

August 12, 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. **V22013008-A22001328**

ROMAN LYTVYSHKO
Animal Services Enforcement Appeal

Activity no.: A22001328

Appellant: **Roman Lytvyshko**

[REDACTED]
Renton, WA 98058

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
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FINDINGS AND CONCLUSIONS:

Overview

1. Roman Lytvyshko appeals a Regional Animal Services of King County (Animal Services) violation. After hearing witness testimony, observing demeanor, studying the exhibits, and considering the parties' arguments and the relevant law, we find that, during the period covered by the violation, his dog was making noise to an unreasonable degree, in such a manner as to disturb multiple people. We deny his appeal.

Background

2. Animal Services received numerous complaints from several neighbors about Mr. Lytvyshko's dog, Dodge, stretching back to 2021. Exs. D2, D5, D6, D10, D13. In October 2021, Animal Services issued Mr. Lytvyshko a warning for Dodge making excessive noise. Ex. D11.
3. After several more complaints, on March 17, 2022, Animal Services issued Roman Lytvyshko a violation notice for Dodge's noise. Ex. D4. Mr. Lytvyshko filed an appeal on March 23. Ex. D16. Finding the situation had not improved, Animal Services issued a second violation notice on April 5, which was not appealed. Ex. D14. We held a pre-hearing conference on April 20, where Mr. Lytvyshko and the complainants agreed to go to mediation.
4. On June 29, the mediation coordinator returned the case to us, explaining that while the complainants appeared at the scheduled mediation session, Mr. Lytvyshko did not.¹ We then scheduled an August 4 hearing on the merits.

Hearing Testimony

Testimony of Steve Nickelson

5. Animal Services Ofc. Steve Nickelson described his March 17 visit to the Lytvyshko home, in response to a noise complaint.² He parked across the street from the Lytvyshkos' front door. While he completed his computer work [Dodge] barked consistently the entire time. Dodge took some breaks, but he was consistently barking, whining, and howling, possibly because he was lonely. Ofc. Nickelson typically does paperwork for about ten minutes. From where Ofc. Nickelson was, he could not see Dodge. His truck was running, but he could still distinctly hear Dodge. He rolled down his window to better hear the disturbance.
6. Ofc. Nickelson approached the house and spoke with Mr. Lytvyshko. Mr. Lytvyshko believed that Dodge was barking because it could see Ofc. Nickelson. Ofc. Nickelson explained that he could not see the dog when he was across the street. Ofc. Nickelson issued a violation to Mr. Lytvyshko, based on the complaint and his observations.
7. Ofc. Nickelson could not provide an estimate on the number of barking cases he has responded to, but he has been an Animal Services officer since 1998. He would say that, in his experience, Dodge's barking was excessive barking. Typically, Ofc. Nickelson will try to mediate between the neighbors and give them the noise ordinance letter. He described this as a more egregious case of barking.

¹ Efforts to schedule mediation and attendance at that mediation are among the very few things allowed to be disclosed about a mediation. RCW 7.07.060(2)(a).

² Ofc. Nickelson first visited the property in October 2021, but that was for a welfare check. At that time he found that Dodge's outdoor pen was a clean environment.

Testimony of David Weller

8. David Weller testified that he is retired and spends a majority of the day at home. He can easily hear Dodge barking and whining. He acknowledges that dogs bark, but Dodge's was a continuous disturbance. The barking was a total annoyance when he was home. The barking went on for what seemed like hours. Once Dodge was put in the outdoor kennel, he started barking. Prior to the March complaint, Dodge appeared to be alone in a kennel, with no one home with him. Dodge barked incessantly.
9. Mr. Weller kept the doors and windows closed to reduce the sound of the barking. Apart from that, he did not take any other steps to alleviate the barking.
10. This continued until March or April when the Animal Services officer showed up and then our office held a prehearing conference. (Our conference was April 20.) But prior to that, Dodge would bark, then whine.
11. Dodge has significantly quieted since, and the situation has definitely improved. Mr. Weller hears Dodge barking when there are people playing with him, but that is about it. (Before Dodge would whine incessantly when he was alone.) Mr. Weller spoke with Mr. Lytvyshko, who said he is trying a bark collar on Dodge. Mr. Weller believes that the level of barking now is a reasonable amount of barking for a dog in a neighborhood setting.

