



**Town of Swampscott
Select Board Meeting Minutes**

Wednesday, January 29, 2020

Swampscott High School, B208, 200 Essex Street Swampscott, MA 01907

MEMBERS PRESENT

Peter Spellios (Chair), Naomi Dreeben (Vice Chair), Don Hause, Laura Spathanas, Polly Titcomb

MEMBERS ABSENT

None

OTHER TOWN OFFICIALS PRESENT

Sean Fitzgerald, Town Administrator; Allie Fiske, Assistant to the Town Administrator; Chief Ron Madigan, Chief of Police; Detective Ted Delano, Police Department; Jeff Vaughan, Director of Public Health; Tom McEnaney, Town Counsel – KP Law

The meeting was called to order at 6:07pm

DANGEROUS/NUISANCE DOG HEARING

Motion to enter Public Hearing:

On **MOTION** (Dreeben) and **SECOND** (Titcomb) a roll call was performed to enter into public hearing (Hause) Yes (Spellios) Yes (Spathanas) Yes (Titcomb) Yes (Dreeben) Yes

The Select Board and/or its designees will hold a public hearing in accordance with Massachusetts General Laws, Chapter 140, Section 157, to investigate, examine, and determine whether the dogs owned and/or kept by Glenn, Irene, and Rebecca Schwartz of 50 Puritan Lane in the Town of Swampscott are Nuisance Dogs or Dangerous Dogs as those terms are defined in said statute. Votes will be taken by the hearing authority.

Town Counsel Tom McEnaney stated the purpose of the hearing, which is a result of complaints stemming from two different incidents: on November 13, 2019 and December 24, 2019. The dogs involved are Tennessee Jed, Bubba, and Lucy (who now resides in Salem with the previous dog owners' daughter). The Select Board will need to vote on whether the three dogs in question are dangerous dogs, and what remediation will need to be taken to address the dangerous dog situation. Attorney McEnaney provided definitions to guide the discussion:

Dangerous dog", a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would

believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

Nuisance dog", a dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (iii) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

Attorney McEnaney explained that if the dogs were determined to be a nuisance, remedial option would be determined to ameliorate the cause of nuisance behavior. If dangerous dog, the Select Board can impose remedial efforts within the guidelines of 7 options by law.

Before the first witness was called, Peter Spellios noted that the Select Board visited the dog-owners' property at 50 Puritan Ave. To evaluate the current housing conditions.

Jeremy Cohen from Boston Dog Lawyers was in attendance representing the dog owners. He specified that whatever remedies imposed upon Lucy would follow her to whatever town she will be in the Commonwealth.

Angela O'Brien was sworn in and provided a statement regarding her interaction with the dogs on November 13, 2019 where her dog Bailey was attacked. Attorney McEnaney shared photographs of the dog the day after the attack and submitted them into exhibit.

Terri Sebelli was sworn in and provided a statement and answered questions regarding her interaction with the dogs on November 13, as she was present on the walk with Ms. O'Brien when the attack occurred.

Nigel Godley was sworn in and provided a statement and answered questions regarding his interaction with one of the dogs on December 24, 2019 when on a walk with his dog Luna.

Detective Ted Delano of the Swampscott Police Department was tasked with performing an investigation into two incidents involving the Schwartz's dogs. To develop a report, Det. Delano gathered incident reports from November 13 and December 24 police reports, performed interviews with Terri Miller, Angela O'Brien, Irene Schwartz, Nigel Godley, and Swampscott Animal Control officer Dan Proulx. He also secured all relative documents including police written statements. Det. Delano was on scene after the event transpired on November 13 and stated that his opinion is that all statements provided are reliable. A copy of Detective Delano's statement was entered into exhibit.

On-call Swampscott Animal Control Officer Dan Proulx was sworn in and provided a statement and answered questions about his experience with both incidents. He was on-call for both incidents but did not witness the first incident in person.

Lisa Cutting, Owner of Ocean View Kennel in Revere was sworn in and provided a statement and answered questions about her experience with Lucy after the second incident. Ocean View Kennel offers daycare and grooming services and is also the City pound for five cities. She observed Luci for her quarantine period and did not gauge any aggression toward humans or dogs. When new owner Rebecca

Schwartz arranged to gather Lucy after her quarantine, Cutting suggested specific apparatus to help better control Lucy.

Rebecca Schwartz, daughter of the dog owners and new owner of Lucy was sworn in and provided a statement and answered questions about her experience with the first attack on November 13 at which she was present. She provided context about each of the dogs and the situations that led to the dogs getting out on that day. She also outlined some of the steps the dog owners have taken to better secure the backyard gated area. She spoke about her ownership of Lucy, confirming that she has taken all recommendations from Lisa Cutting to better control Lucy.

The Select Board members discussed the three dogs in question, Tennessee Jed, Bubba, and Lucy to ensure there was understanding to the best extent possible of what role each dog played in the two incidents. Several Select Board members stated that they found the testimony that all three dogs were involved in the first attack to be credible.

Spathanas made the **MOTION**, based on the evidence introduced at this hearing, including the testimony of Angela O'Brien, Teri Sibelli and Nigel Godley, as well as the other witnesses and documents submitted, that the 3 dogs owned and/or kept by Glenn, Irene, and Rebecca Schwartz, Lucy, Bubba and Jed are dangerous dogs. **SECONDED** (Hause). All in favor.

