

**MARION BOARD OF SELECTMEN
WATER/SEWER COMMISSIONERS
MEETING MINUTES
January 3, 2017**

MEMBERS PRESENT: Jonathan Dickerson, Chairman
Stephen Cushing
Stephen Gonsalves

ALSO PRESENT: Paul Dawson, Town Administrator
Isaac Perry, Harbormaster
Adam Murphy, Shellfish Officer
Lincoln Miller, Police Chief
Susan Connor, Animal Control Officer
Steve Pool
Steve Howe
Jay Somerville
David Mitton
Shea Doonan
Tanner Harding, Sippican Week
Jean Perry, Wanderer
Debra Paiva, secretary
Others who did not sign in

The meeting was called to order at 7:00 p.m. in the Town House conference room. Mr. Dickerson announced that the meeting would be video recorded and televised by ORCTV and audio recorded by Town of Marion staff.

Approval of meeting minutes –February 5, 2013 Executive Session, March 5, 2013 Executive Session, March 19, 2013 Executive Session, April 16, 2013 Executive Session, May 7, 2013 Executive Session, May 21, 2013 Executive Session, June 18, 2013 Executive Session, July 31, 2013 Executive Session, August 6, 2013 Executive Session, August 20, 2013 Executive Session

Moved by Mr. Cushing and seconded by Mr. Gonsalves to approve the minutes. VOTE: 3-0-0

ACTION ITEMS

Water/Sewer commitment – final readings & misc. bill - \$2317.96 (11/18/16)

Moved by Mr. Cushing and seconded by Mr. Gonsalves to move the commitment. VOTE: 3-0-0

Water/Sewer commitment – final readings & misc. run - \$3071.76 (12/22/16)

Moved by Mr. Cushing and seconded by Mr. Gonsalves to move the commitment. VOTE: 3-0-0

Review and approve Annual Report to ABCC

Moved by Mr. Cushing and seconded by Mr. Gonsalves to approve the Annual Report for the year 2016. VOTE: 3-0-0

Request for appointment to Marion Cultural Council – Lisa Baltz

The request for appointment and comments from the committee chairman were reviewed and briefly discussed.

Moved by Mr. Cushing and seconded by Mr. Gonsalves to appoint Lisa Baltz to the Marion Cultural Council. VOTE: 3-0-0

APPOINTMENTS

7:05 p.m. – Public Hearing – Aquaculture permit application – Shea Doonan

The public hearing notice was read into the record. Mr. Doonan was present for the public hearing; the request is to construct an aquaculture project on Mitton's Flats. At their December 20 meeting the selectmen approved the request of Catherine Brodeur to transfer her permit for a half acre site off Ram Island to Mr. Doonan; he explained that the site is not big enough to stay in business and he needs to expand to an additional site.

Mr. Doonan acknowledged that the Town of Marion regulations prohibit expanding a site until subsequent years but noted that those regulations allow the selectmen to use their discretion and allow an expansion.

Harbormaster Isaac Perry told the selectmen that there is no reason to recommend expansion as there is nothing to review. He cautioned the Board that granting a second half acre at this point in time does not fit in with the Town's regulations.

Jay Somerville, 756 Point Road, voiced concern for the quality of the site, occasional freezing of water, navigation water quality surveys done by Buzzards Bay Coalition; Mr. Doonan responded to Mr. Somerville's concerns. During his statement, Mr. Doonan stated that the site was recommended to him by the Shellfish Officer.

Rob Hurd, Tabor Academy, said the Mitton's Flats area is one of the viable area of the school's waterfront program; he voiced concern for navigation and that the project could interfere with what the school has done for decades. Mr. Doonan responded to that he does not want to interfere with navigation and what he is proposing does not interfere with navigation any more than the existing dock.

Jay Somerville read a statement on behalf of Miley Wakeman voicing concern for navigation for rowing shells.

Bill Washburn, Rocky Knook, suggested a proactive way to check the harbor and identify sites suitable for aquaculture. Mr. Dickerson explained that the Harbormaster works with applicants to find sites. Mr. Cushing explained that once an applicant goes through the selectmen they have many other steps to go through before final approval.

