

IN THE MATTER OF
COLLEEN BAUGHER - APPELLANT
41 Left Wing Road
Middle River, MD 21220

RE: Citation Nos. E45945A --- Animal at Large
E45945B --- Dangerous Animal

AHB Case No. DD4430

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-18-022

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Animal Hearing Board of Baltimore County (“AHB”) in which the AHB upheld Citation E45945A (Animal At Large) and E45945B (Dangerous Animal). The AHB ordered that the animal at issue, “Xena”, a female Rottweiler, become the property of Baltimore County and be humanely euthanized. *No monetary penalties were imposed*, but Ms. Baugher was required to pay the daily boarding fees of \$15.00 per day with a two-month payment in advance. The AHB indicated that the boarding fees would be waived if Ms. Baugher did not appeal.¹

The initial hearing before the AHB occurred on January 2, 2018. The AHB affirmed the two citations and ordered Xena to be euthanized. That matter was appealed to this Board. On April 16, 2018, the parties jointly moved for a remand to the AHB so that the AHB could reconsider the order to euthanize given this Board’s opinion in the Matter of Catherine Grasso, Case number: CBA-18-014 (“Grasso 1”). Though the remand was limited to the question of the sanction to be imposed, it was agreed that the Appellant retained her right to challenge the substantive findings should the matter be re-appealed to this Board. On May 15, 2018, the AHB

¹ Initially, the AHB ordered that the daily boarding fees would be waived if Ms. Baugher did not appeal. This Board has previously ruled that conditioning civil monetary penalties on the waiver of appellate rights was improper. *See* in the Matter of Andrew Miller, CBA-18-002. Whether conditioning impoundment fees on such a waiver is not before us.

reconsidered the question of sanctions, and in an opinion dated May 31, 2018, the AHB again ordered that Xena be euthanized. On June 12, 2018, Ms. Baugher filed a notice of appeal.

The Board held its hearing, an appeal on the record, on August 8, 2018. Ms. Baugher was represented by Brockston W. Posner Smuch, Esquire. The County was represented by Jonny Akchin, Assistant County Attorney.

Factual Background

At the January 2, 2018, hearing, the evidence, as presented, was largely uncontested that Xena had escaped her yard, and then carried off and killed Lila, a Maltese canine owned by a neighbor, James Reynolds. There was an immaterial dispute as to whether Xena took Lila away from Lila's own yard or whether the dogs encountered each other in the street. There was testimony that after dropping the body of the victim dog, Xena made aggressive moves toward children getting on a school bus. It was reported that Xena bit at the door and tires of the bus after the children were safely inside. The evidence also established that there were four previous citations involving Xena.²

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:

² While there is no doubt that Xena has a troubling history, the Animal Control officer's testimony at the May 15 hearing on these prior matters was rather unsatisfying. He seemed to be suggesting that, essentially, Animal Control had been gulled into lax treatment on a citation that had been issued in April 2017, involving Xena jumping out of the Baughers' automobile and attacking another dog. The citation charged License Required and Nuisance Animal. He stated that the underlying conduct was actually menacing but because Ms. Baugher simply paid the fine as directed by Animal Control, no factual findings were ever made. The Officer implied that Ms. Baugher had somehow taken unfair advantage of Animal Control by following Animal Control's rules. That an owner has followed Animal Control's rules can never be acceptable evidence to demonstrate that the dog and/or owner are bad. If an officer is frustrated with Animal Control's procedures, then he should be directed to the appropriate individuals inside Animal Control.

- (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). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the reviewing court has no power to reject that conclusion. *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, 98 Md. App. 695, 698 (1994). Judicial review of an agency decision does not involve an independent decision on the evidence. Instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569 577 (1994).

When considering whether an agency erred as a matter of law, the reviewing court decides the correctness of the agency's conclusions and may substitute the court's judgment for that of the agency. *People's Counsel for Baltimore Cnty. v. Prosser Co.*, 119 Md. App. 150, 168 (1998). The "substantial evidence test" also applies when there is a mixed question of law and fact. In other words, the agency has correctly stated the law and the fact finding is supported by the record, but the question is whether the agency has applied the law to the facts correctly. *Cowles v. Montgomery*

Cnty., 123 Md. App. 426, 433 (1998). Therefore, the order of an administrative agency must be upheld on review if it is not premised upon an error of law and if the agency's conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOCC, Inc.* 103 Md. App. 694, 711 (1995).

The Basis of the Appeal

The Appellant filed a Memorandum In Support Of Appeal which specifies the bases for this appeal. The first three points relate to the original hearing on January 2. The final two points concern the AHB decision that Xena be euthanized.

As to its first item, the Appellant attempted to introduce video evidence that showed the Baugher house at the time of the incident. The AHB refused to admit the evidence because the AHB rules, provided to Ms. Baugher before the hearing, precluded video evidence. Certainly, the Appellant had notice that the AHB would most likely refuse to admit video evidence. The fact that the AHB rules do not permit video evidence is relevant though not necessarily dispositive. It is possible, theoretically, that the rule in question violates due process, for example, or is otherwise improper. We can, however, see no defect in the application of the rule in this case. Moreover, it was clear from oral argument that the Appellant provided oral testimony as to what the video depicted. Consequently, the video was at best duplicative. In addition, the testimony -- and hence the video -- were not material since the video did not depict the incident itself. Accordingly, the refusal to admit the video was not an error of law, much less an error requiring reversal.