Attorney McEnaney then provided information about the seven potential remedies that the board has available to address a dangerous dog situation. These are summarized as: 1) humanely retrained 2) confined to premises including being held a secure location indoor or outdoor 3) if removed from premises then must be muzzled and restrained 4) Require owner to have insurance 5) Provide ACO with identification of the dog in question 6) Have dog spayed or neutered 7) humane euthanization

Chairmen Spellios provided an opportunity for the witnesses to provide their opinion, based on their experience, of what remediation should take place to address these situations and to avoid future incidents.

The Select Board discussed in detail the various remedies to address the current situation. Chairman Spellios suggested that a pen (per MGL requirements) be erected in the fenced yard, located 15-feet from the fence. He suggested that each named dog should be restrained from door to pen. When off the property, dogs should be muzzled. The Board then proposed that a potential remediation be that the dogs are no longer allowed off the premises at all.

On **MOTION** (Dreeben) and **SECOND** (Hause) it was **VOTED** (unanimous) to table the public hearing.

CONSENT AGENDA:

The board discussed a vote to authorize Town Administrator to purchase new standardized barrels from Cascade for the new Solid Waste Program. The Town has received a grant from MassDEP for \$153,000 as part of a state-wide effort to mitigate the impact of solid waste. Polly confirmed that Cascade provided the best deal for the quality.

The first conveyance of units at Fishermen's Watch is occurring and needs a subordination agreement relative to the second mortgage the Town of Swampscott has on the property. The developer of

Fishermen's Watch has made their affordable housing contribution to the Town of Swampscott. There had been substantial disruption to Greenwood Ave. because of utility installation and the developer has paid \$21,000 and \$8,000 from National Grid to repave the portion of Greenwood Ave. The last mortgage release is not to occur until the Town of Swampscott receives all amounts due under land development agreement and related documents.

On **MOTION** (Hause) and **SECONDED** (Dreeben) it was **VOTED** (unanimous) that the Town execute and deliver a Subordination of Mortgage to Condominium Documents and a Partial Release of Mortgage for each Unit provided that, as a condition to delivery of a Partial Release of Mortgage for the final Unit, the delivery thereof shall be conditioned upon receipt of a payment from the Developer equal to 10% of a total gross unit sales price of the Project in excess of \$21,000,000.

On **MOTION** (Hause) and **SECONDED** (Dreeben) it was **VOTED** (unanimous) that Sean Fitzgerald, in his capacity as Town Administrator, be hereby authorized to execute and acknowledge such documents and any additional certificates ancillary thereto in forms approved by him.

On **MOTION** (Spathanas) and **SECONDED** (Hause) it was **VOTED** (unanimous) to authorize Town Administrator to move forward with procurement of solid waste containers in connection with a grant from the Massachusetts Department of Environmental Protection.

On **MOTION** (Dreeben) and **SECOND** (Spathanas) it was **VOTED** (unanimous) to take the public hearing off the table.

After consulting with client, Attorney Cohen requested that the Board consider that Lucy, now residing in Salem, be able to be walked with all necessary apparatus as long as Don Famico (Salem Animal Control Officer) is comfortable. Regarding Swampscott, Cohen stated that the dog owners are amenable to all recommended remediations presented but request that Bubba - being the youngest of the dogs - be able to be brought off property for walks with all restrictions and all necessary apparatus.

The dog owners through Attorney Cohen voluntarily stated that Lucy will not return to Swampscott.

The Select Board expressed concern about how they can be assured that the owners of Bubba have control over her while walking. It was decided that Animal Control Officer Diane Treadwell and a professional dog trainer of her choice can evaluate the owner's abilities to manage the dogs while walking off the property.

Chairmen Spellios generally reviewed the remedies requested by the Select Board:

- Dogs must be securely confined indoor or outdoor in a locked pen no closer than 15 feet to the fence line. If the pen does not have a floor, the sides will go in the ground not less than 2 feet. The fence will be chain-link and not less than 6-feet in height. Provide appropriate shelter per M.G.L
- Install pen or run on property in Salem for Lucy subject to approval of Salem ACO
- Off-site walking of Lucy subject to approval of Salem ACO
- On Salem property, backyard should have a fence no less than 6-feet high
- Dogs must be humanely restrained when taken from house to pen
- Dogs not to be taken off premises except by vehicle
- Bubba can be walked if approved by the ACO together with a special trainer selected by the ACO when muzzled and restrained by martindale harness, and a leash meeting specific requirements

- The Schwartz's will provide proof of insurance no less than \$100,000 per dog
- Lucy, Bubba, and Jed will undergo additional training
- Lucy will reside in Salem and Lucy will not return to visit or reside in Swampscott
- A copy of this order will be provided to the ACO in Salem
- All three dogs remaining in Swampscott and one in Salem will be microchipped
- All dogs will surrender Swampscott dog park privilege
- There will be an inspection within 30 days of the execution of agreement

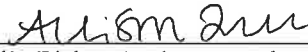
At the request of Attorney Cohen, the Select Board added to this list that until the fence can be installed, the dogs remain muzzled when in the yard, and they will look into installing a run.

On **MOTION** (Hause) and **SECONDED** (Titcomb) it was **VOTED** (unanimous) to close the evidential portion of the hearing.

On **MOTION** (Titcomb) and **SECONDED** (Spathanas) it was **VOTE** (unanimous) to approve the requested conditions subject to final written agreement between the Schwartz's and the Town of Swampscott.

On **MOTION** (Titcomb) and **SECONDED** (Dreeben) it was **VOTED** (unanimous) to adjourn at 9:52pm.

Respectfully submitted,


 Allie Fiske, Assistant to the Town Administrator

Minutes APPROVED by vote of the Select Board 1/29/2020