

**ANIMAL CONTROL BOARD  
COUNTY OF MAUI**

SEPTEMBER 17, 2018  
9:00 A.M.

Dept. of Finance Conference Room  
(Located on the lobby level of the County Building)  
200 South High Street  
Wailuku, Hawaii 96793

**MINUTES**

The meeting was called to order at 9:03 a.m. by Chair Balcomb. The following members and staff were present:

Members Present: Dr. Christie Balcomb, Chair  
Aimee Anderson, Vice Chair  
Patrick Borge  
Ronald Larsen  
Dr. Paul McCurdy

Staff Present: Jerrie Sheppard, Deputy Corporation Counsel (DCC)  
Kimberly Ferguson, DHHC, Board support staff

Others Present: Mark Wilson, Maui Humane Society (MHS)  
Debbie Redd, MHS  
Matt Weeks, MHS  
Mark Simonds, Appellant

**I. PUBLIC TESTIMONY**

There was no one present for public testimony.

**II. APPROVAL OF MINUTES**

Chair Balcomb entertained a motion to approve the minutes of the July 19, 2018 meeting. Motion moved by Member Larsen, seconded by Vice Chair Anderson. All members present voted in favor approving the minutes of the July 19, 2018 meeting. Motion carried unanimously.

**III. RECESS FOR HEARING**

Prior to recessing for the hearings, Vice Chair Anderson requested to recuse herself from the appeal hearing. There were no objections by either party and she was excused by Chair Balcomb.

A motion to recess the board meeting was entertained by Chair Balcomb, moved by Member Larsen and seconded by Member Borge. All members were in favor of recessing the board meeting for the hearings on today's agenda. Meeting was recessed at 9:06 a.m.

**IV. HEARING**

(Record of hearing is attached)

**V. ANNOUNCEMENT OF NEXT MEETING DATE AND AGENDA ITEMS**

Ms. Ferguson reminded Chair Balcomb that the members were interested in proceeding with requesting a presentation by MHS on the services and programs offered. Chair Balcomb polled the members present for their availability to determine date of next meeting. Next meeting date was tentatively set for Monday, October 15, 2018 pending confirmation of MHS's availability to present.

**VI. ADJOURNMENT**

Chair Balcomb entertained a motion to adjourn the meeting. Motion moved by Member McCurdy, seconded by Member Borge. All members present were in favor of adjourning the meeting. Meeting was adjourned by Chair Balcomb at 11:16 a.m.

Respectfully submitted:



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Kimberly Ferguson  
Secretary to the Animal Control Board

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SEPTEMBER 17, 2018  
9:00 A.M.

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**MARK SIMONDS  
APPEAL HEARING**

Members Present: Dr. Christie Balcomb, Chair  
Patrick Borge  
Ronald Larsen  
Dr. Paul McCurdy

Members Excused: Aimee Anderson, Vice Chair

Staff Present: Jerrie Sheppard, Deputy Corporation Counsel  
Kimberly Ferguson, Board staff-DHHC

Parties Present: Mark Wilson, Maui Humane Society (MHS)  
Debbie Redd, MHS  
Matt Weeks, MHS  
Mark Simonds, Appellant

**Procedural summary:**

The hearing of the Appeal requested by Mark Simonds was convened on September 17, 2018 at 9:06 a.m., following the board's business meeting this date. Board members and staff, along with MHS personnel Mark Wilson, Director of Humane Enforcement, Debbie Redd, Humane Enforcement Supervisor, and Matt Weeks, Humane Enforcement Officer (HEO) were present. Appellant Mark Simonds was also present.

Chair Balcomb asked Deputy Corporation Counsel (DCC) Sheppard to outline the process. DCC Sheppard explained this is a formal hearing with two presenting parties; the Maui Humane Society has the burden of proof to show they had probable cause to designate the dog dangerous pursuant to the Maui County Code (MCC) sections listed in the Charges, and Appellant, Mark Simonds, will be asked if he admits or denies the charges. If the appellant wishes to admit the fact and present mitigating circumstances to alter the conditions of ownership that can be done, and the MHS would not be obligated to present a case. If the appellant denies the fact of the charge, there would be a full hearing. Mr. Simmonds would then have the right to present evidence to justify removal of the dangerous dog designations. DCC Sheppard explained the Board will hear evidence from both parties, each party may cross-examine witnesses presented by the opposing party. The Board would then deliberate in

private, and afterwards would announce its decision upon reconvening the Animal Control Board meeting.

The following is a summarized, not verbatim, record of the proceedings.

**Chair Balcomb:** Mr. Simonds, in a moment, you will be offered an opportunity to admit or deny the charges. If you admit to the charges, you will be afforded the opportunity to present evidence in mitigation, that is, evidence to explain the facts and circumstances of the incident, and evidence that may impact the penalty the Board imposes. Do you understand?

**Mr. Simonds:** Yes I do.

**Chair Balcomb:** We will now hear the complaint and accusation against Mark Simonds and his dog Kole.

[Chair Balcomb read the charges consisting of one count against the appellant's dog "Kole", copy attached]

**Chair Balcomb:** Mr. Simonds, do you have legal counsel?

**Mr. Simonds:** No, I'm representing myself.

**Chair Balcomb:** Do you understand the charges against you?

**Mr. Simonds:** I do.

**Chair Balcomb:** Do you admit or deny the allegations of the complaint or allegations as set forth in the counts?

**Mr. Simonds:** I'm going to deny but would like the opportunity to be allowed to offer mitigating circumstances.

**Chair Balcomb:** Okay.

**Chair Balcomb:** Are the Humane Society and the owner ready to proceed?

**Mr. Simonds:** Appellant's ready.

**Chair Balcomb:** Humane Society?

**Officer Redd:** Yes

**Chair Balcomb:** The hearing shall be taken in two phases. If the board finds the owner responsible and maintains the designation as a dangerous dog, the Humane Society and Owner will be given an opportunity to present arguments to the Board as to what the conditions of ownership and safekeeping should be. The Board will now invoke the exclusionary rule and ask any witnesses for their case to please wait outside until it is your turn to testify.

**DCC Sheppard:** Who are your witnesses Humane Society?

**Officer Redd:** We don't have any witnesses.

**DCC Sheppard:** Who's going to testify on your behalf? I see three of you're here, who's going to testify?

**Officer Redd:** Officer Weeks and myself, Officer Redd.

**DCC Sheppard:** Mr. Simonds, do you have any objections to both Humane Society officers being present during their presentation of evidence?

**Mr. Simmonds:** No objections, that's fine.

**Chair Balcomb:** Humane Society, will you please present your opening statement? Please introduce yourself for the record.

**Officer Weeks:** Officer Matt Weeks, Maui Humane Society. On April 19<sup>th</sup> at approximately 9:00 a.m., Mark Simonds' dog Kole, a four year old lab retriever mix, attacked and bit victim 1, William Peter Van Den Top on his left calf area, resulting in puncture wounds and requiring medical treatment, picture in Exhibit 7. Kole was unrestrained fronting Simonds' front gate to his property when victim 1 was bit and the bite occurred in the presence of the dog owner.

**Chair Balcomb:** Mr. Simonds, do you wish to present an opening statement now or reserve that until the presentation of your case?

