

March 28, 2022

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V21012783-A21006311**

**TAMMY MAXWELL**

Animal Services Enforcement Appeal

Activity no.: A21006311

Appellant: **Tammy Maxwell**

[REDACTED]  
Shoreline, WA 98133

Telephone: [REDACTED]

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King County: Regional Animal Services of King County  
*represented by* **Rebecca Smokoska**  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. Tammy Maxwell appeals a notice asserting that her dog, Shadow Bear (Shadow), violated the noise code. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant her appeal.

### Background

2. On June 26, 2021, Animal Services issued violation notice V21012237-A21002828 to Tammy Maxwell for Shadow making excessive noise. Ex. D8. Ms. Maxwell appealed on June 30. Ex. D9. On August 5, Animal Services reported that, from the complainant's perspective, Ms. Maxwell's efforts had, at the time, significantly improved the situation, prompting Animal Services to withdraw the violation notice. We issued a dismissal order that same day. Ex. D10.
3. On December 20, 2021, Animal Services issued violation notice V21012783-A21006311 to Tammy Maxwell for Shadow again making excessive noise. Ex. D4. On December 20, Ms. Maxwell appealed. Ex. D5. We held a pre-hearing conference on January 18, 2022, where the parties agreed to enter mediation. After receiving notice from the mediator that Thomas Huff declined mediation, we went to hearing on March 14.
4. In analyzing the below, we do not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. For those matters or issues raised in an appeal statement, Animal Services bears the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed. KCC 20.22.080.G; .210.B.

### Hearing Testimony

#### *Testimony of Thomas Huff*

5. Thomas Huff testified that he had been logging barking from Ms. Maxwell's dog [Shadow] since July 2020. In the beginning, the only time he entered an event was when the barking took fifteen minutes or longer. Mr. Huff stated multiple times that writing down the barking episodes has become a waste of his time, so he upped the minimum barking time to thirty minutes. He believes that a maximum of thirty minutes is tolerable. He is not looking for silence; he just does not want Shadow to do a marathon barking session.
6. Shadow was out the morning of the hearing from 7:20 to 7:40 a.m., barking for a few minutes, which Mr. Huff said was fine. Mr. Huff stated that Shadow starts barking after seven in the morning when it is let out to relieve itself.
7. Mr. Huff knows the barking is coming from Shadow because from his balcony he is able to watch Shadow peak through the slits in the fence and bark. There is a dog north of the Maxwell property and another across the street that bark occasionally, but Mr. Huff knows that the barking is mostly Shadow. Mr. Huff has also gone down to the fence where Shadow is barking. Mr. Huff recorded the video to show which dog was barking.
8. In 2020, Mr. Huff waited about a month after the barking started to try to go over to Ms. Maxwell's house. Mr. Huff could not get to the front door because Shadow was out. In 2021, he attempted to go over again, but did not get to the house because Shadow was out and he did not want to encroach on its property. He stated that he had better things to do, and has not returned to her house since. Additionally, after an hour-long barking

episode, Mr. Huff used a police bullhorn at maximum volume and shouted at the property to shut Shadow up. No one came out to quiet Shadow.

9. Mr. Huff said that there is no noise difference to him between Ms. Maxwell's dogs being in her front yard versus her backyard. Mr. Huff was not aware Shadow could not see through the fence.
10. When Shadow is barking at people walking on the trail, at other dogs, or at delivery drivers, Mr. Huff has not noticed something like a shock collar stopping Shadow from barking. Mr. Huff has seen someone come out and quiet the dogs only twice in the two years he has lived in the apartment.
11. Mr. Huff is woken up by the barking in the morning. He shuts his windows, and the barking can be tough during Zoom meetings. Mr. Huff also uses noise canceling headphones, but he believes he should not have to do that to do his job. It is annoying, and the barking is disturbing the peace.
12. The barking is highly dependent on the season and quadruples in the summertime. Mr. Huff noted that after the first appeal was dismissed, the barking went back to the way it had been earlier. The barking has gone away, but might come back in the summertime. Since January, the persistence of the barking had dropped, but it is also cold and rainy. Mr. Huff only got Ms. Maxwell's phone number recently, and by that point the hearing was already scheduled, so he did not reach out to her.

