

**BEFORE THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU**

JOYCE AND JODY VICK,

Appellants,

vs.

ANIMAL CONTROL BOARD,

Appellee.

Appeal of:  
Notice of Animal Control Board  
Decision, January 17, 2014

**DECISION ON APPEAL**

Appellants Joyce and Jody Vick filed an appeal of the Animal Control Board's decision, dated January 17, 2014, designating their dog Sushi as a "dangerous animal" under CBJ 08.30.010.

After the record was prepared, the Vicks filed a motion to supplement the record with a number of documents, and a motion objecting to a portion of the record prepared by the Animal Control Board. The Vick's objections to the record were overruled by order dated May 16, 2014. Their motion to supplement the record was denied in part and granted in part by order dated May 16, 2014.

The Vicks filed an appellants' brief on June 9, 2014, arguing two issues on appeal. First, they argued the Board lacked sufficient evidence to find Sushi was a "dangerous dog" under CBJ code. Second, they argued their "due process was violated by the long delay in scheduling the hearing." As to the second issue, the Vicks provided no evidence or argument in support of their claim.

The Animal Control Board filed its appellee's brief on June 20, 2014. After outlining the facts heard by it at the January 15, 2014 hearing, the Board argued that the Vicks had failed to meet their burden to show the Board's decision was not supported by substantial evidence in

light of the whole record (and any supplementation). CBJ 01.50.070(a)(1). As to the Vicks' due process claim, the Board argued the issue had been waived due to the Vicks' failure to brief the issue.

The Vicks did not file a reply brief.

The Assembly heard oral arguments on July 21, 2014. Both parties were represented by counsel. The Assembly then deliberated in closed session. When deliberations concluded, the Assembly directed the Municipal Attorney to prepare a draft decision. As required by CBJ 01.50.140, the draft decision was circulated to the parties and an opportunity to comment on the draft was provided.

For the reasons stated below, the appeal is denied.

I. The Animal Control Board's Decision was Supported by Substantial Evidence in Light of the Whole Record

The Vicks offered mainly one fact at oral argument in support of their claim that the Board's decision lacked sufficient evidence: that Mr. Vick witnessed Sophie (the dead dog) "biting" Sushi on the nose prior to the attack.<sup>1</sup>

The Vicks presented a slightly different argument in their appellants' brief, stating "A review of the record confirms that no one saw the onset of the incident. There is no evidence as to whether Sushi's biting of Sophie was provoked or unprovoked." And, that Mr. Vick only found "a cut on Sush's [sic] nose consistent with having been nipped or bit" after the attack. The

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1 The Board found Sushi to be a "dangerous animal" under CBJ 08.30.010(b)(2). That provision states that "a dangerous domestic animal is any domestic animal that has, while off the premises of its keeper, killed a domestic animal without provocation." "Provocation" is defined as "the teasing, tormenting, abusing, or assault of a domestic animal or livestock inciting the animal to bite or attack." CBJ 08.05.010. There is no dispute that the Vicks' dog, Sushi, killed the neighbor's dog, Sophie. Nor was there any dispute that Sushi was off premises when the incident occurred.

Vicks also argued the Board should not have relied upon Officer Musselwhite’s testimony about “predatory behavior,” especially given that Sushi had more recently successfully passed the American Kennel Club’s “Good Citizen” test.

The Animal Control Board argued it had heard sufficient evidence at the hearing to find that Sushi’s attack was unprovoked. The Board specifically referred to the following facts:

- The incident happened very quickly while the two owners (Mr. Vick and Sophie’s owner, Ms. Harvey) were talking;
- Sushi grabbed Sophie by the neck and shook her;
- After Sushi was pulled off of Sophie, Sushi had to be restrained because he tried to attack Sophie again;
- Sophie died of the injuries she sustained as a result of the incident;
- Testimony that Sophie was not a ‘nipper’ or ‘biter’ from three third-party witnesses;
- Sushi had a history of aggression, while Sophie did not;
- The two dogs had interacted previously without incident;
- The relative size of the two animals;
- When the incident occurred, Sophie was on leash and alone with her owner, while Sushi was walking off-leash with three other dogs and Mr. Vick; and
- Officer Musselwhite’s testimony about “pack mentality” and “predatory drive.”

The appeal code requires the Assembly to uphold the decision being appealed if “the appellant establishes that the decision is not supported by substantial evidence in light of the

whole record, as supplemented at the hearing.” CBJ 01.50.070. “Substantial evidence” is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” CBJ 01.50.010.

We find the Vicks failed to meet their burden. The Vicks’ arguments go to the weight given their evidence by the Board. It is not the Assembly’s role to reweigh the evidence. The Assembly must answer whether the Board had enough evidence as a reasonable mind might accept as adequate to support its decision. We find that it did.

II. The Vicks Waived Their Due Process Claims

The entirety of the Vicks’ due process claim consists of the single un-argued statement in their brief that “due process was violated by the long delay in scheduling the hearing.” The Vicks offered no argument or explanation in support of this statement in their briefing. Their attorney did not mention the issue at all at the hearing on July 21, 2014.

CBJ 01.50.070 provides that the Assembly may set aside a decision on appeal if “The appeal agency or the hearing officer failed to follow its own procedures or otherwise denied procedural due process to one or more of the parties.” The code further provides that “The burden of proof is on the appellant.” CBJ 01.50.070(b).

We find the Vicks failed to meet their burden to prove that the Animal Control Board denied the Vicks procedural due process.

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Because we find the Vicks failed to meet their burden to establish either that the Animal Control Board lacked sufficient evidence to support its decision or that they were denied procedural due process, the Vicks' appeal is denied.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

By: \_\_\_\_\_

DRAFT