Testimony of Molly Weller

12. Molly Weller testified that she started a barking log in September 2021, but there had been barking before that. On September 15, Ms. Weller went to the Lytvyshko house to address Dodge's barking. She told Mr. Lytvyshko that Dodge's barking was very upsetting and keeping people from sleeping. Mr. Lytvyshko was defensive and said he got a dog to defend his house. Ms. Weller gave him some printed paperwork about barking. Mr. Lytvyshko's mother denied it was their dog making the noise. There was no change in the barking at that time.
13. Ms. Weller submitted a complaint in October 2021. The barking continued and nothing changed, so she submitted another complaint on November 10. Ofc. Wilcox contacted her the next day. The day after that her electricity box was vandalized, and the next day the meter itself was stolen. Dodge continued to bark, but Ms. Weller did not submit complaints, being afraid of Mr. Lytvyshko, given his earlier defensive and angry response and the meter vandalism immediately after she filed her complaint. She does not have a bark log from November 2021 to March 2022, until Mr. Carchedi filed a complaint.
14. Dodge continued to bark and whine. He was not barking because he, say, saw a squirrel; instead, he was looking towards the house. She has never experienced anything like this with the other neighborhood dogs in terms of duration and intensity of the barking. There could be about twenty-five episodes of barking a day. Dodge would start around eight or eight thirty in the morning and steadily bark throughout the day. When the Lytvyshkos were home, Dodge would be quiet. Ms. Weller did take recordings of Dodge barking, but her phone was losing storage and she did not send them to Animal Services.

15. It was incredibly frustrating that Mr. Lytvyshko did not respond earlier to Dodge's barking. Ms. Weller has lived in the neighborhood for over twenty years. Ms. Weller believed Dodge was barking because he was anxious when no one was around. She requested Animal Services do a welfare check because it appeared no one was paying attention to Dodge. She did not see people walk Dodge. Dodge was outside day and night. Since Mr. Lytvyshko told Ms. Weller he got Dodge to guard the house, it appeared Dodge was not a companion animal.
16. Ms. Weller testified that the barking level now is normal. The level of barking is a night and day difference from what it had been.

Testimony of Joe Carchedi

17. Joe Carchedi testified that his recollection is not as good as Ms. Weller's because he did not keep a barking log, but what she described during her testimony is accurate. His wife complained to him about the barking keeping her from sleeping when she was home sick. Mr. Carchedi heard Dodge barking and howling, starting early in the morning, even on Saturday mornings.
18. Mr. Carchedi spoke with Mr. Lytvyshko's father about the barking. After that conversation, there was no change in the level of barking. The barking was a daily issue. Mr. Carchedi kept his windows closed because it is about seventy-five feet to Dodge's cage. Mr. Carchedi could even hear Dodge barking with his TV volume up and the windows closed. The barking would disrupt his Zoom calls for work. That prompted Mr. Carchedi to file a complaint with Animal Services. Mr. Carchedi was ready to participate in mediation.
19. The current state of barking is very good. It is a normal level of barking. Mr. Carchedi hears Dodge bark when people are playing with him. Mr. Carchedi is concerned that the barking may return. The barking level gradually improved.

Testimony of Ryan McNeilly

20. Ryan McNeilly testified that he works from home in the northwest corner of his house, the opposite side of the house from Dodge. When Mr. McNeilly would go to his kitchen (on the Dodge side), he could clearly hear Dodge barking. From his backyard, he has a direct line of sight to the Lytvyshkos. The barking level for him was not as much of a quality-of-life problem compared to the Wellers or Carchedis, who live closer to Dodge.
21. On weekdays starting around eight or nine in the morning until early evening Dodge would bark pretty consistently. He would stop barking for a minute or two, but then pick up barking again. He also heard howling at times. It was generally workdays during normal working hours. Mr. McNeilly did not maintain a bark log.
22. There has been a significant improvement. For the last month or two, Mr. McNeilly has mostly only heard Dodge barking when he is out playing. Mr. McNeilly has no problem with Dodge barking when he is playing. The noise level is normal now.

