

**MARION BOARD OF SELECTMEN  
WATER/SEWER COMMISSIONERS**

**February 3, 2009**

**Minutes**

The meeting was called to order at 7:03 p.m. Present were Chairman Jonathan F. Henry, Board members Roger F. Blanchette and Stephen M. Cushing and Town Administrator Paul F. Dawson. Also present were Lee Craver, Patricia Aleks of *The Wanderer*, Town Counsel Jonathan Witten, Police Chief Lincoln W. Miller, Animal Control Officer Susan Connor, Assistant Animal Control Officer Gilbert Leonardo, Jan and Lawrence Dorman, Christopher, Cathryn, Jessica, and Connor MacLean, Chloe Seroussi, Christopher Markey, attorney for the MacLeans, Barbara Foster and Helene Craver, secretary.

**Mr. Cushing moved** the minutes of January 20, 2009; the motion was seconded and carried unanimously.

Mr. Henry opened the hearing concerning a dog ("Cody") belonging to the MacLeans of Allen's Point Road. Town Counsel Witten, acting as hearing officer, noted that the Board will not necessarily render a final decision this evening, but is here to listen to the testimony with a decision probably delivered at the February 17 meeting and that the hearing would be conducted following Mass. General Laws, Chapter 140, section 157. Mr. Witten said Mr. Markey, the MacLeans attorney, would like to outline the method proposed by the MacLeans to restrain the dog and that the Police Chief and Animal Control Officer would address the hearing.

Chief Miller quoted from the incident report, covering the December 28, 2008 incident when the MacLean's dog's bit Mrs. Dorman. Chief Miller noted that the Police Department had received a letter of complaint from Mr. Dorman and that he had advised the Selectmen to conduct the hearing.

Mr. Markey distributed material which summarized the MacLean's perspective on their dog and the purported previous attacks and outlined several proposed actions to prevent any further incidents, including fencing in their property, sending the dog to obedience classes ( for "rehabilitation") and leashing the dog when off the property. Mr. Markey expressed the MacLeans "deep concern" over the injury and assured them that the dog "will not bite anyone again". Mr. Henry asked when these measures would be put into practice. Mr. Markey said that they would take place in relatively short order and asked that the matter be continued without disposition for six months. Mr. Blanchette said that he had been advised that the dog had bitten in the past—he sees this as a trend. Mr. Markey said that one incident was a playful scenario when the dog was a puppy and the second bite was not proven to be by Cody. Mr. and Mrs. MacLean both refuted that it was Cody who caused the second bite; both claimed the dog was with them that day. Chief Miller reported that, during the first incident, the victim's skin was not broken and the dog was placed on a ten-day quarantine. Chief Miller said that, when the second incident occurred, there were identification issues and it didn't proceed any further. Mrs. Foster reported that it was her daughter who was

involved with the first dog bite and the skin was not broken; there was another incident when Cody knocked Mrs. Foster over, but she didn't see him as a vicious dog.

Mr. Dorman said that he feels that Cody is aggressive and that this situation continues. Mr. Dorman said that he was concerned that a gate could be left open and that the liability issues are huge; he is concerned for his family and grandchildren, who refuse to visit Marion as long as the dog is here. Mrs. Dorman said that the attack on her was on her own property and unprovoked and that she is afraid of the dog and for her grandchildren. Mr. Markey said that it was reasonable to restrain the dog on a leash until the fence could be erected.

Officer Connor said that she feels there are behavior issues and there is a need for at least a 6' fence, along with the other provisions the MacLeans have proposed, but mistakes happen. Officer Connor said that she wouldn't want it on her conscience if someone else was injured; if the dog were relocated, this only changes the location of a dangerous situation to others who don't know that the situation exists.

