

November 17, 2023

**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. **V23014386-A23003819**

GABRIELA BODEA

Animal Services Enforcement Appeal

Activity no.: A23003819

Appellant: **Gabriela Bodea**

[REDACTED]
Kenmore, WA 98028

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Gabriela Bodea appeals a violation notice involving her dog's barking. 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 deny her appeal.

Background

2. On June 20, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014386-A23003819 to Gabriela Bodea for her dog, Samson, making excessive noise. Ex. D5. Ms. Bodea timely appealed. Ex. D15.
3. We held a pre-hearing conference on August 1. Animal Services noted the complainants observed an improvement in the noise due to Ms. Bodea's efforts. We stayed the case for 90 days.
4. We received notice from Animal Services on September 21 to set a hearing due to the complainant's concerns. We reopened the record and held a hearing on November 2.

Hearing Testimony

Dan Cosley Testimony

5. Dan Cosley testified that he moved into the neighborhood in November 2022. From the beginning, he noticed the persistent barking. His initial concern was for the dog's [Samson's] welfare; it seemed to be barking from distress or boredom. Mr. Cosley can see Samson from his apartment. Samson will sit by his fence and bark all day.
6. Mr. Cosley took many videos of Samson's barking. Ex. D4. He can go out almost any minute of the day and capture the barking. Samson continuously barks. The videos are indicative to Samson's regular behavior.
7. Mr. Cosley now buys earplugs in bulk that he wears when not actively teaching; however, he can still hear the barking with them in. He also uses white noise.
8. Prior to the stay order, things had substantially improved, but once the stay was issued, Samson went right back to barking profusely. There were periods when Mr. Cosley heard Samson yelp, but he has not heard that for months. Samson would bark a few times, yelp, and then stop barking.
9. Mr. Cosley is persistent about this because he is a language professor. The barking makes it difficult for him to concentrate, and the barking can be heard by his students. His wife is a translator and also works from home.
10. Mr. Cosley has dozens of videos from October he did not submit that demonstrates the same level of barking from Samson.

Gabriela Bodea Testimony

11. Gabriela Bodea testified that before Samson was fixed in May 2023, the barking was also driving her crazy. She did not see an improvement in his barking until two months after the operation. Samson has bad days, but those are exceptions. Samson gets bored only once in a while; 99% of the time, Samson barks in response to seeing someone.

12. Ms. Bodea was gone more in August, so Samson may have barked more then. Samson does not bark profusely when Ms. Bodea is home.
13. Now, Samson spends most of his time outside on the deck; he only goes to the fence with Ms. Bodea’s permission. He is locked on the deck when Ms. Bodea is not home. Since Ms. Bodea started leaving Samson on the porch, the barking improved.
14. She puts the bark collar on Samson once and awhile. When he is on the porch, she does not use the collar.

Legal Standards

15. The legal standard is easy to state—did Samson bark “to an unreasonable degree, in such a manner as to disturb a person or neighborhood,” KCC 11.04.230.J—and more complex to apply. However, we have established consistent benchmarks, several of which are applicable here.
16. First, we draw a sharp 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 court described it, “The peace of Sunday may be disturbed by acts which, on other days, cannot be complained of.”² Replace “Sunday” with “midnight” and “on other days” with “noon,” and that proposition remains true 164 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.”³ Thus, Animal Services carries a significantly 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. each evening) than for nighttime noise.
17. 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.⁴ Similarly, our Court instructs us to guard against measuring conduct “by its effect on those who are inordinately timorous or belligerent.”⁵ And in looking at both

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>.

² *Commonwealth v. Jendell*, 2 Grant 506, 509 (Pa. 1859).

³ *Altman v. Ryan*, 435 Pa. 401, 407, 257 A.2d 583, 605 (1969).

⁴ *City of Spokane v. Fischer*, 110 Wn.2d 541, 544–45, 754 P.2d 1241 (1988).

⁵ *Seattle v. Eze*, 111 Wn.2d 22, 29–30, 759 P.2d 366 (1988) (citations omitted).