Testimony of Jessica Abramchuk

23. Jessica Abramchuk, Mr. Lytvyshko's girlfriend, does not live in the house. However, she testified that once she heard about the first complaint in fall 2021, she bought a bark collar and read the barking pamphlet Ms. Weller provided. At that time, Dodge was living with the Lytvyshkos because he was a young pup. She was trying to train Dodge to not bark and to get used to being outside. This did not work. Dodge wanted to be around people. Since the first complaint they took measures to address the barking, but each attempt was hit or miss. She worked hard to train Dodge.
24. When Ms. Abramchuk started working from her home in January 2022, she started picking up Dodge during her lunch break, which would be between ten in the morning and one in the afternoon, and she would bring him back around five or six. Ms. Abramchuk tried to use the bark collar on Dodge in the morning, which worked for a bit. At night she and Mr. Lytvyshko would give Dodge a sleeping pill from the vet. Starting in April, Ms. Abramchuk started taking Dodge in the morning around nine or ten. They put up cameras to keep an eye on Dodge and his barking. He has not barked this week.
25. Dodge has a kennel outside. During the winter, he lives in the house. In the spring they let him out more, which may have caused him anxiety because he was used to living inside. Mr. Lytvyshko's grandparents recently moved into the house. Mr. Lytvyshko's brothers are also home at times.

Testimony of Roman Lytvyshko

26. Roman Lytvyshko testified that he got Dodge from Kansas in September 2020. When Dodge was a puppy, he stayed in a kennel in the garage. Mr. Lytvyshko bought a fence and made an outdoor kennel for Dodge in the winter. The kennel was made out of wood and drywall; it is basically a little house. He finished it in the last couple months. Once the wood frame was done, Dodge moved into the outdoor kennel. Mr. Lytvyshko gave him plenty of blankets when outside. Mr. Lytvyshko explained that his parents would not let Dodge stay inside.
27. Dodge started barking when he turned a year old. When Ms. Weller approached Mr. Lytvyshko after the first complaint, he was not trying to be defensive. The way he talks comes off as defensive. He apologized for his attitude. Mr. Lytvyshko has an apartment, but it does not allow animals, so he kept Dodge at his parents' house.
28. Mr. Lytvyshko and Ms. Abramchuk tried different things to stop Dodge barking and ways to get him to exert his energy. They tried a bark collar, but it took a while to find the right shock level. Mr. Lytvyshko would take Dodge out to do his business and put the bark collar on him around 4:30 a.m. Ms. Abramchuk started taking Dodge in the morning around February 2022. After about two weeks of using the bark collar, they noticed an improvement with Dodge's barking.
29. After a while, they started to take the collar off, and still saw an improvement with Dodge's barking. Now they focus on wasting Dodge's energy to tire him out. They bring

him to the dog park, where he can play for sometimes two or three hours. Mr. Lytvyshko has noticed a huge improvement. He tries to talk with the neighbors because he understands the importance of allowing his neighbors to live in peace.

30. Mr. Lytvyshko did not touch the Wellers' electrical box. Mr. Lytvyshko has had issues with people breaking into his car and his brother's car. He has had some problems in the neighborhood.
31. Mr. Lytvyshko received letters from Animal Services requesting he pay the fines. Mr. Lytvyshko said he asked Animal Services regarding the second violation, and they told him that the two cases would be merged.
32. From the very beginning, Mr. Lytvyshko took action to try to address the barking. Mr. Lytvyshko said there is no video proof of Dodge excessively barking. He crosschecked the times from the barking logs with his video logs of Dodge from his outdoor camera. He may have barked, but it was not excessive. He apologized for the previous barking.

Legal Standards

33. The legal standard is easy to state—does the animal make noise “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 some consistent benchmarks.
34. First, we draw a stark distinction between nighttime barking and daytime barking, construing section .230.J consistently with the general County noise code, which makes numerous daytime v. nighttime distinctions.³ That the *timing* of a noise matters significantly is not controversial, nor new. For example, as one pre-Civil War noise case described it, “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. Animal Services carries a higher burden for appeals involving daytime noise.
35. Second, while the noise need not disturb a neighborhood (the code standard being disturbing a person *or* neighborhood), in analyzing whether noise truly “disturbs,” 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). Similarly, our Court 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

³ KCC 11.04.230.J and KCC chapter 12.86 were jointly amended by Ordinance 18000 in 2015. 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>.

