not be abnormal to Muzzle after a first bite and he would continue to do so, particularly given the severity of the injury, although a muzzle could be ordered even if the injury did not result in breaking the skin.

Braden was asked if Mrs. Boychuk spoke to the dog, but he did not hear her speak to the dog or ask if the dog was friendly. Mrs. Young continued to maintain she asked if the dog was friendly, Mrs. Boychuk stating she only said hello to Mrs. Young.

8. Presentation of Summary Arguments

Officer Huurman suggested that a Muzzle Order is not a death sentence but merely a measure to prevent future instances such as this from happening. The assurance of the owner alone may not be sufficient, wherein a physical measure will provide an absolute assurance against a dog bite. The order will have restrictions on the dog or owner when in the front yard, but it would not be required in the fenced back yard. The officer advised that he has not inspected the back yard fence, however the onus is on the owner to ensure the security of the yard, such as adequate fencing.

Mrs. Young stated that she has addressed the Order. If there was a threat she would not object but there will be little to no chance of a future attack given the number of times the dog would not be in the back yard. He has never done this before. She suggested that if a dog is vicious the by-law may need to be revisited.

The Officer advised that the Order would apply to the dog anywhere in Ontario, and would be required for the rest of the dog's life.

9. Rendering of a Decision

Council obtained clarification on the repercussions of removing the order. Further, the Officer explained how only a judge can order a dog be put down under the Dog Owner's Liability Act. In response to a question by Council, should the order be removed/rescinded and the dog were to attack another time, the Town would accept liability.

The Officer reviewed different types of collars used to help control dogs, Mrs. Young confirming that a prong collar was on the dog at the time of the attack.

Moved By Ron Kore; **Seconded By** John Wink

BE IT RESOLVED THAT the evidence submitted by Amanda Ellis, Enforcement Manager, Welland & District SPCA and Officer Ryan Huurman, Welland & District SPCA, be received; and

THAT the evidence submitted by the victim, Mrs. Boychuk, be received.

Carried

Moved By Lisa Haun; **Seconded By** John Wink

BE IT RESOLVED THAT the evidence submitted by T. Young, Owner, be received for information.

Carried

Moved By Bob Hildebrandt; **Seconded By** John Wink

BE IT RESOLVED THAT the following Muzzle Order Appeal Hearing Decision be and is hereby rendered:

THAT the Muzzle Order dated February 12, 2019 to "Titan", Tara Young, be and is hereby UPHELD.

Carried

10. Confirming By-law

Moved By John Wink; **Seconded By** Bob Hildebrandt

BE IT RESOLVED THAT the following By-law be read a first, second and third time and passed:

Being a By-law No. 5001(2019) to Adopt, Ratify and Confirm the proceedings of Council of the Town of Pelham at its Special Meeting held on the 29th day of April, 2019.

Carried

11. Adjournment

Moved By Bob Hildebrandt; **Seconded By** John Wink

BE IT RESOLVED THAT this Special Meeting of April 29, 2019 be adjourned until the next regular meeting scheduled for May 6, 2019 at 6:30 pm.

Carried

Mayor Marvin Junkin

Town Clerk, Nancy J. Bozzato