

**BOARD OF HEALTH FOR MADISON AND DANE COUNTY  
ADMINISTRATIVE HEARINGS SUBCOMMITTEE**

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In the Matter of Mary K. McCanna  
(Owner of Sugar)

FINAL DECISION

Case No. 15-02397

Dangerous Animal Determination  
Pursuant to sec. 47.18 of the Dane County Code of Ordinances

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TO: Attorney George Strother IV  
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DATE OF HEARING: September 2, 2015

HEARING PANEL: Judith Wilcox (chair), Mark Edgar, Lezli Redmond

APPEARANCES: Appellant: Mary K. McCanna, represented by  
Attorney Strother  
Respondent: Public Health Madison & Dane County,  
represented by Attorney Greenlee

EXHIBITS: Public Health Madison & Dane County  
No. 1 E-mail dated 6/11/15 from Julie Kull to  
Village of Shorewood Police Chief Pine  
No. 2 E-mail dated 6/12/15 from Julie Kull to  
Village of Shorewood Police Officer Weitzel  
No. 3 UW Veterinary Care discharge summary dated  
8/24/15 for Frances owner Julie Kull

No. 4 Meet the Dog summary prepared by Patrick Comfort

No. 5 Dangerous Animal Determination letter dated 7/28/15

Mary K McCanna

No exhibits

#### FINDINGS OF FACTS:

Having been called to order at 5:30 p.m. on September 2, 2015, in Conference Room B of the Water Utility Administration Office, 119 East Olin Avenue, Madison, Wisconsin, the Board of Health for Public Health Madison and Dane County – Administrative Hearing Subcommittee (“Subcommittee”) heard testimony regarding the Public Health of Madison and Dane County’s (“Department”) determination of Mary K. McCanna’s dog Sugar as a dangerous dog pursuant to sec. 47.18 of the Dane County Code of Ordinances (“DCCO”). The Subcommittee heard testimony from Julie Foster, Julie Kull, Village of Shorewood Hills Police Officer Jaime Weitzel, Animal Services Lead Worker Patrick Comfort, Mary K. McCanna, Benedita Sampaio E Mello and Jeff Stadler. Having considered the testimony and the exhibits received into record, the Subcommittee makes the following findings of facts:

In the spring of 2011, Mary K. McCanna’s sister was walking Sugar. Sugar ran away from her and ran into Julie Foster’s backyard. Ms. Foster looked out her window and was startled to see Sugar pick up her dog Daisy by the neck. Sugar shook Daisy by the neck before releasing her and running out of the yard. Ms. Foster took Daisy to the veterinarian, where it was observed that Daisy had an injury to her neck that required stitches. Mrs. McCanna apologized to Ms. Foster for Daisy’s injuries and paid for the veterinary bill. Mrs. McCanna testified that this was the first time Sugar had bit another dog and she assumed it was an isolated incident.

In October 2011, Mrs. McCanna and Benedita Sampaio E Mello were gardening near the Shorewood pool, which had been closed for the season. When they were done working, Mrs. McCanna took the leash off Sugar while she was loading items into her car. At this time, Mr. and Mrs. Whiting approached on the sidewalk with their dog Woolie, who was on a leash. Both Mrs. McCanna and Ms. Sampaio E Mello were surprised and shocked to see Sugar, without warning, attack Woolie. The entire incident happened very quickly with Mr. Whiting pushing or kicking Sugar away.

In the spring of 2015, Mrs. McCanna was walking Sugar on leash. She removed Sugar’s leash so that Sugar could go to the bathroom. When the leash was removed, Sugar heard dogs barking in Ms. Foster’s backyard and ran into

the yard. Ms. Foster saw Sugar in her backyard and immediately brought two of her dogs inside. She was not able to immediately locate her puppy, Oto. When Mrs. McCanna reached Ms. Foster's property she saw Sugar standing in the driveway. Mrs. McCanna tied Sugar to a fence and saw Oto underneath a bush in the front yard. At that time Oto was not crying and Ms. Foster did not notice any injuries. The next morning Ms. Foster noticed an injury to Oto's backside. The veterinarian informed Ms. Foster that there were two puncture holes on Otto's backside from being bitten. Oto received staples for these injuries. Ms. Foster then contacted Mrs. McCanna and explained that Oto did in fact have injuries and Mrs. McCanna agreed to pay the veterinary bill.

