

TOWN OF ELMORE, VT

Monthly Select Board Meeting

Meeting Minutes – prepared by C. DeVore
Status: APPROVED

Meeting Date: June 14, 2017

Start Time: 6:30 pm **Adjourn:** 9:25 pm

Meeting Attendees: Robert Burley – ESB Chairman, Caroline DeVore – ESB, Robb Wills – ESB, Michel LaCasse – Road Commissioner, Chuck Barkley – Resident/Principle Party, Cheryl Barkley – Resident/Principle Party, Meura Rose – Interested Party, Elizabeth Conolly – Interested Party/Non-resident, Bernard Jensen – Principal Party/Resident, Ken Haggett – Elmore Animal Control Officer, Ray Johnson – Interested Party/Resident, MaryAnn Johnson – Interested Party/Resident

Opening remarks by the ESB Chairman Burley: Mr. Burley reviewed the meeting guidelines with all in attendance. Guidelines were also provided in written form. Per VT statute, following the hearing and scheduled board meeting, the Select Board will enter into Executive Session(s) to review submitted evidence, discuss testimony and reach a determination in this matter. Principle parties will be notified in writing via certified mail (return receipt requested) of the Board's conclusion and any course of action required by Principle Parties.

A. SPECIAL TOPICS:

B. NEW ITEMS:

1. **HEARING: ANIMAL CONTROL - Dog bite; Cheryl Barkley 18May2017 on West Loop Rd. Dog owner Bernard Jensen. Animal Control Officer has met with parties. Barkleys submitted written request for hearing IAW 20VSA -3546 dated 6Jun17.**

Note: Mr. Jensen's dog Blue is a subject of this investigation. The record will refer to the dog by name.

Blue is a male (neutered) Husky/German Shepherd mix, approximately 4-5 years old, weighing ~70 lbs. Blue was obtained by the Jensen's in August 2016 from North Country Animal League (NCAL) animal shelter, Morrisville, VT. Blue was transferred to the Jensens with no known history of aggression and no known incidences of biting.

Rabies questioning: Prior to opening remarks by the Principle parties, Mr. Burley reviewed Blue's rabies status. After a confirmation of a negative rabies diagnosis (current and previous), Mr. Burley continued with a "rabies negative" hearing agenda.

Hearing of complaint:

Mr. & Mrs. Barkley's letter requesting a hearing and describing the Complaint was read aloud by Mr. Burley. The letter was presented to the Board along with three (3) photographs of Mrs. Barkley's injuries sustained on May 18, 2017. Letter and 3 photos labeled Exhibit #1. Note: Mr. & Mrs. Barkley's letter requests that the Board remove Blue from the neighborhood referencing a concern for public safety.

Discussion:

Elizabeth (Liz) Conolly, Mr. & Mrs. Barkley's attorney noted: "This is not a personal issue, this (hearing request) is out of fear for their (Barkley's) safety and use and enjoyment of their property. Mr./Mrs. Barkley will not be pursuing civil liability at this time. The Barkley's live directly next door to the dog which is a constant reminder of what (the bite) Mrs. Barkley experienced. Other neighbors may not have experienced this first hand. There were guidelines established when the incident happened, but those were not followed."

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Mr. Burley asked for clarification of the reference to civil liability. Ms. Conolly noted that she had reviewed VT case law and other incidents of a similar nature. She added that there was some evidence indicating another bite by the same dog before the May 18, 2017 incident. Ms. Conolly observed that with a “known aggression issue before the bite,” the court may find negligence. Mr. Burley noted that while the VT court doesn’t explicitly say that VT is a “one bite state,” there is precedence.

Mrs. Barkley: “I want to convey the fear I have. The dog consistently exhibits aggressive behavior. Passersby are barked at. The Jensen’s house has big windows – when I go into my back yard the dog lunges at those windows. The dog, to my knowledge, has escaped 3 times. My concern is that, even though Blue is not allowed out of the house, one more escape could have horrific consequences. We observe that when he (Blue) goes in and out, there is no leash and Mr. Jensen doesn’t hold the collar. There is no control by the owners. I also have a picture of the dog against the cage, my concern is he could jump deck railing.”

Mrs. Barkley provided pictures of the dog entering and exiting the kennel. Marked as Exhibit #1.1.

SB Observation: As a result of concerns, the Mr./Mrs. Barkley have initiated a number of defensive procedures/actions for protection. Actions described during the hearing.

Description and discussion of dog’s location

Previous to the bite incident of May 18, 2017: Dog was housed on the Jensen’s enclosed deck. Estimated deck railing height was 40” with mesh wiring attached to deck rails.

Newly-created kennel (post May 18, 2017 bite incident): Estimated size of new kennel is 10’(w) x 10’(l) x 6’ (h) located on the Jensen’s deck. See Exhibit #1.2 for pictures of the new cage area. Per Mr. Jensen, the dog is now an “indoor” dog who will live between the inside of the Jensen’s home and the deck kennel. There is no enclosed area connecting the kennel door to the house door – a distance of approximately 4 feet.

