

August 31, 2022

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V22013259-A22003000**

BARBARA PINTI

Animal Services Enforcement Appeal

Activity no.: A22003000

Appellant: **Barbara Pinti**

[REDACTED]
Renton, WA 98058

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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Kent, WA 98032
Telephone: (206) 263-5968
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FINDINGS AND CONCLUSIONS:

Overview

1. Barbara Pinti appeals a Regional Animal Services of King County violation for her dog, Bean, making excessive noise. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant

law, we deny her appeal and offer some thoughts to set future expectations and avoid a repeat.

Background

2. On June 16, 2022, Animal Services issued a violation notice to Barbara Pinti for Bean making excessive noise. Ex. D4. Ms. Pinti appealed on June 21. Ex. D10. We held a prehearing conference on July 11, where we set a hearing for August 23.

Hearing Testimony

Testimony of Charles Yarid

3. Charles Yarid testified that he filed a complaint on June 8, after there were multiple occasions of the dog [Bean] barking at unreasonable times. Ex. D2. Mr. Yarid's bedroom is sixty feet from Ms. Pinti's back deck. Mr. Yarid knows the barking is from Bean because when he hears the barking, he looks out his bedroom window and he can see Bean sitting on the Pinti back deck. Bean will be out late at night barking, at 10:00 p.m., 11:00 p.m., or 1:00 a.m.
4. Bean only needs to bark one or two times before Mr. Yarid is woken up. Once Mr. Yarid is woken up late at night from Bean barking, it is difficult for him to fall back asleep because he is aggravated. After Mr. Yarid filed the recent complaint, he has not heard Bean barking.
5. In September 2018, Mr. Yarid went over to the Pinti house after Bean had been barking early in the morning. No one was home, so he left a note. On rebuttal, Mr. Yarid testified that he does not remember what he wrote on the note, but he did not think it was angry. He also does not think he would leave an anonymous note. Ms. Pinti never contacted him, but she spoke with his wife when she came over.
6. After a couple more occasions of Bean barking the following month, he filed a complaint with the HOA, who told Mr. Yarid that they had sent a notice to Ms. Pinti about the noise complaint. Mr. Yarid also contacted Animal Services at that time. Mr. Yarid did not hear Bean for three months after that.
7. There are short periods of quiet after Mr. Yarid files a formal complaint. He was hesitant to say that there has been an improvement in the noise level this round, in the sense that there have been times in the past when a week, two weeks, or a month of quiet goes by, before there is another late-night barking incident.
8. At the end of 2019, after a number of barking incidents from Bean, Mr. Yarid notified the HOA again. On September 19, 2020, Bean was barking from 11:45 p.m. to 1:15 a.m. The following day, Bean was barking at 12:45 a.m. Mr. Yarid called, left a message, and texted Ms. Pinti. Mr. Yarid never got a response. This was the last time Mr. Yarid attempted to reach out to Ms. Pinti.

9. Mr. Yarid has better things to do than look for things to complain about. Mr. Yarid did not submit a complete barking log. He just listed some to give an idea of the problem. Bean's barking wakes up Mr. Yarid on average two to three times a month, but it varies. Mr. Yarid believes that unreasonable barking is him hearing Bean any time, but he understands if a dog barks once in four or five weeks. This barking is happening multiple days per month. Mr. Yarid has tolerated it up to a point. Once it became regular, he started contacting agencies.
10. Mr. Yarid sleeps with the windows closed and uses blackout curtains. Typically, Mr. Yarid does not use a fan or white noise to block out the barking.
11. Mr. Yarid does not think Ms. Pinti pays as close of attention to Bean as she says she does.

