

MEETING MINUTES
Town of Heath
BOARD OF SELECTMEN
DANGEROUS DOG HEARING
Community Hall
April 8, 2014

Called to order at 7:07 p.m. by Sheila Litchfield, with Brian DeVriese, Bill Lattrell present. Also present: Kara Leistyna, Town Coordinator, Chris Mattson, Heath Police Officer, Ed Grinnell, Regional Animal Control Officer (ACO), Sarah Hettlinger, Asst. Animal Control Officer.

Reviewed Agenda: No changes.

Dangerous Dog Hearing: Board of Selectmen presiding as Hearing Authority.

Purpose of Hearing: To hear a complaint about dogs owned by Ronnie and Linda Woodard and, to make a determination whether the dogs are dangerous or nuisance dogs and to determine a corrective action and orders to prevent a nuisance or dangerous dog from endangering public safety or endangering environment or livestock. Also, this evaluation is made with consideration of the dog owner's demonstrated ability to be a responsible dog owner in the community.

Chair: We'll start out with the actual complaint that we are dealing with right now.

Anybody who is going to speak needs to be sworn in for the hearing. I would like to ask Brian DeVriese to do the swearing in.

Swearing In: Brian DeVriese conducted the swearing in by asking all those offering testimony to raise their right hand and answer: "Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth?" Those who stated their name and were sworn in: Chris Mattson, Sarah Hettlinger, Ed Grinnell, Kara Leistyna, Bill Lattrell, Sheila Litchfield, Brian DeVriese

Sarah Hettlinger: I received a call from Cathy Waldron at about 9:15 a.m. of 153 Colrain Road on March 18, 2014 stating that she had come out of her home and found two dogs in her yard and she found both of them in her barn chasing her...one it looked like it was actually going after the rabbits. She was able to grab them and took them up to who she assumed the owner was who was in fact Ronnie Woodard at 146 Colrain Road. So she took the dogs back. Linda Woodard, who was home at the time, Ronnie was not there, took the dogs into the house. She made a rude comment and closed the door. Cathy went back to her house and after she had the dogs out of there she looked around and found that two of her chickens were dead and one rooster and a lot of feathers were scattered everywhere. A lot of her other chickens were lost in the woods; they all came back other than the three that were dead. I actually didn't get there till the dogs had been taken home. When I got there she showed me the dead chickens that she had in a pile. She walked me around and showed other spots where they had been attacked. At that point she had located all her chickens. I had her sign a complaint and we dated it. Ed actually joined us at this point and he may have something else to add.

Chair: Alright.

Officer Mattson: The correct address is Colrain Stage Road rather than Colrain Road.

Chair: The corrected location of the incident is 153 Colrain Stage Road and the address of the dog owner is 146 Colrain Stage Road.

Entered into Evidence: Hearing Exhibit #1: Complaint dated 3/18/14.

7:15 p.m. Chief Margo Newton entered hearing.

Chair: I neglected to mention a brief description of how the hearing is going to go. We are currently right now in the evidentiary phase of the hearing. We are going to gather all of the evidence from persons already sworn in with the exception of Margo Newton who has just arrived. She'll be sworn in if she is

going to speak. Following the evidentiary phase of the hearing we will be closing that portion of the hearing. The second section of the hearing continues and that is the deliberation phase where the Select Board who are the hearing authority for the Town will be discussing what we've learned and determining what the orders will be. During that phase we may have questions for some of you so we may be asking you to clarify or speak or to help us with the process of determining the orders. We have just heard from Sarah, the Assistant ACO. Ed Grinnell, ACO, if you could enlighten us about what you learned.

Ed Grinnell: I went to Waldron's house that afternoon and saw what had happened and saw what was happening. I then went back the next day and took pictures. I have pictures to introduce into evidence.

Chair: Are these six different photos or the same?

Ed: There is one of each chicken, there's footprints in the snow and there's feathers and footprints scattered around.

Chair: Are these copies we can have? There are three pages here, six photos, two on each page so there's three exhibits, 1, 2 & 3 of dead chickens in the snow, and footprints and feathers

Ed: If you look closely there are dog foot prints.

Kara: Exhibit #1 is the complaint.

Chair: Yes, so the photos are exhibits #2, 3 & 4. And Sarah there is something you wanted to add?

Entered into Evidence: Hearing Exhibit #2, #3 & #4: Photographs of dead chickens, feathers scattered and footprints in snow.

Sarah: Yes, now my memory has been jogged and I do remember that it was pretty obvious that this did not happen due to wild animals coming in during the night. Even though she didn't catch them red handed with something in their mouth, it was obvious that they had done it not some other animal. Plus the chickens were fine at 7:30 p.m. when she (Cathy) came home from work and fed everybody left her barn door open and then went inside the house. The dogs woke her up at 9:00 a.m. and she came out and that'swhen she saw the dogs were there actively still pursuing her chickens.

Chair: Thank you. Do you have anything to add? Okay. Do you have anything you'd like to enter for evidence at all? Either of you? No? In that case, I'd like to enter into evidence the minutes of the previous dog hearing with the Woodard's. What is the date of that hearing?

Kara: March 21, 2013.

Bill: So is that exhibit #4?

Kara: No, #5.

Chair: And then I'd also like to enter each of the letters that were sent previously to the Woodard's. The first one is... actually there's no reason we can't enter all of them. [organizing paperwork] We have the Order to Quarantine dated February 22, 2013 to Mr. Woodard.

Kara: #6?

Chair: Did you get the minutes already?

Kara: I've got the minutes as Exhibit #5. #6 is the letter dated November, 2012 – is that what you wanted?

Chair: No, the Letter of Quarantine which is Feb. 22 is #6. The next is the Notice of Decision...

Bill: The Notice of Decision was, the amended version was Sept. 3, 2013.

Chair: Okay, the first one was March 27, 2013....so why don't we do the March 27 and the amended version as well. And Officer Lee Lively observations from July 24, I'd like those entered as well. I guess the others as well...the letter from Hilma dated April 8, 2014.

Kara: Lee Lively report is #9?

Chair: Yes. Can you tell me which one was #8?

Kara: Amended Decision, Sept. 3, 2013.

