

Milton Selectboard Vicious Dog Hearing Minutes

June 27, 2016 at 6:30 PM

Municipal Building Community Room

Selectboard Members Present: Darren Adams, Chair; Kenneth Nolan, Vice Chair; John Bartlett, Clerk; John Palasik, Member; John Cushing, Member

Selectboard Members Not Present: None

Staff Members Present: Donna Barlow Casey, Town Manager; Erik Wells, Director of Administration & Community Affairs; Paul Locke, Police Sergeant; Matthew McQueen, Police Officer; Police Chief; Don Turner, Fire/Rescue Chief; Victoria LaFountain, Rescue Member;

Others Present: Bob Fletcher, Courtney Lamdin, Lynn Delaney, Sally Nolan, Robert Devino, Matthew Stern, David Von Holden, Allison Belizle, Tom Nichols, Joan White, Denis White, Duane Merrill, Carol Merrill, Carol Ann Ostrander, Lynne Fletcher, Alan Fletcher, Dave Muller, Tracey Tobin, Chris Mitiguy

Adams called the hearing to order at 6:30 PM.

Adams read the hearing notice: "The Selectboard of the Town of Milton, Vermont, will hold a Public Hearing pursuant to 20 V.S.A. § 3546 on Monday, June 27th at 6:30 PM in the Community Room of the Municipal Building at 43 Bombardier Road to hear evidence and receive testimony on a complaint of "vicious dogs" concerning dogs named Scooter and Clearance owned by John Bowes and Gretchen Kunze presently residing at 250 Eagle Mountain Harbor Road in Milton, VT."

Adams read the written complaint: "The written complaint filed by Robert Devino of behalf of his injured wife Pauline Kehoe states:

- Robert Devino reported the attack on behalf of his injured wife. They live at 239 Eagle Mountain Harbor Road.
- The facts of the attack are as follows:
 - Occurred on 6/18/16 at 5:03 PM along Eagle Mountain Harbor Road
 - The victim was Pauline Kehoe of 239 Eagle Mountain Harbor Road
 - Other Facts stated:
 - Gretchen Kunze and John Bowes are the owners of the two rottweilers involved in the incident. Detailed information was provided to the police by the individuals involved in the situation and subsequent resulting actions. The incident occurred when John Bowes was walking his dogs (both reportedly on leash). Pauline Kehoe was also walking with Carolann Olander to her car when she (Pauline) was attacked by the two rottweilers. Pauline sustained bites to her neck, her right hip and head. Also on her back (top of spine). The wounds were deep. Robert Devino was in his residence and awakened to the sound of screams, as well as dog barks. Milton Rescue responded to the incident and took Pauline to the hospital. The wounds were stitched up and treated, but Pauline sustains a loss of movement capability in her right arm and neck. She remained in the hospital until June 22, and will require physical therapy and the service of a visiting nurse until further notice. – Signed Robert S. Devino, 6/23/16"

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- **Adams stated:** “State Law 20 VSA 3546 requires the selectboard to hold a vicious dog hearing when a domestic pet or wolf-hybrid has bitten a person while the animal is off the premises of its owner or keeper, the person bitten requires medical attention for the attack, and such person files a written complaint with the selectboard. All attendees here tonight, this is a hearing in the public but not of the public. It will be conducted in an orderly manner according to the selectboard’s rules of procedure, and no public comment will be taken unless it is relevant to the complaint made and the dogs subject to this hearing. Selectboard members should disclose any conflicts of interest of ex parte communications with the participants and reclude themselves from the hearing when a conflict or the appearance of a conflict is present.

Adams turned the hearing over to Town Attorney Bob Fletcher to call witnesses and submit testimony on the Town’s behalf.

