

**MARION BOARD OF SELECTMEN  
WATER/SEWER COMMISSIONERS  
February 17, 2009  
Minutes**

The meeting was called to order at 7:02 p.m. Present were Chairman Jonathan F. Henry, Selectmen Roger F. Blanchette and Stephen M. Cushing and Town Administrator Paul F. Dawson. Also present were Lee Craver, Police Chief Lincoln W. Miller, Fire Chief Richard J. Guerzoni, Sarah Taylor of *The Wanderer*, Andrea Smith of the *Tri-Town Observer*, Ruth Thompson of *The Sentinel*, attorney for the MacLeans Christopher Markey, Lawrence B. Dorman, Frank Cerkovitz, Carol Sanz, Town Counsel Jonathan Witten and Helene Craver, secretary.

**Mr. Cushing moved** the minutes of February 3, 2009; the motion was seconded and carried unanimously.

Mr. Henry noted that a former resident, Franklin E. Winters, has died; he was a long-time firefighter, a member of the Masonic Lodge and various charities and a personal friend and requested a moment of silence in his memory.

Mr. Henry opened the continued dog hearing, MacLean, 167 Allen's Point Road, boxer "Cody", at 7:05 p.m. Mr. Henry noted that the Board has been advised that the dog has been relocated out of Town. Attorney Markey confirmed this fact. Mr. Henry indicated that the Board has a motion for consideration which, in essence, bans the dog from Town.

**Mr. Cushing moved** that, pursuant to the authority granted the Board by G. L., c. 140, s. 157, and after consideration of all the evidence presented to the Board at a public hearing held in this matter on February 3, 2009, that the Marion Board of Selectmen:

1. Declare that "Cody", now or formerly owned by Mr. and Mrs. MacLean of 166 Allen's Point Road, Marion, Massachusetts, is a nuisance by reason of his vicious disposition and a danger to the community by reason of his history of unprovoked attacks; and
2. Order that, based upon the testimony of the Animal Control Officer, that rehabilitation of "Cody" is not in the Town's best interests as such rehabilitation of "Cody" is not likely to be successful; and
3. Order that the dog named "Cody" owned by Mr. and Mrs. MacLean of 166 Allen's Point Road, Marion, Massachusetts, be hereinafter, prohibited from entry into the Town of Marion during the dog's natural life; and
4. Order that any entry of "Cody" into the Town of Marion, without that order first being rescinded or modified by the Board of Selectmen shall constitute a violation of G. L., c. 140, s. 157 and subject the owner and/or handler(s) to fines and imprisonment as provided for by statute; and

5. Order that should "Cody" while alive, ever enter into the Town of Marion, without this order first being rescinded or modified by the Board of Selectmen, that the Chief of Police or his designate immediately capture and restrain said "Cody"; and
6. Order that the Chief of Police or his designate prepare a copy of the file assembled with respect to "Cody", together with this Motion, and deliver the same to the chief law enforcement officer or agency where "Cody" has been relocated, together with an explanation that said materials are being conveyed to bring to the attention of the community to which "Cody" has been transferred, the Town of Marion's file on "Cody".

It was brought to the Board's attention by Mr. Dorman that the correct address of the owner, MacLean, is 167 Allen's Point Road.

**Mr. Henry moved** to correct the address as noted and pass the corrected motion; the motion was seconded and carried unanimously.

Mr. Witten requested that, while the MacLean's attorney is present and for the record, that it is his understanding that the dog is in California and no longer in Town. Mr. Markey said that he believes the Board has correspondence from Mr. MacLean which states that the dog has been relocated to the care of Tracy MacLean, 3256 Mandeville Canyon Road, Los Angeles, CA 90049. Mr. Markey wished to clarify the motion to indicate that the Town would be notifying Los Angeles in writing that the dog will not be allowed to return except for some type of action by this or some future Board, that the condition of Cody's disposition would be considered by the Board. Mr. Henry said that was correct.