The Appellant also complains that the AHB failed to credit the testimony of one of Appellant's witnesses, Brian Reitz, who testified that Xena and Lila were face-to-face on the sidewalk at the time of Xena's attack. James Reynolds, Lila's owner, had testified that Xena entered his property and snatched Lila. Mr. Reitz's testimony was arguably impeaching of Mr.

Reynolds' testimony that the initial attack took place in his own yard. The AHB is the finder of fact. As such, its factual findings, including the weight to confer upon any given witness, is unreviewable if supported by substantial evidence. The AHB was free to credit Lila's owner and not accept the (merely) impeaching testimony. Given the record, we cannot say that the AHB's finding in that regard was without substantial evidence. Further, even if the encounter had occurred on the street, it still would not have given Xena the right to kill the other dog. There is no credible evidence that Lila attacked Xena.

Finally, as to the January 2 hearing, Appellant complains, essentially, that the demeanor of the AHB was so hostile that the impartiality of the AHB can be reasonably questioned. In her Memorandum In Support of Appeal, she bases this argument on the AHB refusing to accept the video evidence, examining and asking questions regarding some of Appellant's counsel's possible exhibits before those exhibits had been offered, and making a number of snide remarks about Counsel and Mr. Baugher, the Appellant's husband. The question of the video can hardly depict bias because the AHB simply and properly followed its own advertised rule. Further, the record is rather incomplete regarding the exhibits in question. Improperly examining Appellant's evidence may indicate sloppy procedures, but it is not evidence of hostility.

Appellant's frustration with the AHB is understandable, however, given the demeanor of one AHB member. The recorded hearings show that the one member was, arguably, curt, abrupt and, at times, snide. This is unfortunate. It is also unfortunate that many judges, state and federal, elected and appointed, are on occasion, guilty of the same offenses. But being crusty, or even overly crusty, is nowhere near enough by which a tribunal can be found to be fundamentally unfair. Further, in this instance, the alleged offender is simply one member of a board comprised of seven individuals. Since there was no hostility by any other member of the AHB, there is no reason to

believe, or even to suggest, that the other AHB members were not perfectly fair, and it appears as though the decision regarding Xena was unanimous. We are not saying that the one Board member's demeanor was a fine example of judicial deportment. We are saying, however, that it was nowhere near the point at which one could say that it infected the fairness of the entire hearing process. We hope greater civility will govern the AHB in the future.

Finally, as to the remedy of euthanasia, the Appellant complains that the AHB did not consider a lesser remedy and reached its decision as to euthanasia "solely because it did not believe that Ms. Baugher's acceptance of Xena's behavior was sincere." (Memorandum at p.3.) We cannot accept this conclusion. First, the question of Ms. Baugher's sincerity and willingness to implement proper remedial measures is a factual finding that this Board of Appeals cannot disturb so long as there is credible evidence in the record to support that finding. This Board of Appeals does not have to agree with the AHB assessment so long as that assessment is supported by the record. The fact that there are four prior incidents with Xena is more than enough of a basis to find that the Baughers are not owners who sufficiently appreciate the danger that Xena poses. Xena's behavior in this incident was extreme. While acknowledging the Baughers' substantial efforts to create a foolproof area in which to house Xena, the AHB found that "[t]he risk of escape and mayhem is too high" and that the County enforcing the creation and use of a confinement area would be too costly to the County and not within its jurisdiction. This assessment was based not only on the AHB's wariness about Ms. Baugher's sincerity, but also on the nature of the attack, and importantly, the prior incidents, one of which was barely eight months before this incident. Thus, there is substantial evidence in the record to support the AHB's finding that euthanizing Xena is appropriate.

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Given the standard of review, there was substantial evidence to support the AHB's factual findings, and there was no error of law. Accordingly, this Board of Appeals unanimously affirms the AHB's decision as to the two citations and affirms the decision that Xena be humanely euthanized.

ORDER

THEREFORE, IT IS THIS 5th day of October, 2018, by the Board of Appeals of Baltimore County,

ORDERED that the decisions regarding Citations E45945A (Animal At Large) and E45945B (Dangerous Animal) are **AFFIRMED**. No civil monetary penalty was imposed, and that decision is also **AFFIRMED**; and

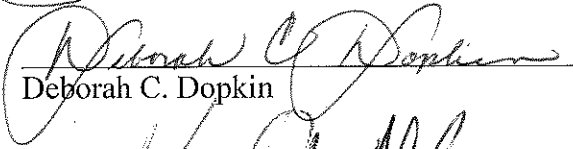
It is further **ORDERED** that the decision of the Animal Hearing Board that Xena become the property of Baltimore County and be humanely euthanized is **AFFIRMED**;

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


**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Joseph L. Evans, Panel Chairman



Deborah C. Dopkin



William A. McComas



Board of Appeals of Baltimore County

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October 5, 2018

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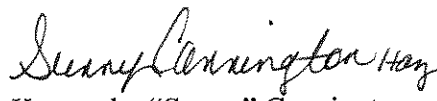
RE: In the Matter of: *Colleen Baugher*
Case No.: CBA-18-022

Dear Counsel:

Enclosed please find a copy of the 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
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Colleen Baugher
James Reynolds
Bernard J. Smith, Chairman/AHB
April Naill/Animal Services Division
Michael E. Field, County Attorney/Office of Law