On June 4, 2015, Julie Kull, who resides two doors down from Mrs. McCanna, was on a walk with her dog Frannie and her small child. At this time Mrs. McCanna had been on a short walk with Sugar. As Mrs. McCanna was about to go into her home, she decided to go back down the steps and get the mail. She had taken the leash off Sugar at this point in time. As Mrs. McCanna was at the mailbox, Ms. Kull, who was in the street, approached Mrs. McCanna's house. Sugar, without warning, ran down into the street and grabbed Frannie by the neck. Both women were screaming at Sugar to release Frannie. Sugar had Frannie in her mouth for 1-2 minutes. Sugar did release Frannie and Ms. Kull went home. At home, Ms. Kull observed a laceration with a deep pocket from Frannie's ear down to her neck, along with dried blood. Due to these injuries, on June 5, 2015, Ms. Kull took Frannie to the University of Wisconsin Veterinary Clinic where Frannie received staples, stitches and antibiotics for the puncture wounds caused by Sugar. Mrs. McCanna paid for these veterinary services.

After this incident, Ms. Kull contacted the Village of Shorewood police department. Village of Shorewood police officer Weitzel was assigned to investigate the incidents involving Sugar. On June 15, 2015, Officer Weitzel issued Mrs. McCanna a citation for dog at large and informed Mrs. McCanna that while in the Village of Shorewood, Sugar must be walked with a muzzle and leash at all times. Officer Weitzel contacted Public Health for Madison and Dane County Animal Services Lead worker Patrick Comfort and requested that he conduct a dangerous dog investigation regarding the incidents involving Sugar.

Based on this request, Lead worker Comfort conducted a dangerous dog investigation. As part of this investigation, Mr. Comfort went through Mrs. McCanna's neighborhood and attempted to contact neighbors regarding any contact they had with Sugar. Mr. Comfort contacted 4-5 neighbors and all but one had positive statements regarding Sugar. One neighbor stated that Sugar is always off leash and running into people's yards. On July 22, 2015, as part of the investigation, Mr. Comfort met and observed Sugar in Mrs. McCanna's home and yard. Mr. Comfort observed Sugar to be friendly and at ease in his presence. While in the yard a chipmunk ran by Sugar and Mr. Comfort observed Sugar become focused on the chipmunk and observed Sugar exhibiting prey drive while she attempted to hunt the chipmunk. Mr. Comfort indicated that

Sugar was a socialized well behaved dog. Mrs. McCanna informed Mr. Comfort that she has been walking Sugar outside of the Village of Shorewood so that she did not have to put a leash or muzzle on Sugar as was ordered by Officer Weitzel. In Mr. Comfort's professional opinion, Sugar is a dangerous dog because Sugar has attacked four dogs without warning and that the attacks to the neck indicate an attempt to kill and are not considered a warning bite.

Ms. Sampaio E Mello has been with Sugar on numerous occasions and has only observed Sugar behaving in an aggressive manner on the occasion involving the dog Woolie. Ms. Sampaio E Mello has observed Mrs. McCanna always walking Sugar on leash, unless they are in a dog park. Ms. Sampaio E Mello believes Mrs. McCanna is a responsible dog owner and that Sugar has an issue with little "yippy" dogs.

Mr. Jeff Stadler has been taking care of Sugar for 7-8 years, when Mrs. McCanna is out of town. Mr. Stadler has never observed Sugar to be aggressive to people or larger dogs. Mrs. McCanna had informed him of the incidents with Sugar and smaller dogs, so whenever a smaller dog approaches Sugar he keeps her leash tighter so Sugar does not have an opportunity to go after the smaller dog.

#### DISCUSSION:

Pursuant to sec. 47.18(6) of the Dane County Code of Ordinances, the Department may declare any animal to be dangerous if the animal meets certain proscribed criteria. See sec. 47.18(6)(a)-(d)), DCCO. Upon such a determination the Department may order the animal to be humanely destroyed, removed from the County placed under restrictions as set forth in sec. 47.18(9), DCCO. See sec. 47.18(7), DCCO.

