



**Board of Selectmen
Minutes
Tuesday, February 4, 2014 at 7:00PM
Town Hall Meeting Room**

The meeting was called to order at 7:00 PM by Chair, Marie Sobalvarro in the Town Hall Meeting Room. Selectmen Stu Sklar, Ron Ricci, Lucy Wallace and Leo Blair were all in attendance as well as the Town Administrator Tim Bragan and Executive Assistant Julie Doucet.

MINUTES

On a Wallace/Sklar motion, the board voted unanimously to approve the 12/20 minutes, as amended.

On a Wallace/Sklar motion, the board voted unanimously to approve the 1/7 minutes, as presented.

On a Wallace/Sklar motion, the board voted unanimously to approve the 1/21 minutes, as presented.

SAGANICH DOG HEARING

Marie Sobalvarro opened the hearing at 7:05pm. She asked Dog Officer Paul Willard, Sandra Leftkovits who filed the complaint and dog owner Mark Saganich to come forward. Sobalvarro explained the Selectmen decided at their last meeting to hold a hearing due to a report from Dog Officer Willard and complaint from Leftkovits.

Sobalvarro asked Willard to explain what happened on January 6th. Willard said he received a phone message from dispatch stating Sandy Leftkovits of 18 Depot Road called because she went to her chicken coop and found her chickens dead along with two Brittany Spaniels. He went to the Leftkovits residence took pictures and issued a restraining order to Saganich.

Willard then read the following testimony from Leftkovits:

I think it is important that you understand the sequence of events that took place on Jan. 6. It was my habit to visit the chicken coop about mid-afternoon everyday with treats for the chickens, such as lettuce leaves, crusts of bread, etc., and to gather the eggs. That afternoon was no different. The chickens were excited to get their treats and there were a couple of eggs in the nests. I returned to the house and after removing my chicken coop boots and coat, I put the eggs on the kitchen counter. Then I thought to myself that I should go to the Post Office before starting anything else. I went to my husband's office and told him I was going to the Post Office and then got my purse, changed my shoes, put on my coat and went outside toward the barn where my car was parked. It is directly across from the chicken coop at a short distance from the house. As I approached I saw one dog in the run with three dead chickens and the other dog outside with four dead chickens. When the dog outside saw me he ran into the coop and I followed him. I saw that they had already killed the chickens in the coop. I was in such shock that I just closed the door of the coop locking the dogs in. I returned to the house and told my husband what had happened. I then called Paul and left a

message. Then I called the dispatcher who contacted Paul. He called me and came and took the pictures that you saw. From the time I left the chickens alive until I went back outside, it could not have been more than 20 minutes. It could have been less. If I had been 5 minutes earlier, I might have saved the chickens. If I had been 5 minutes later, the dogs may have been gone. There is no doubt in my mind that the dogs killed the chickens.

Email correspondence

Sobalvarro gave a brief synopsis of two emails received. She said the first was from Barbara Heim who suggested copies of the dog bylaw be included with dog licenses each year. She also asked the Selectmen consider increasing the current fines. The second was from Libby Levison. She encountered the two Brittany spaniels in her yard a few times over the past three years. She expressed concern for their safety being lose so close to Route 2.

Testimony from dog owner Mark Saganich

Saganich said he has known Sandy Lefkovits for 10 years and is sorry for the rift the loss of her chickens has caused. He felt articles written in the local newspapers were misleading. He was told his dogs were taken by authorities and it took him over two hours to find out where they were. He testified his dogs were filthy when he picked them up so he guessed they were in the coop for some time. Saganich pointed out Lefkovits said she opened the coop door each day so the chickens could come and go. He said his daughter witnessed a hole in the fence and the chickens were coming and going through it. He is unsure about what happened but does not believe his dogs killed the chickens. He has not received any complaints about his dogs and felt what was printed in the papers made it sound as if the dogs had bitten a child. He is happy to find a way to work through this. He said there is no proof my dogs did this and he does not believe they did. He added they have no history of this type of behavior. Dog Officer Willard reported the Saganich dogs killed a single chicken prior to this event. Saganich said with free range chickens anything could happen to them. How do we not know the dogs did not smell the dead chickens and that is why they went there?