Mr. Witten notified the Selectmen that they could require the MacLeans to purchase an extensive homeowner's insurance policy and to feel comfortable during the interim until the hearing continues in two weeks that this doesn't happen again. Mr. Henry said that no steps have been taken to prevent this from happening again and to safeguard the public's and Town's interests. Mr. Henry said that he would be satisfied with nothing less than total confinement of the dog; the dog would be confined to the premises and in the house, even though the dog needs exercise. Mr. Henry said that he understands why Officer Connor would have a dog put down because there is no practical solution to this ongoing problem. Mr. Cushing agreed and noted that the dog has exhibited aggressive behavior from a young age. Mr. Blanchette said that he owned a Labrador Retriever years ago that became aggressive and began nipping at people and they overlooked it. Mr. Blanchette said that one day it attacked his daughter and then, it attacked him and he called the dog officer to have the dog removed and destroyed. Mrs. MacLean said that she has two adolescent children herself and nothing has ever happened; she doesn't believe that the dog is a problem. Mrs. MacLean said that there are two adults home all day long and the fence would prevent the dog from leaving the property. Mrs. MacLean said that she doesn't know what happened the day Mrs. Dorman was bitten, but Cody is not a vicious dog. (Mrs. Foster offered to deliver a commercial kennel to the MacLeans until the fence was installed.) Mr. Henry said that this sounds appropriate; the restraints need to be imposed as an interim measure and to insist on a high degree of security. Mr. Dorman did not want the interim solution to alter the final decision. Mrs. MacLean said that, when the dog is outside, it will be on a leash. Mr. Blanchette asked why they were discussing a kennel when the dog would be on a leash when outside the house. Mr. Henry said that this is required by the Town's by laws. Mrs. Dorman said that she was living in fear—the dog could get out of the fence or break free from the leash. Mrs. Dorman said that she is afraid every time she leaves the house. Mrs. Foster said that she has gone back and forth in front of the electric fence and the dog doesn't go through the fence. Mr. Dorman said that the dog goes right through the fence. Mr. Markey suggested the dog also be muzzled when outdoors on a leash to prevent biting. Mr. Henry asked the MacLeans if they were

planning to take any trips. The MacLeans said that they would place Cody in a kennel if they leave the area.

A discussion followed regarding the effectiveness of the electric fence and collar. Officer Connor said that each collar is made for a specific dog, but there can be problems, such as a power failure and you won't know until the dog has breached the fence. Officer Connor said that she doesn't recommend an electrical fence, except when the dog is with the owner, because you don't know when the dog is willing to take the shock to breach the fence. A discussion followed regarding the use of a muzzle. Mrs. MacLean wished to know if this would only apply on Allen's Point Road, as she allows Cody off leash at the golf course.

**Mr. Henry proposed the following motion:** to take the matter under advisement, with the following conditions: the dog is to remain in the house at all times; when out of the house, it will be under the supervision of an adult, leashed and with a properly fitted muzzle, with the MacLeans to provide a certificate of insurance for \$1,000,000.

Mr. Witten proposed that Mr. Markey agree to the proposal, so that it was on the record that he consents, his clients consent and agree to comply with the conditions. Mr. Markey replied, "Absolutely". Mrs. MacLean said that she didn't presently have a muzzle for Cody.

**Mr. Henry amended the proposed motion** to include that the MacLeans obtain a muzzle for Cody by 4:00 p.m. on Friday, February 6, 2009, subject to inspection by the Animal Control Officer, and if the muzzle is obtained before that time, to contact the Town.

Mr. Dorman asked if a decision would be rendered at the February 17, 2009 meeting, because they had not retained an attorney, as they expected only a discussion tonight, and they are not closing out that possibility. Mr. Dawson suggested leaving the hearing open until the next meeting.

**Mr. Blanchette agreed** with the motion, as did Mr. Cushing; the motion was seconded and carried unanimously.

It was agreed to continue the hearing until 7:05 p.m. on February 17, 2009.

Mr. Dawson asked to take an agenda item out of order for discussion while Town Counsel is still present—Earth Tech and the Arrowhead Lane sewer. Mr. Dawson recalled that the Town had had a problem with the sewer extension project at Arrowhead Lane and had sent the contractor, D. W. White, a demand. Mr. Dawson reported that D. W. White had made an offer for settlement, which has been declined. Mr. Dawson recalled that the Board had requested the Town also include in the matter the company providing resident engineer services, Earth Tech. Mr. Dawson reported that they have not had a response from Earth Tech, so the Town is filing a claim in Superior Court against D. W. White and Earth Tech. Mr. Dawson explained that the initiation of a lawsuit requires a vote of the Board.

**Mr. Cushing** moved to proceed with the lawsuit; the motion was seconded and carried unanimously.

Mr. Witten noted that he will be in Marion for the Planning Board's 5:00 p.m. Dunkin' Donuts meeting on February 17 and can stay for the continuation of the dog hearing the same evening, if the Board wishes. It was agreed that Mr. Witten would attend the hearing.

