

**ANIMAL CONTROL BOARD
COUNTY OF MAUI**

Cameron Center
Auditorium
95 Mahalani Street
Wailuku, Maui, Hawaii

November 5, 2015
9:00 a.m.

MINUTES

I. CALL TO ORDER

The meeting was called to order at 9:08 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	Mark Wilson
Others Present:	Joel Katz

III. PUBLIC TESTIMONY

A. Joel Katz

Mr. Katz stated he had requested a copy of the Humane Society's report but understood he was not able to obtain it until after the meeting. Deputy Corporation Counsel Sheppard asked Mr. Katz to state what agenda item he was providing testimony on. Mr. Katz responded he was testifying regarding the Dennis Hall Appeal.

Mr. Katz stated he was at the meeting to present his letter dated October 18, 2015 which is his objection to the conclusion of the Maui Humane Society's (MHS) report

that only one of the four dogs that attacked him and killed his dog was considered dangerous and that it was his understanding that there wasn't enough evidence to conclude that a dog attacked him.

Mr. Katz stated he didn't believe that MHS looked at the evidence completely because they didn't interview a key witness. Mr. Katz stated he had the witness's statement and a copy of an email with him and the statement clearly states the witness saw four dogs attacking him and his dog. Mr. Katz read parts of the statement and email which were entered into the record as Exhibit 1 and Exhibit 2, respectively.

Mr. Katz then stated he was present at the meeting where the Board sent the case back to MHS to do a complete investigation and they didn't do it. He commented that the evidence which was presented by everyone, including the dog owners, stated there were four dogs there. Mr. Katz then showed the Board photos of his dog and his hand after the attack. Mr. Katz commented he realized he was confused about the authority or power of the Board to handle appeals. He also stated the decision that three dogs were not dangerous was under the jurisdiction of the Board to reverse although he might be wrong about that. Mr. Katz encouraged the Board to look at the way the code is written and then commented it is very important that this Board has control to review these decisions.

Mr. Katz commented that it was clear the investigation was flawed and the logic behind the way MHS draws their conclusions defies common sense. Mr. Katz stated that he understood the dogs were "excused" because they were in a pack and because so they're somehow not responsible for the attack that occurred on his property. Mr. Katz then stated that was what he heard and it seemed so flawed to him because if the dogs live in a pack and travel together, it's the owner's responsibility.

Mr. Katz stated one of the reasons he was so persistent and kept coming back before the Board was because this issue really affects his ability to get restitution. He stated so far costs have amounted to thousands of dollars and will be more with his ongoing medical treatments for his injury and he felt morally it was wrong. Mr. Katz concluded by commenting that he feels as though the incident will slip through and cracks and no one cares.

Member Winer stated that the case speaks for itself based on the photos and Mr. Katz's written statement and obviously unless there was something in a different dimension, the case speaks for itself.

Mr. Katz replied that at the first meeting he was told by the Board that they all found it really offensive and they were going to do something about it and he wanted to see something done.

Chair Vargas responded the Board did something and that there was one dog identified throughout the whole process, so they did what they were asked to do. Chair Vargas stated the Board was not asked to do anything about the three dogs which were not properly identified. Chair Vargas asked Mr. Katz if he understood and Mr. Katz replied no. Chair Vargas stated that Tank was the only dog that was positively identified and there was no positive ID on the other three dogs. Chair Vargas asked "What three dogs"? Mr. Katz replied that Hall and Trento have four

dogs which were all involved in the attack. Chair Vargas replied that the Board doesn't know that. Mr. Katz replied stating that Hall admitted it and he heard it on the tape. Chair Vargas stated the Board requires identity be established, and they cannot reach a decision unless they establish identity of the dogs, and the only dog identified was Tank. Mr. Katz asked how that was done. Chair Vargas responded identity was established through the Board's meetings, paperwork and reports which were reviewed. Chair Vargas stated there were no other dogs which were positively identified and asked Mr. Katz if he understood where he was coming from. Mr. Katz acknowledged he did and stated again that was why he felt the report by MHS was flawed. Mr. Katz commented that obtaining a positive ID on the others dogs seemed so simple, as the owners of the dogs admitted they have the dogs and they were there, in addition to statements of two eye witnesses. Mr. Katz stated it is so simple to follow it through and he felt it was the responsibility of MHS to do so as he gave MHS the witnesses' names and they didn't do it. Mr. Katz stated he would like to see the Board hold MHS accountable to do their job.

Member Winer stated he felt there were things that were not done fairly early on, and things done that were ill-advised perhaps, but he "doesn't see any reason why the case would not fall under the category of.....I mean we know there were four dogs in the truck, one jumped out and the other three followed and they weren't tied up. So if the dogs weren't controlled by the owner, then the owner would have liability for whatever damages were done." He then remarked it seems to him that would be the right thing.

