

Windham VT Selectboard Meeting Minutes
Vicious Dog Hearing
May 26, 2020

Present via Zoom web conference:

Maureen Bell, Selectboard Chairwoman
Kord Scott, Selectman
Becky Eliastam
Heath Boyer
Kathy Jungermann
Carolyn Rubin
Imme Maurath (joined at 5:10 p.m.)

Peter Chamberlain, Selectman
Joyce Cumming, Selectboard Clerk
Maureen Fitch
Jo-Jo Chlebogiannis
Jeff Rubin
Kate Wright

Maureen Bell (hereinafter referred to as the Chairwoman) read from the Rules of Procedure for Selectboard Vicious Dog/Wolf Hybrid Hearings (attached). She announced the purpose of the meeting which according to 20 VSA 3546 and Windham Town Ordinance, the Selectboard is required to conduct when a domestic pet or wolf-hybrid has bitten a person while the domestic pet or wolf-hybrid is off the premises of the owner or keeper, the person bitten requires medical attention for the attack, and the person bitten has filed a written complaint with the Selectboard.

The Chairwoman explained the procedure to be followed for the hearing which she will chair. Any irrelevant, unreliable or unnecessarily repetitive evidence will be excluded. The Chairwoman opened the hearing at 5:01 p.m. by reading the warning/notice of hearing. (The meeting was interrupted briefly in order for the Chairwoman to send the meeting link to the Health Officer.)

The Chairwoman read aloud the complaint received on May 20, 2020 from Maureen Fitch. On May 19, 2020, in the area of Old Farm Road, Ms. Fitch and her dog, Peppe, were attacked by Marlo, a neutered male mix breed dog, almost 6 years of age, weighing approximately 42 lbs., owned by Jordan Eliastam (dog's details taken from rabies vaccination certificate attached). Ms. Fitch was treated at Grace Cottage for a hand wound and given a tetanus shot. Peppe was treated at Springfield Veterinary Hospital for multiple wounds requiring stitches and staples. The Eliastams paid for Peppe's veterinary bills; Ms. Fitch's care was covered by her health insurance. Ms. Fitch was concerned for her safety, Peppe's safety, and the safety of her 3-year old grandchild whom she cares for weekly. (See attached statement.)

The Chairwoman explained that the Selectboard would be acting as a quasi-judicial body and is obliged to objectively determine the facts and draw conclusions to provide the basis of an official action. She asked Ms. Fitch whether she was provided with the Rules of Procedure; Ms. Fitch acknowledged receipt. The Chairwoman asked Mrs. Becky Eliastam whether she was provided with the Rules of Procedure; Mrs. Eliastam acknowledged receipt. Neither Ms. Fitch nor Mrs. Eliastam had any questions about the hearing procedure.

The Chairwoman inquired about any conflicts of interest and/or ex-parte communications. No one reported any conflict of interest or was party to any ex-parte communication.

The Chairwoman administered the oath to Ms. Fitch who affirmed the truthfulness of her statement and evidence. Having been provided with Ms. Fitch's written statement, the Chairwoman allowed Ms. Fitch the opportunity to present oral testimony.

Ms. Fitch spoke briefly about the stress, emotional toll and anxiety she has had to endure as a result of the incident. Ms. Fitch explained that one of Peppe's wounds opened earlier in the day which necessitated a return visit to the vet to have it stapled. Hopefully, the staples will keep the wound closed until healing can occur. In the meantime, Peppe needs to wear a cone around his head to prevent contact with the wounds. Maureen said she and Peppe are adjusting.

The Chairwoman afforded the other Selectboard members an opportunity to question Ms. Fitch; neither Peter nor Kord had questions at this time.

The Chairwoman then allowed Mrs. Eliastam to respond to evidence presented by Ms. Fitch. Mrs. Eliastam explained that her primary concern was the safety of all the neighbors, adding that it was heartbreaking to hear and see the pain Ms. Fitch has endured. After the attack, she and her husband (Jordan Eliastam) acted as quickly as possible to institute safety measures and provide Ms. Fitch with a sense of security and comfort against a recurrence. After speaking with Ms. Fitch, the Eliastams agreed to a list of safety measures including that Marlo will be required to wear a muzzle at all times outdoors. Because of the limitations of the invisible fence originally purchased and intended to contain Marlo, Mrs. Eliastam explained that they plan to install a physical fence and have called a company in Springfield that specializes in dog kennel fences. Due to COVID-19 and high demand, the fence company has not been able to conduct a site visit and provide a quote yet. The Eliastams anticipate a site visit from the fence company in about a week. Mrs. Eliastam explained that the fence would contain Marlo directly upon exiting the house with no transition area in between and will be constructed so that Marlo would not be able to burrow beneath the enclosure. She said that she and her husband are prepared to move forward financially as soon as they are able to with the fence company, and that they want Ms. Fitch to feel comfortable leaving home and walking on/near Old Farm Road.

