

**MINUTES – SPECIAL SELECTBOARD MEETING
TOWN OF BARNET, VERMONT
MONDAY, MAY 18, 2015**

Meeting convened at 7:00 p.m. in the conference room of the Barnet Town Clerk's Office.

Board members present: Chair Jeremy Roberts, Gary Bunnell, and Dylan Ford.

Others present: Town Health Officer Theodore Faris, Animal Control Officer Josephine Guertin, Town Clerk Benjamin Heisholt, First Constable Steve Mosher, Zoning Administrative Officer Shirley Warden, Jean Chase, Wayne Chase, Darcie Nash, Octavia Nash, Taylor Reed (Caledonian-Record), Kevin Sargent, Abbey Sherman, Brian Sherman, and Zoey Sherman.

1. Public hearing pursuant to 20 V.S.A. § 3546, per the below notice

***TOWN OF BARNET, VERMONT
NOTICE OF PUBLIC HEARING***

Re: Vicious Dog / Public Nuisance Complaint

Dog believed to be owned by Darcie Nash of the Village of Passumpsic, Town of Barnet, Vermont

The Selectboard of the Town of Barnet, Vermont, will hold a Public Hearing pursuant to 20 V.S.A. § 3546 on May 18, 2015 at 7:00 p.m. at the Town Clerk's Office in Barnet, Vermont to hear evidence and receive testimony on a complaint of a "vicious dog" concerning a dog named Reese believed to be owned by Darcie Nash presently residing at 4660 US Route 5 North in Barnet, Vermont.

Introduction

Mr. Roberts opened the meeting by reviewing the rules of procedure for this quasi-judicial hearing. Those intending to give oral testimony (including all who did in fact give oral testimony) signed witness oaths. Mr. Roberts then read the notice as appears above, and the "Notice of Complaint and Hearing" mailed to Darcie Nash on May 18, 2015. Mr. Roberts noted that, in addition to the complaint filed by Josephine Guertin on May 14, 2015, the Board had previously received two exhibits relevant to this hearing: a witness statement from Nicole L. Leigh and Gary T. Leigh, and Reese's dog collar. The Board then opened the floor for oral testimony.

Oral Testimony

Darcie Nash, owner/keeper of Reese, gave oral testimony and answered questions presented by the Selectboard and Town Health Officer, as summarized below:

- Reese has been vaccinated for rabies; Ms. Nash will furnish evidence of such vaccination to the Town Clerk's Office on Tuesday, May 19, 2015.
- Ms. Nash has had problems with Reese getting loose. He has never, however, shown signs of being a danger for biting or harming children.
- Reese is not neutered.
- Animal Control Officer Josephine Guertin picked up Reese when he was loose on one occasion in 2014; at that time Ms. Guertin threatened to euthanize the dog if it was loose again. Since that time the dog has been primarily kenneled indoors.
- Reese is three (3) years old.

- Pulling at his collar has proved to irritate Reese in the past; perhaps this is what triggered the incident. Although he has reacted negatively to this in the past, he has not threatened to bite.
- Reese appears to be healthy and has not displayed any outward signs of rabies infection.
- Ms. Nash is willing to construct a fence or some other containment system to ensure that Reese remains on her property.

Josephine Guertin, complainant and Animal Control Officer for the Town of Barnet, gave oral testimony and answered questions presented by the Selectboard and Town Health Officer, as summarized below:

- On May 10, 2015 at about 4:00 p.m. Ms. Guertin received a call about a stray dog in Passumpsic. She went to the home where the dog was hitched on a cable to the picnic table. The homeowners told her they had tried to call the number on the dog's tag and no one had answered. Their son had told them he heard the dog belonged to some people who had moved and left it behind. Ms. Guertin put a leash on the dog; she could tell he was tense. She started walking towards her vehicle with him; Reese, however, would not get in the car, so she stood back away from the car to let him calm down. After standing quietly for a couple of minutes, Ms. Guertin said "okay let's go" and tightened the leash to lead Reese to the car. He then lunged at Ms. Guertin, and bit her left arm twice before she could let go of the leash. He went back to the lawn near the table and stood there. He was in a very aggressive pose, head down, ears back and slightly crouched. At that point Ms. Guertin determined that she must attempt to put the dog down for the protection of the people who were there and anyone else in town who might come in contact with him. Reese was injured by gunshot and ran up the road.
- Ms. Guertin was treated at Littleton Regional Hospital until nearly midnight on the evening of May 10, 2015; her treatment included IV antibiotics, and cleaning and bandaging of the wounds. She visited a specialist on May 11, 2015 to have the injury checked for tendon damage and may require surgery at some point.
- Ms. Guertin did not threaten to euthanize the dog when it was picked up in 2014; she told the owners that if they allow the dog to be loose it will eventually get into trouble that may result in it needing to be euthanized.
- Ms. Guertin, in the course of her duties as Animal Control Officer, has encountered almost every breed of dog. She has been bitten on only one other occasion; this bite was received from a dog with a broken hip.

Steve Mosher, First Constable of the Town of Barnet, gave oral testimony as summarized below:

- Mr. Mosher reported, along with Second Constable David Stevenson, to the residence of Gary and Nicole Leigh after the incident occurred. Mr. Stevenson indicated to Mr. Mosher that during the incident Ms. Guertin had attempted to call him, but a poor cell phone connection prevented their communication. After receiving from with Mr. and Mrs. Leigh their report of the incident, Mr. Mosher and Mr. Stevenson reported to the Nash residence. They requested documentation of the rabies vaccination of the dog in question. The Nashes indicated that the dog has a current rabies vaccination, which was administered at the Western Avenue veterinary office in St. Johnsbury. The Nashes, however, did not have documentation of this vaccination. On Monday, May 11, 2015, Mr. Mosher reported to the Town Clerk's Office. Assistant Town Clerk Cathy McLam placed a telephone call to the Western Avenue veterinary office; the office reported that they had no record of the dog in question. Ms. McLam also confirmed that the dog is not licensed in the Town of Barnet.
- Dogs that are friendly with their owners are not always friendly with strangers; dogs are instinctively territorial.