**Mr. Blanchette** moved a one-day, all-alcohol license for the Marion Social Club on March 8, 2009; the motion was seconded and carried unanimously.

**Mr. Blanchette** moved to authorize deficit spending for veterans' benefits; the motion was seconded and carried unanimously.

**Mr. Blanchette** moved to sign an application for Chapter 90 reimbursement; the motion was seconded and carried unanimously.

**Mr. Cushing** moved a final water bill in the amount of \$300.37; the motion was seconded and carried unanimously.

**Mr. Cushing** moved a credit memo in the amount of \$1,436.03; the motion was seconded and carried unanimously.

**Mr. Cushing** moved a new services commitment in the amount of \$500.00; the motion was seconded and carried unanimously.

Mr. Dawson reported that he has been informed that Rochester has decided not to go forward with Casella for recycling and wishes to continue its partnership with Marion.

Mr. Dawson explained that the rescheduled date for the Southcoast Communities Municipal Forum, February 10, is in conflict with the Marion Affordable Housing Trust meeting. After discussion, it was agreed that Mr. Dawson would attend the meeting to represent Marion.

Mr. Blanchette noted that, last year, there were some discussions concerning charging fees for the resident stickers, which resulted in the Town's charging \$10 per sticker. Mr. Blanchette said that many people told him they were happy to pay the fee and that it was their opinion that guest stickers should cost as much as \$50. Mr. Blanchette suggested the fee for the guest stickers be increased from \$25.00 to \$40.00, effective immediately. Mr. Henry suggested they take this under advisement and allow a two-week period to elapse to gather public comment.

The Board reviewed an invitation to tour the Naval War College in Newport, Rhode Island, on April 3. Each member expressed interest in attending; a decision on attendance will be made at the next meeting.

The Board reviewed the notice of the annual herring meeting to be held February 24 in Mattapoissett.

**Mr. Blanchette moved** to have Mr. Cushing represent the Town at the herring meeting; the motion was seconded and carried, Mr. Cushing abstaining.

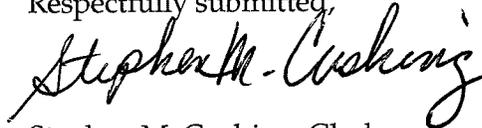
Mr. Cushing said that there are several Fire Department issues he would like to have addressed by the Board to clear the record. Mr. Cushing said that a raffle is being held and there is a question as to where the money is going. Mr. Dawson explained that they had become aware that "50/50" raffle tickets are being sold to benefit the Marion Fire Trust Fund and he doesn't know what the fund is, as there isn't anything on the books with that title for the Town of Marion.

Mr. Cushing said that another issue is that there have been complaints about smoking in the Fire Department apparatus room; he understands that the Chief is one of those smoking there. Mr. Dawson indicated that he had discussed this with the Chief and asked him to address this issue, but understands that this is not the case. Mr. Henry noted that the ventilation in the apparatus room has never been addressed and there is a problem with diesel fumes and smoke in the same space; it is appropriate to address this larger issue. Mr. Blanchette asked if, because there isn't proper ventilation, it is acceptable to smoke in the space? Mr. Henry said that smoking in the building is a prohibited practice but, at the same time, starting a diesel truck may be far worse than cigarette smoke and should be addressed. It was agreed to request the Chief attend the February 17 meeting.

Mr. Blanchette said that he read that Rochester has received another grant for a fire pumper, in addition to having recently received a grant for a brush breaker, along with other grants the Rochester Fire Department has received, and Marion is not getting any. A regional grant writer was discussed. Mr. Henry said that two people have expressed interest in applying for such a position. Mr. Blanchette said that, if we do not gain any headway with a regional grant writer, perhaps the Town should take this on themselves. Mr. Henry suggested it be an agenda item for the Tri-Town Selectmen's meeting on February 5.

**Mr. Henry moved** to adjourn the regular meeting and convene an executive session at 9:07 p.m. to discuss litigation; the Board will not be reconvening any business in open session following the executive session; the motion was seconded and carried unanimously, Messrs. Henry, Blanchette and Cushing voting aye.

Respectfully submitted,



Stephen M. Cushing, Clerk

Date voted: 2/17/09