Fletcher called Milton Police Officer Matthew McQueen. After being sworn in McQueen stated he was on duty Saturday the 18th of June at approximately 5 PM and was dispatched to 239 Eagle Mountain Harbor Road. The nature of the call was for a female bitten by a dog on her neck and side and McQueen was told there was bleeding by dispatch. He arrived on scene about 20 minutes after the call. Upon arrival he saw Ms. Kehoe’s cousin on the road telling him Ms. Kehoe was on the lawn in front of her house, was bitten by dogs and needed oxygen. He got the first aid kit, saw Ms. Kehoe laying on the ground with her husband attending to her with what looked like a torn shirt placed against the side of her neck where her dog bite was. McQueen looked and asked if there were more wounds and was told there were on her hip and her back. He did not roll her over. Her right hip had dog puncture marks, not much bleeding but the puncture marks were significant. He took a bandage and covered it and waited for Milton rescue to arrive. McQueen spoke with Ms. Kehoe’s cousin Ms. Ostrander, and spoke with Ms. Kehoe while he was doing follow up while she was in the hospital. He spoke with Mr. Devino at the scene to get contact information as Rescue arrived quickly for transport. McQueen did not observe the wounds on the neck, he did not want to remove the shirt covering them. He did not see the dogs, they were inside when he arrived. He confirmed the dogs belonged to a Mr. Bowe and Ms. Kunze. He spoke with the victim Ms. Kehoe while she was in the hospital, she told him that she was walking her friend to the car when Mr. Bowes walked down his driveway walking his two dogs. She and Mr. Bowes had a conversation and then the dogs suddenly attacked her. McQueen asked if there had been a provocation to the dogs to Ms. Kehoe and Mr. Devino, and both replied the incident had happened very quickly and didn’t know. Mr. Devino did not claim that the dogs had been antagonized in any way or provoked. McQueen spoke with Ms. Ostrander at the scene and she relayed the same information- he didn’t question her as much because she wanted to go to the hospital. McQueen gathered that the dogs were both on leases. Mr. Bowes told him that there was one previous case when the dogs attacked a neighbor’s dog and another case when the dog came at him but he didn’t report it. McQueen stated the attack took place on the road and then she was dragged back to the grass in front of her property, the attacked occurred on Eagle Mountain Harbor Road. McQueen stated he prepared a written report of the incident, Fletcher produced a copy and McQueen affirmed it was an accurate copy to the best of his knowledge and belief. Fletcher moved introduction of the Town’s exhibit #1, the police report.

Adams asked if the defendants were present or if they had an attorney present. Fletcher said no, and for the edification of the Board it is understood the named defendants are both out of the country at the time. Both have submitted via email written statements to the Board that will be presented. Ms. Kehoe is not present but Mr. Devino is.

97 The Town called Victoria LaFountain. After being sworn in, LaFountain stated she has been an
98 EMT with Milton Rescue 6 years and with the Department 7 years. She stated she was on duty
99 the afternoon of June 18th at approximately 5 PM and was dispatched to 239 Eagle Mountain
100 Harbor Road. She was dispatched because of a dog attack, she arrived 20-25 minutes later.
101 Upon arrival she observed the patient, husband and friend on the grassy part of the lawn. They
102 had taken clothes and wet them down and were applying pressure to stop bleeding. She was
103 able to talk briefly with the patient and assessed she was in pain. She was bleeding on the neck,
104 back of the head, neck and right hip area. These were not simple puncture wounds LaFountain
105 stated, they were a bite and drag that were torn and quite deep. Tissue on her neck was torn.
106 She was having difficulty breathing and oxygen was applied. Hip injuries included scratches,
107 abrasions and bites, LaFountain sated. Most concerning injury was to the neck close to artery
108 and windpipe. She was injured from dog bites, looked like animal bites and consistent with a dog
109 bite, LaFountain said. Time on scene was 10-15 minutes. She did not see the animals. Ms. Kehoe
110 told her that she was walking her friend across the street to her car and Mr. Bowes was walking
111 his dogs and stopped to have a conversation. From accounts it was an unprovoked attack and
112 Ms. Kehoe described the attack as being thrown around like a rag doll according to LaFountain.
113 LaFountain spoke with Ms. Ostrander and she relayed the same information – the attack
114 happened quickly and she was thrown around like a rag doll. She did not speak with the dog
115 owners. Bartlett asked if based on the location of the wounds and conversation if could tell that
116 two dogs caused the injuries. LaFountain stated that yes, they were able to surmise the due to
117 the nature of the bites and in her opinion that one dog could not have gone that quickly from
118 both ends of her body. She stated there were abrasions, could have been from being on the
119 ground or claws. Ms. Kehoe had injuries at her head, neck and top of spine on back. Palasik
120 asked for clarification regarding one or two dogs, the victim kept saying dogs LaFountain said.
121