Member Winer stated he was very disappointed by the past actions of the Board and he is ready to resign from the Board and would resign if this matter is not resolved. Vice Chair Forsberg interjected stating that she wasn't protecting anyone, but wanted to clarify that all the statements submitted reflect that the dogs were in the truck. She stated that's where it is confusing because the dogs came from the house, not the truck. Member Winer acknowledged and stated the dogs were still unrestrained, not on a leash or lead, otherwise they wouldn't have been able to run to Mr. Katz's house to kill his dog and damage his ability to use his hand. Member Winer stated to him it was a simple case, as there is an owner who doesn't take responsibility and who ignores the County code and they shouldn't have a dog.

Vice Chair Forsberg reiterated that throughout the case there has been references to dogs, plural, however Tank was the only dog that was positively identified as causing the harm, pain and injury to Mr. Katz' dog, "CC". Member Winer asked if what Vice Chair Forsberg was saying was that there were no other dogs involved other than Tank? Vice Chair Forsberg replied that wasn't what she was saying, and explained that all accounts say there were other dogs but none were clearly identified except Tank. Member Winer stated there was a pack of dogs coming from one house and to him that's a dog pack. Vice Chair Forsberg responded that wasn't proven as the Board did not get specific names and descriptions or witnesses to come forward and identify the dogs.

Member Winer then asked Mr. Katz if he could identify the dogs if he saw them. Mr. Katz responded "The police report shows there were four citations so to dispute the fact there were four dogs?" Mr. Katz then commented the issue was that there was an improper investigation done by MHS. He then stated that he knows the owners Hall and Trento admitted the four dogs were there and that MHS didn't get a proper identification and didn't do a proper investigation.

Member Winer asked Officer Wilson, Maui Humane Society, if all four of the dogs were licensed by the County of Maui and had tags on them. Officer Wilson responded they did not to both questions posed but stated they got licensed the day after the attack. Chair Vargas commented that although Mr. Katz has a picture of the four dogs in the back of the truck, who was to say those four dogs did the crime jointly?

The conversation that followed was not audible as Chair Vargas, Member Winer and Mr. Katz were speaking at the same time. Member Winer responded that he thinks they should all four be deemed dangerous dogs. Deputy Corporation Counsel Sheppard pointed out that the Maui County Code, Section 6.04.095 explains what the Animal Control Board (ACB) does. She stated Mr. Katz's dispute is with MHS and that the Board is not the arbitrator between those two. She explained the job of the ACB is to review and hear dangerous dog designations made by MHS when appealed by the dangerous dog's owner. Deputy Corporation Counsel Sheppard advised the Board of the scope of the Board's authority and if the Board had any questions regarding their authority she'd be happy to review that. She then stated the Board cannot be the governing body of MHS, which is an independent organization contracted by the County of Maui. Deputy Corporation Counsel Sheppard reminded the Board that Mr. Katz disagreed with MHS's determination and the Board was there to review dangerous dog determinations and not how MHS operates.

Mr. Katz stated he disagreed. He stated he was going to leave and go back to the classes he kept missing if the Board was satisfied with the work of MHS.

Member Winer made reference to and read Appendix 1 of the Policy for Enforcement Officers for Determination of Dangerous Dog which was provided to the Board by MHS at the last meeting. Deputy Corporation Counsel Sheppard asked for clarification for the record to what Member Winer was referring, and asked if it was set forth in the Maui County Code, Section 6.04.046, because there was no Appendix to that.

Deputy Corporation Counsel Sheppard offered to explain the powers and responsibilities of the Board. She then proceeded to state the section Member Winer was referring to was 6.04.046 A.1 and it states that an Enforcement or Animal Control Officer "may" designate a dog as dangerous; it does not say "shall" so they have discretion. Deputy Corporation Counsel Sheppard then referred to the powers, duties and responsibilities of the Animal Control Board noted in Maui County Code, Section 6.04.095 C. She read item number one and then explained that the only designation the Board had at the present time to be reviewed was the designation of Tank, which was appealed by Tank's owner, Mr. Hall. Deputy Corporation Counsel Sheppard stated there were no other appeals filed, or orders deeming other dogs dangerous by MHS to be heard by the Board. She then continued to read from the powers, duties and responsibilities of the Animal Control Board as stated in Maui County Code, Sections 6.04.046 B and 6.04.050 B3 and explained how the code refers to dogs who were deemed dangerous.

Deputy Corporation Counsel Sheppard also stated there were rules for application of the Board's duties and responsibilities and it doesn't state anywhere in there that there is an option for the Board to supersede or replace or make decisions on behalf

of MHS. She then stated the decisions made by MHS were their decisions. Deputy Corporation Counsel Sheppard clarified that Mr. Katz's business was handled by the Board as an item of business and not an appeal of a dangerous dog determination. She stated when it first came to the Board's attention, there was no dangerous dog determination to be appealed; however, now there is a dangerous dog determination of Tank, and it has been appealed by Mr. Hall. Deputy Corporation Counsel Sheppard then advised the Board of their options for this item and that the Board's obligation is to hear dangerous dog appeals, not to arbitrate disputes between MHS's decisions and other people's dissatisfaction with those decisions.