Chair: [Organizing paperwork] April 8, 2014 letter from Hilma is Exhibit #10 which identifies his (Woodard's) dogs....we can enter all of them if we want to. That was not as a result of a hearing, it was just the original letter about our fines that were unpaid. Include the official certified letter from the Town Clerk, Feb. 25, 2013 listed at the top of your list, make that Exhibit #11. And the copies of most recent recorded licenses from Hilma, I just want to be sure that's not everybody in Town.

Kara: No, it's just theirs.

Chair: Okay, that will be Exhibit #12.

Kara: And Sheila, excuse me, Sarah has the signed affidavit from Cathy Waldron.

Sarah: I had her sign an affidavit stating that pretty much, basically, that the dogs were in her yard. She had two chickens and one rooster that were dead. That she had returned the dogs to the Woodard's where they were accepted by Linda Woodard. She believes that these dogs did cause the death of her chickens and rooster. And she signed that to her knowledge and belief the information herein is true, correct and complete. So I had her sign and I witnessed it.

Chair: Thank you. There's two copies here...I'm turning it all over to Kara.

Kara: That's Exhibit #12?

Chair: That's Exhibit #13 because #12 was the licenses. And the reason I wanted to make sure this all gets entered as evidence, is that it helps to support how long we've all been dealing with this and strengthens our orders we'll use to go forward and we've been advised by attorneys that even without the witnesses present that if we had enough evidence that's credible we can go forward and establish new orders even beyond what we've already established in the past even without their presence at this hearing. Is there anything else anyone would like to enter into evidence at this point?

Bill: Did we put this in?

Chair: We didn't, would you like that in?

Bill: Yes, we need to establish a clear process.

Chair: That's the November 28, 2012 letter. So that will be Exhibit #14. Thank you.

So everything on Kara's nice orderly page is entered as evidence but in a different order. Thank you for organizing it that way. Okay.

Brian: The letter from Hilma dated February 25, 2013 is not one of the exhibits? There's a typo in the first sentence? The first sentence doesn't make sense, I don't know if that makes a difference....

[Looking for document]

Chair: No, it's fine, it's just one misspelled word but the meaning is there.

Kara: I forwarded a large packet via email that's on your flashdrive. There's other statements via email from other people after the March hearing last year. I don't know if you want to enter that?

Chair: Are any of them specifically talking about that situation?

Kara: The situation? Yes but I don't know....

Chair: Let's tap everything that we have at our fingertips that we can put in. We have them on our thumb-drive and you emailed them to us? But I think it also included some of the stuff that we've already included like the minutes...

Kara: I can show you the hard copy...basically it's some emails, some correspondence between Eileen Tougas and Debbie Cavalier specific to ...last year. I just wanted you to look at it and if you want to enter it let me know. Just see what it says.

Chair: Maybe, maybe not. [looking at paperwork]

Chief: I know in one case it was mistaken identity.

Chair: This was back in March, 2013.

Bill: Some of it is hearsay.

Chair: It's very hard to identify unless you see them...

Chief: I don't think it's credible evidence, it's hearsay.

Chair: We can't deal with hearsay. If the dogs were specifically with them ...

Bill: Or if they had filed a complaint.

Chair: Actually, we can consider credible evidence based on credibility of person giving the statement and can you actually determine that the dogs in question are the dogs you are talking about. How effective is it?

Bill: That would be my point here. A, you don't have them here to talk to them and ask them questions.

Chair: [looking through papers] We have to be really careful not to deal with rumors and you just don't know.

Chief: I remember those and it was, in one case I know they were identifying the wrong dogs because I was with this person and they said something about Ron's dogs and they weren't Ron's dogs.

Chair: Is there any more evidence? Anybody? Any other testimony from anybody at this point. I want to make sure that we can't think of anything else you want to add. Because once we close this portion of the hearing we can't add anymore testimony. We basically have to make our decision on what we've already heard and what's been entered into evidence.

Bill: We can ask questions though?

Chair: Absolutely.

Sarah: I do want to mention a few things. More people are saying they've seen the dogs loose. Now it's hearsay, I don't know if they were actually his dogs. It sounds like we've got some more Rottweilers over in Mohawk Estates. The people who live in Sue Sylvester's old house, the fellow is a Vet Tech, used to be a Vet Tech, anyway, he knows dogs and he's seen them a couple of times. And then there was one morning it sounds like they were way over on Waterfall Drive, Ken Spencer's. He had two dogs that were sort of aggressive towards him when he was trying to leave for work. He described two Rottweilers. So that could be, but I don't have signed complaints. I could probably get them to follow up with that.

Chair: I'm thinking it would be really helpful if you knew where dogs lived or what dogs lived where.

Sarah: I'm learning. And someone has said there's two other Rottweilers over in Mohawk Estates.

Chief: [inaudible]...has an American Bulldog and one of Ron's puppies so you know people....

Sarah: Is this puppy maybe one of the ones that killed the chickens? How old is he? Do you know?

Chief: No, I don't know. But if she took those other dogs in...

Chair: She let them in. [three people speaking at once]

Ed: She let them in. That's admission that they are her dogs that she is control of them.

Chief: I don't think she lets them out because the American Bulldog there, I had to quarantine last year. So they kind of learned their lesson about letting their dogs out.

Chair: So the best thing if someone tells you that they've seen dogs out we need to get it documented on report forms, they can take a picture, they can hold the dogs, they can call you directly to pick them up and there's several different possible things to help us make it, help us enforce the law.

Sarah: So basically if any of these people do see those dogs loose again they can call me and I can just go pick them up, is what you're saying. I should contact them and say, 'you can inform me about it and have you seen them then keep me informed about that.

Chair: You can't go on private property unless you've been invited on...

Ed: Actually you can.

Chair: You can? Yes, we are still talking evidence. What's your question, I'm sorry?

Ed: Yes, if you are following a dog or looking for a dog, you can go through people's backyards, you just are not allowed to open doors or gates. So if the gate is open you can walk through it, if it's closed you can't open it, you can look over it.

Sarah: I'm not talking about the Woodard's property. If they are at the Spencer's and they can keep the dogs around and I can go get them.

Chair: So I would encourage you to keep working with Eddie to get the steps around that piece to ensure you are doing it legally. It doesn't help us at all if it's not done right.

