

MINUTES OF THE NUISANCE DOG HEARING
Tipper
July 13, 2010

Board of Selectmen

Town of Charlemont

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The hearing was convened at 9:00 P.M. by Selectman Winston Healy who announced that he will Chair the hearing and that the purpose of the hearing will be to consider the counter proposal to the conditions that were verbally agreed upon during the dog hearing on June 29, 2010 for release of the dog named Tipper to Paul DiBenedetto. It was announced that the hearing was being tape recorded. Also attending the hearing were Jean Brisson and Paul Fantucchio. Mr. Healy administered the oath to all but 3 attendees.

Mr. Healy informed the attendees the procedure for the hearing.

A handout depicting the history of events and offenses of the dog named Tipper was distributed to the attendees and is attached.

A sign in sheet was circulated and is attached.

Phase I – Testimony

Neal Lear – Neighbor of Paul DiBenedetto – 10 Thunder Land – Mr. DiBenedetto requested that Mr. Lear represent him during the hearing. Mr. Lear stated the Paul and Valerie DiBenedetto read the agreement for the dog from the Selectmen and they have a problem with condition #6. Mr. and Mrs. DiBenedetto feel they are being unjustly treated as a new dog owner. The DiBenedettos' want to be treated as any dog owner, with a fee being paid for the dog if found at large the first time, etc.

Question from the Board:

Mr. Healy explained that the Town is being asked to turn over the dog to a new owner, but realistically to the old address. Mr. Lear was asked if the previous owner, Jason Betinis, will continue to live at the same residence as Mr. DiBenedetto and continue to care for the dog. Mr. Lear stated that yes, Mr. Betinis will be still living at the same residence as Mr. DiBenedetto and that Mr. Betinis' role with the dog may be only feeding the dog from time to time.

Mr. Lear explained that the DiBenedetto's have a pen in their back yard and that the only way out of the pen is if someone lets the dog out.

Question from the Board:

Ms Brisson questioned Mr. Lear as to the location of the pen in relation to the house door. Mr. Lear stated the house door opens right into the pen, which is made out of turkey wire.

Mr. Healy stated that at a previous hearing, Mr. Betinis stated that his parents, Mr. and Mrs. DiBenedetto, were not physically able to care for the dog and wanted it confirmed that if the dog gets out of the house through the door, the dog will be entering the dog pen. Mr. Lear confirmed the location of the pen to the house door.

Question from the Board:

Mr. Healy questioned Mr. Lear if the new owner, essentially wants the Board to erase the previous records and start with a blank slate, forget the past, or does the new owner want to negotiate terms for the dog possibly, in the future, getting out once, twice, maybe the third time? Mr. Lear stated that he does not know the laws but the new owner wants the same rights as any new dog owner.

Loretta Kearsley – family friend – Stated that the layout of the DiBenedettos home is that Jason has an apartment on the bottom floor and the dog will be kept on the main level of the home. Ms Kearsley stated that the dog is obedient and knows that the previous owner will not have anything to do with the dog in the future.

Michael Kane – 25A Thunder Mtn. Road – neighbor – Questions the 2008 dog bylaw where it states that the old laws have been repealed and that dogs will only be held for 10 days. Mr. Kane stated that he feels anything that happened prior to the old laws should be thrown out as the old laws have been repealed.

Cecilia Lear – 10 Thunder Lane – neighbor – Submitted to the Board past Selectmen's minutes that refers to a request for Town bylaws.

Patricia Harker – East Hawley Road – neighbor – Asked the Board how long the Town is going to keep the dog.

The hearing was closed at 9:35 P.M. by a motion from Ms Brisson, seconded by Mr. Fantucchio and unanimously voted by the Board.

Phase 2 – Selectboard deliberation

The Board reviewed a letter submitted by Mr. DiBenedetto that requested copies of certain documents. The Board went over each request.