Complainant response

Leftkovits said her chickens were outside the coop that day because they were running scared and ran through the hole created by his dogs. She explained the door she leaves open is where the food is kept. She described the barn as a horse barn so one side is for the chickens and one side is for their food. She said the dogs dug a hole under the chicken wire. She was adamant there was no hole there prior. She witnessed the dogs running around having a great time while the chickens scattered. They even ate the chickens. Saganich said that was because they were locked in the coop. Leftkovits asked about payment for damages. Sobalvarro understands the dog owner shall be held liable for damages but the burden of proof is on the complainant.

Public comment/testimony

Glen Alexander, 59 Ayer Road, a neighbor about 20 yards from the Leftkovits property where the coop is located. He said the dogs were in his yard jumping on the fence a few years back. He explained the coop has two doors which go outside and there are also two doors inside the coop.

Lynn Cook, 14 Depot Road, lives next to Leftkovits and had a chicken killed last summer by one of Saganich's dogs. She called Saganich and he took his dog's home. She said she has stopped his dogs several times from getting her free range chickens.

Connie Larrabee, 15 Under Pin Hill Road, is a faithful buyer of Sandy's eggs going every Saturday morning. She said the chickens are never out of their pen, well cared for and laid wonderful eggs.

Marie Sobalvarro clarified their choices given the existing bylaws and recent state modifications:

- levy a small fine
- restrict dogs to yard
- Euthanize the dogs

She said we no longer have the ability to simply banish the dogs from town.

Leo Blair believes it reasonable to expect dogs may try to catch and eat chickens. If given the chance they will most likely do it again. He said it is also reasonable for homeowners to have free range chickens along with reasonable expectations they will not be harmed. Lucy Wallace echoed what Blair said and considering the options confinement to the property seemed appropriate. They discussed having the Dog Officer inspect to ensure Saganich confines the dogs as required by Mass General Law.

Leftkovits commented on Saganich's dogs being loose so much and getting many excuses from Saganich. She is skeptical he will do what is required. Sobalvarro assured her there are specific rules when it comes to confinement. Willard said a kennel must be constructed.

Sobalvarro, Ricci and Sklar agreed with confinement.

Meg Bagdonas, 42 South Shaker Road, asked what if the dogs do get free again. What is the recourse then?

Wallace answered a complaint must be filed and then another hearing would be held.

Bragan said the Selectmen need to deem the dog a nuisance or dangerous in order to determine what punishment can be enforced.

On a Wallace/Sklar motion, the board voted unanimously to close the hearing.

Finding

Blair requested holding off on making a recommendation until their next meeting. He wanted more time to gain clarity on the consequences related to deeming the dog a nuisance as opposed to dangerous. Wallace asked Bragan to review the options. He read Chapter 140, Section 157: Nuisance or dangerous dogs; for remedial action; appeal; violation of order.

Blair said the term dangerous makes him think of people more so than livestock or fowl. Bragan said actually in Mass General Law there is no difference between people and animals.

Wallace moved and Sobalvarro seconded a motion that the board vote to declare the dogs as dangerous.

Blair was not confident in his understanding of what constitutes deeming a dog dangerous. However, he does want the dogs restrained to the property. Sklar also expressed uncertainty on deeming the dogs dangerous. Ricci wanted the motion to ensure the dogs never leave his property. The motion did not carry (nay – Sklar, Blair, Ricci)

Blair moved and Sklar seconded a motion that the board vote to declare the dogs a nuisance. Bragan again reviewed the different options for punishment, based on the Board's determination whether the dogs are declared a nuisance or dangerous. Confinement was not an allowed punishment if declared a nuisance. The motion did not carry. (nay-all)

On a Ricci/Blair motion, the board voted to declare the dog dangerous and confine according to Mass General Law and supervised by the Animal Control Officer. (Nay – Blair, Sklar)

Bragan said a decision will be drafted with notice sent to the dog owner, Dog Officer and complainant. Leftkovits asked how she could be reimbursed for her loss. Sobalvarro said she would need to take that up in court.

PUBLIC COMMUNICATION

Sandy Leftkovits, 18 Depot Road, hopes it does not take a child getting hurt to declare a dog dangerous. She said livestock now could progress to a child the next time.

Fred Hinchliffe, 221 Still River Road, asked if comments or questions from the public would be permitted during the US Fish & Wildlife agenda item. Sobalvarro said only a brief presentation would take place. She welcomed questions or comments now. Hinchliffe is interested in more specifics from Fish & Wildlife on how they plan to work with the town on fire and forest management.