Note: The distance between the Jensen’s and Barkley’s houses is ~50-60 feet and each lot is about 1 acre. This is a thickly settled area.

Mrs. Barkley: “There was at least one recorded bite before this incident. We are asking that the dog be removed from the neighborhood. Blue is dangerous and doesn’t belong in a residential setting.”

Mr. Burley: Entering Exhibit #2: Filing of dog bite incident report by Ms. Marge Kelso. This is an ex post facto filing on a bite that allegedly occurred in the summer of 2016. The letter will be presented to the Elmore Health Officer. Letter received by Select Board on June 14, 2017 (day of hearing).

Testimony by Mr. Ken Haggett, Elmore Animal Control Officer. Mr. Haggett spoke with the Barkley’s via phone and exchanged email. First contact was the report of the bite. Mr. Haggett advised Mr./Mrs. Barkley to create a report and submitted to the Elmore Health Officer. Mr. Haggett recommended keeping the dog restrained. The 10x10x6 kennel was added after the bite incident. Prior to the bite, the existing deck railing (~40” high deck railing) was in place. (See notes above).

Mr. Haggett visited the Jensen’s property the day after the kennel was added to the property. Mr. Haggett observed that the new kennel could be adequate to contain the animal. He noted

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that animals similar to Blue would benefit from a more natural and less confined lifestyle. He doesn't know the animal well and can't predict what the animal's response will be to the continual confinement to the house and kennel.

Mr. Jensen's statements: Exhibit #3 – Collection of memos sent to Mr. Jensen. Mr. Jensen provided the following letters/communications to the Board.

Exhibit #3.1 Letter from Steven McDonough, dated 6/13/17: Mr. Burley read to the audience.
Exhibit #3.2 Letter from Brian & Laurie Marineau, dated 6/13/17: Mr. Burley read to audience.
Exhibit #3.3 Email from Mr. Barkley to Mr. Jensen dated 5/28/17 @ 07:30. Mr. Burley noted that Mr. Barkley's email is a strong and thorough restatement of issues outlines in Exhibit #1. This email as not read aloud.

Board to Mr. Jensen: What are the current restraints?
Deck has railing at ~40" high with wire mesh fastened to railing. This railing encloses a six foot high, 10'x10' kennel. Mr. Jensen noted, "When Blue goes into or out of the kennel, he goes from one door to the next. There is no way for him to get out."

Open discussion:

Questions to Mr. Haggett: Should this be sufficient to contain the dog? Yes, as long as he doesn't jump the railing.

Mr. Jensen: Blue has never tried to jump the railing, but did escape through the railing before mesh was added.

Mr. Berkley: Observed the dog putting his paws up on the gate and noted that when the dog moves between the new kennel and the house, there is no containment, no leash, no muzzle, no collar hold.

Mr. Jensen: Plans to keep the dog either on the deck or in the house continually with no more walking or access to areas outside of the house or kennel - the dog won't go into the yard.

Mr. Haggett noted that NCAL has refused to take the dog back because of the bite issue.

Ms. DeVore: Asked to confirm where Ms. Kelso's bite/incident occurred. Mr. Jensen confirmed that the Kelso incident occurred on his deck (Blue unleashed). Ms. DeVore confirmed that one reported incident (Barkley) was with the dog leashed, the other unreported Kelso incident the year prior was on the Jensen's deck when the dog was unleashed.

Ms DeVore: Where will the dog relieve himself? Mr. Jensen: On the deck that is cleaned daily.

Mr. Barkley: Referencing letter from Steve McDonough said that Mr. McDonough's letter confused Blue with the Jensen's previous dog (Ucon). Also noted that Mr. Marineau's letter mentioned Blue was a puppy so it couldn't have been a reference to the same dog.

Mr. Wills: Pointed out that everyone is trying to do the right thing - trying to come together as a neighborhood.

Mr. Barkley: Observed that talking about an incident in the abstract is different than experiencing the incident directly. It is difficult to live next door to the dog daily knowing there could be another incident – especially visiting children.

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Mr. Burley asked that we explore possible remedies noting that there will need to be some adaptive moves and that the Board is fully sympathetic to all parties and their concerns.

Mr. Jensen's statement – continued:

Mr. Jensen noted he had a written statement to add to the record. He read his statement aloud. Written statement entered as Exhibit #4.

Ms. Conolly submitted additional documents into evidence supporting Mr./Mrs. Barkley's position.

#1.4 – Memo from Mr. Richard Curry

#1.5 - Memo from Ms. Marcy McNamara

Ms. Rose: She met Blue when he first arrived at the Jensen's. He was a very nice dog. Previous dog (Ucon) was aggressive. Initial interaction was good. On second visit to the Jensen's Blue wasn't aggressive. In the winter (2016/2017), the dog lunged at her and was growling and baring his teeth. She noted that the dog's behavior had changed. Concern expressed: "Two people have been bitten, maybe the dog isn't socialized. What if he gets out and there is a young child. Do we get to the point that we wait until a serious injury?" She noted that she doesn't want to see the dog euthanized and hopes this difficult situation can be resolved. She fears something disastrous will happen – she wishes for more control so neighbors don't need to be afraid.

