

**ANIMAL CONTROL BOARD  
COUNTY OF MAUI**

Cameron Center  
Room 28-2A  
95 Mahalani Street  
Wailuku, Maui, Hawaii

September 3, 2015  
9:00 a.m.

**MINUTES**

**I. CALL TO ORDER**

The meeting was called to order at 9:05 a.m. by Chair Vargas

**II. ATTENDANCE/QUORUM**

A. ATTENDANCE

Members Present:	Anthony Vargas, Jr. Doreen Forsberg Rabbi Larry Winer
Members Excused:	Larry Shapiro
Staff Present:	Kimberly Ferguson, DHHC Jerrie Sheppard, Deputy Corporation Counsel
Maui Humane Society:	Jerleen Bryant, CEO Mark Wilson, Director of Humane Enforcement
Others Present:	Joel Katz Dania Katz

**III. PUBLIC TESTIMONY**

Mr. Joel Katz was present along with his wife Mrs. Dania Katz. Mr. Katz was reminded by Chair Vargas that he would be providing public testimony at the meeting. Mr. Katz stated he was present to follow up and that his understanding was the Animal Control Board was ready to support his appeal, was in agreement with his point of view, and that the board felt that they needed to give the Maui Humane Society (MHS) a second chance to appear. Mr. Katz then stated he wanted to present more evidence to support what he believes is inconsistency and improper enforcement of the law.

Chair Vargas asked Mr. Katz to standby throughout the meeting as a resource should the board need more information from him. Chair Vargas stated that the board feels

that they received enough information from Mr. Katz but should they need more information, the board would ask.

#### **IV. UNFINISHED BUSINESS**

##### **A. Joel Katz Objecting to Maui Humane Society's non-enforcement of dangerous dog designation**

The Maui Humane Society was asked by Chair Vargas why they were not present at the last meeting. Jerleen Bryant, MHS CEO, apologized and stated that they were not present due to miscommunication. She explained that MHS had reached out to request a meeting with the Animal Control Board regarding their process prior to the Katz incident coming into play. Ms. Bryan stated that MHS had met with DHHC Deputy Director Jan Shishido regarding the request. When communicating with DHHC and being notified that the item they requested to discuss was not on the agenda, MHS opted to wait and not attend, not realizing that the meeting was going to involve the Katz case and that MHS's presence was needed.

Mark Wilson, Director of Humane Enforcement, stated that when he originally asked to be on the agenda it was to discuss a different section that he enforced. Mr. Wilson stated Kim advised him the new item wasn't on the agenda and couldn't be discussed per the Sunshine Law. He then asked if it could be on the next agenda but it wasn't. Mr. Wilson stated the matter didn't have anything to do with the Katz's case and MHS did discuss how they determined what they did with Deputy Director Shishido.

Ms. Bryant then said the bottom line is that MHS apologizes, there was some miscommunication which occurred and they take responsibility for that. She stated it wasn't because they blatantly chose not to show up.

Chair Vargas asked if ACO Beverly Green would be attending the meeting. Mr. Wilson responded she would not. When asked why not, Mr. Wilson stated the meeting was outside of her work hours and he was familiar with the case. Mr. Wilson was asked if he was the responding officer to which he responded he was not, but he did do most of the interviews. Mr. Wilson was then asked if he conducted the interviews at the site and he responded that he interviewed over the phone and the Hall's came to the office.

Chair Vargas asked MHS to tell the board what happened in the case and why MHS did not deem the dogs dangerous.

Mark Wilson voiced his concern that the meeting was a public forum and being MHS was in the middle of prosecuting the Halls and due to the fact that the information would be available to the defense attorney, he did not want to jeopardize the case by going over the particulars.

Deputy Corporation Counsel Jerrie Sheppard reported the case had already gone through prosecution and the defense plead no contest and a restitution hearing was pending. MHS stated they didn't know that. Deputy Corporation Counsel Sheppard stated she had just received the information from the prosecutor's office that morning and that the hearing should have no impact on the case.

Chair Vargas asked MHS to proceed. Director of Enforcement Mark Wilson stated Mr. Hall was transporting his dogs in the back of his truck and went home. According to a statement from the witnesses, he locked them inside the house. Mr. Wilson stated that Mrs. Katz said her dog was tethered outside in their front yard. Mr. Wilson then stated at the time the Halls were having a garage sale outside and the dogs were locked inside the house and the house was for sale. According to Mr. Hall's statement and a witness who lives there, someone opened the door to their house and the dogs escaped, ran down the street, and attacked Mr. Katz's dog in the front yard. Mr. Wilson stated based on the criteria that MHS was using for deeming dogs, the law allows discretion, it says may so it's not absolute. MHS looked at the totality of the animal's aggressiveness and prior acts and based on the current criteria, the dogs did not fit the criteria to deem them dangerous with this particular act.