“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.⁶

18. Third, “unreasonable” does not simply mean that a dog barks more than other neighborhood dogs. Dogs bark along a bell curve, starting with a thin slice of unusually quiet dogs, moving to the fat part of the bell curve with the vast majority of dogs making less than average through average through more than average noise, to a thin slice of unusually noisy dogs at the far end of the curve. During the day, simply making more noise than the average dog does not cut it; daytime noise must be at the far end of the bell curve.
19. Fourth, something beyond timing, decibels, and duration figure into the impact of noise on the average listener. Noises made seemingly in distress—either active pain or loneliness—are more likely to disturb to a typical person 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 easier 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.
20. 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

21. As noted above, daytime violations are hard to prove. But here the evidence is overwhelming. There are three periods in play.
22. First, in the spring, multiple neighbors complained about Samson being left out all day and seemingly in distress. That is the type of barking the videos Animal Services submitted as exhibits (albeit showing noise from August 7 onward) depict—Samson continuously barking, not in response to an acute, limited stimulus such as a postman approaching the door, but seemingly out of loneliness or some other type of distress. Ex. D14.
23. Then, after getting the violation notice in June, the Bodeas took steps to curb Samson’s barking. Mr. Cosely agreed that those steps were sufficient to reduce the barking to a reasonable level, so we stayed the case on August 8. That is to the Bodeas’ credit. It also cuts in Mr. Cosely’s favor, credibility-wise, because it shows he can distinguish between the somewhat annoying and the truly disturbing.
24. However, it appears the Bodeas took their foot off the gas and stopped being as diligent after we issued our stay. It is a natural response we have seen in other noise cases, an

⁶ See, e.g., *State v. Acrey*, 148 Wn.2d 738, 748-49, 64 P.3d 594 (2003) (“reasonable” depends on balancing competing interests).

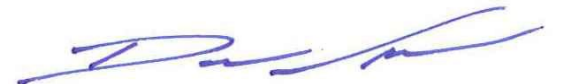
owner essentially confusing, “The situation is currently acceptable because I am taking active steps to make it that way” with, “The situation is resolved, so I don’t have to worry about it anymore.”

25. While Ms. Bodea asserted that Samson only barks at active stimuli or maybe “once in a while” when he gets bored, the videos and testimony Mr. Cosley submitted tell a very different story. Especially starting August 14 and moving on through September 22, the barking becomes relentless. Ex. D14. In many of the videos we can actually see Samson. He is not, for example, running around the yard agitated in response to an unwelcome visitor, but just standing there barking and barking.
26. We have overturned more daytime barking violations than we have upheld, and we often write pages of analysis. But this is one of the simpler ones. Animal Services easily meets its burden. Under even the most conservative interpretation, during the periods before Animal Services issued the enforcement order in June and then again after we issued our August stay, Samson barked to an unreasonable degree, in such a manner as to disturb a person or neighborhood. We uphold the violation.
27. Future-wise, Ms. Bodea noted that she had more recently kept Samson on the porch when she goes out and thought this had resolved the problem. Mr. Cosley stated that he had numerous more recent videos showing that this had not solved the problem. Our record essentially ends on September 22. (There was one October 15 video, but persistent barking on one day, standing alone, would not rise to a violation.) We do not comment on the post-September 22 situation.
28. It seems wiser, in terms of avoiding a future violation notice, if Ms. Bodea would, say, keep Samson inside when she leaves the house or keep the bark collar on him if she leaves him outside. But if the dispute festers and Animal Services issues another violation notice to the Bodeas that gets appealed, we will look afresh at the post-September 22 evidence.

DECISION:

We deny Ms. Bodea’s appeal.

ORDERED November 17, 2023.



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 *December 18, 2023*. 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 NOVEMBER 2, 2023, HEARING IN THE APPEAL OF GABRIELA BODEA, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V23014386-A23003819

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Dan Cosley, and Gabriela Bodea. 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
Exhibit no. D2	RASKC investigation report no. A23003819
Exhibit no. D3	Noise Complaint form of June 2-4 incident by Dan Cosley, Chris Thunen, Pierre Jandayan, dated June 5, 2023
Exhibit no. D4	Videos from Mr. Cosley
Exhibit no. D5	Notice of violation no. V23014386-A23003819, issued June 20, 2023
Exhibit no. D6	Emails from Dan Cosley to Animal Services, dated June 16, 2023
Exhibit no. D7	RASKC investigation report no. A22006083
Exhibit no. D8	RASKC investigation report no. A23002091
Exhibit no. D9	Online Complaint form of March 29, 2023, incident by Matt Lindenburg, dated March 29, 2023
Exhibit no. D10	RASKC investigation report no. A23002777
Exhibit no. D11	Online Complaint form of April 21, 2023, incident by Christine Forcucci, dated April 22, 2023
Exhibit no. D12	RASKC investigation report no. A23003436
Exhibit no. D13	Complaint form of incident by Dan Cosley, dated May 2022
Exhibit no. D14	Email from Dan Cosley, dated May 22, 2023
Exhibit no. D15	Email from Ovidiu Bodea, dated June 26, 2023
Exhibit no. D16	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014386-A23003819**

GABRIELA BODEA

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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED November 17, 2023.



Lauren Olson
Legislative Secretary

Bodea, Gabriela

Hardcopy

Cosley, Dan

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Waldon, Christopher

Hardcopy