Ed: So we're talking about picking the dog up and taking it to Greenfield or Turners?

Chair: We're gonna actually get into that, in discussing orders. We'll discuss more in the deliberation is about picking up the dogs and who can do that.

Brian: We were just talking about a dog maybe on someone else's property...

Chair: If the ACOs pick up, take the dog, they can take them to the Animal Shelter. So what we're hoping is that if a resident had a problem with the dog on their property, they could contain the dog and call the ACO.

Bill: Not too many people are going to volunteer to contain a Rottweiler just because of their reputation. [others agreed]

Chair: Alright is there any other evidence to enter so that we can go into deliberation? Hearing none, the evidentiary part of the hearing is closed at 7:34 p.m. and the deliberation phase commences now.

Deliberation by the Board of Selectmen

Closed evidentiary hearing – no new evidence or statements may be made at this point. The Board will deliberate with no interruptions/interaction. Chair read statutes and definitions of nuisance and dangerous dog. Deliberated on whether to deem the dogs dangerous or nuisance.

Read again **Hearing Exhibit #1: Complaint dated 3/18/14.**

Sarah made a correction to the color of the cocker spaniel to a tan/buff dog not black/tan. She made one line through error and initialed change with today's date.

Chair: I'm going to give this back to Kara corrected. Thank you. Alright, so the question is the definition of a nuisance and what is the definition of a dangerous dog and do we have one based on the evidence that we have so far. What we're talking about right now is these specific two dogs that caused death to the animals – the rooster and the chickens. [looked for definitions]

Bill: I just want to be sure it's on the record that we covered it. I know that the Waldron's have dogs – were they out that morning?

Sarah: No. They were in the house barking and that's what got her up.

Bill: We need to have it on record that it wasn't her dogs that killed those chickens.

Chair: Thank you, Bill, that's a good point.

Bill: So was there any other evidence?

Sarah: No. Oh, the other evidence was that her dogs were inside so they would not be the ones that attacked.

Ed: Her dogs don't fill the footprints. She has a pitbull and two small dogs.

Chair: And the footprints that are being spoken of are in the photographs.

Bill: Can you describe the footprints that were seen by you or in the photographs?

Ed: A large dog and a small dog, smaller dog. But the large dog was much bigger than her pit.

Chief: Was there any blood on the dog?

Ed: I didn't see the dogs. There was blood in the snow.

Sarah: She had already taken the dogs back when Ed and I arrived.

Chair: So a dangerous dog by State definition, MGL Chap. 140, Sect. 157 – 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. So that's the dangerous dog.

A nuisance dog is 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 the circumstances.

So those are the two definitions that we're dealing with. We also have a suggestion from Kopelman & Paige attorneys that we actually have more latitude in the determination of a nuisance dog than a dangerous dog. The motions for orders and the outcome when you determine a dog a dangerous dog are pretty specific, and there are several actions that we cannot do that we could do, or could consider applying if the dog is determined a nuisance dog. So the attorney actually advised us that if we can, to use the nuisance terminology.

Bill: I would agree with that. That has a lot to do with the way the dog is treated. They could be destroyed if they are dangerous dogs.

Ed: A dangerous dog you can't run out of town – you can't even take it out of town. Where a nuisance dog you can ban from town. I have a question. Do we know if this Rottweiler was one of the determined dangerous dogs from last year? Who would know?

Sarah: Cathy seemed very definite. She knows her dogs – Cathy Waldron pretty well convinced me that she's very sure that that was not one of the three that was deemed dangerous, that this was a different dog.

Ed: Because he had another litter right after we were there when we did the inspection last year, last summer.

Sarah: It could be one of those puppies.

Bill: How did Cathy Waldron determine its age?

Sarah: She could tell by looking at his testicles, she seemed to really know – maybe it was a year or year and a half old at the most.

Ed: Because Rottweilers bulk up in two years. So they are kind of thinner at a year, year and a half.

Sarah: And she apparently says she really knows the other dogs.

Kara: The dogs that he had during the hearing when you had the hearing last March, the youngest one was three.

Chair: Thank you very much. So one of the motions just to kind of get us started would be to consider that in accordance with Chap. 140, sect. 157 that we establish a finding of nuisance and order very specific remedial action to ameliorate the cause of a nuisance behavior and then we can itemize what that behavior is.

Brian: I make a motion to declare these dogs nuisance dogs under this section of the law.

Bill: I second.

Chair: The motion was that under Chap. 140, Sect. 157, the finding is the dogs are deemed nuisance and remedial action to ameliorate the cause of the nuisance behavior will be further identified. So one of the things that people, we need to all understand and make sure that we get across to not just the Woodard's but several other people in Town, I know that we're talking specifically about the Woodard's right now but we have a situation that the State law now requires that if you have four or more dogs you have to have a kennel license, you absolutely have to have a kennel license. In the Town of Heath the process to get a kennel license requires you to go to the Planning Board to get it. And the Planning Board has to verify a) that there is enough land on the piece of property for the animals. The zoning bylaw requires 5 acres for four or more dogs. And there very well may be other people that are in the same situation so we need to communicate that this is the law. People need to go to the Planning Board to get their kennel license approval. Once they get authorized by the Planning Board, the Town Clerk actually issues the license. And the center of town, is one zone prohibited to have a kennel. It is the only zone you may not have a kennel at all. One of the very first things that we need to include in our orders is that they need to comply all of the laws of the State and the Town of Heath. And that they need to limit the dogs on the property they are currently on to four dogs, three months of age or older. Anymore than four dogs, three months of age or older have to be off, have to leave. He is not allowed to have any more than four dogs, three months of age or older. So that means when he has a litter, you can have them up to three months of age and then they have to leave. But he may only have four dogs, three months of age or older on that particular piece of property. And he may go to the Planning Board and request a zoning variance but it's quite unlikely to happen because the zoning bylaw says you need five acres of land.

Brian: Can you just read that it's four or more...

Chair: Four or more dogs, three months of age or older requires a kennel license.

Brian: So how can he have four dogs?

Ed: It's actually four or more [many people speaking at once]

Chair: Four or more is the wording.

Bill: So Heath's rules that say more than four for licenses?

Ed: The State law is four or more.