The owner may appeal a dangerous animal determination by the Department under sec. 47.18(11), DCCO. Upon such an appeal the Subcommittee shall conduct a hearing on whether to affirm, conditionally affirm or reject the Department's determination.

Before this Subcommittee is Mrs. McCanna's appeal of the Department's determination that Sugar be declared a dangerous animal and be placed under restrictions outlined in the Dangerous Animal Determination letter dated August 19, 2015.

After all the evidence submitted, this Subcommittee finds that on four separate incidents, without warning Sugar attacked four small dogs. In the spring of 2011 Sugar was off leash and entered Ms. Foster's backyard, where Sugar grabbed and shook Ms. Foster's dog, Daisy, by the neck, requiring Daisy to receive stitches. In October 2011, while off leash, Sugar attacked Mr.

Whiting's dog Woolie. In the spring of 2015, while off leash, Sugar attacked Ms. Foster's dog Oto in her yard. Due to these injuries, Oto received staples. In June, 2015, Sugar, while off leash, attacked Ms. Kull's dog Frannie. Frannie received a large laceration to her neck that required staples, stitches and antibiotics.

Throughout the evidence presented there was no denial of any of the four incidents. Mrs. McCanna paid for all necessary veterinary treatment that was required due to these attacks. There was also no denial that Sugar is a well behaved social dog around people and larger dogs.

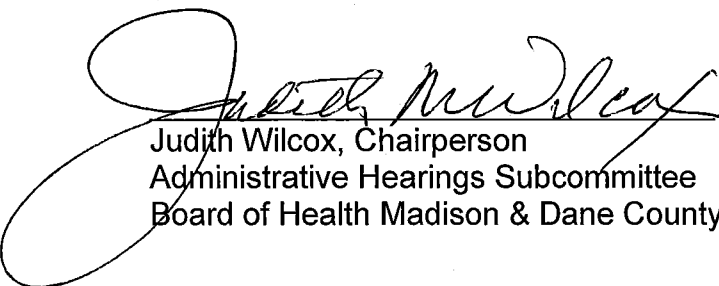
Under sec. 47.18(6)(a) DCCO, there is reasonable grounds to believe an animal is dangerous if an animal "has attacked, bitten or injured another domesticated animal or human being engaged in a lawful activity." In all four incidents involving Sugar, the four other dogs that were injured were either on public property or on private property owned by the dog's owner. Therefore, there is no dispute that on four separate occasions Sugar attacked, bit and injured a dog engaged in lawful activity. Therefore, Sugar is hereby declared a dangerous animal as authorized under secs. 47.18(6)(a) & (7) DCCO.

The restrictions imposed by the Department in the Dangerous Animal Determination letter dated July 28, 2015, are authorized under sec. 47.18(9), DCCO. The subcommittee finds that all of the restrictions imposed are reasonable to insure that the public and other animals are safe from being injured by Sugar. The subcommittee finds the restriction requiring Mrs. McCanna to post "dangerous dog" signs on her property is not necessary at this point in time. Due to the fact that all evidence presented was that Sugar never injured another animal or person while on Mrs. McCanna's property, therefore, there is no need for such a warning on Mrs. McCanna's property.

ORDER:

The Subcommittee unanimously affirms the determination by the Department to declare Sugar a Dangerous Animal. The Subcommittee unanimously upholds all restrictions ordered by the Department in the Dangerous Animal Determination letter dated July 28, 2015, except for restriction number four (4). The Subcommittee unanimously rules to remove the restriction requiring Mary K. McCanna to post dangerous dog warning signs on her property.

Dated: 9/10/15

  
Judith Wilcox, Chairperson  
Administrative Hearings Subcommittee  
Board of Health Madison & Dane County

## NOTICE OF APPEAL RIGHTS

Any person aggrieved by this final decision may appeal this determination by filing a writ of certiorari with the Dane County Circuit Court. The writ of certiorari must be filed with the court within ten (10) days of notification of the subcommittee's determination. See Dane County Code of Ordinance sec. 47.18(12).