**Mr. Simonds:** I'll present it now. First of all, I want to thank the board for the continuance and also thank you for your patience with my submission which was late due to Tropical Storm Olivia last week. My name is Mark R. Simonds Sr. I am the respondent or appellant in today's hearing. I've lived on Maui since 1971. I am a father to a three and a half year old son and I've been a dog owner for 45 of my 53 years. The term "dangerous dog" usually evokes an emotional response; usually anger. Anger directed towards the human handler or the owner who usually takes a defensive posture and I can assure you today I am not that type of owner. I stand in front of my dog, pardon me, I stand behind my dog, not in front of him. I'm not one of those people that my dog is always right; my dog, right or wrong, I take accountability where accountability is due. In fact, the evidence will show that I've complied largely with the provisions of 6.04.045, Maui County Code. So the question you may have on your minds is why am I here? Well, I will say this. Canines are largely predictable, people generally are not. Dogs behave instinctively, human beings are prone to dishonestly, to malice and to prejudice, those and other faults which are many times to our collective detriment. I'd like you to keep that in mind as you hear the evidence in this case. In this case, you'll hear a history of Kole being provoked on his own property by other dogs on Hohani Place and by the owners of one dog in particular who, over a period of almost two years, thought it was entertaining to allow their dog, Maliko, off leash, charge at our front gate and fence, and allow these animals to fence fight, thus conditioning them to be aggressive towards each other and failing to stop that behavior upon my reasonable request.

**DCC Sheppard:** This is opening statement. Do you have anything to sum it up?

**Mr. Simonds:** In this case you'll hear about what happened on April 19<sup>th</sup> of this year, how Maliko was allowed to approach my fence line, call our dog Kole out, so to speak, provoke him to escape and engage with Maliko, all allowed by a friend of Maliko's owners, Mr. Van Den Top. You will hear how Mr. Van Den Top, contrary to what he reported to the Maui Humane Society, yelled, swore, swung, kicked at and otherwise provoked Kole. You will hear how Mr. Van Den Top did not follow reasonable instruction to step away from the gate, remain calm, and allow me

to restrain Kole. Instead, he escalated the situation by yelling at, swearing at, kicking at, swinging at my dog Kole.

**Chair Balcomb:** Maui Humane Society, you shall conduct direct examination of your witnesses but I understand you do not have any witnesses so at least present your evidence. The appellant may cross-examine any witness.

**MHS Case:**

**Officer Redd:** Debbie Redd, Humane Enforcement Supervisor. I'm going to submit the evidence that we received on behalf of the victim.

**DCC Sheppard:** First of all, can we get your Exhibit on record? Your exhibit is your report and it consists of 45 pages is that correct?

**Officer Redd:** Yes.

**DCC Sheppard:** Okay some additional pages from what was previously sent to the respondent and to the members was handed out today. That's the official pages numbered pages 35-45. Does everybody have a complete package of Exhibit 1 from MHS?

**Member Larsen:** I do not. I just have 35-45.

**Ms. Ferguson:** The original was sent to out earlier via hard copy and emailed.

**DCC Sheppard:** Does everybody have it, pages 1-45, Exhibit 1? Okay.

**Member Larsen:** We're good.

**Mr. Simonds:** Before that is considered, for purposes of the record, I'd like to note some objections.

**DCC Sheppard:** Okay, they haven't really presented it yet.

**Mr. Simonds:** Okay, go ahead and present it and I'll make my objections.

**Officer Redd:** Okay, so I'd like to present Exhibit 1, the dangerous dog notice that was served by myself.

**DCC Sheppard:** No, just go ahead and present your case and at the end he can make objections.

**Officer Redd:** I'd like to also present Exhibit 2.

**DCC Sheppard:** There's no Exhibit 2. This is Exhibit 1 with pages 1 to 45.

**Officer Redd:** Well I have Exhibit 2 as our dangerous dog acknowledgement receipt.

**DCC Sheppard:** That's Page 2 of Exhibit 1.

**Mr. Simonds:** The whole report.

**DCC Sheppard:** The whole report is your Exhibit 1, and the pages are numbered, so if you want to refer to a particular page you can.

**Officer Redd:** Okay, well I'd like to present the Exhibit, pages 1-45.

**DCC Sheppard:** Exhibit 1, pages 1-45 is what you're presenting.

**Officer Redd:** That's our evidence, yes.

**DCC Sheppard:** What did you want to say about those?

**Officer Redd:** That they were submitted and I wanted to explain what they were but you're saying I can't.

**DCC Sheppard:** You can explain what they are but refer to them by page, not by exhibit number.

**Officer Redd:** Okay. Pages 1-3 are an email that was forwarded to Director Wilson on April 22<sup>nd</sup> by the current house owner.

**DCC Sheppard:** Okay I don't see that. Page 1 is your dangerous dog notice, page 2 is the acknowledgement receipt, and page 3 is the dangerous dog compliance checklist.

**Officer Redd:** Okay. I thought each one was an exhibit. So page 35 was a copy of the email that was submitted to Director Wilson on April 22, 2018 by the current house owner, previous complainant Donna Badome, I don't know how to say her name. She submitted this from what she received from William Peter Van Den Top, the summary of events, the police report number 18-016689. So this would be pages 35-38. I would also like to submit page 39 which depicts a photo of the injury received by the victim William Peter Van Den Top.

**DCC Sheppard:** Who took the photograph?

**Officer Redd:** I'm not sure who took the photo. Do you know?

**HEO Weeks:** I'm assuming he did.

**Officer Redd:** Did you, through your investigation, find out who took the photograph?

**HEO Weeks:** According to the picture, it looks like Victim 1 took the photo himself.

**DCC Sheppard:** Okay.

**Officer Redd:** Pages 38-45 is testimony from Peter Van Den Top. Photo of his injury, police report, and we need to submit the rest here, the print is so small and I can't read it without my glasses. Where he identifies the dog. Can you look at what page that is?

**DCC Sheppard:** Is that page 41? Page 41 of your Exhibit 1 says "I recognize the dog. That is the dog that attacked me. Kind regards, William Peter" and it has a photograph of the black dog.

**HEO Weeks:** Yes, I see page 44 here.

**DCC Sheppard:** Okay, I'm sorry. Page 44.

**Officer Redd:** We have different pages on our timeline I'm not sure why. All the evidence that we have is through email and photos sent through email because the victim does not live over here. There is also a discrepancy on dates because of the International Date Line where he lives. Mark?