122 The Town called Carol Ann Ostrander. After swearing in, she stated she is Ms. Kehoe's cousin.
123 She was at Ms. Kehoe's home on Saturday, June 18th at approximately 5 PM. The purpose of the
124 visit was social. She was getting ready to go home and Ms. Kehoe was showing her new
125 plantings up on the road. Her car was across the road and Ms. Kehoe walked across the road
126 with her. Ms. Ostrander stated that next she saw a man with two dogs come down off the hill
127 perpendicular to the road right across from Ms. Kehoe's house. The owner and two dogs took a
128 left and walked past Ms. Ostrander and Ms. Kehoe and starting speaking with Ms. Kehoe. She
129 overhead him say that they would not be neighbors much longer and that his wife was in
130 Myanmar. While he was speaking with Ms. Kehoe with dogs were pretty far across the road
131 peeing and stomping through her new plantings. Ms. Ostrander said she then threw her purse in
132 her car and started to walk toward Ms. Kehoe. One dog knocked Ms. Kehoe down stated Ms.
133 Ostrander, it did not look like it was on a leash anymore. Ms. Ostrander said she then recognized
134 what was happening than because she was attacked by a dog at a softball game last year. Ms.
135 Kehoe than hit her tailbone and her head hit the ground. Ms. Ostrander stated both dogs then
136 were ripping Ms. Kehoe apart. She said what she was watching was her Pauline who she loves
137 being murdered. One dog was ripping her throat and her head and the other dog was down by
138 her hip Ms. Ostrander said. She was being mauled according to Ms. Ostrander. The dogs were
139 both on a lease when she first saw them Ms. Ostrander said. At the time they came onto the
140 road they were on a leash but on the road. Ms. Ostrander stated that she believes one dog was
141 off the leash, it seemed like he wasn't on a leash to her. The other dog she didn't know. Ms.
142 Ostrander called 911. The operator sent out police and rescue. Ms. Ostrander said at the time of
143 the attack she did not do anything to provoke the dogs, and Ms. Kehoe did not do anything to
144 provoke the dogs. She added she tried to kick one dog off her but it was like a brick wall. The
145 dogs appeared to be really big, large, heavy dogs. She estimates they weighed over 100 lbs. Ms.

146 Ostrander stated that she didn't know Mr. Bowes' reaction, all she remembered was Ms. Kehoe
147 screaming for her life. She didn't have any interaction with Mr. Bowes after. She doesn't
148 remember how she got Ms. Kehoe from the road to her house. She remembers screaming and
149 then Bob hearing and coming out to help and he took over. Cushing asked about the leash and
150 how much area the dogs could cover. Ms. Ostrander replied it could have been one of the
151 extension leashes. She was so covered in blood after that rescue thought something had
152 happened to her. After the incident Ms. Kehoe's shoes and glasses were in the road with a
153 broken collar and the police said not to touch anything and that they needed to take pictures,
154 Ms. Ostrander said. She thinks maybe the first dog broke its collar. She said Mr. Bowes didn't
155 appear to have a lot of control over the dogs. Bartlett asked how she would describe the
156 duration of the attack but Ms. Ostrander could not recall and how the dogs disengaged from the
157 attack. Nolan asked if she had any recollection of the owner being involved in the altercation at
158 all and Ms. Ostrander replied no only what the dogs were doing to Ms. Kehoe. Palasik asked to
159 clarify if the owner Mr. Bowes gave any verbal commands to the dogs to stop – Ms. Ostrander
160 replied that she didn't know and may have been screaming so did not hear. She could not recall
161 whether Mr. Bowes was holding any leashes in his hands. Adams asked what happened prior to
162 the incident, Ms. Ostrander said Mr. Bowes in conversation with Ms. Kehoe stated that his
163 girlfriend not wife was in Myanmar and they were going to be breaking up and he would be
164 moving back to Great Britain soon.