Mr. Dickerson commended Mr. Doonan for his presentation but he does not have a track record as the other grant was just transferred to him.

Mr. Cushing said he wants to adhere to the Town's regulations and can't support the request at this time.

Mr. Gonsalves said he has to rely on the expertise of the Harbormaster.

Mr. Doonan requested that the selectmen continue the public hearing for six months; Mr. Perry cautioned that continuing the public hearing would not prevent another applicant from requesting use of the site.

Moved by Mr. Cushing and seconded by Mr. Gonsalves to continue the public hearing to June 20, 2017 at 7:05 p.m. VOTE: 3-0-0

7:30 p.m. – Continued Public Hearing – Complaint regarding dog owned by Greg Silva

NOTE: Mr. Cushing recused himself and left the room.

The public hearing was opened on December 20, 2016 and continued to tonight at the request of Mr. Silva. Before any information was given the individuals who were planning to testify were sworn in. Mr. Silva was represented by Attorney Leonard Kesten.

Animal Control Officer Susan Connor described the events that occurred on October 10, 2016. A copy of the police report related to the incident was included in the information reviewed by the selectmen.

Attorney Kesten provided the following information:

Mr. Silva has been a resident of Marion for 17 years and has always had dogs.

Mr. Silva has owned Cal, a rescue dog, since March, 2016.

There are four dogs in Mr. Silva's household.

There were two quick bites to the other dog.

Mr. Silva offered to pay the veterinary bills for the injuries the attack resulted in

Subsequent to the attack Mr. Silva paid for the professional installation of an electric fence and the associated training; the dogs are not left unattended in the yard and have not crossed the fence in the two months since the installation.

Mr. Silva addressed the board and provided the following information:

Cal is a rescue dog who has suffered abuse

The day of the attack Mr. Silva was watching the dogs from his back door when he heard barking at the street, when he saw his dogs run to the street he ran as well.

His neighbor was raking leaves at the time.

One of Ms. Giokas' dogs was off the leash and the dog that was attacked was on a leash.

Mr. Silva fell when he attempted to separate the dogs and asked Ms. Giokas to kick Cal to distract him and stop the attack.

Mr. Silva's other two dogs did not bite or participate in the incident.

When the dogs were separated and Mr. Silva's dogs were in his house he went to see Ms. Giokas and her son and check on her dogs; she told him that she was calling the police.

Mr. Silva asked where Ms. Giokas was taking her dog; he offered to drive them to the vet and informed her that he would pay for the dog's medical treatment.

The next day he sent letters of apology, gift cards, and doggie gift baskets to Ms. Giokas, her son, and dogs. He saw them at the bus stop and asked how they were.

When Attorney Kesten questioned Mr. Silva the following information was provided:

Mr. Silva got Cal in March, 2016

Cal did not show any violent tendencies until October 10

Cal was a skittish, timid dog and got in skirmishes with the dogs in the household but is friendly and has not hurt anybody

Cal met Attorney Kesten this evening and was fearful initially but then was friendly

On the day of the attack Cal bit the other dog in the ear and let go and then when Mr. Silva fell Cal bit the dog on the back. When the neighbor intervened with the rake and Mr. Silva shouted Cal retreated behind Mr. Silva. CHECK TAPE

Mr. Silva described the electric fence, the training associated with it, and the safeguards built into the system in the event of battery fatigue or power outage.

Elizabeth Leite, Mr. Silva's girlfriend, testified that Cal is a loving, affectionate dog and she has never seen him exhibit aggressive behavior.

Andrea Giokas, 16 Rocky Knook Lane, provided the following information:

Both of her dogs were on leash when the attack occurred

During the attack the small dog escaped and stood in the neighbor's yard with one of Mr. Silva's other dogs

She was afraid to kick Mr. Silva's dog off her dog

Mr. Silva's dog was on her dog's back and if not for the neighbor with a rake Ms. Giokas believes "there would have been a different outcome".