**Officer Wilson:** Yes, his emails might be dated a day ahead. We're getting them before the actual date here.

**DCC Sheppard:** The charge reads on or about April 19, 2018 and the police report indicates it was what date?

**Officer Redd:** The 19<sup>th</sup>, April 19<sup>th</sup>, 2018.

**DCC Sheppard:** And that's the date it was reported to the police?

**Officer Redd:** Correct.

**DCC Sheppard:** Alright.

**DCC Sheppard:** Before it's admitted into evidence, I think Mr. Simonds had some objections he wanted to make?

**Mr. Simonds:** Yes. For the record, I object to the introduction of the report, pages 4-5. All statements of William Peter Van Den Top are hearsay. On page 5, without conceding to the matter asserted, the allegation of April 14, 2018 is irrelevant under 6.04.010. Definition of dangerous dog, last sentence, mere growling or barking or a combination of both shall not constitute grounds upon which to find a dog dangerous. Pages 18-44 as a whole, I submit are irrelevant, immaterial and the submission attempts to resurrect prior matters disproven and dismissed with prejudice by the district court of the second circuit. The attempt to introduce these matters number one, violates my right to double jeopardy under the constitutions of the State of Hawaii and the United States and/or the doctrine of [unintelligible]. These matters were already adjudicated. Secondly, violates the applicable statute of limitations which is one year for allegations of 6.040.040 of the Maui County Code by bringing up matters from 2014, 15 and 16 and is a violation of my right to due process and an impartial tribunal, as is un-adjudicated, disproven and unproven conduct is highly prejudicial, has no bearing on whether Kole is an aggressive or dangerous dog and has very little pertinent value. Specific objections on page 18, paragraph 7. is hearsay. Pages 22-23 discusses dogs that do not belong to respondent, specifically a Doberman. Page 24 the dogs in the photographs do not belong to the appellant and definitely not the dog in question, Kole. Page 25 I would say is irrelevant and immaterial and also contains an incorrect summary of a conversation that occurred on or about May 19, 2016. Pages 27-28 are irrelevant and immaterial. The report of July 16, 2016 by Officer Castro observed another black lab on the street by the name of Sparky who is commonly confused with Kole. Pages 30-31 discuss observation of Kole being properly restrained on my property so I'll withdraw my objection as to those two pages. Page 33 talks about an incident reported on January 26, 2017 which was dismissed or account of which arose which was dismissed with prejudice as unfounded by the district court of the second circuit. I have a copy of the leash law complaint and the court's ruling on that in my submission which I'll be introducing. So generally, I think anything prior to April 19<sup>th</sup> is irrelevant, immaterial, has been already disproven in court with the exception of a single leash law violation which occurred in August, 2016 for which I



entered a plea of no contest to and I think it's an attempt to deprive me of a fair hearing. Thank you.

**DCC Sheppard:** So at this point in time, the appellant has objected to everything as irrelevant if prior to the date of August 19, 2018.

**Mr. Simonds:** April

**DCC Sheppard:** April. I'm sorry, April 19, 2018 that's contained in Exhibit 1. So the board has to determine whether you're going admit the exhibit in full over objections or you're going to admit the exhibit, removing the pages the appellant objects to because he's claiming they are irrelevant to that particular offense. The board should make a determination about that by making a motion to what you want to do.

**Chair Balcomb:** Is there a motion to amend the current Exhibit to remove the pages the appellant is requesting?

**Member Borge:** No.

**DCC Sheppard:** Okay, you should have another motion.

**Chair Balcomb:** Is there a motion to deny and or just maintain the entire Exhibit?

**Member McCurdy:** Motion to accept the entire Exhibit.

**Member Borge:** I second.

**Chair Balcomb:** All in favor?

**All Members:** Aye.

**Chair Balcomb:** So the Exhibit will be entered as was presented in its entirety.

**Mr. Simonds:** Thank you. Furthermore, with respect to pages 35-45, I will object that it is cumulative and it was just presented to me at this morning's hearing despite the fact these communications appear to have been conducted in April, 2018. But I would object to it as cumulative as it's already contained in pages 1-18 of the original pages presented.

**DCC Sheppard:** You're saying pages 35-45 are redundant, cumulative.

**Mr. Simonds:** Yes.

**DCC Sheppard:** So there would be another motion either to remove pages 35-45 based on Mr. Simonds' objection or to retain those in. The board must make that decision.

**Chair Balcomb:** Is there a motion to maintain it as it is?

**Member Borge:** I'll make the motion to retain it as it is.

**Member Larsen:** I second.

**Chair Balcomb:** All in favor?

**All Members:** Aye.

**Chair Balcomb:** So the Exhibit 1, pages 35-45, will be retained as entered.

**Mr. Simonds:** Thank you for your ruling.

**DCC Sheppard:** Is there any other information that you want to present, from the Humane Society, for this matter?

**Officer Redd:** Would we do our conclusion right now?

**Mr. Simonds:** I get an opportunity to cross.

**DCC Sheppard:** No, I'm just asking them if they have any more evidence to present, anything you want to highlight out of your exhibit.

**Officer Redd:** No, not at this time.

**DCC Sheppard:** So the Humane Society is subject to cross examination by Mr. Simmonds.

**Mr. Simonds:** Who's testifying?

**DCC Sheppard:** The only person who's testified has been Ms. Redd and she just basically introduced the exhibit and that was basically the evidence.

**Mr. Simonds:** Okay. Good morning Deb. So obviously you weren't on Hohani Place on April 19<sup>th</sup>, 2018. You weren't an eye witness to the incident.

**Officer Redd:** No. No I was not.

**Mr. Simonds:** Where does Mr. Van Den Top reside?

**Officer Redd:** I don't know. Officer Weeks did the initial investigation.

**Mr. Simonds:** Okay. Officer Weeks, where does Mr. Van Den Top reside?

**HEO Weeks:** I believe in the Netherlands.

**Mr. Simonds:** And that's an approximately a 12 hour time difference, correct?

**HEO Weeks:** Correct.

**Mr. Simonds:** Can you tell this board what if any arrangements were made for Mr. Van DenTop to be available by telephone today for this hearing?

**HEO Weeks:** None

**Mr. Simonds:** I'd like you to look at the photograph on page 16 of the Maui Humane Society's submission. I believe its page 16, which reports to be a picture, aerial photo of my property. The "X" marks the spot where the alleged fight took place is that correct?

**HEO Weeks:** Correct.

**Mr. Simonds:** And that appears to be on the driveway apron of 125 Hohani Place?

**HEO Weeks:** Correct.

**Mr. Simonds:** So the allegation is that the alleged fight did not take place on the street but on a driveway apron on the property located at 125 Hohani Place.

**HEO Weeks:** Correct.

**Mr. Simonds:** Now Officer Weeks, you were not present on April 19, 2018 is that right?

**Officer Weeks:** No, I was not.

**Mr. Simonds:** Now obviously I don't mean this as an unfair question but you weren't an eye witness to this alleged incident is that right?

**Officer Weeks:** Correct.

**Mr. Simonds:** On page 18 of the MHS submission, who was the author of the timeline of events?

**Officer Weeks:** I am.

**Mr. Simonds:** Oh, you were the author of that. I wanted to go down that a little bit. It seems to go down a while back. April 3, 2015, February 23, 2016, May 19, 2016, July 15, 2016, November 12, 2016 and January 26, 2017, you were not an eyewitness to any of these events correct?

**Officer Weeks:** Correct.

**Mr. Simonds:** And the January 26, 2017 incident, are you aware that matter was dismissed with prejudice by the district court of the second circuit?

**Officer Weeks:** No I was not.

**Mr. Simonds:** Alright.

**Officer Weeks:** This timeline was basically made to show these were all previous cases that were called into the Humane Society regarding your address.