165
166 Fletcher stated at this point the Town has provided information under VSA 3546 to establish
167 what had occurred and believe has proven the elements necessary for the Board to make a
168 determination whether the dogs are to be disposed of, muzzled, chained, confined or otherwise
169 dealt with. As indicated earlier the dog owners, neither of who could be there tonight have each
170 submitted email statements. The Town does not have an objection if the Selectboard wants to
171 receive that information. Town Manager Donna Barlow Casey passed out a copy of the email
172 communication to the Board. She shared that she told Gretchen (Ms. Kunze) that she would
173 provide it to the Selectboard and she asked that she and John (Mr. Bowes) have an opportunity
174 to speak with the Board and would be available to speak within the next two weeks as both are
175 currently abroad.

176
177 Cushing asked about dog registration. Fletcher stated they were registered after the event to his
178 knowledge. Cushing asked that those registration documents are made available for the hearing.
179 Fletcher stated that with the defendants not here tonight and their request to address the
180 Board that could lead to an adjourned hearing and an opportunity to speak with the Board at a
181 future date. Fletcher stated he doesn't think the Board is obligated to do that, but may be
182 something it would want to do. If that was the case the registration materials could be supplied,
183 but the police report states the registration took place after the incident occurred. Cushing
184 asked for a copy of the documents to indicate the registration was after the fact.

185
186 Adams asked about the 2015 incident mentioned by McQueen. Fletcher said he thinks it was an
187 unreported incident. He does have information that would rebut some of the claims made by
188 the dependents made about the dangerous propensities of their dogs. Adams asked him to
189 proceed.

190
191 Fletcher handed to Adams as evidence a settlement agreement as Town's #2. It refers to a
192 settlement reached between the defendants dogs and the persons named in the settlement. To
193 rebut the statements made by the defendants in their email, paragraph #2 in the settlement
194 that references the injuries suffered by the female in that incident. Bartlett read from paragraph

195 #3 of the settlement that stated Clarence and Scooter shall always be on a leash when outdoors
196 and under the control of a single person, one person not holding leashes for both dogs. Fletcher
197 said this was a contract agreement between the parties that signed it. Bartlett said this is an
198 example of an agreement to do something with the dogs and that was not the case regarding
199 the separate matter at hand. Fletcher didn't disagree, but the more relevant piece is paragraph
200 #2 of the settlement referring to injuries by the woman being paid for which rebuts the emails
201 that state the dogs have never caused injury to a human before. Nolan asked Fletcher to speak
202 to paragraph #4 of the settlement, which refers to the agreement being enforced by an
203 appropriate court order, and how it applies to the hearing this evening. Fletcher said it doesn't
204 apply directly, if the folks in the settlement chose to enforce it they could use the information
205 shared this evening to do so and doesn't bear on the decision to be made by this Board.

206
207 Bartlett asked about the two owners moving and breaking up and if that had bearing on the
208 ownership of the dogs. Fletcher said the dogs were under the custody and control of the two
209 individuals, the relevant point is they are here in Milton and the folks who have them ought to
210 be responsible for their behavior. The expiration of the 10 day quarantine period is Tuesday,
211 June 28th. Fletcher said the Administration's position is the Town is able to extend that period
212 and advisable to do so. If the Board was in a position to proceed and make a decision this
213 evening it could do that. If afforded the defendants to come and have their say, believe statute
214 broad enough that under the circumstances that suggest the Town order temporarily that the
215 dogs continue to be kenneled where they are. The Town would have an argument to make that
216 the cost of the kenneling be made by the defendants. Nolan asked if Ms. Kunze was present
217 during the attack, Fletcher stated through testimony and conversation with the Town Manager
218 it is consistent that she was aboard during the time of the attack.