Mr. Wilson commented that everyone knows how pack dogs act differently than single dogs. He also stated that the dogs at the time were not aggressive to people and when the dogs were brought to the shelter, they were not aggressive to people or himself. Based on the criteria MHS is currently using, MHS did not feel that the dogs should be deemed dangerous.

Chair Vargas asked Mr. Wilson if he was referring to the check sheet and if it was approved by the board or the County. Mr. Wilson responded that it was a standardized form used throughout the animal control industry. Mr. Wilson stated he had been to an Animal Control Academy on the mainland. Chair Vargas asked if the form was used by any other entity in Hawaii or in Maui County. Mr. Wilson replied that MHS is the only entity on Maui tasked with enforcement. Ms. Bryant also stated the form is an inter-agency guideline for their use.

Chair Vargas commented that the Board should be consulted when MHS changes its procedure. Animal Control Board staff member Kim Ferguson informed the board that she had received a copy of the new form from Mr. Wilson back in May, however there were no meetings since then to inform the board of the change.

Mr. Wilson said that he came from an organization where standardization is a way to avoid being sued. He stated if you do it the same way all the time and it becomes an industry standard that's accepted throughout the industry, which it is, that's the proper way of doing it. He then stated that prior to having a standardized form for doing this, it was subjective. Each officer determined whether or not they were going to do it based on how they felt, it was really an emotional, subjective event.

Mr. Wilson reported that he went through 173 dog bite cases over the last year and passed it through County Council and Jerleen. Based on not using the form, MHS is barely deeming 10% of the dogs. Mr. Wilson then stated that if the form was used during the last year, MHS would have probably deemed 40% of the dogs, including one dog which should not have been deemed based on the form. Mr. Wilson then stated that the form and the criteria MHS is using is a valid way of doing it otherwise there is no way of determining how to do it. Mr. Wilson stated the law says MHS "may" deem a dog, it doesn't say "shall", and they know shall is a wrong way to do it because any bite, for any reason, will get a dog deemed which is not fair to the dog. He also stated all that deeming a dog really does is restrict the dog's movement.

Mr. Wilson reported out of at least 11 cases where MHS was going to deem a dog, the owner cited that because of the requirements, they turned the dogs in to be destroyed. Mr. Wilson concluded by saying that's how MHS got where they are.

Member Winer commented that it was his understanding that if a dog bites an individual, human being or another animal, whether a pet or a rabbit walking through the back yard, that in itself is cause to deem the dog dangerous. Mr. Wilson replied that in itself allows MHS to deem it dangerous if they feel that the dog should be dangerous, and the law says "may" not "shall". He explained the designation is based on the form and also the dog's history on whether or not the dog is aggressive. Mr. Wilson then stated there is no law that says you can't own an aggressive or mean dog, as long as you keep it restrained. Member Winer replied from what he understood, the dogs were not restricted when in the back of the vehicle. Mr. Wilson clarified that the dogs did not come from the vehicle. When asked by Chair Vargas if that was hearsay, Mr. Wilson responded he couldn't prove it so he had to go with what he knew.

Member Forsberg asked Mr. Wilson if he went over the form with ACO Green and he responded that he did. Member Forsberg asked if only one dog was reviewed as the board saw only one form when there were four dogs involved. Mr. Wilson responded they did all four dogs and MHS thought one dog was the aggressor. Member Forsberg then asked Mr. Wilson if he saw the items which were checked off on the form.

Chair Vargas asked how MHS could say which dog was the aggressor if there were no actual witnesses at the site except for Mr. Katz. Mr. Wilson replied in addition to the Katz's witness, the owner was also present and informed MHS that they witnessed Tank as the aggressor. Deputy Corporation Counsel Sheppard asked if the dogs were seized and Mr. Wilson responded they were not. She then asked how the dogs were in MHS's custody and he stated they were not and clarified his earlier statement regarding the owner's statement about Tank being the aggressor.

Member Forsberg commented she was having a hard time understanding how the determination was made when looking over the form. She stated it seemed there were more than enough points checked on the form to deem the dog as dangerous. She also said that she couldn't understand how the facts that Mr. Katz's dog died and Mr. Katz got bitten weren't taken into consideration. Chair Vargas commented the dog was mutilated and asked if MHS saw the photos. Chair Vargas also commented that it took more than one dog to rip the dog apart as one dog could not have inflicted that amount of damage on its own.