**Mr. Simonds:** Verified or unverified?

**Officer Weeks:** Unverified.

**Mr. Simonds:** Unverified, okay. So you're telling this board that you're presenting evidence here of unverified complaints, not dealing with an aggressive dog but a loose dog? Is that correct?

**Officer Weeks:** Some of these complaints in here the complainants do have pictures of Kole loose. Of course we don't have them here they were all previous cases in years before.

**Mr. Simonds:** Well what's the statute of limitations for 6.04.40 on this dog? Isn't it true it's one year?

**Officer Redd:** I don't know.

**DCC Sheppard:** I'll just interject. I believe that is accurate that it is one year for a loose dog complaint and if it's a district court violation.

**Mr. Simonds:** So then again I'll renew my objection that these paragraphs: 1, 2, 3, 4, 5, and 6- the first six paragraphs on page 18 timeline of events is irrelevant and immaterial to the determination at issue here in this hearing.

**DCC Sheppard:** Noted for the record Mark.

**Mr. Simonds:** Thank you. I believe that's all I have, thank you. Thank you officers.

**Officer Redd:** You're welcome.

**Chair Balcomb:** We will now proceed with Appellant's case. Mr. Simonds, you shall conduct direct examination of your witnesses and present your evidence, and the Humane Society may cross examine.

**Mr. Simonds:** That's fine, I'm not going to conduct direct examination of myself but I'll go ahead and give you a summary.

**DCC Sheppard:** Before we do that would you mind if we swear you in?

**Mr. Simonds:** Not at all.

**Appellant Mark Simond's Case:**

Mr. Mark Simonds was sworn in by Chair Balcomb and testified as follows:

**Chair Balcomb:** Do you solemnly swear or affirm that the testimony you are about to give before the Board in connections with the case will be the truth, the whole truth and nothing but the truth?

**Mr. Simonds:** I do so help me God. At this time I'll move into evidence my submission which is 44 pages.

**DCC Sheppard:** It will be labeled Exhibit A. It starts with Page A, but the subsequent pages are numbered 1-44. The total of Exhibit A is 45 pages. Are there any objections to submission of this exhibit? Humane Society, are there any objections to submission of this exhibit in total?

**Officer Redd:** No.

**DCC Sheppard:** No objections, you may receive the exhibit.

**Mr. Simonds:** Good morning again everyone. I thank you for your time this morning. I seem to be getting over the same cold Ms. Sheppard has so just bear with me. Before I begin with my

narrative, I would like to just incorporate my reference to points made during the objections of submission by the officers from Maui Humane Society just so I don't have to reiterate all of that. So I'll just note for the record that I'll incorporate my previous objections.

Again my name is Mark Simonds Sr. I've been a dog owner for 45 of my 53 years here on this earth. I do own a dog named Kole. He's a very good dog, fine temperament. Page 1 basically shows him with my 2-year old son. He's a black lab, he's got all the characteristics of the breed. He's a high energy animal, he's a very loving animal, has good temperament, good watch dog. I mentioned watch dog because I do live out in rural Haiku. We have issues out there with theft, we have issues with drugs, and drugs and theft seem to go hand in hand. Kole and our other dog, Hanalei, who's a Catahoula, they are watch dogs. Hanalei's taken over that duty since Kole is restrained in the back of the house in a kennel, pursuant to the notice I've got and I'm fine with that. I can live with that, with him being restrained in the back. A little history here. I talked about how people can be unpredictable and unfortunately, I had a dispute with my neighbors that live up the street, Mark and Donna Raaphorst. This started about 2004 when Mrs. Raaphorst received a speeding ticket. I was employed at the Prosecutors office at the time. Her husband contacted me a number of times and asked me to take care of that ticket and I told him I couldn't do it, that's illegal. There's a specific case law that prevents that, State vs. Okubo, where someone on Oahu was prosecuted very vigorously for ticket fixing.

So that seemed to be the beginning of the breakdown of the neighborly relationship so to speak. As I indicated in my submission, Hohani Place has a history of dogs roaming loose on the street. I bring that up because the Humane Society has unfortunately gone into the past so I feel I don't need to address that. I know we're here about April 19<sup>th</sup>. But anyway, I'll talk a little to that and then we'll move forward to the incident in question. Hohani Place, a lot of dogs roam loose. It got to the point where you know, I would talk to my neighbors. Long story short, I ended up getting cited for a number of incidents, went to court, I took responsibility for one. Most of them got thrown out as unproven or unfounded. The offending canines include Sparky, who resides at a home on Hohani Place; Kalo, who resides on Palulu Place; Maliko who resides at 155 Hohani Place who's owned by Mark and Donna Raaphorst, the two neighbors that I've had problems with, as well as others. I started taking pictures of these dogs when I got cited to show that there are numerous dogs on the street, one of which is a black lab, who I believe is often mistaken for Kole and that's the dog Sparky whose picture is in here.

The biggest issue has been with the Raaphorst's dog Maliko. Over a period of two years, in about 2014 and 2015, these folks had a habit of walking their dog off leash, they would allow their dog to charge my fence, charge the gate, provoke Kole and allow the dogs to fence fight. Mark and Donna Raaphorst appear to find great entertainment in this. They would laugh, they would joke about it, and they would ignore my reasonable request to a) keep their dog Maliko under control and b) not allow the dogs to fence fight as they are conditioning the dogs to be aggressive towards each other and that's summarized again in my statement to you. When the Humane Society started calling, I tried to explain the situation to them numerous times. Again, I take responsibility for my dog. If my dog got loose, I'd round him up. I see a neighbor's dog loose, the problem was I'm not one to call the Humane Society, I'm one to take it up with the neighbors. If I could do it all over again that probably wouldn't be the case. I'd probably be calling every single time I see a dog loose on Hohani Place. In fact, I may even start doing that which is unfortunate because again I try to work things out with my neighbors. Anyway, long story short, the Raaphorsts did not take my reasonable requests, it ended up in a restraining order being filed by myself against the Raaphorsts. We ended up in mediation, attempted to settle it and that's that.

Anyway, moving forward. As you can see there are a couple pictures taken November 15<sup>th</sup> of last year showing Maliko at my front gate unrestrained.

**DCC Sheppard:** What page is that?

**Mr. Simonds:** They are pages 4, pardon me, 5 and 6. So that's been a big part of the problem as to why Kole gets aggressive around Maliko. To this day I don't believe Maliko's owners realize or accept that their past actions of allowing Maliko to come onto our property, go to our gate and fence line, bark at our dogs including Kole, have caused these two dogs to become conditioned to respond aggressively when they encounter each other.