Theodore Faris, Town Health Officer of the Town of Barnet, gave oral testimony as summarized below:

- Mr. Faris became aware of this dog bite much after the fact; he has therefore not impounded the dog. Normally in the case of a bite from a dog not having a documented rabies vaccination, a ten (10) day observed impoundment is required to confirm that the dog is not infected.

Jean Chase, a resident of Passumpsic Village, gave oral testimony as summarized below:

- Ms. Chase witnessed Reese leave the Nash residence on May 10, 2015. Reese does not like the Chases' dog, has been aggressive, and needs to be contained. The Chases have seen Reese loose on several occasions.

Jeremy Roberts, the Selectboard Chair and also a resident of Passumpsic Village, gave oral testimony as summarized below:

- Reese has been loose in the Roberts' yard in the past. On another occasion Mr. Roberts witnessed Reese being hit by a Volkswagen on Route 5 in Passumpsic Village; the dog left the scene apparently unharmed. It appears that the containment system that the Nashes currently have in place is not adequate.

Wayne Chase, a resident of Passumpsic Village, gave oral testimony as summarized below:

- Reese is often loose when Mr. Nash is outside the Nashes' residence with the dog.

Deliberative Session

At 7:35 p.m. the Board entered deliberative session to consider the relevant exhibits and oral testimony and to render a decision.

At 9:40 p.m. the Board exited deliberative session.

Findings of Fact, Conclusions of Law, Decision and Protective Order

Out of their deliberative session, the Board agreed upon the following:

FINDINGS OF FACT

- On May 14, 2015 a complaint was received by Josephine Guertin concerning an incident that occurred on May 10, 2015 at 249 Bridge Street in Passumpsic, Vermont. The complaint states that at approximately 4:00 p.m. a call was received by Josephine Guertin about a stray dog in Passumpsic. She went to the home of the Leighs' at 249 Bridge Street, Passumpsic, Vermont. A brown pit-bull entered the yard, unleashed and unchained. The homeowner hitched the dog. Josephine Guertin attempted to lead the dog into her car. The dog jumped and bit her arm as she was protecting her face. The dog then backed away in an aggressive pose, head down, ears back and slightly crouched. Thereafter, Josephine Guertin attempted to put the dog down. The dog was injured by a gunshot and ran up the road. Josephine Guertin had to go the hospital to have the wounds cleaned and bandaged; it is yet undetermined whether surgery will be required.
- Proof of current and valid rabies vaccination has not been presented.
- Reese is not a licensed animal in the Town of Barnet.
- Reese has been loose and displaying aggressive behavior in the Passumpsic Village on several occasions in the past two years.

CONCLUSIONS OF LAW

On the basis of the evidence submitted and the oral testimony given, the Selectboard concludes as follows:

- There is not material variation in reports received, through written submission and oral testimony, of the incident in which the bite occurred. It is clear that Reese did in fact bite Ms. Guertin in the manner described in the above findings of fact.
- During the incident, it is plausible that the tightening of the collar by Ms. Guertin irritated Reese, leading to the bite. Ms. Guertin, however, as an experienced Animal Control Officer, was taking routine and cautious measures and, as she was unfamiliar with Reese, could not have known that the dog would be unduly irritated by her action. This bite must therefore be judged to have been unprovoked.
- The containment system currently in place to prevent Reese from leaving the premises of the Nash residence and presenting a potential danger to Barnet residents is inadequate.

DECISION

Based on the foregoing findings of fact and conclusions of law the selectboard finds that Reese *did* bite Josephine Guertin *without* provocation and therefore a protective order *will* be rendered.

PROTECTIVE ORDER

Based on the foregoing facts and circumstances, and pursuant to 20 V.S.A. § 3546(c), the selectboard hereby orders that Darcie Nash, owner/keeper the domestic pet or wolf-hybrid named Reese, must furnish valid and current proof of rabies vaccination of said Reese to the Barnet Town Clerk's Office not later than the close of business (4:30 p.m.) on Tuesday, May 19, 2015. If such proof is not timely received, the Selectboard hereby orders that Reese is to be disposed of in a humane way. If said proof of rabies vaccination is furnished in a timely manner, the Selectboard hereby orders that owner/keeper must construct an outdoor fence to contain Reese. The fence must be of dimensions (length, width, and height) and manner of construction that the owner/keeper deems to be adequate to contain Reese; the dimensions must be, at minimum, pursuant to those set forth in 13 V.S.A. § 365 (d) (copy attached). When the construction of said fence is complete, the owner/keeper must thereafter sign an affidavit swearing or affirming that the fence is of dimensions and manner of construction that the owner/keeper deems to be adequate to contain Reese, and that the dimensions are, at minimum, pursuant to those set forth in 13 V.S.A. § 365 (d).

Until such time as completion of the conditions set forth in this order can be satisfactorily verified Reese shall be released to the pound/detention facility of the owner/keeper's choice with all associated costs being the responsibility of the owner/keeper. If, after ten (10) calendar days of impoundment, the conditions set forth in this order have not been satisfactorily verified, the owner/keeper shall relinquish all rights of ownership to the Town of Barnet.

Failure to comply fully with the conditions set forth in this order shall subject the owner/keeper to the penalties provided for in Title 20 Section 3546.

2. Adjournment

The meeting adjourned at 9:40 p.m.

A true copy.

Attest: _____
Town Clerk