

IN THE MATTER OF	*	BEFORE THE
DANIEL MULLENS AND TONYA WOLFE,	*	BOARD OF APPEALS
Respondents	*	
1042 Cockeys Mill Road	*	OF
Reisterstown, MD 21136	*	
RE: Citation Nos. (1) E58510 – Nuisance Animal	*	BALTIMORE COUNTY
(2) E58511 – Nuisance Animal	*	
AHB Case No.: 5209	*	Case No.: CBA-24-008

* * * * * * * * * * *

OPINION

This case comes to the Board of Appeals for Baltimore County (“Board”) on appeal of the final decision of the Animal Hearing Board of Baltimore County (“AHB”) wherein the AHB upheld Citations E58510 and E58511 (Nuisance Animal) and imposed a monetary penalty of Three Hundred Dollars (\$300.00); and directed that if Respondents relocate bird enclosures away from Complainants’ property and allow Animal Services to observe such relocation within thirty days of the AHB decision, the monetary fine would be waived.

A timely appeal was noted by Respondents, along with a Petition in Support of the appeal.

Respondents were represented by Jan I. Berlage, Esquire, of Gohn, Hankey & Berlage, LLP. Baltimore County was represented by Assistant County Attorneys Marissa L. Merrick, Esquire, and Perneita Farrar, Esquire.

Pursuant to Baltimore County Code (“BCC”) §12-114(f), the appeal before the Board was on the record below. The hearing before the Board was held virtually by Webex on November 29, 2023.

Complainant Terrence Collins, Jr., owns property near that of Respondents. Collins’ property is just over 4 acres, while Respondents’ is over 9 acres. The complaint asserts that the

animals raised by Mr. Mullens and Ms. Wolfe – peacocks and guinea fowl – create excessive noise such that the animals meet the definition of public nuisance animal pursuant to BCC§ 12-3-109(a) (3).

Mr. Berlage argued on behalf of Respondents that the AHB order was unsupported by analysis and findings, but merely recited testimony presented at its hearing. The AHB decision, while stating it relied on Complainants' testimony and "other evidence", did not recite any other evidence or testimony to support its decision.

Mr. Berlage further argued that the AHB repeatedly stymied Respondents' counsel's attempts to present relevant and substantial evidence. He further asserted that testimony before the AHB was that Respondents had mitigated the situation by previously relocating the birds away from Complainants' property – yet the AHB order required further mitigation without any guidance as how to achieve the same.

Mr. Berlage asserted that based on case law, to be a nuisance from noise, just hearing birds is not in itself enough. Rather the noise must be unreasonable and outside the ordinary course. He noted that no recordings or sound measurements were offered to the AHB to demonstrate the volume or frequency of the bird noise was out of what is normal or ordinary. We note that Respondents' property is zoned for agricultural use and that raising birds is a permitted use.

In conclusion, Mr. Berlage argued that the decision of the AHB is unsupported by competent, material and substantial evidence in light of the entire record, such that the AHB decision should be reversed.

Ms. Merrick spoke on behalf of the AHB, explaining the procedure ordinarily followed by the AHB, a lay board of unpaid members. Nonetheless, Ms. Merrick agreed that

Respondents were not fully and adequately heard. She agreed that the AHB relied on allegations in the Complaint, rather than requiring objective evidence to substantiate the character of the noise. Ms. Merrick concluded that there was not sufficient substantial evidence to support the decision of the AHB and concurred that its decision should be reversed.

Standard of Review

BCC §12-1-114 (f) and (g) requires that all hearings before this Board from the AHB be heard on the record from the AHB hearing. Upon review of the transcript and evidence in the AHB record, this Board has the authority to:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board;
- (iii) Reverse or modify the decision of the Animal Hearing Board if a finding, conclusion or decision of the Animal Hearing Board:

1. Exceeds the statutory authority or jurisdiction of the Animal Hearing Board;
2. Results from an unlawful procedure;
3. Is affected by any other error of law;
4. Subject to paragraph (2) of this subsection, is unsupported by competent, material and substantial evidence in light of the entire record as submitted; or
5. Is arbitrary and capricious.

When assessing a factual finding of an agency, the appropriate standard of review is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 84 (2001).

Decision

Based on the lack of substantial evidence presented at the Animal Hearing Board and on review by the Board of Appeal, the decision reached by the Animal Hearing Board should be reversed by this Board as to the citations and the imposition of the fines.

ORDER

THEREFORE, IT IS THIS 18th day of January, 2024, by the Board of Appeals of Baltimore County, it is:

ORDERED that the decisions regarding Citations E58510 (Nuisance Animal) together with a fine of \$150.00, and regarding Citation E58511 (Nuisance Animal) together with a fine of \$150.00 are **REVERSED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Deborah Dopkin, Panel Chair


Michael J. Steimack


Bryan T. Pennington



Board of Appeals of Baltimore County

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January 18, 2024

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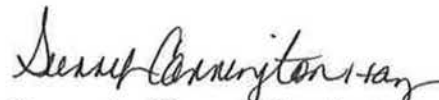
RE: In the Matter of: *Daniel Mullens and Tonya Wolfe*
Case No.: CBA-24-008

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,


Krysundra "Sunny" Cannington
Legal Administrative Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Daniel Mullens and Tonya Wolfe
Terence D. Collins, Jr.
Bernard J. Smith, Chairman/AHB
April Naill/Animal Services Division
James R. Benjamin, Jr., County Attorney/Office of Law