Chair: Four or more is a kennel. But when you have less than five acres, you can only have three dogs.

Sarah: Other people can only have three if they have under five acres? You sure you want to pursue this?

Bill: In the Heath bylaw: it says the owner or keeper of an owner kennel license. So our bylaw is in conflict with the State law.

Kara: Read the definition of kennel.

Bill: A kennel is a pack or collection of more than four dogs.

Kara: More than four dogs.

Bill: Yeah, that's what I said, three months of age or older.

Kara: The attorney did it – that's what we voted.

Chair: We're going back to Town Meeting so we don't have to...

Kara: I have the law here.

Bill: The only reason I am pointing this out Sheila is that if they are ...[inaudible]

Chair: That's it's four or more? No, they aren't under any belief whatsoever, I'm sorry they have seven, eight or nine dogs.

Bill: [inaudible]

Ed: You can change your bylaws but you can make laws more stringent but not less. So you could say two but you can't say five.

Chair: So under Heath Animal Welfare Bylaws, Sect. 9, item 2 – kennels. A kennel license is required when more than four dogs, three months of age or older are kept on the same property. That's exactly

what the State law says. So that's correct. That goes into the zoning bylaw – the zoning bylaw I don't have with me.

Kara: I do.

Chair: That's been in effect for maybe 6 or 7 years for the 5 acre.

Ed: The dog law you are quoting is 96 and it was amended a year and a half ago.

Chair: Yes, which is when all of us got re-educated.

Sarah: Is this any breed of dog? What if you have five Chihuahuas in your house?

Chair: It doesn't matter. So I see two places that we need to work on in the bylaws so there isn't any confusion. [looking at zoning bylaw] on the left column it says a dog kennel is acceptable provided that the lot area is not less than five acres and the structure is placed within 75 ft. of the road. A special permit is required in all zones in Town with the exception of the Center where a kennel is not permitted at all. So they have to go to Planning Board to get a special permit to have a kennel whenever there are four or more dogs, three months of age or older. The other piece is there is a benefit to the person to have that because you are getting a kennel license – you are paying just for that. You are not paying for each individual dog to be licensed.

Sarah: But so many people don't have five acres.

Chair: That is the law on the charts and it's not new.

Sarah: Thanks to the Woodard's it is now begin enforced.

[inaudible]

Chair: That is correct – there is a possibility like Sarah is implying that there are people who don't know this. So we have to do our homework to let people know that this is the case. But we're not going after people, we're dealing with this hearing issue right now. So one of the amelioration items would be to ensure that they understand that given the size of the property they are currently residing on that they may not have more than three dogs, three months of age or older. Do you want to move that or you want to do one at a time...

Brian: Read them all, we can vote on all orders at one time at the end of our deliberation.

Chair: I found that when I was re-reading the State law in Sect. 157 it also says that part of our orders can be that if we find to be in violation of any of the orders, that we can, the dogs can be subject to seizure and impoundment. And I think that stating that in the orders would be useful to make it really clear that that is one of the things we intend to do.

Ed: That can happen. You can bring the kennel truck up here with Leslee Colucci and police back up. They go in and take them. That's not something Sarah and I do.

Bill: Do you need a warrant?

Ed: We need a determination that they're in violation.

Chair: To do that, we would need to convene a hearing and make that order?

Ed: Yes.

Chair: So I'd like to in these orders to say that we'd do that if necessary...if it comes to it.

Ed: It can be done if it comes to it but it's not that easy.

Officer Mattson: Is an emergency order different than a regular meeting order?

Chair: That's a great question because we have to post a hearing for a period of time. That's a very good point.

Officer Mattson: That's what I'm saying, if it's a hearing because of certain situations it may be too late, otherwise it'll be two weeks before you have ...an emergency order that the Selectmen can go about.

Chair: I wonder about that. Do you know if there's a way that we can ..some wording in an order now that we can say that if, at the bottom of the order, if there is non-compliance...

Ed: Well there is violation of the Dangerous Dog hearing. The dogs are loose on occasion, the fence hasn't been brought up to requirements although we said it seems to be adequate, nobody is digging out or jumping over it. But they're still not doing the letter of the law.

Bill: The main issue is the dogs have been loose.

Ed: But we can't prove it's their dogs unless you pick the dog up.

Chair: That's a very good point you just mentioned about the other orders. [looking through papers]

Bill: But, he's also right that we have no direct proof that they are in violation other than...

Chair: Sure we do. I'm just going back to the other orders.

Chief: There's no proof that the dog

Bill: We don't know the specific dogs.

Chair: But it's beyond that, some of our orders aren't just these dogs. The previous order says that, "you are ordered to keep all dogs owned and/or kept by you or anyone who resides with you in the Town of Heath indoors at all times, unless they are on a leash or are in pens which are of sufficient size to humanely contain the dogs." So it's all of his dogs and he's in violation of that. So we can make a statement that he's in violation of previous orders.

Bill: I actually witnessed one of his dogs at the transfer station not on a leash last week.

Chair: You need to write it down, we need documentation. And a description of that dog, and a date and a signature. The second order was "dogs shall be permitted outdoors on leashes provided that only 1 dog is being walked at a time; that each dog shall only be walked by an adult capable of controlling the dog; and that the leash has a minimum tensile strength of 300 pounds and does not exceed 3 feet in length. This order remains in full force." So if there are dogs not being walked on leashes or more than one dog out with only one person, that is a violation. The second violation. The best evidence we have is documenting it. Observing it and documenting it. And if someone calls to report it, you guys can go visit them, anybody, officers, anyone, take down, take a statement. And here's the fence description.

Kara: The attorney specifically said today that Cathy Waldron's affidavit stating that she returned the dogs to the Woodard's and they were accepted, is evidence that their dogs were in violation and you can, that's it.

Chair: That's evidence enough for us and that those were her dogs and that they were in violation of this order as well.

Kara: And that way you can impose any kind of punishment, enforcement that you deem necessary.

Chair: So, [looking through papers], which is the one Sept. 9, I can't see it quickly, which evidence exhibit number it is. So it's exhibit #8 [hands it to Brian].