Ms. Bryant stated she was not the officer on this case and that Mr. Wilson is the expert. Chair Vargas again asked where the officer was and said he felt that she should have been present as the board wants to hear the facts from the actual officer and wants to get to the bottom of this. Ms. Bryant replied she understood and apologized but stated that Mr. Wilson was very well versed. Ms. Bryant stated that she does not want anyone to think MHS implemented the form to make the process more lenient, in fact it is the opposite. She also said that because their officers are human beings, they could have a tendency to let emotions come into play. The MHS's intent for the form was to take emotions out of the process.

Ms. Bryant acknowledged the situation was terrible and it was a very tragic incident. She also stated it's not typical of a dog attack...(part of sentence was inaudible)...so in and of itself it's not a great representation of the process that MHS recommends. Ms. Bryant reported because of this situation, MHS is making improvements to their standardized form and should be completed in the next couple of weeks. Ms. Bryant reported again when MHS looked at the 173 dog bite cases that were prior to implementing the form, MHS would have deemed 9 cases as dangerous dogs. Ms. Bryant then stated she wanted to make it very clear that MHS is not trying to make deeming of dangerous dogs a more lenient process.

Member Forsberg thanked Ms. Bryant for stating that but unfortunately this was the fifth case that got stuck in the lingo that should have never happened. Ms. Bryant said she understood and was happy to go through the form point by point, however she wanted to clarify one more thing which was brought up as far as human aggression. Ms. Bryant stated the incident involving Mr. Katz does not qualify as the dogs being human aggressive. Member Forsberg asked why the attack didn't qualify as grounds for MHS to take the dogs away. Ms. Bryant replied it doesn't and gave the following example: If you have two dogs and you break up a dog fight, they're your dogs, they're not trying to bite you, your hands are in the way. Member Forsberg asked why not if the dogs were in your yard attacking your dog? Ms. Bryant stated that in the Animal Welfare Industry, it does not qualify as the animals being human aggressive and that's why they were brought to the shelter and evaluated by a stranger to see if the animals were human aggressive and they were not in any way. She said unfortunately Mr. Katz got bitten during the dog fight but that does not qualify as the dogs being human aggressive. She then stated that the dogs would have to bite Mr. Katz on their own accord, not when they're attacking a dog.

Mr. Katz questioned why it was being called a dog fight. Chair Vargas asked Mr. Katz to refrain from speaking. Ms. Bryant clarified it was a dog attack, but meant that even in a dog fight, there's a very clear distinction between an animal biting a human unintentionally while the animal is attacking a dog versus an animal attacking a human. Member Forsberg commented that the dog was attacking their child so to speak. Ms. Bryant said she understood and was not disputing that at all but is saying in the animal welfare industry that does not qualify as dog being human aggressive. Ms. Bryant stated the dog's intention was not to bite the human, as they probably didn't know they were attacking a human because they were attacking the dog and that's why it doesn't qualify as biting a human.

Mr. Wilson stated there was no dispute that the four dogs attacked Mr. Katz's dog and said in the form where it says severity of injury to humans....Chair Vargas interjected and asked which form, as the board only saw one form. Discussion on the form ensued and it was clarified that the form which the board received was provided by Mr. Katz at the last meeting. Ms. Bryant stated there was one form for each dog and the form provided by Mr. Katz was shared as a reference during MHS's meeting with the Katz's. Mr. Wilson stated the form the board received was not the form included in MHS's report, it was a form used at their meeting in which the Katz's voiced their concerns about items not being checked. Mr. Wilson explained he went over the form with ACO Green himself. Chair Vargas asked if all four forms were included in the packet provided by MHS. Mr. Wilson responded the forms were strictly an internal form and that it is not included in the report when it goes forth. He explained if the dogs would have been deemed, there would have been another section stating the current criteria used to deem the dogs. Mr. Wilson stated if you go

through the form as the attack occurred, the dog does not meet the criteria of the form, although he knows Mr. Katz disagrees. He explained that even when they had a meeting with Mr. Katz and went with injury treated at home, it still did not get the dog over the limit.

Member Winer asked if Mr. Wilson was saying that Mr. Katz was not trying to protect his dog, a family pet. Mr. Wilson responded they were not saying that at all. Ms. Bryant commented that she would have done the same thing. Mr. Wilson then explained what he was saying was the form goes to the attack of the dog to the dog. Mr. Wilson reiterated that Mr. Katz was not attacked by the dog, he did get bit interjecting himself into the attack and MHS understood that, that's what people do.