Mr. Cerkovitz said that he had been unable to attend the February 3 meeting; he had been the caretaker for the MacLeans when the injury to Mrs. Dorman occurred. Mr. Cerkovitz recalled that it was alleged that he had placed the wrong collar on Cody at that time, which was absolutely false—the collar was on the dog when he arrived, was on the entire time he was there and was on when he left. Mr. Cerkovitz said that he has lived and worked in this Town for over thirty years and doesn't want his competence questioned or being blamed for Mrs. Dorman's injury.

**Mr. Cushing moved** to close the hearing; the motion was seconded and carried unanimously.

Chief Miller explained that, at the beginning of January, Officer Shawn Costa relocated to another state but, immediately upon being relocated, a situation developed which caused him to return and he has requested that he be reinstated to his previous position. Chief Miller recommended that Officer Costa be reinstated to his part-time, on-call position.

**Mr. Blanchette moved** to grant Chief Miller's request; the motion was seconded and carried unanimously.

**Mr. Blanchette moved** one-day wine and malt licenses for the Marion Art Center for March 6, 7 and 8 and for March 13 and 14, 2009; the motion was seconded and carried unanimously.

Mr. Dawson recalled that, at the last meeting, there was a discussion regarding increasing the fee for guest passes from \$25.00 to \$35.00 and that Mr. Blanchette recommended increasing the fee to \$40.00. Mr. Dawson noted that, actually the Board voted to increase the fee to \$35.00 on May 6, 2008. Messrs. Henry and Cushing preferred to leave the fee at \$35.00, rather than \$40.00.

Mr. Cushing agreed to represent the Board on the tour of the Naval War College in Newport, Rhode Island.

Mr. Dawson reported the Board that the Leatham's water meter had been tested, as had been requested, and the results were negative—the water meter was accurate.

**Mr. Blanchette moved** to accept the Department of Public Works' recommendation of December, 2008 and deny the Leatham's request for an abatement on their water bill; the motion was seconded and carried unanimously.

Mr. Dawson reported on a meeting he had attended of the first Southeast Communities Municipal forum and noted that it was very well attended. Mr. Dawson reported that the focus was primarily on the elimination of unfunded state mandates or, at the least, ways of dealing with them. Mr. Dawson reported that, another area of concern was regionalization of services, such as public safety dispatch, veterans' services and library services and procurement of goods and services. Mr. Henry said that he was interested in intermunicipal agreements; Mr. Dawson noted that the law has been changed to allow Boards of Selectmen to enter into agreements without going through Town Meeting. The regionalization of veterans' services was briefly discussed.

The Board then met with Chief Guerzoni. Mr. Cushing said that Chief Guerzoni had been made aware of the smoking ban in the fire/police station, but Mr. Cushing has received at least four complaints about the continued smoking himself; in checking on this issue, he has discovered that this is not the first time Chief Guerzoni has been addressed on this infraction. Mr. Cushing noted that the Chief was one of those involved with the violation and that the Board of Health had sent him a memo regarding smoking in the fire station on September 6, 2005 and quoted, "This letter is written to notify you that a complaint was filed in this office on Wednesday, August 3, 2005, regarding smoking in the fire station. The complainant alleges that personnel from the Fire Department are smoking in the garage portion of the fire station or near the open garage doors. Please be advised that smoking in public places is specifically addressed and prohibited in the Marion Sanitary Code, Section 11.60 Public Places. Under Section 11.60, whoever smokes within 25 feet of each point of entry to a municipal building shall be punished by a fine of not less than \$100 for the first offense, not less than \$200 for the second offense and not less than \$300 for the third offense. On August 8, 2005, Karen A. Walega, Director of the Marion Board of Health, spoke with you to make you aware of the complaint. Since this is the first complaint that we have