Brian: I move to find Ronald Woodard in violation of Notice of Decision condition #1, "you are ordered to keep all dogs owned and/or kept by you or anyone who resides with you in the Town of Heath indoors at all times, unless they are on a leash or are in pens which are of sufficient size to humanely contain the dogs." And #2, "dogs shall be permitted outdoors on leashes provided that only 1 dog is being walked at a time; that each dog shall only be walked by an adult capable of controlling the dog; and that the leash has a minimum tensile strength of 300 pounds and does not exceed 3 feet in length. This order remains in full force." Because two dogs were out.

Chair: Two dogs were out, they weren't on leashes and there wasn't a person with them. So it's one answer at the same time. And I think this [looking at other previous orders] was about the fence and this was about the kennel so that's a different thing.

Brian: Okay, that's fine.

Chair: Alright, and I also found another law reference - do you want to do them all together? I think I got it, Brian, I don't think we're going to miss it. In Sect. 157A, of Chap. 140, that non-compliance of an order from this hearing authority shall be punished by a fine of \$500 or imprisonment for not more than 60 days and for a second, or subsequent offense, a fine of \$1,000 or imprisonment for not more than 90 days. At our previous hearing we had approximately \$1,500 worth of fines that we decided to waive and in effort to try to encourage compliance I would like us to re-establish this statement with these fines as, because we also did clearly tell them that were no more chances - this was it. And I fully intend that we're going to send somebody over to arrest him if he doesn't comply. I'd much rather have him arrested than have a fine.

Ed: They aren't going to pay the fine.

Chair: No, they're not going to pay the fine and I want them to understand that they can very well be arrested. We'll be going to court and we'll just deal with the consequences.

Bill: And the arrest happens after...

Chair: After a credible... if he doesn't comply with these orders, whatever we create as orders tonight we have to be able to follow those up to see if they are truly compliant and if there's non-compliance with these orders we need to be able to say that we are willing to ask that he be arrested.

Bill: But we have to ask the court?

Kara: You have to get a court order.

Chair: You have to go to court [people talking at the same time]

Bill: We can't order the arrest, it has to be a court ordered arrest.

Chair: Right, and let's just say that we don't know if it's gonna be just us sitting here again let's say in our statement that the Town will pursue a court order with a request to arrest.

Bill: I agree with that.

Brian: I agree we should include that, and also state that Ronnie Woodard did not attend the hearing.

Chair: Thank you Brian, can you please make sure you add that, Kara? For the record we state that Ron Woodard did not appear for the hearing. Guys, we can't hear with conversations going on at once.

Chair: For the record, Brian wanted to be sure to state that Ron Woodard did not come to the hearing.

Bill: Or anyone else on his behalf.

Chair: Was there something that you guys were speaking of that needs to be shared?

Ed: We were just talking about ...

Officer Mattson: We wouldn't physically arrest, we would summons him into court. We would give him the criminal application and then if he fails to appear, then the judge would actually give an arrest warrant to the police and then we can go on his property.

Chair: Should our written order state it that way? Because that's the way it would happen. What I read was exactly from the State Law.

Officer Mattson: You can amend it, you can do a fine and/or do the criminal application (a/k/a citation). You can do both.

Chair: It says and/or anyway.

Officer Mattson: You can do a summons... they can adjust it in court and still if he doesn't pay the court fines or fines to the Town, the judge can still issue a warrant and further penalties if he doesn't abide by what we have ordered.

Bill: You are right, that's a whole different perspective.

Chair: How do you suggest we word this? So a fine of \$500 or imprisonment for not more than 60 days or both and for a second, subsequent offense, a fine of a \$1,000 or imprisonment for not more than 90 days or both.

Ed: And this is a second offense.

Chair: This is a second offense.

Bill: So, we'll ... say that part.

Chair: Yes, okay so the motion actually would have more to do with, that given that this is a second offense...do you think, one of the problems we know we have is we need to follow all of the steps and stay on top of this in order for the court to take us seriously. Should we immediately at this point, I know this is a second offense, but we haven't done the fine or imprisonment for the first offense.

Chief: So the second offense, it would be a first offense.

Chair: That's what I'm wondering. [several speaking at once] okay, in court [inaudible] that's what I'm concerned about. That is so critical because that alone could get us tossed out. Okay? This is the new order that were stating a fine of \$500 or imprisonment for not more than 60 days or both and for a second, subsequent offense, a fine of a \$1,000 or imprisonment for not more than 90 days or both. Here's another thing I found out, Sect. 150 of Chap. 140 says that, "we can make a statement that if Ron Woodard fails to make a list of all dogs owned by him we can state by when and give that list to the Town Clerk at whatever date we determine. That you shall be punished by a fine of \$20, and we can say per day or whatever, if you refuse to provide a list or answer falsely again there's another consequence so we can order that the list by the end of the week be given to the Town Clerk so that we have a final number of dogs that are there and if we, what I would like to know what teeth can we put in that. If we don't get a response by the end of the week or question the validity of the information given, what can we do?

Chief: What does the law say?

Chair: It doesn't. They are expecting people are going to want to comply.

Chief: So it's kind of moot if it doesn't throw any weight.

Chair: Under what circumstances can we request an inspection? There's a Board of Health inspection if there's a health issue. What other reasons could we might request an inspection?

Ed: The reason for the five acre rule is a health issue which is the amount of waste in a small area.

Chair: That's right.

Ed: You could request a health inspection for the yard and house. There's too many dogs in the house.

Bill: Didn't we just correspond with someone about that?

Kara: I asked the Health Agent what steps can the Town take to get a Board of Health inspection and it's pretty slim. It has to be a really serious, like waste polluting the water, if people see physical evidence...

Chair: Dead, dying animals on the property?

Kara: It has to be really serious.

Officer Mattson: With the snow melting, if there's that much waste in the yard it's considered runoff.

Kara: If you can take photos of waste runoff.

Bill: You're getting into the area of science there. Any good defense attorney is going to point to any barnyard.

Chair: So, let's ask, are his dogs licensed right now?

Kara: No.

Bill: Can we follow up on that question? Were they licensed last year?

Kara: After the hearing.

Officer Mattson: All of them?

Kara: Yes, well, [many speaking at once] the ones we knew about.

Chair: How many did he license, six, last year?

Bill: I think one of them passed away.