The Chairwoman solicited questions from the other Selectboard members. Peter asked if Marlo would be leashed at all times while outside; Mrs. Eliastam responded saying that Marlo is currently being leashed at all times outdoors, contained to their property, and is wearing a muzzle at all times outdoors. In addition, Mrs. Eliastam explained that they have ordered a more durable leash and collar for Marlo.

At this point the Chairwoman invited members of the public to present any relevant information.

Jeff Rubin described his experiences with Marlo, saying the dog has attacked his car preventing his family from exiting, he believes Marlo is vicious, and he and his family cannot walk in the area without fear. Jeff said he now carries a club when in the area of Old Farm Road. In addition, he doesn't believe an invisible fence will contain Marlo.

Heath Boyer described an incident approximately two weeks prior to the attack on Ms. Fitch when he was walking near the Nature Conservancy and he heard a dog (Marlo) barking and running toward him. When Marlo approached him in a threatening manner, Heath stopped walking and tried to use a soft voice with the dog initially. Heath progressed to a more stern tone and tried to figure out what to do as Marlo continued in a threatening manner. Heath reported that as Jordan approached, Marlo did not respond to Jordan's voice command. When Jordan got close enough, he was able to restrain Marlo by the collar. Like Jeff Rubin, Heath Boyer now also carries a big stick when walking in the area and Heath considers the dog dangerous.

The Chairwoman asked Mrs. Eliastam whether she was aware that dogs are not allowed off-leash while outside the owner's property if the dog is not responsive to its owners' voice command. Mrs. Eliastam responded saying she is aware now.

The Chairwoman then offered Ms. Fitch an opportunity to comment further and Ms. Fitch stressed her concerns for everyone's safety.

The Chairwoman offered Mrs. Eliastam a chance for further comment. Mrs. Eliastam acknowledged concerns voiced by the Rubins (though they have not met), Ms. Fitch, and Mr. Boyer, and reiterated that she is trying to take as many precautions as she can to prevent repeat occurrences.

Jeff Rubin expressed frustration that the situation has been allowed to go on for as long as it has. He feels the dog is too aggressive and should be put down.

Kate Wright expressed her perspective that the neighbors have a responsibility to make the Eliastams aware of their experiences regarding Marlo. She does not believe that neighbors have communicated with the Eliastams sufficiently to express concerns.

Jeff Rubin responded that he has reached the tipping point and now just avoids the area whenever possible.

Heath acknowledged positions expressed by Kate and Jeff, adding that he feels fences are of limited value in restraining a big strong dog. Heath is concerned not just for his own safety and feels that Marlo is a menace. He believes it is just a matter of time before Marlo attacks again because situations like this don't get better, only worse.

Jo-Jo Chlebogiannis explained an incident in which she and her husband, Jim, almost hit Marlo while the Eliastams' dogs were in the road near the Johnson residence late at night. Jo-Jo described the event as harrowing and said that she too felt threatened by Marlo when the dog prevented them and their pet from exiting the vehicle.

Imme Maurath said she thought that the Eliastam family should be concerned for their own safety with a small child in the home and a baby on the way.

Having heard from the members of the public, the Chairwoman invited Kord and Peter to express comments or ask questions. Kord asked for more information about the fence the Eliastams are planning to install. Mrs. Eliastam explained that she and Jordan have a stockade fence at their primary home in Massachusetts and there has not been a problem there in 8 years. The fence planned at their second home here is similar to a kennel fence and designed specifically to contain dogs. It consists of 4x4 lumber running along the ground from which a chain link fence will extend 6 ft. high to more 4x4 lumber at the top with additional 4x4s placed vertically around the kennel every 6 feet or so.

No final comments or questions were expressed by Ms. Fitch, Mrs. Eliastam or members of the Selectboard.

The Chairwoman closed the proceeding and announced that this is the final public hearing on the matter. She suggested that members of the Selectboard enter a closed deliberative session in order to reach a decision. She explained that the decision of the Selectboard setting forth its findings, conclusion, and order will be rendered in writing to the Eliastams by certified mail, return receipt requested, within 7 days.

Motion: To adjourn the Special Selectboard Meeting/Vicious Dog Hearing at 5:34 p.m.—moved by Kord, seconded by Peter—all in favor.

Respectfully submitted,

Joyce Cumming
Selectboard Clerk

Attachments:

- Rules of Procedure for Selectboard Vicious Dog/Wolf Hybrid Hearings
- Vicious Dog complaint (email) from Maureen Fitch dated May 24, 2020
- Certificate of Rabies Vaccination for Marlo

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