366 (1988) (citations omitted). And 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. *See, e.g., State v. Acrey*, 148 Wn.2d 738, 748-49, 64 P.3d 594 (2003) (“reasonable” depends on balancing competing interests).

36. In undertaking that analysis, 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.

Analysis

Context

37. Often, a hearing on a noise violation is valuable, because in addition to a thumbs up thumbs down call on a \$50 (or for a second violation, a \$100) ticket, our decision can influence future actions. Sometimes that is in the context of overturning a violation and letting a complainant(s) know that the current noise does not constitute a violation and thus the complainant(s) will need to take mitigating actions or at least adjust expectations. Sometimes that is in the context of upholding the violation and letting the owner know that the current situation is unacceptable, and thus that the owner will need to take more effective steps to avoid a future violation.
38. An unfortunate aspect here is that all four complainants who testified agreed that the situation had dramatically improved since March, and Dodge’s noise was no longer an issue. Thus if Mr. Lytvyshko had attended the scheduled June 29 mediation, it is highly likely that the outcome would have been a resolution that then would have resulted in Animal Services dismissing the violations and fines. And there would have been no need to hold a hearing.
39. Instead, we are stuck looking backward and evaluating a situation that no longer exists. It does not appear we have jurisdiction to entertain a challenge to the second violation notice, because that was issued after Mr. Lytvyshko appealed the first violation and there was no second appeal. But even if, say, someone at Animal Services erroneously instructed Mr. Lytvyshko, during the period before the appeal window for the second violation closed on April 30, that the cases would be merged and thus that he did not need to file a second appeal, that violation was also related to March 2022, before the situation improved dramatically. So, we are still essentially looking at the situation before April.

Application

40. Mr. Lytvyshko submitted signed copies from five of his neighbors that Dodge has not barked that much and has not been a disturbance. Ex. A1. Out-of-court statements not given under oath and subject to cross-examination are typically considered “hearsay.” We typically allow them into evidence, but we usually do not put as much weight on them as we do testimony offered at hearing under oath and subject to cross-examination. They

are evidence in Mr. Lytvyshko's favor—tending to show that maybe the noise was not that bad and/or that the complainants are unusually sensitive—but they are not dispositive. They are also undercut somewhat by the greater distance to Dodge for most of the supportive neighbors versus most of the complainants. Ex. D17. One exception, Mr. McNeilly, expressly emphasized the importance of location, noting that he was further away from Dodge than the other complainants, that his office is in the opposite corner, and that the barking for him was not as much of a quality-of-life problem as it would be for the closer complainants.

41. It seems here the fateful tipping point here came when Mr. Lytvyshko's parents instructed him that Dodge could not stay inside and Mr. Lytvyshko moved him to a kennel. As understandable as that choice might have been from a domestic perspective, it had three compounding effects.
42. First, Dodge was outside a lot more, reducing the significant dampening effect the home would provide when Dodge barked.
43. Second, Dodge barked, howled, and whined, much more than he had when he was inside. While some of these might have been, say, in response to an external stimulus like a delivery, Ms. Weller described how Dodge would continue barking and whining *at* the house, because he was anxious and lonely. And all four complainants testified to the extended duration of the barking until April, which not coincidentally was the month Ms. Abramchuk started picking up Dodge in the morning and keeping him company. There was a lot of noise over a long period, both within a given day and over multiple months.
44. Third, the quality of Dodge's noises were significantly more disturbing. Ofc. Nickelson noted the whining and howling that went along with Dodge's barking.⁴ Mr. Weller differentiated between the acceptable barking Dodge does now (primarily when people are outside playing with him) versus the incessant whining Dodge previously did when he was left alone outside for long stretches. Mr. Carchedi distinguished between the howling Dodge used to do versus the barking he does now when people are playing with him. Mr. McNeilly contrasted Dodge's previous howling with the barking Dodge does now when Dodge is playing, barking Mr. McNeilly has no problem with.
45. This last point emphasizes that, for the average person, something beyond decibels and duration figures into the impact of noise on the average listener. Noises made in distress are more likely to disturb to a typical non-psychopath than noises made during play. And that is not just true for dogs. For example, in the summer our neighborhood is filled with children screaming. But it is sound of children at play, and thus far more easy to ignore, and far less disturbing, than even softer, shorter duration sounds of a child in distress. There is a qualitative, as well as quantitative, aspect to noise.
46. That is not to devalue the extensive efforts especially Ms. Abramchuk took to train Dodge not to bark and to get him used to being outside. But she recognized—which