Ms. Giokas' 7 year old son witnessed the attack and had to pass by all of the dogs in order to get home but they did not bother him

Mr. Silva had told her approximately one year ago that he was planning to get an electric fence but did not until the attack occurred

Richard Dias, 11 Inland Road, told the selectmen that years ago he had two dogs that would cross an electric fence. He voiced concern for the safety of neighbors walking in the area.

Peter Farrell, 22 Rocky Knook Lane, commended Mr. Silva for trying to take care of the problem and for showing concern for Ms. Giokas' son. He made the following observations:

For many years people and children never worried about whether it was safe to walk on the street He would have preferred the money spent on the electric fence had been spent on a fence enclosing the back yard

If the dogs are roaming in the woods behind Mr. Silva's house there would be no protection in the neighbors' own yards.

Mr. Farrell recommended that a fence be constructed to keep the dogs in a safe spot and also to keep the neighbors safe from overly enthusiastic or overly aggressive dogs.

Attorney Kesten said the electric fence is completely enclosed and since the installation of the fence in late October the dogs never go out into the woods.

Attorney Mark Carchidi was present on behalf of Deborah Giokas; he distributed packets of information to the selectmen and also to Attorney Kesten. During his testimony Attorney Carchidi provided the following information:

The Giokas' are not seeking retribution against Mr. Silva and they are very appreciative of what he's done after the attack.

This is a public safety issue because this is the third incident this year involving these dogs, Whether it's because of the breed, because they are rescue dogs, or they were maintained in a particular way prior to this, the fact is that something needs to be done

The dogs were not under control of the owner, which is a violation to the Town of Marion bylaws.

A kennel license is required for four or more dogs.

What should happen: the dogs should be in a secure enclosure, the dogs should be removed from the property or a different arrangement should be made to keep the neighbors safe.

Dog training expert Dan Boucher commended Mr. Silva for rescuing the dogs but he is out of his element rescuing dogs without knowing their history

Allowing the dogs off leash with no barriers is not responsible at all. He warned that someone would get hurt and

The dog needs to be tied up somewhere or completely enclosed.

There is no guarantee that a dog will not cross an electric fence

It's dangerous and irresponsible to have an electric fence and think that nothing will happen

A fearful dog is very dangerous because it's unpredictable

Attorney Carchidi explained that both of Ms. Giokas' dogs were on leashes but one escaped when the attack occurred. Cal has already been in skirmishes with the dogs he lives with they are not strange dogs to him whether it's the propensity of the dog or the breed it needs to be taken care of

Attorney Kesten made the following statements:

None of the dogs pictured in the handout provided by Attorney Carchidi is Cal

The purpose of the hearing is whether Cal is a nuisance, not about pit bulls

The dog has lived with the family since March with no issues

The dog has never broken out and roamed

The incident is not enough to find that the dog poses a nuisance

The owner has taken steps and nothing guarantees anything

The owner has been a very responsible owner for years

The kennel issue is not being addressed tonight.

The Giokas family has been in the neighborhood for one year and Mr. Silva has been in the neighborhood without incident for 17 years.

The one incident regarding Cal has been addressed

Mr. Gonsalves asked Ms. Giokas if her son has ever walked her dog by himself and was told no. Ms. Giokas said her son was on his bike and she was walking her dogs with a double leash. Mr. Gonsalves said he was concerned that the incident was traumatic for her child. He commended Mr. Silva for his love of animals and asked about Cal's history. Mr. Silva said he does not know the history of any of his dogs but his assumption is that Cal's was troubled. Mr. Gonsalves said he is very concerned that this will happen again.

Mr. Silva said Cal is not crossing the fence and he has a long range of correction available, Cal is never outside alone, and dogs can escape traditional fences.

Mr. Gonsalves said he is not against pit bulls, he is looking at this specific case and his concern is that the aggression will happen again.

Mr. Dickerson explained that under Massachusetts General Laws Chapter 140, Section 157 as the hearing authority for the Town of Marion the selectmen have an obligation and a responsibility to determine whether Cal is a dangerous dog or a nuisance dog.