Chair Vargas responded maybe or maybe not and that Mr. Katz could have been comforting his dog and the dog came back and bit Mr. Katz. Mr. Wilson replied we know that's not true and that he was bit trying to break up the fight. Chair Vargas questioned why the dogs were not dangerous today. Mr. Wilson replied that based on the criteria, without emotions, they were not. Mr. Wilson reported that there was no history of those dogs ever doing anything. Chair Vargas asked MHS to clarify that there were no calls whatsoever regarding those dogs in that neighborhood. Mr. Wilson replied there was one complaint from the next door neighbor who said the dogs were unleashed in the yard and that was it. Member Winer asked if that was taken into consideration and Mr. Wilson responded yes, that the form states leash law complaint and there is one point for that.

Mr. Wilson stated MHS took the complaint but didn't cite them for it because they couldn't prove it. Chair Vargas asked if the police reports contained prior complaints. Member Winer shared a story about a prior incident in which he was dispatched to a farm where a couple of pitbulls were attacking a horse and how the situation had been handled. Mr. Wilson responded that MHS can't even impound the dogs based on the law. Member Winer asked if that applied if the dogs were a threat to the population and if that wouldn't come into the picture. Mr. Wilson responded only if they're at large and that the law has one impound section which allows their officers to impound a dog that has not been deemed. If the dog has been deemed and violated conditions of the deeming, then they could impound, prior to that there's only one impound section on a dog being at large.

Deputy Corporation Counsel Sheppard asked MHS to clarify that during the pendency of an investigation on whether or not they are going to deem a dog dangerous, they would not impound a suspect dog. Mr. Wilson responded that was correct. Deputy Corporation Counsel Sheppard described a scenario of a dog owner having no protective things at their house, their dog has just viciously attacked a person or animal on the street, outside their yard and there's a complaint and MHS would undertake an investigation, this is not instantaneous. They've called to follow up and in the meantime the dogs can just do whatever they like and the owner can leave them however they are and MHS would not impound the dogs? Mr. Wilson responded that is not true and what she said was inaccurate. Mr. Wilson stated that you can lock the dogs in your house and be in compliance with dangerous dog conditions.

Deputy Corporation Counsel Sheppard repeated the scenario and asked MHS again if they would not impound the dog pending the determination. Ms. Bryant interjected and clarified that it's not what they would want to do, it's what they are able to do

based on the law. Ms. Bryant said it can be frustrating for MHS because they want to be able to impound an animal but they can't because the law won't allow it. The law only says they can impound if the animal is running at large or after the animal's been deemed dangerous and the owner is not compliant.

Chair Vargas commented "Then deem it dangerous". Member Forsberg cited and read Maui County Code, Section 6.04.046 out loud. Member Forsberg then said that MHS can deem a dog dangerous right there on the spot. Mr. Wilson replied correct, however they have to release the dog back to the owner if they can comply with the restrictions. Mr. Wilson stated that one of the restrictions is they are allowed to keep the dog in the house. Chair Vargas stated that screens and doors also need to be secured. Mr. Wilson stated they had a secure front door and all they need to do is close the windows and that complies. Member Forsberg referred to the scenario presented by Deputy Corporation Counsel Sheppard. Mr. Wilson stated if MHS got there on the spot and the people are there, they can impound the dog right then and there. Deputy Corporation Counsel Sheppard asked MHS if they were saying that if they wanted to take their time and investigate to be sure, they can't seize the dog and impound it as dangerous until they can prove otherwise. Mr. Wilson responded that for instance, if MHS got there and the dogs were on the property, they could take the dogs but could only have taken them if they were unlicensed. However, the owner could come down to the shelter, pay the fee and get them back. If they showed up and deemed them dangerous and filled the forms out right there, MHS can impound the dogs; but if the owner can secure them inside their house, they would have to give the dogs back. Member Forsberg commented that MHS could've removed the animal for the time being. Mr. Wilson replied the owner had already taken the dogs back to his house.

Mr. Wilson stated the law does not allow him to enter someone's property and take their dog. Deputy Corporation Counsel Sheppard stated it sounds like the question the board was asking is why on earth would somebody look at that mangled dog in somebody else's yard, know the dog that is responsible, and not consider the dog dangerous until further investigation.

Member Winer commented that was taking a real chance. Chair Vargas then stated the Board's main concern was the general public. He stated there were four potential threats and when looking at MHS, it seems like they can't do anything....BS. Chair Vargas said that MHS can deem the dogs dangerous and get the dogs and take care of the dogs until they figure out this case. Mr. Wilson responded stating they can deem the dogs but if the owner can keep them in his house.... Chair Vargas asked if the owner could comply with all of the restrictions as stated such as the insurance. Mr. Wilson responded that the insurance requirement is not immediate as the law gives them so many days. Deputy Corporation Counsel Sheppard asked why MHS can't impound the dogs until they get that done.