On April 19<sup>th</sup>, during the morning hours, I'll tell you a little bit about what happened. My wife, myself, and my 3-year old son were out in the yard. We unhitched Kole. We were playing with the dogs in our yard. Suddenly, the dogs were drawn to the fence line. I peered over and I saw Maliko, on our property, sticking his head through our hog wire fence and barking at us. The two dogs rushed over, I called my dogs back, and Maliko then disappeared. We went back to throwing tennis balls. I figured Maliko was being walked and the owner had regained control over him and that was the end of it. About ten minutes later, the dogs were done playing. I went to gather up my son to take him inside to eat breakfast. As we walked to go inside the house, Hanalei was at my side and I called for Kole. I suddenly heard a male voice, "can you restrain your, [pardon the French], f\*\*\*\*\* dog?" I initially did not believe the question would be directed to me, I believed Kole was at my side, in my vicinity. As I walked towards the house, I heard the male again at my gate. I saw who I believe is Mr. Van Den Top. He was standing on my driveway. He was outside the gate. It was not Maliko's owner, apparently he was caring for Maliko while the owners were off island. I believe I saw Mr. Van Den Top before walking Maliko, on and off leash I might note, in the past. He was aggressively flailing, yelling, swearing, swinging and he was kicking at Kole. Kole was out, I will concede that. Mr. Van Den Top was on my property. Kole was on my property. I was unaware that Kole had gotten out. It was not a case of permitting the dog to go out. Having seen Maliko earlier, I think he wanted to go out and wanted to get into it with Maliko. In any event, I asked the man, who I believe was Mr. William Peter Van Den Top, to calm down, not provoke the dog. I said "I'll get him under control, please step away from the property." I went to the lock box, I went to open the gate and I was fumbling for the gate. As I was fumbling for the gate, I kept asking Mr. Van Den Top, "please stop provoking the dog, please get away and I'll get him under control." What I was saying seemed to have the opposite effect on Mr. Van Den Top. He seemed to more aggravated, more violent, directing kicks and flailing towards Kole. At one point, he kicked at Kole. I didn't see a bite but from what I saw the back of his calf contacted Kole's mouth. It could have been a bite I can't say for sure. I was fumbling, there was a lot of excitement in the moment. I was fumbling with my gate, I wanted to get Kole under control. Got control of Kole, restrained him in the yard. I returned to Mr. Van Den Top and he was still standing on my driveway. I saw what appeared to be cuts on his calf. Despite my frustration as to what happened, I wanted to de-escalate the situation. I asked him to step away from the gate, I asked him if he was okay, and the rest is kind of summarized in my statement. I offered to take him to seek medical care, offered to go retrieve Maliko for him but he had tied him up down the street. As I was walking Maliko back, I noticed he was on a reel leash that was greater than 10 feet in length. That may have been how Maliko was able to come onto my property originally and bark and harass my dogs.

So in any event, that is basically what happened. I walked the dog back to the house, we had a conversation, I tried to tell him about the history between these two dogs. I expressed my frustration as to why they couldn't get along, again offered to help him seek medical care, we exchanged phone numbers and information. I did everything I thought was reasonable under the circumstances and being a responsible pet owner. Kole has never bitten anyone other than this incident. Again, I didn't see a bite. It's an alleged bite. If the board finds this was a bite, this never happened prior to or after this incident. It's my position that this was a provocation, it was completely avoidable and granted it would have been avoidable if he hadn't escaped the property and I concede that but I think the reaction by Mr. Van Den Top was unreasonable. It is not as he indicated in the Maui Humane Society report or the email contained in the Maui Humane Society report. He was not calm and talking friendly. If he is

calm and talking friendly to a black Labrador retriever I would submit that if this was a bite, it would not have occurred. This situation as I said was completely avoidable. Due to provocation, due to a reaction, an unreasonable response and reaction on the part of Mr. Van Den Top.

Some of the remedial measures I've taken, actually there was one more thing I wanted to indicate. The one thing I did notice or I did recall after I made this submission to the Humane Society, this was submitted about a week after the incident, was that one of the things that may have contributed to Kole's reaction was the presence of my son. My son was inside the gate, he was about 20 feet away. Kole may have felt that he was defending my son. He and my 3-year old are very close. He may have then felt that he was defending me, given Mr. Van Den Top's reaction, and he may have felt that he was defending the property against an intrusion at that point so I'll submit to that.

Again I concede he did get out, I did not allow him to leave property this morning. I'm not sure how he got out, whether he went over or under the fence that morning but the fact of the matter is that he did get out and the fact of the matter is Mr. Van Den Top was technically on my property. So with all that said, the remedial measures that I've taken since this incident, Kole is now kenneled and secured at all times and I posted the dangerous or beware of dogs signs as required by statute. We also have confined him in the house by statute when it's in the evening, he spends his days in a fully enclosed kennel. I've put a roof over the kennel so it is fully enclosed on all sides as required by 6.04.045. I've also, he's also spent two weeks at Sit Means Sit in July, where they utilize the corrective collar and other training methods. I use those to this day and it's been wonderful. Kole has become a much more responsive and focused animal. I've improved my fence line, hog wire has been replaced with a higher, tighter wire. Kole is not a pure breed Labrador retriever. His mother is an Australian Collie. They are bred to climb fences. That breed is a working dog, bred to climb fences and herd cattle. I have caught Kole attempting to climb over our hog wire fence on occasions. I have made improvements to the fence to ensure that doesn't happen. Basically that's all I have. I'm willing to invite questions from the Maui Humane Society.

[A break was requested by Member Larsen. Hearing was recessed at 9:55 a.m. and was called back to order at 10:00 a.m.]

**Chair Balcomb:** We are back on record. I believe it was time for the Maui Humane Society to ask questions.

**DCC Sheppard:** Any questions for the appellant?

**Officer Redd:** Yes. Debbie Redd, Humane Enforcement. Mark, so you said you don't know how Kole is getting out of the yard?

**Mr. Simonds:** No, that morning I don't know how he got out.

**Officer Redd:** Your gate was shut?

**Mr. Simonds:** It was shut. I believe he may have climbed over in a spot. Typically when dogs go under hog wire, you can find where the wires bent up and there's loose dirt but that morning I'm not sure how he got out. I have caught him on occasion attempting to climb out and that may have been what happened that morning, April 19<sup>th</sup>, it's kind of guess work on my part. What I did do in spots is I did put a higher wire and a tighter wire so he can't climb now but the larger opening hog wire he's able to attempt to climb out.

**Officer Redd:** Did you put that extra wire over the gate as well?

**Mr. Simonds:** No, he typically doesn't climb the gate, not that I've seen. If he'd climbed the gate I would have heard the gate clanging because we have farm style gates on our property as evidenced in my submission, pages 5 and 6. That is my front gate, one of my front gates.

**Officer Redd:** So on page 5?

**Mr. Simonds:** Five. If Kole had climbed on that gate I would have heard the gate clanging. It would have rattled and I would have heard it.

**Officer Redd:** The wiring on that gate is very similar to the hog wiring so it would be possible to me that if he can climb the hog wire he would be able to climb the gate.

**Mr. Simonds:** But I would have heard the gate clanging, because it would rattle and I didn't hear it.

**Officer Redd:** So another question I had was now when you seen this person was kicking at Kole, I picture in my head when someone's kicking to defend themselves they would be in a forward motion. But in our evidence, the photo that we have, the bite was on the calf.

**Mr. Simonds:** Like I said, I can't say for sure it was a bite because he was kicking him fast and furious. I see your point that the bite was obviously on the calf. I really can't explain that. I had a padlock on my gate to keep people out at night because we've had people come into our carport and just run off with stuff. I've caught people at our mailbox. We lock our gate at night and this was in the early morning hours and it was still locked. I have a lock box off to the side, I was fumbling with the code, getting the key and opening it while all this was going on. I saw his leg make contact with Kole's mouth. Kole may have moved in and bit him at that point but I can't say for sure, it happened very quickly. I can't say for sure if it was a bite or a contact but you know, you look at the photograph and it does look like a bite. I will concede that.