Bob O'Shea, Harbormaster, said he has two applications for approval before him. One is for placement of a dock and one for beach ropes. As attachments to town property they require town approval. He said in the past Park & Recreation signed the permits but with changes in regulations he is asking how the Selectmen wish to handle these approvals.

Betty De Angelis, South Shaker, hopes the Selectmen seriously consider updating the dog bylaws and fine structure.

CERT PROGRAM (Citizen Emergency Response Team)

Fire Chief Rick Sicard and Pat Natoli attended the meeting to explain the CERT program and ask the Selectmen to adopt the program. Natoli said CERT stands for Citizen Emergency Response Team. She explained our emergency personnel will train members of the community in basic response skills. As a start, they have received grant funds which will allow them to set up cooling and warming stations in both Bowers Brook and Foxglove. They have also received training materials and two backpacks for CERT leaders. The Selectmen were in full support of the program and acknowledged adoption of the CERT program in Harvard.

N. MIDDLESEX AREA EMERGENCY PLANNING COMMITTEE APPOINTMENTS

On a Ricci/Wallace motion, the board voted unanimously to appoint Fire Chief Rick Sicard and Pat Natoli to the NMAEPC and Police Chief Ed Denmark as an alternate.

US FISH & WILDLIFE SERVICE – OXBOW MANAGEMENT

Project Leader Libby Herland and Deputy Project Leader Tom Eagle were invited to the meeting to discuss fire management of the Oxbow National Wildlife Refuge. Herland explained the Oxbow is managed as part of the Eastern Massachusetts National Wildlife Refuge Complex. Currently, they are developing a special fire management plan and environmental assessment for the Oxbow and have begun seeking input from the surrounding communities.

She thanked the Selectmen for inviting them and took some time to explain the mission of the US Fish & Wildlife Service. She stated most of the land within Harvard was transferred from the Army and later the Watt land was purchased. Herland reviewed monies Shirley, Ayer, Devens and Harvard have received from US Fish & Wildlife over the years.

Herland said the Habitat Management Plan for the Watt Farm will be finalized within the next two years and once the plan is completed they will know how to manage the land better. She explained the land was mowed in January and October of 2012 but was not done in 2013 due to the government shut down. She was not using the shutdown as an excuse but said this did reduce budgets and staff. She also explained mowing can only be done during certain months of the year in an effort to protect pollinators. Herland and Eagle are willing to coordinate with volunteers who are interested in assisting with mowing if necessary. She explained there are other methods to manage lands besides mowing and they will consider all options. Herland said every refuge has a Fire Management Plan to provide protection of life and property. She agrees the plan for Oxbow is in need of updating. They will come back to present the environmental assessment document for public review and comment.

They reviewed a Planning & Current conditions map and a Fire Operations Plan. Both are tools for Fire Chief Sicard. Volunteers were instructed to contact Fire Chief Rick Sicard.

The Selectmen strongly urged mowing of fields and buffer zones annually to avoid future brush fires.

AMBULANCE

Appointment

Squad member Bonnie Sweeney was present to request the appointment of Samantha Rogers. She explained Rogers has a nursing degree, is a certified EMT and will be a great asset to the squad. On a Wallace/Sklar motion, the board voted unanimously to appoint Samantha Rogers to the Ambulance Squad.

Cash Flow Projection

Assistant Director Jason Cotting said the cash flow numbers indicate a short fall of \$100,000 for the purchase of a new ambulance estimated to cost \$300,000. He said this does not take into

account residual value from the current ambulance. The revenue projection shows \$198,154 available for the purchase of a new ambulance in FY2018. Cotting explained his revenue projections are on the conservative side. It was discussed the gap in funding could be funded out of their budget in following years. Leo Blair said considering funds received from the sale of the old ambulance we are looking at around \$50,000. Cotting recognized there will be a gap in funding which can be accommodated by future ambulance revenues and not from taxpayers.

BARE HILL TRIATHLON

The Selectmen wanted clarity on the transition area in front of old Bromfield and if they had received approval from the Bromfield Trustees to use this space. They also wanted to confirm there would be sufficient parking available for residents who want to use the beach that day. They will revisit this item at their next meeting.

MUNICIPAL AFFORDABLE HOUSING TRUST (MAHT) UPDATE

Leo Blair reported the trust is focusing on the property at 166 Littleton Road. He said testing has indicated the soil is good which will provide flexibility on how the property is developed. The trust will reach out to MassDevelopment to do a Request for Proposals (RFP). They want to see who may be attracted to develop the property. He said the trust will bring the draft RFP to the Selectmen. They expect to have it out by April with any activity taking place in late spring early summer.