Testimony of Barbara Pinti

12. Barbara Pinti testified that the first time she heard of a barking complaint was in 2018. She and her family had gone on a trip and had someone at their house caring for Bean. Ms. Pinti returned home, and a neighbor told her that someone had come over, angry about Bean barking. Ms. Pinti was confused, because Bean is an unusually quiet animal; he does not bark. Ms. Pinti found an angry, unsigned note about her dog barking. Her neighbor thought the note was from Mr. Yarid. Ms. Pinti thought it was a one-off incident that happened while she was on vacation.
13. After she received the note from Animal Services, she went to the Yarid house and briefly spoke with his wife. Ms. Pinti said she did not think Bean was making noise. She gave the complainant's wife her phone number and asked her to call if they heard Bean.
14. Ms. Pinti does not recall a voicemail from Mr. Yarid. She did see a text several years ago from Mr. Yarid. At that time, Bean was outside, so she brought him in. Ms. Pinti does not dispute that Bean has made noise. Mr. Yarid is not working with Ms. Pinti; he is only calling the County on her. The only time the HOA reached out to her regarding Bean was when she returned from vacation. She told the HOA that she was dealing with the issue with the County.
15. When Ms. Pinti received the latest citation, she asked her neighbors if they had been bothered by noise from Bean. Ms. Pinti said that her neighbors told her they had not heard Bean bark. Both of Ms. Pinti's next-door neighbors told her they have never heard Bean bark or been bothered by Bean.
16. Ms. Pinti testified that Bean is an extremely quiet animal, even at night. It is not typical for Ms. Pinti to let Bean outside after 10:00 p.m. However, if Bean has to go outside at that time, Ms. Pinti will let her out, but she does not keep track of the exact time. Bean lets Ms. Pinti know when she is done outside by coming to the back door. Ms. Pinti does not think that Bean barks to get her attention to be let in.
17. Bean is not left out on the porch for fifteen to twenty minutes regularly. Bean goes out and then generally comes straight in. If Bean would bark, someone in the Pinti house

would hear her and let her back in. If her family hears barking, they confirm that it is not Bean.

18. Ms. Pinti did not contact Animal Services when they requested a call because her daughter placed the note on the crowded refrigerator, and she did not show it to Ms. Pinti until after the Animal Services deadline.

Testimony of Lisanna Smithhart

19. Lisanna Smithhart testified that she lives across the street and one house over from Ms. Pinti. Her family is often up late at night, until midnight or 1:00 a.m. They also often have their windows open in the spring and summer. At night, the neighborhood is generally quiet. She is able to hear other dogs in the neighborhood bark. The dogs on either side of her house and behind her bark, but they do not bark at night.
20. On June 7, Ms. Smithhart was home. She does not hear barking in a way that she would find bothersome. After we asked her to clarify, she testified that if she heard a single bark, she would not pay attention to that. If she heard barking for multiple minutes, that would draw her attention.

Legal Standards

21. Animal Services bears the burden of proving that, more likely than not, Appellant’s dog makes noise “to an unreasonable degree, in such a manner as to disturb a person or neighborhood.” KCC 11.04.230.J. We give no deference to Animal Services.
22. 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.¹ 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 “midnight” and “on other days” with “noon,” and that proposition remains true 163 years later. Animal Services carries a higher burden for appeals involving daytime noise (meaning after 7:00 a.m. on weekdays/9:00 a.m. on weekends and before 10:00 p.m. every evening) than nighttime noise.
23. 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.

¹ 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>.

City of Spokane v. Fischer, 110 Wn.2d 541, 544–45, 754 P.2d 1241 (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 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).

24. 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

25. As noted above, the fact that no one else complained about the noise is certainly a factor in assessing Mr. Yarid’s credibility and whether he is inordinately sensitive; it certainly cuts against him. But it is not dispositive. Given Mr. Yarid’s proximity and the direct line between the Pinti back porch and his bedroom, it is not surprising that he would be much more impacted than, say, Ms. Smithhart. We found Ms. Smithhart by far the most credible of the three witnesses, and she acknowledged that not only is she on the opposite side of the Pinti house, but she is typically up until or past midnight.² (Our neighbor’s dog barks sporadically throughout the day and evening, but unless we happen to be in bed, it does not even register unless it just goes on and on for an excessively long time.) Plus the three times between May 4 and June 7 where Mr. Yarid asserted there was nighttime noise were all over before midnight. Ex. D2 at 002. And Mr. Yarid’s point that Bean only needs to bark one or two times before he is woken up and it is difficult for him to fall back asleep is pretty consistent with the testimony in multiple noise appeals.
26. That is not to say that Mr. Yarid was a particularly persuasive witness; he was not. Beyond the lack of corroborating neighbor testimony, he did not text Ms. Pinti after any of the recent barking incidents to let her know. He did not submit a complete barking log. He did not even employ a fan or white noise to try to minimize the impact of the barking. He seemed to say that *anytime* he hears Bean at night it is “unreasonable,” a ridiculous standard. This is not a dog with a viciousness designation for whom even escaping containment once can have severe consequences; instead this is a disturbance case, sanctioned only by what is essentially a \$50 ticket.
27. Normally, that would be game over, but Ms. Pinti was equally or even less persuasive. She seemed unaware that the law differentiates between daytime and nighttime hours. And rather than a scenario where from time to time a kid forgets to close a door and the dog gets out during nighttime hours and barks before anyone realizes she is out, Ms.