Chair: So we don't know how many dogs he has right now. I still think we need to require him to give Hilma, to license them by the end of the week or whatever date we determine and make sure Hilma has the photos of all of them and the list.

Officer Mattson: We have non-criminal disposition.

Chair: We do, thank you, we do. We have the Non-criminal disposition.

Chief: Is that something that Hilma issues? Does she, if she knows there's dogs there and she doesn't hear from them what can she do?

Chair: We would like to say, that by the end of the week he'd need to comply and she'd need to let us know if he didn't comply. Then, we would ask Sarah to go and issue the Non-criminal Disposition ticket, for example. I don't know that that's the way it's going to happen but that is how we've done it in the past and we went through the Dog Officer at the time – before we had an ACO.

Ed: The other thing is if you issue a ticket it should be one of your Non-criminalit should be on that form.

Chair: We have forms, we have a Non-criminal Disposition ticketing system and forms for that. It's a wonderful thing. When it's been used it's really quite helpful. [to Sarah] Have you gotten briefed on how to use that? Okay, you need to see Hilma.

Kara: [to Sarah] Yes, I gave you the worksheet that listed it. Look in your file. But I can give it to you again. For the first offense, you get a ticket. Second offense, it's a certain amount of money ...

Sarah: Okay.

Chair: So perhaps we could say something to the effect that if you should fail to make a list, this is the wording right from the law, of all dogs owned by you and give it to the Town Clerk, and we state when, you shall be punished, we can say, that we're following our Non-Criminal Disposition ticketing system and that's got its own stated frequency of offenses and that sort of thing.

Brian: If you ignore it three times then you can be summonsed to court, or something like that.

Obviously, he probably wouldn't pay the first or second offenses, but, cause he has ignored them in the past. But the summons to court is something he wouldn't be able to ...[inaudible]

Chair: There is also a statement in our Town bylaws about restraining dogs. I was looking for everything we could say...page 14 [looking through papers]. Yes, Restraint of Dogs: No person shall cause or permit a dog whether licensed or unlicensed to run at large or permit such a dog to wander unrestrained on public or private property other than the premises of the owner, keeper of the premises of another person with knowledge and permission of such other person. A dog is under restraint within the meaning of this bylaw if it is controlled by a leash or at heel beside a competent person and obedient to the commands of that person, and further, in the area of Town zoned as Heath Center dogs must be tied or on a leash.

So I want to be sure we're also requiring compliance with Heath General Bylaw Sect. 9.3(a) regarding restraint of dogs. This is important because the dogs have been seen at the Transfer Station, the Town Hall, etc.

Bill: I would say that in that instance when I saw them [at transfer station], they were under control.

Chair: Whether or not, keep those Non-Criminal Disposition, keep those complaint tickets with you.

I would, I'm not quite sure, should we say something to that effect? The restraint piece? I would like to refer, not just to the State laws, but the Town law, too. The police dept. will pick up loose dog and turn them over to the shelter...let's see, that maybe just be in a letter, a cover letter

That whenever his dogs are found to be off his property and not under his control, they will be picked up and turned over to the ACO.

Ed: That's just general law, you don't have to specify it. It's State law as it is right now.

Chair: Alright. Can we just summarize what we've got and if you think of something we've missed. Let me see if I've got this all, Kara. We have a finding of a nuisance dog – get that phrased properly. We're clarifying that there's, on the size of the property he's on, there's a limit of three dogs, three months of age or older; more than three dogs he has have to leave the property – can no longer be there and that's in compliance with the Zoning bylaws and Animal Control laws.

Officer Mattson: Are you going to put a date on that?

Chair: Yes, we need a date on, which date? End of April? Because this doesn't impact the fact that he's got puppies coming – April 30th. That we're requiring him to comply with the laws? You've got to comply with the laws. All dogs must be licensed, well let's wait on that one second. If found to be in violation of an order under Chap. 140, Sect. 157, they will be subject to seizure and impoundment. That's again part of the law that I wanted to know if that's gonna happen. Another one, in accordance with Sect. 157A, non-compliance of Hearing Authority shall be punishable by a fine, all that laundry list...fine or imprisonment or both. We wanted to add the phrase...

Brian: But, isn't this a second offense?

Chair: We said that this technically is a second but we can't enforce that because we haven't actually issued a fine, so we're going to call, it a first offense but because it has to go to court in order for us to get a summons...

Officer Mattson: We can try to do the two, a first and a second, because obviously the dates are going to be day one and day two, I'd be more than willing to do that. It's just, once I do that it's in the court's hands as to how they find it.

Chair: What I'm afraid of is that the court is going to say you guys are going too fast on this one and they're not going to help. So you're saying, "you're found to be in violation of previous hearing orders," good point, Brian, and so we're already issuing a fine of \$500.

Brian: Because we have the evidence that the dogs were returned to the owners (the Woodard's), they received them (the dogs).

Chair: Because we have the evidence, that's the first point...and then the second one is, second or subsequent offenses shall be subject, he'll be subject to 60 days and/or, etc.

Kara: Your Notice of Decision a year ago ends with, "provided you comply with these conditions, the Board will waive its right to collect previously assessed fines in the amount of \$1,150. Please be advised, however, that if you fail to abide by these conditions (which they did) you can take further action and reinstitute the fines, why do you have to give him another statement? You can act on this, according to the attorney, you can act on this.

Chair: So when that goes to court you really think the court's gonna allow us to go from there to here right away?

Kara: I don't know, but, I have a feeling the court is going to say look how many chances you've given this guy – what the heck? You've said it before. Didn't the Magistrate say that before?

Chair: I just want to be sure we've done everything sequentially so we can't...

Bill: It's risky because if they don't agree with us they can throw it out...we don't want that to happen.

Chair: They can throw the whole thing out. And I also don't want to establish orders that we can't enforce for the same reason.

Brian: Well maybe that's one other condition that was violated, we just stated which conditions of that order he violated, the first two and then the last one, where the fines were conditional, that's the third violation of that order.

Bill: But it still comes down to a first offense.

Brian: I think that we're just acknowledging the fact that he's in violation of that condition where we showed leniency and I don't think we need to re-impose that particular fine but just say, all bets are off.

Bill: Right, there's no more leniency.