Lucy Wallace asked if the Great Elms property needs a support letter for CPC funding. Blair said at this time CHOICE will not be receiving any CPC funds. He said any funds received will most likely be for the Littleton Road property. He added that CHOICE had applied for CPC funding this year but had missed the deadline. CHOICE has been advised it could apply for CPC funds for next year.

JBOS UPDATE

Leo Blair reported the non-binding referendum question they were working on was to ask the towns whether or not it was a good idea to pursue an overlay district for DREZ has stalled. He said in light of the recent letter from MassDevelopment and recent comments from the Devens Committee Rep. (Tom Kinch) indicating MassDevelopment staying in the mix is a good thing is contradictory to discussions JBOS has had. It was also discussed polling the Devens residents first and then going to the towns. Blair questioned this process. He said there is a clear misunderstanding on the relationship with Devens and the towns as to rights and obligations to the Devens residents. That being said, Blair is unsure of the direction JBOS is taking and thus why he is interested in determining the legal relationships. The board members agreed there is not enough time to educate the public about a non-binding referendum question.

SELECTMEN POLICIES & PROCEDURES

The Selectmen revisited proposed amendments from their January 21st meeting.

They made one revision:

On a Blair/Sklar motion, the board voted to amend the existing Board of Selectmen Policies & Procedures to allow the Chair to serve up to two consecutive terms.
(Sobalvarro & Wallace – Nay)

They decided to revisit keeping the warrants open for seven days at a future meeting.

TOWN ADMINISTRATOR REPORT

Snow and ice budget

On a Wallace/Sklar motion, the board voted unanimously to authorization deficit spending of the snow and ice account.

Bragan announced the Unitarian Church has applied for an Entertainment License. The Selectmen will take this up at their next meeting.

On a Blair/Wallace motion, the board approved the following events at the town beach:

Concrete Canoe Race – April 27th

Bare Hill Rowing Regatta – May 4th

Fishing Tournament – May 17th

Elm Commission

Bragan reported the Elm Commission will be seeking Selectmen approval of Tree Policy.

Bragan informed the Selectmen they will need to review income and cost approaches for determining the structure of the PILOT for the Harvard Solar Garden at their February 18th meeting.

Bragan announced anyone who plans to resign from any elected committee/board should do so before February 18th so the position can be placed on the ballot.

Bragan asked the Selectmen to provide him with any projects they may in mind related to the email he received from Senator Jamie Eldridge about the Transportation Bond Bill. He named the old CDM report on Ayer Road corridor or possibly the town center reconstruction.

Bragan distributed draft summary of the warrant articles for the Annual Town Meeting. The Selectmen instructed Bragan to follow through with amending the dog bylaw to reflect changes made to Mass General Laws. The Selectmen received a draft article from the Economic Development Committee amending zoning for grocery stores which needed to be reviewed by the Planning Board. On a Ricci/Blair motion, the board voted to tell the Planning Board to review rezoning for grocery stores. (Wallace – Nay)

**** On a Wallace motion, the Board voted unanimously by a roll call vote: (Sobalvarro – Aye, Ricci – Aye, Wallace –AYE, Sklar – Aye, Blair - Aye) to enter into executive session at 10:00pm, as authorized by Chapter 30A, Section 21.3 of the Massachusetts General Laws, at a meeting for which 48-hours' notice has been given, to discuss strategy with respect to collective bargaining or litigating if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. . Following the executive session, the Board will reconvene into open session. ****

The meeting was adjourned at 10:30pm.

Documents referenced:

SAGANICH DOG HEARING – email complaint dated 1.12.2014

restraining order dated 1.6.2014

email correspondence: Heim dated 2.3.2014

Levison dated 2.3.2014

hearing letter to Saganich dated 1.23.2014

CERT PROGRAM– information sheet dated 1.30.2014

N. MIDDLESEX AREA EMERGENCY PLANNING COM. – bylaws dated 1.7.2008

US FISH & WILDLIFE SERVICE – letter from Herland dated 1.23.2014

AMBULANCE – email from Director Beckman dated 1.19.2014

Cash flow analysis dated 1.29.2014

BARE HILL TRIATHLON – email from Sue Reedich with detailed request dated 1.29.2014