*Testimony of Tammy Maxwell*

13. Tammy Maxwell testified that every morning she lets her dogs outside at 6:30 a.m. to pee and brings them back inside at 6:35 a.m. Ms. Maxwell leaves her house by 6:55 a.m., with the dogs locked in the house. She lets the dogs out around 4:00 or 4:30 p.m. when she returns home.
14. Ms. Maxwell does not let Shadow in the backyard unless she is home. Since the first violation, her dogs have not been left in the backyard; they are only allowed in the front yard. When they are in the backyard they only go out for five to ten minutes. Additionally, Shadow cannot see through the back fence.
15. In the video Mr. Huff submitted, you cannot see Ms. Maxwell's backdoor or her front yard. Ms. Maxwell agrees that the dog in the video is Shadow, but she was playing with Ms. Maxwell's other dog at that point. Ex. D18.
16. Ms. Maxwell does address the barking. When she is caring for a baby residing with her, it may take her a minute or two to respond. When the baby is sleeping, she does not allow the dogs to bark.
17. Ms. Maxwell has tried all of the barking collars and none of them work on Shadow. The shock collar made Shadow aggressive. Ms. Maxwell has also tried spraying water at Shadow to stop her barking, and none of it works. Ms. Maxwell has tried everything she can to appease Mr. Huff.

18. Ms. Maxwell started giving Shadow Prozac at the beginning of this year, to treat her anxiety disorder. Since then, Shadow’s barking has gone down ninety-five percent. Shadow will not bark at squirrels or anything else. If Shadow starts to bark, Ms. Maxwell tells her to go to bed, and she goes. Recently, an Amazon driver delivered a package at 9:45 p.m., and Shadow did not bark. When the Animal Services officer came to her property, they got all the way through the gate and knocked on the door before the dogs started barking. Ex. D2 at 001, n.1.
19. Ms. Maxwell’s neighbors to the north and south have worked from home for two years and say Shadow’s barking is not intrusive. Exs. A1-A2.

### Analysis

#### *Overview*

20. The legal standard is easy to state—does the animal bark “to an unreasonable degree, in such a manner as to disturb a person or neighborhood,” KCC 11.04.230.J—and more challenging to apply. However, we have established consistent benchmarks that we apply here.

#### *Nighttime v. Daytime*

21. First, we draw a stark distinction between nighttime barking and daytime barking, construing section .230.J consistently with the general County noise code, KCC chapter 12.86. KCC 11.04.230.J and KCC chapter 12.86 were jointly amended by Ordinance 18000 in 2015.<sup>1</sup>
22. Even absent the noise code’s daytime/nighttime delineation, we would still draw such a distinction. That the *timing* of a noise matters significantly is not controversial, nor new. For example, in one pre-Civil War noise case, the court stated that, “The peace of Sunday may be disturbed by acts which, on other days, cannot be complained of.” *Commonwealth v. Jendell*, 2 Grant 506, 509 (Pa. 1859). Replace “Sunday” with “3:00 a.m.” and “on other days” with “at 3:00 p.m.,” and that proposition remains true 163 years later. One’s right to make nighttime noise “must be limited by the right of the neighbors in the area to be free of disturbing noises during normal sleeping hours.” *Altman v. Ryan*, 435 Pa. 401, 407, 257 A.2d 583, 605 (1969).
23. What the noise code provides us is a clear, objective line for how late or early is too late or too early, or what “normal sleeping hours” are. Instead of allowing a complainant’s subjective schedule to prevail, or wildly swinging the hours according to the calendar—we take judicial notice that in Seattle the sun sets by 4:20 p.m. around the winter solstice

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<sup>1</sup> The noise code lists numerous sounds exempt from noise code limitations between 7:00 a.m. (9:00 a.m. on weekends) and 10:00 p.m. KCC 12.86.510. In that same ordinance, the Council amended the law to explicitly add that, “The hour of the day at which the sound occurs may be a factor in determining reasonableness.” Ord. 18000 at § 72 (codified at KCC 12.86.410.A). Although decibels are not determinative, from 10 p.m. and 7:00 a.m. (9:00 a.m. on weekends) the maximum permissible sound levels are reduced by ten decibels. KCC 12.86.120.A. Ten decibels may not seem like much; however, reducing the decibel level by 10 dBs halves the perceived loudness. <http://www.siue.edu/~gengel/ece476WebStuff/SPL.pdf>.

and rises by 5:10 a.m. around the summer solstice—the noise code essentially defines for King County residents what qualifies as “nighttime” noise: after 10 p.m. and before 7 a.m. on weekdays and before 9 a.m. on weekends.