Mr. Wilson replied that he wanted to be sure he understood what was being asked. He asked the board if their interpretation was that when MHS deems the dogs dangerous, and they impound the dogs, that all of the restrictions are to be complied with. Deputy Corporation Counsel Sheppard responded yes. Mr. Wilson replied some of them are for six months. Deputy Corporation Counsel Sheppard responded that if they can comply with them immediately then it's not going to take six months. Mr. Wilson stated that the law gives them six months. Deputy Corporation Counsel Sheppard affirmed that she understood. She stated that the dogs would sit in

impound and the owner has six months to comply before MHS would take further action on the dogs. Deputy Corporation Counsel Sheppard then stated it would be an incentive for the owner to hurry and comply in order to avoid paying impound fees. Mr. Wilson replied that was not MHS's interpretation.

Deputy Corporation Counsel Sheppard reiterated the board's concern for public safety. Ms. Sheppard referred back to the scenario she described earlier about a dog being mangled in the street. She asked MHS if they were saying that the dogs in this case present no risk to public safety and are safe dogs because they are locked in the owner's house and were not aggressive when brought to the shelter. Ms. Bryant stated MHS would never say that as they can't predict any animal's behavior. Ms. Bryant said MHS can look at past history, if there's past reports to see if there's ever been violations prior. Chair Vargas commented that history doesn't play a role in the matter.

Member Winer commented that if the animals are not on leashes, that was contrary to Maui County law. Ms. Bryant responded that they were cited and that the owner received citations. Mr. Wilson stated if MHS catches people in the community violating leash laws and the dog does not have a license, then they are able to take the dog away from them right there on the spot. Ms. Bryant also stated the owner is cited at the same time.

Chair Vargas commented the matter is not a leash law case, but a public safety case. He stated dogs have been deemed dangerous for a lot less than this and this case was an oversight. Chair Vargas stated that they all needed to stop trying to figure out who did or didn't do what and proceed with what needs to be done.

Mr. Wilson responded as he recalls, they added the part in where it says "may" because they didn't want MHS deeming every single dog that bit somebody. Deputy Corporation Counsel Sheppard stated that she didn't think that's what the board was asking. She clarified that what the board was trying to say is this is a mechanism for MHS to act and take dogs that have caused some kind of vicious injury or attack into custody, impound them, in order to make the owner comply with all the public safety requirements under the dangerous dog law. She then stated once MHS has taken the dogs in and completed an investigation which determined there was no dangerousness for these dogs and that they could go back home and be unfenced and have a lovely life, then that's MHS's call and the liability issue becomes MHS's issue at that point.

Mr. Wilson responded the law does not allow for them to be unfenced when outside. Chair Vargas commented the law does not allow them to ride in the back of a truck without a leash on anyway. Mr. Wilson responded that it does and he has been told by the prosecutor's office that when the dogs are in the back of a truck they are restrained. MHS stated they want there to be a law that says animals must be restrained when in the back of a vehicle for the safety of the animal and the public.

Deputy Corporation Counsel Sheppard stated the board wanted to know if MHS was going to reconsider their determination on these dogs in light of everything and then asked if MHS got the complete Maui Police Department (MPD) report because it was not provided with the documents the board received. Mr. Wilson responded he didn't know if MHS ever received it. He said the one MHS received was just a couple



pages and brief. Mr. Wilson stated his understanding was that the Katz's had a friend with MPD who went back and did one and said MHS does not have it.

Deputy Corporation Counsel Sheppard asked MHS if they requested and obtained a copy from MPD, if they would reconsider their decision on the deeming or non-deeming of the four dogs. Ms. Bryant responded MHS would take a closer look at it. Deputy Corporation Counsel Sheppard then asked if MHS could obtain the report or if they needed someone to obtain it for them. Mr. Wilson responded MHS could obtain the report. The detailed police report number was provided to MHS along with the names of the police officers who completed the reports.

Deputy Corporation Counsel Sheppard then asked MHS if they would be willing to review that information and all the additional information that has been provided to the board and reconsider the decision on the four dogs. Ms. Bryant responded MHS is willing to review it. MHS was then asked if they would be willing to come and report back to the board at the next meeting. Ms. Bryant responded yes.

Chair Vargas advised MHS that the board meets on the first Thursday of each month and if there is a cancellation, Kim would send out an email. The next meeting is currently scheduled for October 1, 2015.

Chair Vargas asked MHS if the dogs were free as can be and are waiting to do more destruction. Mr. Wilson responded they are not and that the owner still needs to comply with county laws. Deputy Corporation Counsel Sheppard asked if there was any oversight by MHS, such as weekly rechecks. Chair Vargas then asked MHS if there has been any revisits since the incident. Mr. Wilson responded that he's been by there three times himself and he'd never seen the dogs outside at all, even on the day they had a garage sale.