219
220 Adams asked about the size, age type of dogs. 5 years, 7 months large male rottweilers
221 Fletcher stated. Bartlett asked for an update on the dog's behavior. Fletcher said the
222 information provided to him stated that each are doing well, eating and drinking normally and
223 have no signs of rabies according to Pinebrook Kennel.

224
225 Adams stated just received copies of the licenses from Milton PD number 838 and 839 dated
226 June 22nd for Scooter and Clarence with online payment received. Both have proper vaccinations
227 with dates of May 19th, 2015 and due for next vaccination on 5/19/18 from Petty Brook Vet
228 Clinic.

229
230 Fletcher stated no intent to call other witnesses this evening.

231
232 Adams asked if anyone else present to share relevant information.

233
234 Joan White stated after being sworn in that lived on Eagle Mountain Harbor Road for 26 years
235 and walks the road regularly. Experienced walking on the road when Mr. Bowes had both dogs
236 on leashes and had hard time holding them back. She called Milton PD to have it documented in
237 case something happened that these dogs, as far as she knows, that these dogs were trained
238 attack dogs for the couple in Laos and definitely not normal pets. Was afraid that something like
239 this would happen. Palasik asked Sgt. Locke to search for the police reports of these calls.

240
241 Tracey Tobin stated after being sworn in that on Labor Day 2013 she was on a neighbors
242 property at the beach with other neighbors including Mr. Bowes. Her dog was off leash. Mr.
243 Bowes went to feed his dogs and then came back with them on leash. Mr. Bowes' dogs Scooter

244 and Clearance attacked her 45 lb dog and the attack resulting in multiple stitches and the dog's
245 ear being reattached. She didn't report the incident at the time because her dog was off leash
246 and didn't know Mr. Bowes was coming back with his dogs to the beach. Her dog ran up to the
247 road and the incident happened there.
248

249 David Van Holden after being sworn in stated he lives in Eagle Mountain Harbor Road and walks
250 the road each day. He witnessed Ms. Tobin's dog being attacked and it was horrible. He also
251 referenced the incident referred to earlier in the settlement. He had to adapt his life to not walk
252 by Mr. Bowes house.
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254 Adams asked if the Board would like to hear from Mr. Devino. Palasik said updated medical
255 condition if wanted to share.
256

257 Robert S. Devino stated after being sworn in that Ms. Kehoe spent 4 days in the hospital. He
258 stated she is lucky to be alive, had the two incision been an inch or two to one side or another
259 could hit the jugular vein in neck. Could have lost an ear. Bleeding extensively from neck and he
260 was able to get that to stop, he stated. Used his knee to get the hip bleeding to stop. Everything
261 could have been a lot worse, Devino said. Ms. Kehoe had 12-15 stitches to her neck, and has
262 about 40 stitches in various parts of her body and fortunately it is healing well, he added. She
263 still can't walk very well, the surgeon was able to stick his hand in the laceration in her hip,
264 Devino said. Concern is her arm, can't touch her nose, he added. As the nerves come back into
265 feeling have combo of pain and swelling. Ms. Kehoe is undergoing occupational and physical
266 therapy currently, Mr. Devino said and she looks like she was beaten badly by several men. Paw
267 print size on hand between shoulder blades. Very strong women and it's a good thing, many 70
268 year old ladies would have died during that attack, he added. She's going to be alright, but does
269 not know how long it will be until she gets feeling back in arm, he said. Devino stated main
270 concern now is nerve damage in upper shoulder and neck. She went through 2 hours of surgery
271 the night of the attack due to the variety of cuts and lacerations. Skin grafts may be required
272 for hip, but unsure if will come to that. Devino said has seen serious injuries but never his own
273 wife. Adams asked where the dogs and Mr. Bowes were when he came out of the house during
274 the attack. Devino said he saw Mr. Bowes pull up in his vehicle and asked him to leave. Bartlett
275 asked if having the dogs removed from Town and never seen again would be acceptable. Devino
276 stated torn, loves dogs and has 4 rescue dogs. But these are not normal dogs, they are trained
277 to attack. Does not know if passing the buck and sending to Myanmar would be best, he said.
278