Moved by Mr. Gonsalves and seconded by Mr. Dickerson to determine that the dog discussed at tonight's hearing is considered a dangerous dog. VOTE: 2-0-0

Mr. Dickerson explained that under Massachusetts General Laws Chapter 140, Section 157 when a dog is considered a dangerous dog the hearing authority has the responsibility and authority to issue the following order:

Moved by Mr. Dickerson and seconded by Mr. Gonsalves to that this hearing authority enforce Section 1, Section 2, Section 3, and Section 4 of the Massachusetts General Laws regarding nuisance dogs under Chapter 140, Section 157. VOTE: 2-0-0

Mr. Dickerson informed Mr. Silva that he had the right under Massachusetts General Laws to appeal the decision to District Court within 10 days of the hearing.

Moved by Mr. Dickerson and seconded by Mr. Gonsalves to close the public hearing. VOTE: 2-0-0

Mr. Dickerson announced that the Board would take a five minute recess.

TOWN ADMINISTRATOR

NOTE: Mr. Cushing rejoined the meeting.

Discussion regarding Sprague's Cove

A letter dated December 1, 2016, from the Army Corps of Engineers to Mr. Dawson and a memo dated January 3, 2017, from Mr. Dawson to the selectmen were reviewed and discussed.

The letter was notification that the Town of Marion was being assessed a \$33,539 "In Lieu Payment Fee" for the construction of an unpermitted 333 linear foot seawall at Sprague's Cove; the memo contained a timeline of events from August, 2014 to December, 2016.

Mr. Dawson told the selectmen that staff and the consulting engineering firm (JC Engineering) has continued to reach out to the Army Corps of Engineers to explore other options to reduce or eliminate the mitigation fee.

Mr. Dickerson noted that this was the result of deferred maintenance.

Mr. Cushing asked if the wall was installed when the drainage system was constructed and was told yes.

Mr. Gonsalves said he remembered the issue when he served on the Conservation Commission and thought it was being resolved.

Resident Sherman Briggs had questions and comments regarding the original plans, who constructed the wall, who informed the selectmen about the fee, and how long the wall had been in existence.

Expenditure of Funds – Article 32, ATM 2015

A memo from Town Counsel dated January 3, 2017 was reviewed and discussed. The memo indicates that CPC funds approved by the 2015 Annual Town Meeting under Article 32 cannot be used for projects other than specified by Article 32.

It was agreed that tonight's scheduled Executive Session be postponed to a future meeting.

Mr. Dickerson announced that the Fireworks Committee is seeking members.

Moved by Mr. Dickerson and seconded by Mr. Cushing at 9:35 p.m. to adjourn. VOTE: 3-0-0

Respectfully submitted,



Stephen C. Gonsalves, Clerk
Date approved: February 7, 2017

02-08-17A09:17 RCY

MARION BOARD OF SELECTMEN
DOCUMENTS REVIEWED AT MEETING – January 3, 2017

MEETING MINUTES –February 5, 2013 Executive Session, March 5, 2013 Executive Session, March 19, 2015 Executive Session, April 16, 2013 Executive Session, May 7, 2013 Executive Session, May 21, 2013 Executive Session, June 18, 2013 Executive Session, July 31, 2013 Executive Session, August 6, 2013 Executive Session, August 20, 2013 Executive Session

Aquaculture permit application and related public hearing materials – Shea Doonan

Public hearing materials related to complaint regarding dog owned by Gregory Silva

Water/Sewer commitment – final readings & misc. bill - \$2317.96 (11/18/16)

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Review and approve Annual Report to ABCC

Request for appointment to Marion Cultural Council – Lisa Baltz

Letter from Army Corps of Engineers regarding Sprague’s Cove

Town Counsel opinion – use of CPC funds

ZBA notice of decision – 818 Point Road

ZBA notice of decision – 4 Derby Lane

Eversource 2017 Vegetation Management Plan