**Officer Redd:** That's the only questions I had.

**DCC Sheppard:** Are there any questions from the board members for the appellant?

**Member Borge:** Yes. Was there a "beware of dog" sign when this incident happened on your gate?

**Mr. Simonds:** Mr. Borge is it?

**Member Borge:** Yes. Yes, sir.

**Mr. Simonds:** There was a "beware of dog" sign. There was one that was in Italian which was a souvenir, I got it from Rubio, Italy years ago [unintelligible]. Beware of dog sign on the day of the incident? I had a keep out sign but no beware of dog and one for my security service. No beware of dog sign.

**Member Borge:** I know you don't like to bring up the past but there sure were a lot of leash law violations even though it was all dismissed. Who filed all these complaints, there were quite a bit?

**Mr. Simonds:** It was Mark and Donna Raaphorts.



**Member Borge:** You know what I mean? I'd just like to know.

**Mr. Simonds:** Oh yeah, for sure. It was mostly Mark and Donna Raaphorts I think. All or at least 95% of the complaints were from them.

**Member Borge:** Is that the same dog?

**Mr. Simonds:** I believe sir, that the Maui Humane Society was being used in a retaliatory manner against me by them.

**Member Borge:** Why do you think that?

**Mr. Simonds:** Well, it had to do with the incident I brought up in 2004 and also the incident involving or me confronting them about them allowing Maliko off leash to charge my fence, charge my gate. I take responsibility for my dog being loose but at the same time out of fairness most of the counts were dismissed. I did go to court, most of the counts were dismissed and I just saw that and I felt I had to respond to it. I know it's not particularly relevant to whether or not the dog is aggressive. Dogs escape all the time. They'll escape out of boredom, they'll escape out of curiosity, they'll escape for other reasons; not necessarily to go out and be aggressive. But in any event, there were a number of instances where there's been another black lab on the street, named Sparky, he gets confused with Kole a lot. In fact, there was one incident where one of the ACOs came by, it may have been ACO Castro, and she showed me a photograph of a dog, a black lab and it wasn't Kole. It was Sparky. I told her about Sparky and she went up the street, told me I'm going to hang out for a while to check it out and I said yeah, go ahead. She was up there about 40 minutes and then here comes Sparky, running up the street. I think it's noted in there, I can give you the exact page number. She went and had a conversation with the owners of that dog. Now I'm not saying that I'm completely innocent of leash law violations. As I said, I had to go to court and I paid a \$50 fine for that.

**Member Borge:** I have one question for the Humane Society. When you guys got this report that this dog bit a person, why didn't you take the dog, knowing that he bit this person?

**Officer Redd:** We don't normally take somebody's dog on a bite. If it's deemed dangerous and we get a bite, then we can impound the dog and serve them notice to appear before the board but it's not a normal thing that just because there's a bite that we take the dog.

**Member Borge:** Okay, I just wondered.

**Chair Balcomb:** Mr. Simonds I have a question for you.

**Mr. Simonds:** Yes, doctor.

**Chair Balcomb:** In Exhibit 1, page 16, the aerial view of your house. You had mentioned your front gate and you mentioned other gates. Do you have other gates on that fence line?

**Mr. Simonds:** Yes, there are three gates on property. There's another gate, if you go up, there's a hedge line. If you go down from the "x", there's a hedge line and then if you go up about ½ an inch it's kind of obscured by the hedge, there is another farm gate there. On April 19<sup>th</sup> doctor, that gate, what I do is, that gate we don't use that often, it is a farm style gate. But what I have is a big piece of very high hog wire way down on the bottom. I lean it up against the gate, way down on the bottom, so the dogs can't go out or over that gate and that was in place on April 19<sup>th</sup>. He didn't go out that gate. If he did go over the fence that morning, there was a

corner where I believe he may have decided to go over and out but I kind of, I still to this day and I've actually fixed that corner, I didn't see it so it's a corner where I have caught him trying to go out before. He may have had one successful jump over that area but on April 19<sup>th</sup> I can't say for sure if he went out in that corner, which would be the lower, this lower corner of my property here. I have actually taken remedial measures to raise the fence line in that area to make it a little higher so he can't go out that corner anymore. Actually, most of the fence line now is approximately 6 feet high with very small openings, wire openings for the fencing material.

**Chair Balcomb:** That's all inside the hedge?

**Mr. Simonds:** Yes.

**DCC Sheppard:** Other questions from board members?

**Member Larsen:** Yes. Mr. Simonds what you're basically saying that Kole responded to this negative energy and this was a certain situation where the man was showing fear and aggressiveness and Kole's responding as basically any animal or any person would do?

**Mr. Simonds:** In essence, yes. I think there's two parts to that Mr. Larsen. The history between Kole and Maliko and what the neighbors were allowing to happen and to an extent what I allowed to happen because I didn't do enough to stop it. Over a period of two years, by allowing their dog to charge the fence, allowing the two dogs to fence fight and finding entertainment in that, number one and number two, Mr. Van Den Top, you know I don't want to fault him or point finger at him or blame him, but the response seemed to escalate instead of de-escalate. I mean usually, just speaking for myself here for a moment, if I encounter an aggressive or angry dog, there's a couple things you can do. But I think the most reasonable thing is probably turn around and walk away or talk to the dog in a calm manner. I submit to you despite what Mr. Van Den Top asserts in his emails to the Humane Society, he was not behaving in that manner that morning. It stands to reason that had he been calm, this incident probably would not have occurred. Again, I'm not saying I blame him but just given the nature of dogs, given the nature of canine aggression, I don't believe it would have happened, especially the kicking and swinging at Kole, I think that simply escalated it. As I indicated earlier, we've had no other problems with this dog other than occasionally, he likes to escape the property but we've taken the measures to correct that. He's kenneled now unless he's attended in the yard and things like that. I hope that answers your question.

**Member Larsen:** Yes. Another question. You're appealing the dangerous dog designation, you'd like to get Kole out of jail basically. On any given week, with all your repairs and what not, what would be the probability of Kole getting out again?

**Member Simonds:** I would say zero. Zero percent because given what I went through in 2017 with the court case and everything, he's just restrained at all times now. I've lived on Maui for most my life, I've lived in Haiku for 18 years. I've seen the community change a bit. The population is a bit denser, it's still rural but it's not as rural as it used to be. Kole is the type of dog who, he's very high energy, he has to be engaged and he has to be given an outlet. I've had other dogs were very content with staying on property remaining in the fence line. Like I said, Kole, he's very high energy. If he's not confined he has to be engaged, he has to be working. He has to be focused on an activity. So tennis balls are and the pong, things like that are great for him. I'm finding that I have to spend about two hours a day with him, just working with him and keeping him active until he's tuckered out. That seems to do a lot toward keeping

him a more focused animal, a happier animal, a dog that feels he has a purpose. So I hope that answers your question.