² Ms. Pinti had two other neighbors, in addition to Ms. Smithhart, sign a statement that they had never heard Bean make noise that could be considered “excessive,” but unlike Ms. Smithhart, they were not available to testify under oath and subject to questioning.

Pinti nonchalantly let Bean out after 10:00 p.m. if she has to go and then, rather than having someone accompanying her, waited until Bean let Ms. Pinti know when she was done outside by coming to the back door. She surmises that if Bean would bark, someone in the Pinti house would hear her and let her back in. That is probably true, but it is like locking the barn door after the horse is gone—if a few barks are enough to disturb someone’s sleep, the damage for a given night is already done.

28. In some sense, this case is the polar opposite of our last noise appeal. There was a tremendous amount of noise in that case, but the dog owners had actively taken a variety of steps to try to control the noise, including bark collars, while recognizing some of their steps were ultimately not successful. Here the noise level complained about—three in one month, with one of those only minutes after 10 p.m.—is scraping at the bottom end of what we would consider “unreasonable.” If Ms. Pinti had, prior to June, taken *any* steps other than denial, we would have overturned the violation. But as she did not, we sustain it.³
29. Forward-looking this is a pretty simple solution. Mr. Yarid needs to downwardly adjust his expectations, employ a louder fan or white noise machine nightly, and keep a log. Ms. Pinti can try to get Bean to do her business before 9:59 p.m., and just make sure someone accompanies Bean out on nights she has to relieve herself after 10 p.m. In fact, Ms. Pinti may already have started doing this; Mr. Yarid testified that since the violation was issued, barking has not been a problem. So, this dispute already may have been resolved.

DECISION:

We deny Ms. Pinti’s appeal.

ORDERED August 31, 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

³ In our pre-hearing conference notice explaining the benefits of mediation in the noise appeal context, we wrote that “for most decisions we impose on the parties, one party—but not both—is likely to walk away angry. Yet in a noise cases we not infrequently wind up publicly criticizing *both* the complainant and appellant, which means neither party leaves satisfied. By comparison, mediation allows the parties to retain control of their dispute and to negotiate a satisfactory, face-saving outcome.”

September 30, 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 23, 2022, HEARING IN THE APPEAL OF BARBARA PINTI, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V22013259-A22003000**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Charles Yarid, Barbara Pinti, and Lisanna Smithhart. 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 May and June 2022 incidents by Charles Yarid, dated June 8, 2022
Exhibit no. D3	RASKC investigation report no. A22003000
Exhibit no. D4	Notice of violation no. V22013259-A22003000, issued June 16, 2022
Exhibit no. D5	Online Complaint form of October 3, 2018, incident by Charles Yarid, dated October 2, 2018
Exhibit no. D6	RASKC investigation report no. A18005058
Exhibit no. D7	Warning Notice V18008727-A18005058
Exhibit no. D8	Notice of violation no. V18008726-A18005058, issued October 8, 2018
Exhibit no. D9	Appeal V18008727, received October 15, 2018
Exhibit no. D10	Appeal V22013259, received June 21, 2022
Exhibit no. D11	Map of subject area

DS/lo

August 31, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013259-A22003000**

BARBARA PINTI

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 31, 2022.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Pinti, Barbara

Hardcopy

Schlichte, Coleen & Eric

Smithhart, Lisanna/Carter

Yarid, Charles

Hardcopy