⁴ We do not give any deference to agency opinions and give no weight to Ofc. Nickelson's conclusions that the barking was, in his experience, excessive or egregious. But he, like anyone else, is free to testify about their eyewitness observations.

only added to her credibility—those early efforts did not work because Dodge wanted to be around people and was used to living inside, and moving him outside may have caused him anxiety. Their measures up until the violation notices in the spring were simply not effective enough.

47. In sum, the cumulative effect of the steps Ms. Abramchuk and Mr. Lytvyshko have taken since March have turned the situation around and created a normal, livable situation. That is great and, if continued, will continue the peace. But that was not the case at the time Animal Services issued its violations. As of March, Dodge was making noise to an unreasonable degree, in such a manner as to disturb multiple people, and thus violating KCC 11.04.230.J.

DECISION:

We deny Mr. Lytvyshko's appeal.

ORDERED August 12, 2022.



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 *September 12, 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 AUGUST 4, 2022, HEARING IN THE APPEAL OF ROMAN
LYTVYSHKO, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V22013008-A22001328**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Steve Nickelson, David Weller, Molly Weller, Joe Carchedi, Ryan McNeilly, Jessica Abramchuk, and Roman Lytvyshko. 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	Online Noise Complaint form of March 13 and 15, 2022 by Joe Carchedi, dated March 15, 2022
Exhibit no. D3	RASKC investigation report no. A22001328
Exhibit no. D4	Notice of violation no. V22013008-A22001328, issued March 17, 2022
Exhibit no. D5	RASKC investigation report no. A21005266
Exhibit no. D6	Noise Complaint form of multiple incidents by Molly and David Weller, Tina Le, Edgar and Salve Buslon, and Joe Carchedi, dated October 15, 2021
Exhibit no. D7	RASKC investigation report no. A21005366
Exhibit no. D8	Online Complaint form of October 26, 2021, incident by Molly Weller, dated October 26, 2021
Exhibit no. D9	RASKC investigation report no. A21005738
Exhibit no. D10	Online Noise Complaint form of October 29 and November 9 and 10, 2021 incidents by Molly Weller, Ryan McNeilly, Edgar and Salve Buslon, and Mariani and Roman Antoli, dated November 10, 2021
Exhibit no. D11	Warning Notice V21012676-A21005738
Exhibit no. D12	RASKC investigation report no. A22001460
Exhibit no. D13	Noise Complaint form of March 18 and 24, 2022 incidents by Molly Weller, Joe Carchedi, Edgar Buslon, dated March 24, 2022
Exhibit no. D14	Notice of violation no. V22013064-A22001460, issued April 5, 2022
Exhibit no. D15	NVOC mailing/tracking history
Exhibit no. D16	Appeal, received March 23, 2022
Exhibit no. D17	Map of subject area
Exhibit no. D18	Rebuttal Map
Exhibit no. D19	Barking Log

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

Exhibit no. A1	Document of Information
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DS/lo

August 12, 2022

**OFFICE OF THE HEARING EXAMINER
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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013008-A22001328**

ROMAN LYTVYSHKO
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 August 12, 2022.



Lauren Olson
Legislative Secretary

Carchedi, Joseph

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Jessica Abramchuk, Roman Lytvyshko

Hardcopy

McNeilly, Ryan

Hardcopy

Nickelson, Steve

Regional Animal Services of King County

Smokoska, Rebecca

Regional Animal Services of King County

Weller, David & Molly