24. Thus, in each of our numerous barking dog decisions, we have held that daytime barking must be far more significant than nighttime barking to qualify as “unreasonable.” There is simply not the same reasonable expectation that daytime hours will be fairly quiet. During the day lawnmowers whirr. Trucks back up and emit loud warning beeping. Children scream; if our household was representative, parents of young children scream much more than we thought possible. Power tools create a cacophony. Waste collectors bang trash cans. Cars honk. And dogs bark. At some point, the quality and quantity of such daytime barking becomes legally unreasonable, but it is a high threshold.
25. This day/night distinction is especially true when it comes to how long (duration-wise) barking must occur for us to find it to an “unreasonable degree, in such a manner as to disturb a person or neighborhood.” At night, whether a dog barks six seconds or sixty seconds or six minutes or sixty minutes is somewhat irrelevant. If the barking is enough to repeatedly wake someone up from sleep, even quickly quieting the dog down after each episode is a bit like locking the barn door after the horse is gone—the damage for a given night is already done. Conversely, during the day, a dog barking, say, briefly while each driver drops off a delivery is different from a dog going off extensively after the drivers move on.
26. Here, the charted noise was all daytime barking. Although there is no magic minute formula, we do not disagree with Mr. Huff choosing a 30-minute interval as the threshold beyond which barking becomes objectionable. But we wonder if we are missing something. Animal Services asserted that Mr. Huff had submitted logs showing extensive barking. However, our record contains entries for only 12 incidents of lengthy daytime barking over the 22-month period between July 2020 and our hearing. Ex. D14 at 002 (three from July 2020); Ex. D12 at 003 (three from July and August 2020); Ex. D7 at 002 (three from June 2021); Ex. D3 at 002 (three from December 2021). Perhaps Mr. Huff compiled significantly more data, but only those dozen entries made it into our record. In any event the evidence in our record is significant, but nowhere close to the overwhelming quantum of evidence we typically see in the (daytime) noise appeals we deny.

*(Lack of) Corroborating Witnesses*

27. While the noise need not disturb a neighborhood (the code standard being disturbing a person *or* neighborhood), in analyzing whether noise truly “disturbs” (interferes with normal functioning, such as sleep) versus merely “annoys” (irritates), our Court reminds us to focus on an objective “unreasonableness” standard, and to not allow any given complainant to make a “subjective determination” of a noise violation. *City of Spokane v. Fischer*, 110 Wn.2d 541, 544–45, 754 P.2d 1241, 1242 (1988). While Ms. Maxwell claimed her neighbors were fine with Shadow’s barking, and Mr. Huff claimed his neighbors were bothered by it, those were hearsay—alleged out-of-court statements offered for the

truth of what they asserted. Only Mr. Huff and Ms. Maxwell testified under oath and subject to cross-examination.

28. However, we take two walkaway points on this score. First, Animal Services confirmed that no one other than Mr. Huff had ever complained to Animal Services about Shadow. And second, while Ms. Maxwell's hearsay was in written form (letters from both next-door neighbors explaining Shadow's barking and why each considered it reasonable), Mr. Huff only offered secondhand accounts of what he claimed his neighbors (neighbors not next-door to Ms. Maxwell but across the trail corridor) had told him. Exs. A1-A2. While still hearsay and thus not worth that much, letters are still weightier than mere whispers of other conversations with unnamed parties.<sup>2</sup> None of this is dispositive, but they are informative data points.
29. Similarly, our Court also instructs us to guard against measuring conduct "by its effect on those who are inordinately timorous or belligerent." *Seattle v. Eze*, 111 Wn.2d 22, 29–30, 759 P.2d 366 (1988) (citations omitted). Some of Mr. Huff's presentation—having acknowledged last August that Ms. Maxwell's then-recent efforts had (at that point) sufficiently improved the situation, and his recognizing that only barking for a long duration is objectionable—enhanced his credibility. But overall Mr. Huff did himself no favors. He seemed disdainful that he would have to "waste" his time tracking incidents to help Animal Services present its case, annoyed and had "better things to do" than contact Ms. Maxwell to try to resolve the dispute, and incredulous that he should have to wear noise canceling headphones. He came across as entitled and thin-skinned. Given Mr. Huff's presentation, along with the lack of corroborating neighbor testimony and the lack of overwhelming quantitative evidence, we are concerned that upholding the violation here would be measuring Shadow's effect on an inordinately timorous or belligerent complainant, something our Court commands us not to do.
30. Finally, in looking at both "unreasonable" and "disturb," we review the steps an appellant took to control the noise and the steps a complainant took to mitigate the noise's impact, both internally (i.e., within their own property) and externally (such as addressing the issue with their neighbor). *See, e.g., State v. Acrey*, 148 Wn.2d 738, 748-49, 64 P.3d 594 (2003) (whether something is "reasonable" often depends on balancing competing interests in light of all the surrounding facts and circumstances).
31. While Mr. Huff did wear noise-canceling headphones and shut the window, only twice in a two-year period did he approach Ms. Maxwell's house to try to contact her. Conversely, Ms. Maxwell shifted the dogs to primarily the front yard (on the other side of her house from Mr. Huff's residence), tried (albeit unsuccessfully) anti-bark collars and spraying water on her dogs, and finally started giving Shadow Prozac (which seems to be working, given Mr. Huff's testimony, as well as Animal Services' fieldnotes that Shadow did not bark at the approaching officer until the officer actually knocked on Ms. Maxwell's door, exhibit D2 at 001, n.1).