- Ms Brisson made a motion not to release the name and telephone number of the kennel where Tipper is being kept as this disclosure will compromise the security of the Animal Control Officer. The motion was seconded. The Board unanimously voted not to disclose this information.
- Ms Brisson made a motion that the request for documentation of dog's offences has been satisfied by the handout that was

distributed at the beginning of the hearing that stated the history of the violations. This motion was unanimously voted.

- Ms Brisson made a motion not to provide a list of complainants as this list is not relevant and the offenses have been listed in the history handout.

Cecilia Lear – 10 Thunder Lane – neighbor – Stated that the DiBenedetto's want the list to apologize to the people for any nuisance that Tipper may have caused and to let them know the dog will not be a nuisance in the future. Ms Lear stated that she feels it is wrong not to release this information.

- The Board stated that they hesitate to provide this information due to potential harassment from the former owner. This motion was unanimously voted.

Loretta Kearsley – family friend – Questioned if there is a law in place that states the Board can withhold the location of the dog.

- Ms Brisson made a motion not to provide documented calls from the ACO to the DiBenedetto's residence regarding containment of the dog by the ACO as the request is vague and the history document provides all the necessary information. This motion was unanimously voted.
- The request for a copy of the vet bills for the dog's rabies shot will be provided to the new owner, once the new owner has been decided by the Board.
- The request for the written laws of the Town pertaining to leash laws will need to be submitted to the Town Clerk.

Officer in Charge Jared Bellows – Officer Bellows informed the attendees that Mass laws are always changing but because the law has been changed, it does not change the previous or prior records.

Mr. Fantucchio made a motion to release the dog named Tipper to the new owners with an addendum to item #6 of the agreement. Mr. Healy seconded this motion. Ms Brisson stated that the dog has been a continuous nuisance and with the living conditions she does not foresee any change. Mr. Healy stated that the uncertainty of the stability of the home will constitute further harassment of the ACO and neighbors. Mr. Healy further stated that he feels more inclined to give the dog to a new owner out of Town and has reservations about giving the dog to an owner within the Town.

Carole Kane – 25A Thunder Mtn. Road – neighbor – Stated that the DiBenedettos are wonderful people, have lived in Town forever, and love the dog.

Neal Lear – Stated that he will be available to the DiBenedetto’s for assistance at all times and questions why Ms Brisson, as a neighbor and complainant, has not recused herself.

Ms Brisson explained that because she and Mr. Healy have disclosed a conflict in public meeting they do not have to remove themselves form the hearing.

Erwin Reynolds, Jr. – ACO – Reminded the Board that if the dog is found again at large 3 times, he will be asking the Board for another hearing.

The Board called the motion to give the dog to Mr. DiBenedetto with an amendment to condition number 6 of the agreement. Mr. Fantucchio – nay, Ms Brisson – nay, Mr. Healy – nay

Neal Lear - Stated to the Board that Mr. DiBenedetto would like to sign the original agreement as written.

Mr. Fantucchio made a motion to accept this offer to sign as written, with the agreement guaranteeing that the dog will not be at large again. Ms Brisson seconded the motion

Ms Brisson stated that she is concerned about the dog being at large in the near future. Mr. Healy agreed with Ms Brisson and stated that he also feels that the Selectmen have a recourse that is written in the agreement.

A majority of the Board voted to accept the signed agreement, as written, and to release the dog named Tipper to Paul DiBenedetto. The vote went as follows: Mr. Fantucchio – yes, Mr. Healy – yes, Ms Brisson – nay.

Mr. DiBenedetto was informed that the fees stated in the agreement are to be paid before the dog will be released with payment made by cash or money order. The fees will include a dog license.

The hearing was adjourned at 10:15 P.M. by a unanimous vote of the Board of Selectmen.

Respectfully submitted

Approved by:
Charlemont Board of Selectmen

Kathy A. Reynolds
Executive Secretary

This document is to be considered a draft until approved and signed by the Board of Selectmen.