

Minutes: BOS Dog Hearing: Wednesday, July 10, 2013

Present: Chairman Daniel F. Devlin, Kenneth J. Leva, Clerk and Walter F. Alterisio, Procurement Officer and Member; Town Counsel Richard W. Larkin and Dog Officer Susan J. Hogan

The Hearing was called to order by 7:10PM with quorum present.

Chairman Devlin provided introduction advising this hearing convened under Section 157 of Chapter 140 of the General Laws. Two persons, Sharon Healey and Beth Falkner, have made complaint to the Board of Selectmen that a certain dog believed to be kept at 290 Kemp Street is a nuisance dog or a dangerous dog. The Board of Selectmen is the hearing authority for this purpose.

Chairman Devlin then explained the Conduct of the hearing, noting the Board will arrange for the complainants and any other persons desiring to present evidence on the matter to be sworn. The Board will take the statements of the complainants and any other persons the Board deems important to the investigation. The Board reserves the right to require any person wishing to address the hearing to be sworn.

Chairman Devlin then referenced the Dog Control Bylaw advising the town has a dog control bylaw. However, this hearing is under Chapter 140, and not the bylaw.

Chairman Devlin noted plans for Deliberation, advising that following the testimonial portion of the hearing, the Board will consider the evidence and decide what action, if any, must be taken.

Town Counsel, Richard W. Larkin as a Notary swore the following parties in and took their oath of truth: Beth Faulkner, Sharon & Paul Healey and Renee' Reddin.

Chairman Devlin asked to the best of their recollection to provide as much as can – Beth Faulkner advised that dog in question on 3/17 at approximately 12:15 came into yard and attacked her car and on April 16th. Said dog came into yard attacked friends dog that was tied up in the yard. Dog had to spend the night at the vets – it was badly injured – have the vet bills – has photos in black & white but available in color on his phone – Izzy was the attacker.

Sharon Healey witnessed the event, Beth's children did and the nanny did. Sydney, Shane and Juliana also witnessed the attack.

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Renee' saw the damage – advised that when she picked up the dog they were screaming at her – understands how kids could be scared as she'd witnessed an attack by a great dane when she was younger so totally understands. She indicated she knows the second that Izzy gets out, she's off and running, she tries to catch her but she's gone. Selectman Alterisio indicated the reason for asking the question is to confirm that someone physically saw the attack which took about 3 minutes. Sydney was sworn and testified: she was asked to recollect to best of her knowledge what happened on 3/17 she was letting Simba out and saw the dog coming into their yard – knows that someone came over and got Izzy – when Simba came back in they noticed a bite on his side. On the April occasion they were playing in the yard and Simba and Oakley (who was tied) were playing as well. She'd gone inside for a couple of minutes and when she came back she saw Izzy fighting with Oakley.

Sue Hogan presented chronology – March 17th got a message from Tristan that there'd been a fight – returned message following day and they played phone tag for a few days. Attempted to reach the Reddins but didn't have a viable phone number. This was the 4th complaint she'd gotten between these two parties about the same dog.

Before September 2010 Mrs. Healey noted there'd been other instances with the Reddin dog, – October 2011 approximately 11PM let dog Casey out, heard yelp, saw the black & white dog running away, next day noticed wound. March 18, 2012 let dogs out – sitting at computer saw dogs go flying by front door – Izzy chasing Casey & Simba. She grabbed Casey, Izzy went right for Casey's neck so she let go to avoid getting bit.

She reported to dog officer Sean Ready who came out and documented – but she doesn't have a report on it. September 16th 2012 – another attack in her yard – Izzy comes right over to her yard as soon as she gets loose.

Sent e-mail as she was told by Jim Dow that she needed to send an e-mail, but never received a response from the Selectmen. She continued to report that then on the 16th of this year, had another attack from Izzy - this time on the right shoulder. They understand that the dog comes into their yard as she can see them from her deck.

Renee' was asked if she'd considered an electric fence – Chairman Devlin asked if the dog is always aggressive and Ms. Healey said that it was. Sharon advised that Kenny Reddin the owner had said that he

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himself worried about the dog. Renee' Reddin indicated she has a 24, 23 & 18 year old son, she's lived here 22 years and her house has been broken into twice by an acquaintance. She's never let the dog out – the times she's gotten out it was by accident when they were taking trash off the deck, etc. She indicated that the dog isn't aggressive with anyone at home – thinks she's trying to play.

Chairman Devlin asked whether there was any malice – the Healeys indicated it is irresponsibility – Mr. Healey advised that if something isn't done the dog is going to kill a kid. Mrs. Healey reported on another incident in June when the dog was outside her door when she went to let her own dogs out and dog tried to get in.