**Member Larsen:** Thank you.

**Member Borge:** I have one more question. The incident happened outside of the gate, outside of your driveway?

**Mr. Simonds:** It happened on the driveway apron so technically it was on my property but the dog was outside.

**Member Borge:** Right, I understand.

**Chair Balcomb:** Is Kole neutered?

**Mr. Simonds:** Yes he is. He's neutered and micro-chipped.

**DCC Sheppard:** Are all your dogs?

**Mr. Simonds:** Kole got the microchip just because this incident.

**Member Borge:** Mr. Simonds, my family is from Haiku. I grew up in the camps of Puunene where the dogs used to run wild, all the neighborhood dogs. Like you said times have changed. I think what you're saying about your neighborhood, I think the Humane Society should patrol that area a little bit more because you've got all these dogs who seem to be running lose all the time.

**Mr. Simonds:** I welcome that. Like I said in the beginning of all this, I stand behind my dog, I don't stand in front of my dog. Hohani Place seems to have issues. I try to be a good neighbor, I've tried and these folks are busy and I really respect what they're doing. They have an important job to do, I don't have any animosity. There were times when maybe I felt I wasn't being heard but that's okay, I mean I'm okay with that. The problem I think is that I've been trying to deal with my neighbors because you got to keep your neighbors on your side, especially in a rural place. Maybe it's time I start calling up these guys and asking for help but I welcome them coming around because it is a big help. We seem to be dog central because we have two dogs and we live in the middle of Hohani Place and it seems like when dogs are out, they gravitate towards our house, they want to check out what Hanalei and Kole are up to. But unfortunately, what I've had to do, if you look at the map again. This is my house here and I've got a lot of over growth and everything and you can't really see it but Kole's kennel is right back here in the back. I've had to put him in the back so Hanalei is on property and so she watches the front and Kole kind of watches the back of the house while he's in his kennel outside. It's nice to have watch dogs and that's the one thing I feel I've kind of lost over this. Having Kole in the front of the property was a lot better. I had the kennel up against the front fence but that wasn't working out because Kole would try to dig his way out. I'd come home and he'd be all covered in dirt and there would be a hole about that deep where he's trying to tunnel out. So I put the kennel on a cement slab so he couldn't do that in the back of the house. The back of the house just seems to keep him out of trouble and keeps him from barking. I have had a neighbor complain about his barking, he barks when he's confined but that's just life I guess.

**Member Borge:** Mr. Simonds again, you're a lawyer right?

**Mr. Simonds:** Yes sir.

**Member Borge:** So we have laws right?

**Mr. Simonds:** Right, absolutely.

**Member Borge:** So you understand why we ask you these questions.

**Mr. Simonds:** Absolutely, sure.

**Member Borge:** Just like the Humane Society, they have laws to follow.

**Mr. Simonds:** Sure.

**Member Borge:** But thanks for the understanding about your dog. I have dogs and some that are pretty high wired. I see where you're coming from and if I was in your chair, I would be behind my dog too but the bottom line is we have laws so I just want to bring it up to you.

**Mr. Simonds:** For sure.

**Member McCurdy:** I have question. So I notice that there were a couple reports in the history and we didn't throw that evidence out but they said your dog may have not aggressive but it was overturned at some point?

**Mr. Simonds:** Well there were like 16 counts and like 15 were dismissed.

**Member McCurdy:** Of those incidents when it was noted as aggression, was that dog on dog aggression, dog on human aggression?

**Mr. Simonds:** If you're referring to the district court case doctor, that was animal at large, those were 6.04.040 allegations of loose dog. He wasn't charged with being an aggressive dog. This is the first time.

**Member McCurdy:** Yes but although he wasn't charged, do you feel that he might have shown signs of aggression, I guess to another dog and is it only Maliko that he's aggressive or is it to all dogs or dogs and humans?

**Mr. Simonds:** I think with Maliko. I've never seen him aggressive to another human. On page 1 of my submission that's him with my, you know my son was 2 at the time. My son is on the spectrum with a sensory issue, so my son can be pretty aggressive with the dogs. He grabs them, he'll grab the fur and I teach him to behave, be gentle, pet him and Kole just seems to take it in stride. As far as other people outside the family, I've never seen him aggressive towards anyone else. If a dog does come to the gate, I mean, and speaking from the past before I had to move him to the back of the property, Kole would bark at that dog, he might rush up to the gate to show his dominance but with Maliko, he seems to be particularly aggressive towards Maliko. I believe it was because they were conditioned that way towards each other. It's unfortunate because I've warned my neighbors that if these two dogs get together and there's no fence between them bad things could happen. I don't believe that I've really gotten through but I think it's this one dog in particular, Maliko. I think over a period of 2 years they sort of got conditioned to not like each other.

**DCC Sheppard:** For the board, in this photograph on page 11 of the Maui Humane Society's exhibit, that is his other dog Hanalei.

**Mr. Simonds:** In that submission, that was November 15, 2017. What I believe is going on there is I think Maliko is looking for Kole. Kole is confined to a kennel at the back of my house and I think he was loose at my gate looking for Maliko. In that incident I came home to find Maliko there. Maliko was barking and other than barking not really displaying any other aggression but I did have to chase him along. The second picture is him being chased off I guess. I just note for the board that the photographs sent in are basically a very small fraction of the loose dogs, and this is in response to Mr. Borge's question to, are a very small percentage of the times I've observed loose dogs on Hohani Place, for what it's worth. I just started taking photos just to start documenting.

**Member McCurdy:** I have one final question. So you believe this injury was mostly from this guy's calf kicking the face and there wasn't any trauma to your dog?

**Mr. Simonds:** There was no trauma to my dog and doctor I can't, you may have more knowledge than I do, I definitely am no expert, what I think is if it was a bite, the man kicked at Kole and Kole saw an opportunity to move in and bite but I cannot say for certain. I'll rely on your expertise and Dr. Balcomb's expertise when you deliberate. But again I can't say for certain. As the Humane Society indicated, I was present at the time, I was fumbling with my gate, I did hear the swearing and threatening. I did see the kicking, flailing, and swinging at the dog. I can't say for certain if it was a bite or if Kole saw an opportunity to defend, or if the man's leg, back of his leg simply contacted Kole's mouth but I'll leave for you.

**Member McCurdy:** You don't have any hog wire fencing that could have punctured his leg?

**Mr. Simonds:** No. I'm not saying Mr. Van Den Top tried to climb my fence.

**Member McCurdy:** Yeah, okay. I know sometimes you can get a puncture wound from barbed wire.

**Mr. Simonds:** I don't believe that's what happened.

**DCC Sheppard:** I have one more question. Was he wearing short pants at the time or was he wearing long pants?

**Mr. Simonds:** Shorts.

**DCC Sheppard:** Okay.

**Chair Balcomb:** Does the Humane Society have any other rebuttal evidence?

**Officer Redd:** I have some questions. So Mark, is Donna Badome the same as Donna?

**Mr. Simonds:** Yes that's Donna Badome Raaphorst, yes.

**Officer Redd:** Okay, cause we have emails from Donna Badome and you're mentioning Raaphorst. Has Kole ever escaped when you had him on a runner or a tie-out?

**Mr. Simonds:** No.

**Officer Redd:** Are you going to keep Kole if this designation is upheld?

**Mr. Simonds:** Yes, absolutely. I probably will be, I think at some point if it becomes relevant, I will be asking for some accommodation if there's a point.