279 Palasik asked to recall McQueen. Sgt. Locke reported he was unable to find any police reports
280 with Ms. White's name after a cursory search but could continue to search in the future. Palasik
281 asked McQueen if the injuries described by Devino were consistent with what he saw. McQueen
282 said yes, he briefly saw the neck injury and indicated on his own neck. Her hip he didn't see
283 much blood but a significant amount of puncture marks. Palasik asked about a choke collar –
284 McQueen said it was a rubber flea and tick collar. McQueen did not see any other collars. Nolan
285 asked to clarify pictures being taken and it as a crime scene. McQueen did take pictures but did
286 not recall referring to it as a crime scene. He can upload photos for viewing.
287

288 Cushing asked about police reports where other dogs were bitten. Fletcher said the continuation
289 of the hearing would afford the opportunity to have the police reports if they exist. The
290 challenge the Board has is the incident currently being heard is under a statute that pertains to
291 attacks by a dog of wolf hybrid against a human which requires the attack taking place off
292 owners property without provocation and requires medical attention with a complaint filed. All

293 those elements exist. The information pertaining to the dogs interactions with other dogs does
294 not pertain to the June 18th incident.

295
296 Adams asked if the owners are residents of Milton or if this is a second home. Staff could not
297 officially report. Adams asked about statute of when a dog must be licensed. Fletcher stated
298 according to the Town of Milton Ordinance Section 11 that all dogs owned or harbored older
299 than 6 months in Town must be licensed.

300
301 Sgt. Locke after being sworn in stated the other incidents he searched for that evening after
302 hearing the testimony did not result in any matches with a cursory search. Without going
303 through each case individually cannot know for sure – case may have been coded differently. It
304 happens on occasion. Nolan asked about the 2015 attack. Locke printed off the case and read
305 briefly. He explained the defendants dogs got loose one day, got to neighbors yard where they
306 dogs attacked each other and the neighbor's dog owner got bitten during the incident. Locke
307 submitted the police report for review. He confirmed it's in connection to the settlement
308 introduced previously. The 2015 police report is Town's #3.

309
310 Cushing asked Fletcher about case law from 1983 referenced by the defendants in the emails
311 submitted. The case is a civil case Fletcher said, it's a negligent standard not statutory.

312
313 Discussion regarding process commenced.

314
315 Bartlett asked Fletcher about due process in the proceedings. It's not the responsibility of the
316 Milton PD to advise the defendants of the proceedings and did not have the information that
317 Mr. Bowes and Ms. Kunze were not at the property of Eagle Mountain Harbor Road, Fletcher
318 said. The Milton PD stopped by multiple times between June 24th and June 27th at varying times
319 throughout the day in an attempt to serve the notice of the hearing to the defendants. Ms.
320 Kunze had actual notice of these hearings because someone in Town who knows her mother
321 called her mother who then informed Ms. Kunze who then called and spoke with Barlow Casey
322 in the morning.

323
324 Barlow Casey after being sworn in stated the after she spoke with Ms. Kunze that morning she
325 offered her the opportunity to speak via phone or Skype three times during the conversation.
326 She is in Asia and would have been a different time. She did not take the Town up on that
327 matter and said did not have enough time to contact legal counsel of their own.

328
329 Nolan asked Sgt. Locke for the information on Milton PD's outreach. Locke said the notice was
330 provided to him to serve on Friday the 24th by the Town Manager's Office. He and three other
331 officers attempted to serve notice at 5:59 PM on 6/24, then 6 PM on 6/25 then 3:30 PM on 6/26
332 and then 8:45 AM on 6/27. He just became aware of an email address today. Locke said a
333 tracking sheet was used each time the officers went.

334
335 Nolan moved to adjourn and close the hearing and move into a private deliberative session.
336 Second by Palasik. **Approved unanimously.**

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338 Adams closed the hearing and entered deliberative at session at 8:17 PM.

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Respectfully Submitted,


_____ Date: 7/11/16

John Bartlett, Selectboard Clerk

Filed with Milton Town Clerk's Office on this 14th day of July, 2016

ATTEST: Tenny Willingham, Asst. Milton Town Clerk