Selectman Alterisio asked Mrs. Reddin what kind of action they've taken to counteract the aggressive actions of the dog. Dog has been on Prozac since Monday. She's not spayed, is a three year female – not spayed and understands from the vet that sometimes when they come into heat can result in erratic behavior, has a letter from the vet to that effect.

When asked Izzy's breed, Renee' provided information on how she acquired her from an apartment house in Lowell as a puppy – no real history and no paperwork to substantiate her (Izzy's) breed. She indicated she'd been told a Dalmatian-lab, looks like a pit-bull mix but can't be documented as no-one knows her background. Sue Hogan advised that she's bred pit-bulls and she does look like a pit-bull mix, but there's no way of knowing. Renee' Reddin advised that she has been checking into training which is very costly and outside her present financial capabilities and has Izzy on Prozac since last Monday.

Sharon and Paul Healey advised while it's great that she's made an effort and that there's a financial liability and cost here but there's a danger to neighbors and animals because of the dog – something needs to be done.

Selectman Alterisio asked if Ms. Reddin has seen the dog control bylaw and she indicated she'd only just seen it. Chairman Devlin asked if the dog was licensed and Renee' advised that it wasn't as Town Clerk was on vacation but she presented paperwork to prove the dog has current rabies shot.

Mrs. Healey advised that her dogs are licensed. She further reported the Downeys paid the vet bill from their dog's injuries right away and

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are looking for repayment from the Reddins, having already filed a claim in small claims court.

The next question asked was if the dog had ever attacked an individual. Mrs. Healey answered it had not, Mr. Healey advised that those dogs are his kids – he doesn't have children.

With no more questions from the Board, Town Counsel recommended closing the hearing and based on information presented, Town Counsel can recommend how to proceed.

Mrs. Healey asked if there was an expectation of time for resolution- Board confirmed with counsel that there isn't a statutory time limitation; could be continued to another meeting, but shouldn't be working it out amongst them outside a posted meeting. Deliberation can be done at another meeting.

Selectman Leva advised that they are going to make this priority and try to work out as soon as can. Rich is going to say a few words on what's going to happen after this and then move forward. Are they ready to make a decision now or do they want to deliberate. Selectman Alterisio indicated there were some things that were reported by individuals that can't be deliberated at this point. Rich indicated once the board has taken into account what they've taken as facts, they can decide whether to consider the dog as a nuisance dog or as a dangerous dog according the points in the MGL on the subject.

Rich explained the board would have some options available, but cannot order the dog out of town. Sue indicated that she's uncertain about that – she believes it cannot be removed unless the person receiving the dog is aware of the issue. With nuisance dogs, gives vague description of remedy. If found as dangerous dog, are other remedies, some of which are rather drastic. Assuming the board was to issue an order of some kind, the owner has 10 days to go to Ayer District Court to appeal.

The Healeys and Beth Faulkner asked for some sort of timetable as to when they will deliberate the item further. The Board will meet on Monday...deliberation following the dog hearing...Monday at 3PM. Selectman Alterisio if there are additional facts that they're looking for – Rich is intend to take in additional testimony whether it's photos, documentation. Chairman Devlin advised that will be meeting Monday at 3 to deliberate amongst themselves and they're welcome to attend, but Selectman Alterisio noted it won't be a back and forth discussion.

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Hearing closed at 8:10PM. The board briefly discussed some of the items brought forward – Rich noted it's going to come down to nuisance dog or a dangerous dog but there are things to consider in each. Rich explained some of the issues to be considered in making a determination – it's a tough one to give Izzy a break this time, could find her as a nuisance dog. If you find the dog a dangerous dog, there a lot of consequences to it – offense would be a felony. Rich explained the options available and the interpretation of the sections of the law. The board discussed the responsibilities of the owner and whether if determined as a nuisance dog, the issue could recur.

On Monday, the board will focus in on the facts as presented and how to determine the appropriate category. Board must decide officially on facts they're going to adopt – then make findings of fact and in law as to whether the dog is a nuisance dog or a dangerous dog. If they define the dog is a nuisance dog, can come up with an order with steps that the owner must conform to.

Selectman Leva questioned where the teeth in the town bylaw are if the only penalty is a \$10 fine. Rich reminded the board, in their deliberations on the subject; it must reduce the testimony to facts and make a decision.

Treasurer's warrants were reviewed and signed, and meeting adjourned at 8:35PM after appropriate motion by Selectman Leva, 2nd and vote.

Respectfully submitted,

Danice N. Palumbo,
Board Secretary