Chair: Yup.

Brian: I would add that one to the, his violation of that order of conditions, that that's a third one that he's in violation of.

Bill: We should add that as part of the motion.

Chair: So in order to get this worded properly we're going to need to see what you just read, do we have it in what you copied us, maybe?

Kara: Yes, it's in your packet with exhibits. The Notice of Decision and the Amended Notice. The original one, the last paragraph....

Bill: It's not the amended one...

Chair: We have to go by the amended one, don't we?

Kara: No. Why?

Chair: Because the amended one actually toned down some of what was said in the first letter. I think we have to go by the amended one. It didn't, part of the first order, he had to get the dogs licensed, and he did, so we looked at where things stood, we met with him again about the fence piece, and so we clarified what we meant by the outdoor closure for them. We changed that a little bit.

Bill: In an effort to keep him cooperating with us we lessened some of the orders. Clearly it was a mistake but...

Kara: Read the last paragraph of the amended order.

Bill: "Please be advised, that if you fail to abide by these conditions or if there are any further incidents or complaints about dogs owned and/or kept by you, the Board may take further enforcement action, including but not limited-to collection of past fines and additional fines and/or additional orders up to and including euthanization, your arrest, or the issuance of a court warrant." It's pretty clear.

Brian: He's in violation not of the numbered orders but the last paragraph...

Chair: He's in violation of the order. The court does not like to deal with dog stuff, they feel like they've got more important stuff to deal with and we know, we have to have every 'i' dotted and 't' crossed and follow a very clear sequential process in order to feel that we're going to be heard with this.

Ed: You can go in and use the public safety angle that these dogs have been proven to be dangerous and the courts will respond more to public safety than an unlicensed dog. They are a danger, as a group, if they aren't confined. And we proved that they are a danger.

Bill: Yes, but we've just found that they are a nuisance not a dangerous dog.

Ed: But still it's impacting public safety.

Officer Mattson: going after somebody or something, the dog was there because it already went after chickens [hard to hear due to low voice volume]

Bill: I can't imagine, the consequences could be unbelievable if that happened to a different person with a different dog...

Ed: What if it's a little kid playing in the ...

Bill: Especially considering where they live. They live right near Mohawk Estates.

Kara: Can't you say that in court? To protect safety? Because it is a possibility. So many people in town are talking about these dogs. If something happened....

Bill: So are we ready for a motion?

Chair: Probably, I just don't feel like I have all the language completely...we have enough material.

Brian: I think there's enough there. I don't think we'll need anything more than that.

Bill: I'd like to thank you Sheila for all the hard work and thought you've put into this. This is tremendous...

Chair: This just has to work, though. I just has to work. So what we need is the exact language. What I'm hoping we can do is, that we have enough of it for Kara to be able to piece this together or do you want us to give you very specific language for the orders?

Kara: I could probably piece it together. I hear that he's in violation of #1 and #2...

Chair: Of #1 and #2 of Exhibit #9 and in violation of the Heath Bylaw Sect. 9.2 about restraining dogs, in violation of the zoning bylaw requirement, is in violation of the kennel licensing, he's in violation of the dog licensing in general....State law, there's several here.

Kara: So now you have to give him a date certain that he has to comply and if he fails to comply, according to the attorney, you can go seek a court order.

Chair: Right, so the first date I think depending on how long it takes for a letter get written and signed. I would love to say that by the end of the week I want the dogs licensed. But that's not going to happen and he can't get a kennel license that fast.

Kara: Hilma is only here Thursday.

Bill: Let's give him two weeks.

Chair: Give him two weeks to get them licensed.

Chief: And in the letter give the exact time that he can come and see Hilma because he did use that as an excuse before that she was never there.

Sarah: Give him plenty of chances to be able to see her within the two weeks.

Chair: It has to be the Clerk – the Clerk will see people, she will make a special appointment to see him, so...

Chief: She will, he was told that before, too, that he could call her at home.

Chair: Absolutely right, we tell him he's to contact her at this phone number and here's her office hours, etc. Margo, you are absolutely right, that did happen last time.

Kara: So two weeks would be, the 22nd and she's here on Tuesday.

Chair: So that would give him two weeks to see her, so that's...

Kara: How about the 24th?

Bill: Good. Make it the 25th because that's a Friday.

Officer Mattson: But he can also call and make an appointment.

Sarah: Plus he needs the time to go to the vet or wherever he gets the certificate and he's got the rabies shot, that's the most important thing. If they are three years, all he needs to do is get his license, he doesn't even need to get shots.

Bill: If he was late, they'll give him one year shot.

Ed: No, the law has changed. It's now once they have the shot, it's three years till the next one.

Chair: Brian's just made a good pointthat we might want to have Mr. Woodard make an appointment with Hilma so we can assure there's a police officer there at the time.

Brian: If there's an ugly situation similar to a kind of situation as the Assessors.

Bill: It also gives us a credible witness...

Officer Mattson: Can we put that it has to happen in the Town Hall?

Chair: That's a very good point, it needs to happen in the Town Hall, by appointment only, because we intend to assure a police officer is present when he came to see her.

Kara: And then do you want to use a similar paragraph at the end with fines, and includes imprisonment, court order?

Chair: There's the statement in 157A that non-compliance of an order shall be punished by a fine of \$500, imprisonment, or both. And then the second or subsequent, was a \$1,000 or imprisonment, or both. That's one of the orders.

Bill: Any others?

Chair: Okay, so...you've already got violation #1 and #2...

Kara: The fact that he has so many dogs?

Chair: I thought I said that but maybe I didn't so let's repeat it, he's got to comply with the zoning laws. Unfortunately, at the first hearing there was confusion around the kennel requirements that the Clerk didn't understand because she didn't have any kennel licenses physically and didn't understand how the State law had been changed.

Bill: Evidently, our current bylaws don't match the State law anyway.

Chair: In just two places, the language is a little bit weird but the first one, the definition is right. So I've circled them on our bylaws. The bylaws are being revised anyway so it's a good catch to fix for Town Meeting.

Sarah: So which is it? Is it four or more? Or is it five or more? Or is it three or more?

Ed: No you can have three.

Chair: He can have three.

Sarah: Yes, but we can open up a big, big can of worms...