had regarding smoking at the fire station, the Board of Health has deemed it appropriate to issue a letter of warning, rather than issue a fine." Chief Guerzoni said that, since the weather turned frigid, people started to come inside the door in the apparatus area. Chief Guerzoni said that he had been made aware of this a few weeks ago by Mr. Dawson and had advised those involved that they had to stop the practice and had posted a sign by the entry. Mr. Cushing said that Chief Guerzoni allowed this to happen and that he has been named as one of those who are smoking and this is ongoing. Chief Guerzoni said that, with the exhaust fumes in the apparatus room, there is less than desirable air quality to begin with. Mr. Cushing said that this is another discussion—you are the Chief and you did not enforce the regulations. Chief Guerzoni said that he complied as quickly as he could. Mr. Cushing said that it took the Chief three and one-half year to comply. Chief Guerzoni said that it was because of the recent cold weather. Mr. Blanchette said that he has been doing some work in that area for the past few years and has seen people smoking there in the summer, spring and fall; also, with people sitting on the front bumper of a fire truck within the building. Chief Guerzoni said that he has made people aware and will continue to enforce the regulations. Mr. Henry reminded Chief Guerzoni that he sets the example and suggested that Chief Guerzoni arrange a smoke enders clinic through the Board of Health.

Mr. Henry said that the diesel exhaust may be addressed with a ventilation system. Chief Guerzoni said that his five-year capital plan calls for a study of the building, especially in light of the police moving out. Mr. Blanchette said that an exhaust system may be addressed by grant funds. Chief Guerzoni said that his department does receive grants and listed several which have been received in the past. Mr. Blanchette said that the Board and the public should know when the department receives a grant or it looks as if Rochester is getting much and Marion gets nothing. Mr. Henry noted that the large grants received by Rochester have to do with the Department of Homeland Security and the presence of the SEMASS plant in Rochester.

Mr. Cushing raised the issue of the Fire Department running a 50/50 raffle and under what authority is the Fire Department is raising money. Chief Guerzoni said it was through the Fire Department Trust Fund. Mr. Cushing asked, who is the Fire Department Trust Fund? Chief Guerzoni said that, in 2004, the Treasurer and Town Administrator set up the fund for the Fire Department to accept donations to the Fire Department. Mr. Cushing asked if this was the same fund the Town Accountant refers to as the donation account. Chief Guerzoni said it was originally named the Marion Fire Department Trust Fund. Mr. Cushing asked who authorized running a 50/50 raffle? Chief Guerzoni said that he had sanctioned it. Mr. Cushing said that the Board did not believe that the raffle properly and legally raises money on behalf of the Town of Marion and he doesn't believe Chief Guerzoni has the authority to engage in this practice. Chief Guerzoni said that he wasn't aware that they couldn't do that and will turn everything over to the Firefighters' Association. Mr. Henry said that a similar association is the EMS Association, which is a 501.C.3 corporation, but he doesn't think the Firefighters' Association is set up in this manner. Mr. Henry said that the EMS Association is run by the Treasurer/Collector to benefit the EMS. Mr. Dawson said that there is some confusion in nomenclature—most of what people in Marion refer to as a trust fund is, under the Department of Revenue regulations, appropriately entitled a

donation account, which can be restricted or unrestricted. Mr. Dawson said that any donations that come in which are not specifically earmarked go into a general donation account, monitored by the Town. Mr. Dawson said that the only thing that may be a problem is the fact that they are running a raffle, as a game of chance requires filing for a raffle permit, which is monitored by the State Lottery Commission. Mr. Dawson explained that taxes have to be paid on the account and the organization running the raffle has to be designated non profit and have a tax ID number. Chief Guerzoni said that it would not be good practice for the Fire Department to get involved with that; it would be better left with the Firefighters' Association, as he doesn't have any desire to get into gaming. Mr. Dawson said that the proper permits and an annual report have to be filed, along with a list of the officers of the organization. Mr. Dawson said that it would be a policy decision by the Board whether or not the Fire Department should engage in fund raising. Mr. Henry said that the EMS has a donation account. Mr. Blanchette asked what happens when a withdrawal is made from a donation account. Mr. Dawson explained that it goes through the normal trail of any invoice to the Town. Chief Guerzoni asked what they should do about the raffle. Mr. Henry asked what they should do with the money already collected. Mr. Dawson said that they could return the money. Mr. Dawson asked how many people are selling tickets. Chief Guerzoni said about fifteen. Mr. Dawson suggested cutting the raffle off and having the drawing or returning the money. Mr. Blanchette requested a directive sent to each department, prohibiting any more games of chance in this Town. Mr. Henry suggested partnering with someone who has the necessary filings; then agreed with Mr. Blanchette, who was determined to end the raffle now and return the money.