Chair Vargas asked MHS if they had any concerns about the dogs. Ms. Bryant replied "Absolutely, MHS has concerns about every incident with every animal." Chair Vargas questioned the response as there was no follow up and was informed by Ms. Bryant there was none because the dogs were not deemed dangerous.

Deputy Corporation Counsel Sheppard stated again if there is no mechanism in place on those dogs and there is no requirement to make sure the dogs are safe for the public.

Member Forsberg commented that she has seen the dogs in question being transported in the back of the truck unrestrained. Ms. Bryant stated it makes MHS crazy that people have animals in the back of vehicles when they're not tethered. Member Forsberg responded that it was just the thought that she just heard a case on these four dogs and there they were, standing proud, unchained in the back of the truck. Deputy Corporation Counsel Sheppard asked if the dogs would need to be restrained and muzzled had they been deemed dangerous. Mr. Wilson responded yes. Deputy Corporation Counsel Sheppard stated that should be MHS's leverage over animals, to make the call and let the board review whether that was a good decision or not.

Chair Vargas commented that it didn't matter if the owner closed the windows of their home or not as it didn't insure the dogs were restrained in the house. He also commented that it's close to 100 degrees and questioned if an owner would actually

keep their windows closed. Chair Vargas commented that it really bugs him that the four dogs are out and nothing has been done. Chair Vargas continued and said he felt the MHS dropped the ball on this case and that he wanted answers and to get to the bottom of this.

Member Winer commented he is very leery about taking chances with any animal because no one knows what the animal is capable of doing. Mr. Winer then said they could see a ball up in the air and end up jumping on a kid. He stated he's always been very concerned with protecting the public at large and stated that's why they were there.

Member Forsberg asked if Officer Green would have taken the dogs immediately had it been a human life...a child or someone elderly. Mr. Wilson replied if it had been a human life, it wouldn't have been handled by MHS, it would have been handled by MPD. Mr. Wilson also stated that it wouldn't be an option for MHS, however MHS would have helped MPD if they asked. Member Forsberg then asked MHS if it wasn't a death and the dogs ran home and stayed there, would MHS leave the dogs there. Mr. Wilson replied that unfortunately, that's the way.... Ms. Bryant finished stating that's the way the law reads. Ms. Bryant stated if the animals were in the possession of the owner, and please do not misunderstand, this is not a MHS policy.

Deputy Corporation Counsel Sheppard pointed out that the board recently heard a case where that the dog attack had finished, the dog went home with the owner, the officer came out a day or so later, deemed the dog dangerous and took it into custody when the dog wasn't at large. Ms. Bryant asked Mr. Wilson if he was familiar with the case and he responded he was not.

Mr. Wilson stated that the law does not allow him to go into somebody's house and take their property, dogs are property just like your car, your refrigerator or anything else. He stated if you have your dog secured in your house, the law does not allow him to walk into your house and take your dog, it's a fourth amendment issue. Ms. Bryant commented even if they want to. Chair Vargas asked Mr. Wilson if that applied even if the dog had killed something and asked isn't the dog a fugitive. Mr. Wilson responded in order to do something once the dog's been secured in their house, you would need a warrant to get the dog.

Deputy Corporation Counsel Sheppard asked Mr. Wilson to confirm that MHS had the right if the dog was deemed dangerous. Mr. Wilson stated if MHS deemed the dog dangerous, they have the right to impound the dog, and your interpretation of this is, until everything is met. Mr. Wilson stated that has not been the interpretation when he came on board, that all dangerous dog criteria had to be met before the owner got their dog back.

Deputy Corporation Counsel Sheppard provided the name of the August 2, 2014 dangerous dog case that she was previously referred to and gave a brief synopsis of the case. Chair Vargas commented that he thinks the Katz case got to this point because of the form and the form doesn't say common sense on it. Chair Vargas asked MHS to take a look at the form and come back to the board. Ms. Bryant responded that MHS is reviewing the form.

Deputy Corporation Counsel Sheppard asked MHS if their review would be completed by the next meeting. Ms. Bryant and Mr. Wilson both responded yes. Mr.

Wilson referred back to the August 2014 case Deputy Corporation Counsel Sheppard mentioned. Ms. Bryant stated MHS would need to review that case. She also stated that MHS is happy to comply in anyway the law allows them to. Ms. Bryant informed the board that MHS was sued several years ago for unlawful impoundment and stated that MHS needs to be sure that their actions comply with the law.

Chair Vargas asked MHS to clarify that the owner agreed that Tank was the aggressor and if so, why wasn't Tank deemed. He continued by stating that is what he doesn't understand and then asked if the owner had some connection with MHS. Deputy Corporation Counsel Sheppard advised Chair Vargas that MHS would be reviewing the decision. Ms. Bryant said they would look over the case and stated that the owner has no connection with MHS at all.