**Officer Redd:** Okay.

**Mr. Simonds:** I don't want that to, in any way, shape or form, influence the board one way or another on how they are going to decide on the initial request.

**Officer Redd:** I have no other questions.

**Chair Balcomb:** Would you like to present your final arguments?

**Officer Redd:** Officer Weeks is going to read his conclusion.

**Officer Weeks:** Officer Weeks, Humane Enforcement. Based on my investigation, email testimony and photo of victim one's injury, there is probable cause to believe Mark Simonds' dog, Kole, was off property, unrestrained and attacked a person causing bodily injury and therefore Kole was designated a dangerous dog.

**DCC Sheppard:** Do you believe he was off property or he was on property but outside his gate?

**Officer Weeks:** Off property.

**Chair Balcomb:** Who owns the sidewalk?

**Officer Weeks:** The County does. 4 or 5 feet outside is technically County property, even though it could be your driveway.

**Mr. Simonds:** Actually that's a legal setback. It remains the property of the property owner. I won't argue the point.

**Officer Weeks:** As far as deeming the dog dangerous, the law states that it's on or off, so you know unfortunately, like victim one could have been on his property also and got bit and it would have the same result.

**Chair Balcomb:** Mr. Simonds, your final argument.

**Mr. Simonds:** I want to thank the board for your kind attention this morning. I think what I came to tell you today could be summed up as follows: What happened on April 19<sup>th</sup>, 2018 was regrettable and it happened; however, I submit that first of all, that Kole was conditioned to respond aggressively towards Maliko by Maliko's owners who repeatedly, over a two year period, 2014 and 2015, allowed Maliko to aggressively charge and provoke Kole through our gate and fence line, a practice they refused to stop despite my repeated requests to do so. Mr. Van Den Top was technically on my property and therefore trespassing. Kole in all likelihood acted instinctively to protect what he perceived to be a threat to myself and our son. There are no other reports of Kole physically attacking a person before or after this incident. As such, I respectfully request that you find no reasonable cause for the dangerous dog designation in this case. At the appropriate time I would like to present an alternative argument and I could present that at this time or I can wait until after the decision.

**DCC Sheppard:** Are you talking about maybe modifying conditions if they determine that?

**Mr. Simonds:** Yes.

**DCC Sheppard:** You could do that now or you can do that after they render a decision. That's up to you.

**Mr. Simonds:** I think I'll do it now just to save time if everyone's alright with that? In the alternative, and this is clearly an alternative argument, I'm asking that you answer the question but in the alternative, if you do deem that there's a reasonable basis I guess, a reasonable cause to determine that Kole is a dangerous dog, I would respectfully request these modifications to the provisions of 6.04.045 be made.

**Officer Redd:** Can I just interrupt? It's the wrong code that you're quoting there. It's 046.

**Mr. Simonds:** Thank you. I'm sorry I got it right here but thank you, Officer Redd. Paragraph number two: When outdoors, Kole shall be restrained and/or confined within a fully enclosed kennel, consisting of a fully enclosed structure with secured sides, top and bottom from which he cannot escape. If not so confined, Kole shall be accompanied at all times by his owners or other responsible adult within a locked, fenced area, however allowed off leash and without muzzle for training purposes. I would like to be able to continue to work with this very high energy animal, to train him and to continue what he learned at Sit Means Sit. To basically allow him to get rid of some this excess energy if he's going to remain confined for the safety of the public. I would like to continue that practice; I think it would serve safety of the public better if he is trained, if he gets to burn off a lot of his excess energy. And with respect to paragraph three, I would respectfully request that when off the owner's property, I'd ask this board to delete the muzzle or muzzling requirement as unnecessary. I submit with respect to the board that this was an incident or alleged incident that was the result of circumstances that are unlikely to recur. Again, if the board does find, and this is an alternative argument, if the board does find that Mr. Van Den Top was bitten by Kole, I would submit that it was a congruence of events that is unlikely to recur. I think the presence of Maliko, being either off leash and provoking the dogs that morning and Mr. Van Den Top's reaction to Kole. You know, the gentleman is a resident of the Netherlands, which is 13,000 miles away, I would submit that the circumstances that morning are really unlikely to recur. So those are the concessions I would be asking for should you find reasonable cause to deem Kole dangerous. I again thank you for your kindest attention. I appreciate you allowing me to exercise my right to due process and be heard on this matter. Thank you.

**Chair Balcomb:** Is there any other business related to this case, any further discussion? Alright. The Board will take the matter into consideration. Will everyone please wait outside for the Board's decision, and Mr. Simonds, please remain available for our decision.

**Mr. Simonds:** I will thank you.

#### **RECESS FOR DELIBERATIONS**

Chair Balcomb entertained a motion to enter into deliberations. Motion moved by Member Larsen, seconded by Member McCurdy. Hearing recessed for deliberations at 10:34 a.m.

#### **MEETING AND HEARING RECONVENED**

The Hearing and ACB Board Meeting reconvened at 11:06 a.m. Board members, staff, MHS, and Appellant Simonds were present. DCC Sheppard noted for the record that she was called in to assist the board with articulating some additional conditions of ownership.

Chair Balcomb stated that the Board had completed their deliberations and the Board determined based on the evidence received that Count 1 was sustained, and the dangerous dog designation placed on Kole was upheld with two modifications to conditions.

Chair Balcomb read the modifications to the Dangerous Dog Conditions of Ownership (MCC 6.04.046 (c)) and Appellant Simonds was asked to initial the order to indicate he was informed of the conditions pertaining to his dog Kole. Appellant Simonds acknowledged and initialed the conditions. A copy of the Conditions were provided to Appellant Simonds and a copy is attached hereto.

Chair Balcomb also stated that the board wanted to point out that since Kole is deemed a dangerous dog, if he is found out or has any other further issues, he will be impounded by Humane Society as part of the requirements and that the board would also like the Humane Society to do an assessment.

Mr. Simonds asked about the process for future requests and/or additional modifications. DCC Sheppard explained the process.

Ms. Ferguson informed the Chair that she didn't have a chance to poll the board regarding Member Borge's request to ask the Humane Society to do a presentation on their services, such as Wings of Aloha. Discussion between members and staff ensued on timeframe of presentation and scheduling. It was decided that the next meeting would tentatively be scheduled on Monday, October 15<sup>th</sup> at 9:00 a.m.

#### **MEETING AND HEARING ADJOURNMENT**

Chair Balcomb entertained a motion to adjourn the hearing and Board Meeting. Moved by Member McCurdy, seconded by Member Borge. Meeting and hearing adjourned at 11:16 a.m.

Respectfully submitted:



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Kimberly Ferguson  
Secretary to the Animal Control Board



Count 1: On or about April 19, 2018, in the County of Maui, State of Hawaii, "KOLE", a male, black in color, Labrador mix, License Number 18-6494, owned by MARK SIMONDS, of 125 Hohani Place, Haiku, Hawaii, attacked a person, to wit: William Van Den Top, while on or off the owner's property, causing bodily injury to said person, thus being designated as a "dangerous dog" as defined under Maui County Code 6.04.046A(1)(a).