Mr. Barkley: "We'd all feel horrified if something happened and we all knew and no one did anything first."

Mr. Johnson: Next door neighbor to the Jensen's – long time owners. Only in residence during the summer. Has seen the dog kennel. Concerned about "what if" the dog gets out.

Mr. Burley: The Board shares neighbor's concerns. By statute, the Board needs to determine a course of action. The Board doesn't know what that outcome will be at this time, but will provide a written statement of its finding by certified letter.

Ms. Johnson: Next door neighbor. Is concerned about penning the dog up and the impact on behavior. How can the dog be socialized and better managed on leash?

Note: Prior to closing the hearing, all parties expressed disappointment that circumstances devolved to the current state of neighborhood "friction." Neighbors expressed a strong desire to reach a mutually agreeable solution returning the neighborhood to its former cordial nature. The Barkely's reiterated their desire to have the dog relocated vs. euthanized.

Mr. Burley closed the session noting that the Board is required to issue a written statement of its finding by certified letter, return receipt requested, to each party. No timeframe was given for communication of outcome.

- 2. DISCUSSION: Potential sale/development of 50,000+ tap sugar operation on 1994ac; eastern slopes of Worcester Ridge, strict VLT Conservation easements remain in place. Property is former Atlas & Meyer lands currently owned/administered by VLT; traditional non-motorized uses and public access would continue.**

Notes: SB discussed proposal in initial stages.

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3. **DISCUSSION: Tallman Road beaver dam breach 27May17, reduced to 1 lane travel. State Emergency notification protocol executed. Restoration planned by end of June – materials & equipment needed.**

See detailed notes below.

4. **DISCUSSION: Elmore has risen to top of list for CL2 road upgrade funding. Upgrade Elmore Mountain Road to CL2 to reflect increased traffic and increase future town AOT annual highway funding. 20% town match for necessary upgrade.**

C. CONTINUING ACTIVE ITEMS:

1. Road Commissioner Update – LaCasse

Beaver Dam breach. Five plus acres of Beaver Ponds let go putting Tallman Rd under water when our four foot culvert plugged with bebris. Road was closed to traffic for 3 hours. With the backhoe the culvert inlet was partially cleared and road opened to one lane. Sunday, barriers were put in place and damage accessed. Culvert inlet cleaned out.

Damage:

- Culvert is still intact with about 15' exposed, culvert is 60' in length
- Mud and debris cleaned up inlet
- Road surface 9' wide, 3' deep, 100' in length missing
- Grass embankment 22' wide, 100' length, 32' drop vertically
- Concrete headwall blocks pushed 100' downstream – type 2 stone gone completely

Progress:

- State permit in hand
- Town Excavation hired
- Permission to access land owner's property beyond right of way
- Asked information for state emergency monies (cost must exceed 10% of summer operating budget)
- Work to be completed early July

Work Completed:

- Grading between frequent rains have not used chloride to date
- Put down some gravel in spots
- Cut brush on Pond Road
- Start hauling winter sand 4,000 yards bough, 285 truck loads

Equipment status:

- All in working order
- Excavator rented for work to be completed in August and September

Employee Status:

- Michel and Raymond attended training class
- Town garage being painted along with picnic tables

Upcoming Work / Anticipated Issues:

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- Municipal Road grant in draft for pilot program. Elmore eligible for \$5,800 in funding for qualified projects.
- Pond Rd will need attention in 2018 (bank stabilization, new guardrails, culverts and pavement).

2. DISCUSSION: Addition of Occupancy Permits to Zoning Process to assure “as built” compliance with Permits

Notes: Continuing action.

3. UPDATE: 2017 Hazard Mitigation Plan approved at 1) RPC and 2) State DEMS level. Now sent to FEMA for final approval.

4. DISCUSSION: Create Cost/Benefit hierarchy for Law Enforcement Options for continuing discussion with Elmore residents.

Notes: Rob Wills will be the DRI for the project with support from DeVore as needed. Continuing action item.

5. UPDATE - EPC:

- **SUB DIVISION BYLAW INTERIM UPDATE:** ESB edits submitted to EPC on 1/25. Burley met EPC 24May to assess. Problem is current version (2005) text software is “non-support”. Burley secured legacy software capability and will edit to meet new DEMS and FEMA standards and convert to supported text editor.
- **ENERGY PLAN:** Burley met with EPC 24May to clarify terms and content to smooth State Approval of Energy Subchapter as mandated by PSB & Legislature.

6. UPDATE: Effective 10May17, Zoning By-Law for Forest Reserve (FR) and Rural West (RW) districts updated to: a) eliminate existing errors/conflicts in elevations, b) include new water quality provisions to comply with ANR/EPA Regulations.

Notes: Approved by SB.

D. COMPLETED/INACTIVE ITEMS

1. Review Action Item List

E. SB EXECUTIVE SESSION

SB voted unanimously to enter executive session

Entered at 8:56pm

Ended at 9:24pm