Chair Vargas commented it was pretty obvious that this is a dangerous dog case and the board wants to know what happened. Member Winer commented that the owner of the dog indicated that the dog was dangerous. Mr. Wilson responded that the owner never said the dog was dangerous, he said it was the main aggressor. Chair Vargas commented if the dog was the aggressor then it did the damage. Mr. Wilson stated he understood what the board was saying, and that he'd be more than happy to listen if the board has a better way for MHS to determine without it being a mandatory deeming. He stated the form was provided back in May and Ms. Ferguson reminded the board and MHS that there was no meeting since then.

Ms. Bryant stated the form is necessary and that is why animal control agencies around the country use a standardized form. She stated that MHS did not make up the form, however based on this case, they see that there are some improvements which can be made and they are not denying that. Ms. Bryant stated MHS implemented the form to improve their process and not to make things more lenient. Ms. Bryant then stated that based on this case, and the unfortunate, tragic situation, MHS is in the process and final stages of improving and adjusting their form. Ms. Bryant asked the board not to misunderstand that they are there defending the Hall's dogs as they were not, but based on the process that MHS has in place at this time, the animals were not deemed dangerous; but based on the heinous circumstances around this tragic event, MHS looked at the form closer.

Deputy Corporation Counsel Sheppard summarized that MHS would reevaluate the current case in light of all the information that has been presented. The board was asked if they would consider providing MHS with all of the information presented to them regarding this matter. Members were in agreement.

Chair Vargas asked Mr. Katz to present his additional evidence to the board. Mr. Katz asked if he would have an opportunity to speak. Chair Vargas replied no. Deputy Corporation Counsel Sheppard asked Mr. Katz if he would be providing new information to which he responded yes. Chair Vargas asked Mr. Katz if he had new witnesses and he replied no. Mr. Katz then stated that he did present this already, it was a photograph of a video taken of the dogs in the back of a truck. Chair Vargas asked Mr. Katz to show it to MHS.

Mr. Katz asked to submit a brief email exchange he had with Ms. Bryant. Chair Vargas asked to see it first and accepted it for the record. Mr. Katz was asked to read the email dated August 27, 2015 marked as Exhibit 1 out loud to the board.

Chair Vargas asked if MHS sent anyone out after receiving the email. Ms. Bryant replied they did not. Ms. Bryant then stated that she did not take the email as a complaint, but as a sharing of information and a complaint would have gone to enforcement. Chair Vargas asked why MHS didn't send an officer out knowing that there was a case was going on. Member Forsberg interrupted and stated that she made a call to MHS regarding another dog and was told that they have other things going on and that MHS doesn't have the funding or staff to handle the matter. Ms. Bryant stated MHS wishes that wasn't the case, and stated that MHS handles between 90-100 calls a month and they have limited officers. Ms. Bryant also stated that like any other agency, there's what they want to do and what they are actually able to do. Chair Vargas asked if MHS needed more funding to which Ms. Bryant responded MHS submitted a request to add another officer in the county budget via an RFP but it was not approved. Ms. Bryant stated MHS is able to substantiate the request with data. Ms. Bryant also stated she wishes MHS had the ability to do home checks on every animal leaving the shelter, along with home checks multiple times a week on dangerous dogs who are not in compliance. She then stated it's what they wish they could do but unfortunately are unable to do.

Deputy Corporation Counsel Sheppard asked when reviewing if MHS would defer only to the officer that responded or if MHS has the ability to review that officer's decision and change it. Mr. Wilson replied that he has the ultimate authority to do whatever needs to be done. Ms. Bryant stated there was nothing in MHS's policy to prevent them from changing their decision.

Chair Vargas asked MHS to provide a timeframe for taking action. Mr. Wilson explained that if MHS decides the dogs should be deemed, they will not be impounded as long as the owner complies. Ms. Bryant stated they are not going there yet and will finalize the updates to their form and then complete the review.

Mr. Wilson responded to Mr. Katz's complaint stating that Maui County prosecutors require MHS to be able to identify which dogs are loose in what's called a doggie line-up. Deputy Corporation Counsel Sheppard asked MHS to advise the board of the mechanism a citizen should use to report it the correct way. Mr. Wilson responded they can call the enforcement department or email him. He also mentioned that pictures really help because probable cause is built already by the pictures. Conversation resumed on animals being untethered in the back of a truck and MHS's stand on the issue.