Bill: No, no, they can have three dogs in their household.

Sarah: Yes, I understand that. I'll wait and we can discuss it later.

Chair: Is there anything else about this hearing? Hearing none, I'll entertain a motion to adjourn.

On a motion by Brian DeVriese and seconded by Bill Lattrell, the Board voted unanimously to issue an order as discussed here tonight to be set forth in writing by the Town Coordinator, reviewed by Board of Selectmen and Town Counsel, and to be signed outside of any meeting, if necessary.

On a motion by Brian DeVriese and seconded by Bill Lattrell, the Board voted unanimously to close Dog Hearing at 8:34 p.m. and resume scheduled Board of Selectmen's meeting.

Determination and Remedies

On a motion by Brian DeVriese and seconded by Bill Lattrell, the Select Board voted unanimously that the dogs owned by Ronald and Linda Woodard are deemed nuisance based on evidence induced at this hearing whereby the dogs have threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under the circumstances.

Evidence Exhibits:

Hearing Exhibit #1: Complaint dated 3/18/14.

Hearing Exhibit #2, #3 & #4: Photographs of dead chickens, feathers scattered and footprints in snow.

Hearing Exhibit 5# : Minutes from Dangerous Dog Hearing dated March 21, 2013.

Hearing Exhibit 6# : Order of Quarantine issued by Board of Selectmen to Mr. Woodard, sent February 22, 2013.

Hearing Exhibit 7# : Letter to Mr. Woodard from Board of Selectmen dated March 27, 2013 Notice of Decision.

Hearing Exhibit 8# : Letter sent to Ronald Woodard: Notice of Decision Amended 9/3/13.

Hearing Exhibit 9# : Heath Police Report, dated July 24, 2013.

Written by Officer Lee Lively.

Hearing Exhibit 10# : Official Certified Letter from Town Clerk verifying status of dog licensing for all dogs owned by the defendant, dated April 8, 2014.

Signed by Hilma Sumner, Town Clerk, Town of Heath.

Hearing Exhibit 11# : Official Certified Letter from Town Clerk dated February 25, 2013 verifying dogs were not licensed since 2009 nor any proof of rabies vaccination for any dog since that time.

Hearing Exhibit 12# : Copies of most recent recorded livenses issued by the Town of Heath.

Issuing Clerk: Hilma Sumner

All dated on or before March 30, 2013 and all dogs 3 years old and older.

Hearing Exhibit 13# : Official Affidavit.

Signed by Cathy Waldron, April 8, 2014.

Hearing Exhibit 14# : Letter to Mr. Woodard from Board of Selectmen dated November 28, 2012.

Board of Selectmen meeting resumed at 8:34 p.m. with Sheila Litchfield, Bill Lattrell, Brian DeVriese, and Kara Leistyna, present. Also present, Ed Grinnell, Sarah Hettlinger, Margo Newton, Chris Mattson.

Ed Grinnell shared that dogs can be confiscated at the time of arrest should that come to pass. All orders will be reviewed by Town Counsel prior to sending to Mr. Woodard.

There is some confusion in the current dog bylaws so it needs to be cleaned up for clarification. Sheila stated that changing bylaw and cleaning it up to be more specific will help ensure enforcement. This is a priority. Sheila will work with Hilma on all bylaw revisions including kennel bylaw wording.

Margo Newton, Chris Mattson, Ed Grinnell and Sarah Hettlinger Left meeting at 8:40 p.m.

Review Agenda: Minutes will be reviewed at next meeting.

Mail/Email:

Charlemont Ambulance: Would like to meet with Colrain Ambulance Services to discuss wervices and possibly working with Heath. Kara will ask Tim for a contact and whether they are run privately or by the Town.

Chapter 90: Apportionment lowered due to excel formula error. Amount for Heath is \$211,996.

Bill and Sheila will attend the School Committee meeting to discuss capital plan.

Discussed letter from FCCIP to resident whose home was destroyed by fire recently. Discussed safety and liability to the Town. If homeowner doesn't respond to Building Inspector's letter, the Inspector proceeds in demolishing structure. A sign will be posted and driveway will be secured with tape.

Other Business:

- Update on Feasibility Study: The committee met and discussed the meeting with the architect a couple of weeks prior. They reviewed his study on utilization of sites. Northing the Town owns is suitable. Facilities could be divided but that would entail adding 200 sq. ft. or up to \$400,000 extra. There are excavation issues and structural issues. So the alternative is acquiring property large enough for 12,000 sq. feet free standing facility. As a member of the committee, I am recommending to the Board that pursuing a combined facility including the purchase of necessary land. They have included the salt shed in project. The committee feels that if only a part of the project is addressed, it will be another 50 years before the next part gets done. Now is the time. If it doesn't work, it can be brought before the voters again in subsequent years. Construction is inexpensive right now. Brian has the motion and vote for the file. At the ATM, a presentation will be offered with a schematic design on a hypothetical property and voters will be asked to allow the project to be considered at a STM later perhaps a date certain or not. The Committee will defend the proposal. The goal is to make it work for everyone. There is little time to explain or put on this year's warrant for May and will require a fairly intensive discussion. A possible land

acquisition could be the property for sale near the fairgrounds. Land purchase requires a process. The question on the warrant could address a right of first refusal. Interest rates are low and this would not affect the rate in FY15. Brian will contact Town Counsel and ask what the Town needs to do in order to bring this before the voters in May.

- ATM Warrant Review/FY15 Budget/Article 3: postponed till next week.
- Special Projects: Reviewed list that includes cement steps at Community Hall, Heating zone and valve work in Sawyer Hall and Community Hall (two projects), replacement of foyer carpet in Sawyer Hall and gutters/ice shields on front of Sawyer Hall roof. The Board dropped the Art. 3 line item to \$10,000.
- DLS Assessment of Assessor/Tax Collector offices: Will let each department know about upcoming review. This is a free service and could offer some valuable advice.

Signed items.

On a motion by Brian DeVriese and seconded by Bill Lattrell, the Board voted unanimously to adjourn at 9:45 p.m.

Next meeting scheduled for 4/15/14 at 7:00 p.m.

Respectfully submitted,

Kara Leistyna, Town Coordinator