Chair Vargas asked if everyone was clear on that. Member Winer told staffer Kim Ferguson that she would have his resignation letter next week. Mr. Katz stated he was not a lawyer but he thought it meant appeals from decisions concerning dogs and he thought the Board had the power to investigate the actions of MHS and again stated he was wasting his time.

Member Winer commented that as far as he was concerned all four of the dogs should be deemed dangerous. Member Winer commented in terms of the investigation, he served in law enforcement for over 18 years in South Florida and that he's never seen anything like this before in his life. Member Winer then remarked "It's Hawaii, what can I tell you, and this is another example of why I love Hawaii so much.....it's amateur hour here."

Deputy Corporation Counsel Sheppard suggested the Board move on to the approval of minutes and close public testimony. Chair Vargas motioned to close public testimony. Mr. Katz asked if he was able to address Mr. Wilson on the record and his request was denied by Chair Vargas.

IV. APPROVAL OF MINUTES

Chair Vargas entertained a motion to approve the minutes. Motion moved by Vice Chair Forsberg, seconded by Member Winer. All were in favor of approving minutes.

V. OLD BUSINESS

None

VI. NEW BUSINESS

A. DENNIS HALL requesting an appeal of the Dangerous Dog Designation placed on his dog "TANK" on October 2, 2015

Mr. Hall was not present at the meeting. Deputy Corporation Counsel Sheppard stepped outside and made three calls for Mr. Dennis Hall. She reported back to the Board that three calls were made for Mr. Dennis Hall with no response. Vice Chair Forsberg entertained a motion to uphold the dangerous dog designation on Tank as the appellant was not present. Motion moved by Chair Vargas, seconded by Member Winer. Motion carried.

B. LETTER FROM JOEL KATZ DATED OCTOBER 18, 2015

Chair Vargas noted for the record that this matter was addressed during public testimony and the submitted documents will be attached to the minutes.

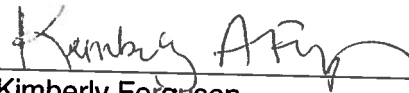
C. DISCUSSION ON SECTION 6.04.050 B3, MAUI COUNTY CODE, AT THE REQUEST OF MAUI HUMANE SOCIETY

ACO Wilson, MHS, stated his request had been addressed after a previous meeting. Deputy Corporation Counsel Sheppard asked Mr. Wilson to state the specific item discussed. Mr. Wilson stated his concern was related to how MHS is to notify an owner when they're non-compliant with MHS's orders, and how the Board would be notified of such. He stated MHS would put the responsibility on the owner to notify the Board if they desired to appeal any MHS order.

VII. ADJOURNMENT

Meeting adjourned at 9:40 a.m. by Chair Vargas.

Respectfully submitted:



Kimberly Ferguson
Secretary to the Animal Control Board

Asher Fergusson neighbor #1

On Sunday the 14th of June at around 7:30 am I saw a truck (light brown Dodge Ram with racks on the back, license plate: MSY 115) drive by on lower Hiahia with 4 dogs not leashed on the tray back. Then a couple of minutes later when I was turning to walk up Iwaena from Hiahia I saw that truck parked and all 4 dogs attacking either a cat or a dog at 1320 Hiahia St front yard. Two men (one was I believe the owner of the truck and dogs and I believe the other was the owner of 1320 Hiahia St) were trying pull the dogs off their prey but not having much success. There were horrible sounds of the animal crying out in pain or dying. Then I saw a man come out of 941 Iwaena St (who is also a very good witness to get info for this incident) with a brick and stick in hand. I promptly left the scene.

EXHIBIT 1

From: Asher Fergusson <[REDACTED]>
Subject: **Re: Dog attack**
Date: October 2, 2015 10:28:20 AM HST
To: Joel Katz <[REDACTED]>

Hi Joel,

I spoke to the detective Theresa but no one else.

Let me know if you need anything.

Cheers,

Asher.

On Thu, Oct 1, 2015 at 11:36 PM, Joel Katz <[REDACTED]>
wrote:

Hi Asher, it looks like the owners of the dogs that attacked my dog and I have pled guilty to a minor leash violation. You will probably not be called to testify or anything.

I am curious if you were ever interviewed by the Maui humane society.

I am trying to get the attack dogs classified as dangerous. This would require the owner to carry liability insurance and take various precautions like muzzles for the dogs in public.

Did you ever talk to the humane society about what you saw. Thanks for your help. Joel

Joel Katz
[REDACTED]
[REDACTED]

Sent from my iPad