**Mr. Henry moved** that the Town Administrator notify all Town departments to avoid games of chance when fund raising.

**Mr. Blanchette amended the motion** that all Town departments who are going to do fund raising meet with the Selectmen

**Mr. Cushing further amended the motion** to order the Fire Chief to cease the drawing and return the monies; the motion was seconded and carried unanimously.

**Mr. Cushing moved** to allow the Chief to keep any monies donated back from the raffle to be turned over to the donation account; the motion was seconded and carried unanimously.

**Mr. Blanchette moved** that, in the future, any Town department that is considering raising money get permission from the Board of Selectmen; the motion was seconded and carried unanimously.

Mrs. Sanz asked if the Board were not going "overboard" and implying that Town departments could not be trusted. Mr. Blanchette said that this would give the group the opportunity to get advice from the Town Administrator. Mr. Henry said that they would err on the side of caution. Ms. Smith of the *Tri-Town Observer* asked if the names of the purchasers were identified as to who purchased the raffle tickets. Chief Guerzoni said that the stubs listed the names, addresses and telephone numbers; most people filled that out. Ms. Smith asked the procedure by which the monies would be

returned. Mr. Henry said that they wouldn't speculate; they would check with the Town Accountant. Ms. Smith asked if contributors should call the Fire Department. Mr. Cushing said that the Fire Department will get in touch with the purchasers.

Mr. Dawson announced that the Medicare rates are set every January and that it was time to determine the rates the Town would charge for the next year for ambulance services. Mr. Dawson reported that most towns charge a variable percentage over the Medicare costs, usually about 30%, because private insurance will pay the invoice rate. Mr. Dawson recommended the Town adopt a rate of Medicare-plus-10% for 2009.

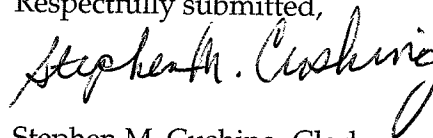
**Mr. Blanchette moved** to accept the Town Administrator's recommendation for ambulance billing in 2009 at Medicare plus 10%; the motion was seconded and carried unanimously.

Mrs. Sanz said that she doesn't recall seeing any information on the finances since the Town began billing for ambulance services on July 1, 2008; also, were there fewer runs since the billing began? Mrs. Sanz was advised that they were waiting for a year's billings before making this determination. Mr. Dawson said that the latest information shows no drop in ambulance runs. Mrs. Sanz asked if the line item in the budget for the Emergency Medical Services would be credited by the amount captured in insurance payments. Mr. Dawson said that the Town still has the expense of running the Emergency Medical Services and the insurance monies go to the general fund.

Mr. Dawson said that he had had a request from a resident who had purchased a resident sticker and was buying a different vehicle and wished to have a replacement sticker at no cost. Mr. Dawson explained that he needed a decision from the Board as to whether or not to charge for replacement stickers. Mr. Dawson reported that the Town had been charging the full \$10.00 for replacement stickers up to this point. It was agreed to discuss this at the next meeting. Mr. Cushing said that the workers at the transfer station have complained about the number of vehicles coming in with last year's sticker. Mr. Cushing said that people are being given one courtesy visit with the old sticker and then refused entry unless the current sticker is displayed.

**Mr. Blanchette moved** to go into executive session at 8:57 p.m. to discuss preparation for negotiations with non-union personnel and not to return to public session following the executive session; the motion was seconded and carried unanimously, Messrs. Henry, Blanchette and Cushing voting aye.

Respectfully submitted,



Stephen M. Cushing, Clerk

Date approved: 3/3/09