

TOWN OF ELMORE, VT

Special Select Board Meeting

Meeting Minutes – prepared by G. Schwartz
Status: Approved

Meeting Date: September 27, 2018

Start Time: 5:32 pm **Adjourn:** 6:10pm

Meeting Attendees: See Attached List

A. Special Topic:

1. Discussion: Hayford Road Dog Complaint Hearing

- a) C. DeVore began the hearing by reading the Warning for this meeting (Exhibit #1)
- b) C. DeVore then read the complaint from Jane Oliphant that was received by the Select Board on September 21, 2018 (Exhibit #2)
- c) C. DeVore read the following statement:

This hearing is mandated by Vermont State Title 20, Section 3546. The hearing is *in* the public, not *of* the public. As such it will be conducted in an orderly manner according to the Selectboard's rules of procedure, and that no public comment will be taken unless it is relevant to the complaint made and the dog subject to the hearing.

- d) C. DeVore then asked the Selectboard members to disclose any conflicts of interest or ex parte communications with the participants and recuse themselves from the hearing when a conflict or the appearance of a conflict is present. All members stated that they do not have a conflict.
- e) The complainant, Jane Oliphant was then sworn in prior to testifying.
- f) Jane Oliphant testified regarding the details surrounding the attack as follows;

While going out to her mailbox, Jane noticed that Kate Guterres was walking three dogs. Two of the dogs owned by the Guterres's were off lead. Ms. Oliphant stated that the dogs were approximately 20-30 feet away from her. She tried to avoid eye contact with the dogs who were barking at her. Nadiya (subject dog of hearing) then ran toward Ms. Oliphant and bit her on the hip.

Ms. Oliphant stated that the attack was unprovoked and occurred on her property. She stated that Kate Guterres leashed her dog after the bite but took no further action.

Ms. Oliphant went into her house and cleaned up the wound. She did not seek medical attention as she is a nurse and knew what to do.

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Ms. Oliphant contacted the Animal Control Officer and filed a dog bit incident report which she would have completed at the hospital had she felt she needed to seek medical attention.

Ms. Oliphant noted that Kate Guterres later sent an email apologizing for the incident and told her that the dogs would be on lead in the future (this information was not presented during the hearing and was not marked as an Exhibit. It was supplied to the Select Board following the hearing). The Selectboard asked questions of Ms. Oliphant following her testimony. Ms. Oliphant confirmed that Kate Guterres noted there was an unprovoked bite in the follow-up email.

C DeVore asked if there were additional comments or testimony from other witnesses.

- a) Len Plant stated that he lives at the top of Hayford Road and will not walk his down the road near the Guterres's because of the aggressiveness of the Guterres's dogs. He also stated that he has seen the Guterres's dogs off lead since the dog bit occurrence.**
- b) The Selectboard did not hear testimony from the defendant as there was no representation for the defendant and no witnesses who contributed any additional observations. No materials were delivered from the defendant for the Selectboard to consider as part of the hearing.**

The Selectboard asked Ken Haggett to recount his experience related to the complaint.

- a) Ken Haggett stated the following;**

He was away on vacation when the bite occurred. He received a voicemail from Jane when he returned. He then sent a report to Jane to get the information on record. He sent Kate Guterres a request for rabies vaccination information via email. The information provided by Kate Guterres was for Nadiya confirming that this was the dog that bit Jane. Ken stated that he did not know if the Guterres's have complied with the requirements of the November 9, 2016 letter for the Elmore Select Board (Exhibit #3)

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The Chairman asked if there were any additional questions from the Selectboard, Ms. Oliphant or if there were any other witnesses who wished to be heard.

Hearing none and having no additional questions, the Chairman stated that the Select Board would issue a written decision that can be appealed in accordance with the following;

Vermont's vicious dog law is silent as to appeals from vicious dog hearings, so any appeal of a Selectboard's decision may be brought in superior court. "Any action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any department, board, commission, or officer, that is not appealable under Rule 74 may be reviewed in accordance with this rule if such review is otherwise available by law." Vermont Rules of Civil procedure (V.R.C.P.) Rule 75. This is the process of appeal for any decision of "an agency of the state or a political subdivision thereof, including any department, board, commission, or officer" when there is no statutory appeal process. When no time limit is specified by statute, "the complaint shall be filed [with the Court] within 30 days after notice of any action or refusal to act of which review is sought ... and, in the event of a failure to act, within six months after expiration of the time in which action should reasonably have occurred." V.R.C.P. 75(c). If a timely appeal is filed, the superior court for the town's county will conduct what is called a "*de novo*" trial. At a *de novo* (which is Latin for "anew") hearing, the court will take evidence, make findings and conclusions, and essentially proceed as if the Selectboard's hearing had not been previously heard and decided. The court may "affirm, reverse, or modify" the Selectboard's decision. V.R.C.P. Rule 75(d). Until that time, any decision and/or protective order rendered by the Selectboard will remain in force and effect unless a motion to stay (i.e., a suspension of the Selectboard's decision) is granted by the court. V.R.C.P. Rule 75(c).

C. DeVore again asked if there were any addition comments or questions. Absent of any additional comments the Chairman motioned to end the meeting and enter into a closed Deliberative Session. Robb Wills Seconded the motion and all were in favor.

Note: The written Decision of the Select Board is a public document and is available to anyone making a public records request at the Town Clerks Office.

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B. EXECUTIVE OR DELIBERATIVE SESSION AS NEEDED

The Select Board entered into Executive Session at 6:10 pm

No Minutes were taken during this session

The Executive Session ended at 6:50 pm