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<sup>2</sup> Our rules do not outright exclude hearsay statements, Exam. R. XII.B.1, but we accord those less weight than actual testimony.

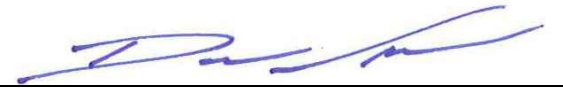
*Conclusion*

32. None of the above facts or factors are dispositive in their own right. However, taken together, we cannot conclude that Animal Services has met its burden to prove a violation here. Ms. Maxwell will want to be vigilant, as our ruling today is simply that, based on the factual record as it closed on March 14, the evidence has thus far been insufficient to show that Shadow barks “to an unreasonable degree, in such a manner as to disturb a person or neighborhood.” A future appeal of a future violation notice might have different facts and thus a different outcome.

DECISION:

We grant Ms. Maxwell’s appeal.

ORDERED March 28, 2022.



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David Spohr  
Hearing Examiner

**NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *April 27, 2022*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

**MINUTES OF THE MARCH 14, 2022, HEARING IN THE APPEAL OF TAMMY  
MAXWELL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V21012783-A21006311**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska, Thomas Huff, and Tammy Maxwell. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

Exhibit no. D1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. D2	RASKC investigation report no. A21006311
Exhibit no. D3	Online Noise Complaint form by Thomas Huff, December 20, 2021
Exhibit no. D4	Notice of violation no. V21012783-A21006311, issued December 20, 2021
Exhibit no. D5	Appeal, received December 20, 2021
Exhibit no. D6	RASKC investigation report no. A21002828
Exhibit no. D7	Online Noise Complaint form by Thomas Huff, dated June 21, 2021
Exhibit no. D8	Notice of violation no. V21012237-A21002828, issued June 26, 2021
Exhibit no. D9	Appeal, received June 30, 2021
Exhibit no. D10	Order of Dismissal V210122237-A21002828, dated August 5, 2021
Exhibit no. D11	RASKC investigation report no. A20013312
Exhibit no. D12	Online Noise Complaint form by Thomas Huff, dated August 13, 2020
Exhibit no. D13	RASKC investigation report no. A20013011
Exhibit no. D14	Online Noise Complaint form by Thomas Huff, dated July 30, 2020
Exhibit no. D15	Sample Barking Dog Letter
Exhibit no. D16	Photograph submitted by Thomas Huff showing location of barking dog
Exhibit no. D17	Map of neighborhood with addresses labeled
Exhibit no. D18	Video submitted for prior complaint A21002828

The following exhibits were offered and entered into the record by appellant:

Exhibit no. A1	Letter from Lacey Snyder, dated February 18, 2022
Exhibit no. A2	Letter from Margaret Sullivan
Exhibit no. A3	Photograph of fence

DS/lo



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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012783-A21006311**

**TAMMY MAXWELL**  
Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED March 28, 2022.



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Lauren Olson  
Legislative Secretary

**Huff, Thomas**  
Hardcopy

**Maxwell, Tammy**  
Hardcopy

**Smokoska, Rebecca**  
Regional Animal Services of King County