Deputy Corporation Counsel Sheppard summarized the case to date. She stated that this particular case turned on the discretion of the animal control officer who made a call not to deem one or more of these dogs dangerous. That limited what MHS can do as far as follow up checks, requirements for restraint, and all other conditions of the dangerous dog law. She then stated what the board has seen from Mr. Katz and all the additional information they have gathered is that they don't necessarily agree that was the right decision and MHS has agreed to review that decision. MHS decision will be reported back to the board at the next meeting.

Chair Vargas asked MHS to provide a report sooner than the next meeting. Ms. Bryant replied that MHS would need to finish updates to their standardized form and then MHS would review. Chair Vargas asked for the report to be provided within five days and Ms. Bryant stated she would not be able to within five days. Deputy Corporation Counsel Sheppard reminded the chair that MHS doesn't answer to the

board and they should be given the courtesy of a month. Ms, Bryant replied they would do their best to make it as quick as possible. Mr. Wilson asked to be put on the next agenda to discuss the impoundment section 6.04.050B of the Maui County Code. Chair agreed, item will be placed on the next agenda.

Mr. Katz asked for a chance to speak as he notified Kim that he would be present. Chair Vargas responded that the board has enough information as far as the dog attack and deeming. Mr. Katz responded that he objected to the direction the board was taking and asked if he could speak his mind. Chair Vargas responded saying that Mr. Katz was present at the meeting as a member of the general public and that the board has received enough information regarding the case from him and the MHS. Chair Vargas asked Mr. Katz to let MHS do their investigation and the matter would be followed up at the next meeting. Mr. Katz responded that he was really unhappy with the decision.

## V. NEW BUSINESS

### A. Approval of Minutes of the August 11, 2015 meeting

Motion to approve minutes entertained by Chair Vargas, moved by Member Forsberg, seconded by Member Winer. All members present were in favor of approving minutes.

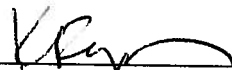
## VI. ADJOURNMENT

Motion to adjourn entertained by Chair Vargas, moved by Member Forsberg, seconded by Member Winer. Meeting adjourned at 10:14 a.m.

At the request of the board, meeting was reconvened at 10:15 a.m. The board allowed Mr. Katz to make a statement. Mr. Katz objected to the board's decision to give the case back to MHS for review. Mr. Katz stated that MHS's own confusion about the law and how to do their job are inconsistent. He stated he came prepared to show the minutes of the testimony before the Council in October, 2013, where ACO's with 20 years of experience were giving examples of dogs who were deemed dangerous. He then commented it was unbelievable that these dogs are not declared dangerous. Chair Vargas instructed Mr. Katz not to direct comments to anyone. Mr. Katz asked the board to use their authority and deem the dogs dangerous and be done with it; to give it back to MHS to review the case makes no sense because they did not have a method or system to carry out these decisions in any logical way.....admittedly by them. Ms. Bryant replied MHS did not admit that. Mr. Katz then stated the dogs are still loose in the street and the owner does not have control of them and that was his point.

Motion to adjourn the meeting entertained by Chair Vargas, moved by Member Forsberg, seconded by Member Winer. Meeting adjourned at 10:20 a.m.

Respectfully submitted:



\_\_\_\_\_  
Kimberly Ferguson  
Secretary to the Animal Control Board

On Aug 27, 2015, at 9:14 AM, Jerleen Bryant wrote:

Hi Joel,

Thank you for notifying me about this situation. I will be checking with my enforcement department to see whether any reports came in

About a problem this morning. As for the dogs being unrestrained in the back of his truck, there is unfortunately no law that says they must be tied.

We do our best to educate people on the importance of keeping dogs safely restrained while riding in the back of trucks but sadly that is not currently one of our animal laws.

Sincerely,

**Jerleen Bryant** | CEO

Maui Humane Society

808-877-3680 ext. 215

[www.MauiHumaneSociety.org](http://www.MauiHumaneSociety.org)

**From:** Joel Katz [REDACTED]

**Sent:** Thursday, August 27, 2015 8:28 AM

**To:** [jbryant@mauihumanesociety.org](mailto:jbryant@mauihumanesociety.org)

**Subject:** Loose dogs August 27, 2015

Aloha Jerleen, You are likely aware that I have appealed the Humane Society's handling of our dog being killed and my injuries from a four dog attack on our property.

There were awful sounds of dog fighting and barking in our neighborhood early this morning. At around 7 am I saw Dennis Hall capture two of his dogs that were loose and lead them by the collar into his truck that he left in the street. It was hauntingly reminiscent of the attack in our yard on June 14. I also have video and photographs of his dogs unleashed in his truck on another occasion.

I am hoping that you will work with me to have these four dogs classified as dangerous. This is an irresponsible person who does not have control of these deadly animals. Sincerely, Joel Katz

Joel Katz  
[REDACTED]

Sent from my iPad

EXHIBIT 1