

**Norfolk Select Board's Open Session Meeting Minutes  
July 27, 2020**

**This meeting was held as a Remote Access Zoom Virtual Meeting.**

Members Present: Kevin Kalkut; CiCi Van Tine; Anita Mecklenburg. Members Not Present: None. Also Present: Blythe Robinson, Town Administrator; Judith Lizardi, Executive Assistant.

Mr. Kalkut called the Remote Access Zoom Virtual Meeting to order at 7:00 p.m. He announced this meeting is being both video and audio recorded.

He noted the Massachusetts State of Emergency and the associated state legislation allowing towns to hold remote access virtual meetings during the COVID-19 pandemic crisis. As provided on the agenda, in accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the July 27, 2020, 7:00 p.m. public meeting of the Norfolk Select Board shall be physically closed to the public to avoid group congregation. Alternative public access to this meeting shall be done via Zoom online video conferencing. This application will allow users to view the meeting and provide comments during allocated windows as outlined in the Board's Public Comment Policy. He noted the Zoom Meeting link and the Zoom Meeting call-in number are provided on the agenda. He stated that all supporting materials have been published to the website.

Continued Public Hearing under G.L. c.140, §157 to determine whether a dog owned by Ms. Melissa Mitchell is a nuisance dog or a dangerous dog

Mr. Kalkut stated this is a dangerous dog public hearing under G.L. c. 140, § 157. He read aloud the Notice of Public Hearing as written in the letter to Ms. Melissa Mitchell, the dog owner, from Ms. Blythe Robinson dated June 30, 2020, which was provided in the Select Board's meeting packet. He reviewed materials that were submitted to the Select Board prior to the hearing and the procedural process for the public hearing. He noted that anyone wishing to speak or ask questions will be given the opportunity. He conducted a collective swearing in of the witnesses. He invited the complainant to testify as the first witness.

Mr. Brian Beachkofski, injured boy's father, stated he understood the significance of the hearing as he is a dog owner. He asked for this hearing because of an attack that happened to his son when his son was at the dog owner's house. It was a significant attack that required multiple trips to the doctors and required a plastic surgeon for repair. He stated that this is not for retaliation or retribution. What they have had to go through is upsetting. It is concerning that something like this could happen again which is why he asked for the hearing. Looking through the MA General Law, the law seems to lay out what does not declare a dangerous dog rather than what does declare a dangerous dog. He read aloud parts of the law. He noted that the dog was not defending or protecting the property or that the dog was not provoked. He stated that given the history of the dog, his son wanted to get out of reach of the run and was trying to walk away. His son did not run or do other quick motions that would have provoked anything. He noted that his son was invited over to the house. In reviewing the law, none of the factors were at play; however, what was a factor is that the dog has a history of having confrontations. His son was invited over to the yard and this is what happened when the dog was supervised. The bite was not just a puncture wound; it was deep. This information that he has given is provided in the account of the incident. He stated that there has been one other documented case before when the dog Annabell came onto his property and bit his dog. This attack in 2017 was reported to animal

control. This recent attack in June 2020 was the second documented attack. He discussed that after the first incident, he did not think a dangerous dog hearing was needed; however, this is a second attack. This is a pattern of behavior over multiple years and he is concerned it will happen again. He thinks that one of the things that is also relevant from prior incidents is the structure around and supervision of the dog. The dog is a rescue, and he appreciates the love the owners have for their rescue dog; it is very commendable. He does not think a dangerous dog cannot be a good companion to its family. However, in certain circumstances the dog has a pattern of behavior that has led to injury. After the first incident the dog was put on a run, but with all those precautions put in place, there was still another incident that happened. He discussed that another element of the supervision of the dog is being a responsible dog owner. He stated that one of the toughest parts of the day of the incident is the time between the attack and the time their son was brought home to them which was 45 minutes. It is hard for him to not take that into consideration. He asked if the dog has adequate supervision. The dog was already on a run line when the bite happened and the response to the incident was not what he would think is okay. The wound was dressed when his son was brought back to their home. He looked at the wound and thought how could the dog owners have not already taken him to urgent care or the emergency room because at a minimum this was going to need to be stitched up. These are all considerations as to whether the dog has adequate supervision. He took his son to the emergency room. The doctors excised out some of the fat from the wound; they could not close the wound otherwise. The son had to later go for a second procedure. It is now healing well. There is a dent in the leg, but he is mobile and moving, and hopefully scarring will be minimal. He stated that all this information is in the meeting packet. He said the pictures provided in the meeting packet seem rather difficult to make out; he would share colored pictures, if necessary. These are the factors he weighed. As a dog owner, he does not take this lightly. This is not a personal thing; he does not want someone else to go through this. He stated that this is his account of the incident and his considerations in making the request for the hearing.

Ms. Van Tine noted that in the son's recitation of his accounts, there was mention that the dog bit another child at 96 Boardman Street. Ms. Durand stated she did not witness this incident and neither did her son. They had heard that Annabell had bitten before; that was in her son's head. After this current incident to her son in June 2020, Ms. Durand stated that the neighbor at 96 Boardman Street told her that Annabell had also bitten her son in the past; however, she had not reported it. She said that she is a veterinarian and prescribed antibiotics for her son. Ms. Mecklenburg said she felt that Mr. Beachkofski was very thorough and she had no questions. Mr. Kalkut stated he had no questions.

Attorney Mello confirmed the meeting is being recorded. He reviewed the statutory definitions of "attack," "dangerous dog," and "nuisance dog" as set forth in G.L. c. 140 §136.

Ms. Hilary Cohen, Animal Control Officer, summarized what transpired in the incidents from 2017 to 2020 in chronological order. She highlighted key points of the 2017 incident. She stated that Norfolk Police contacted her to contact Ms. Durand who stated that while on their deck, Annabell came onto their property and bit their dog, Indigo. The 2017 incident was the first known incident to Animal Control which requires a warning. Ms. Cohen stated that said incident at 96 Boardman Street was never reported. Ms. Cohen stated that Ms. Mary-Anne Rampino owns the property at 90 Boardman Street; her daughter Ms. Melissa Mitchell is the dog owner of Annabell. Attorney Cohen asked numerous questions to which Ms. Cohen responded. Ms. Cohen stated that on June 13, 2020, a call regarding a dog bite to a child was received. Ms. Durand said that her son was playing at 90 Boardman Street and was bitten. Ms. Cohen stated that the dog Annabell was licensed and vaccinated from rabies. On Monday, June 15, 2020, Ms. Cohen spoke with the dog owner, Ms. Mitchell, who was not

home when the incident occurred. Ms. Mitchell said that when Ms. Rampino put the dog out on the runner, she did not realize the boys were outside playing. Ms. Cohen noted she played phone tag with the Ms. Mitchell's dog trainer, Mr. Tim Morgan of Mulligan Kennels. A temporary restraint order was placed on the dog. An email was sent to the animal inspector to quarantine the animal. Due to what she could see, she could not determine if it was a Level 3 or Level 4 on the bite scale. She stated that she completed a supplemental report as she was still trying to get in touch with the dog trainer. She stated that any dog breed can bite. Annabell is listed as a mixed breed Pitbull-type dog. It is not about the breed of the dog, it is all about the acts that happened during this and the previous incident. She has not had any other complaints on this dog except the two incidents.

Ms. Mecklenburg stated she had no questions. Ms. Van Tine reviewed that Ms. Cohen indicated in the June 15, 2020, report that she spoke with the dog owner who said she was moving out of Norfolk as soon as her house in another town was finished. Ms. Cohen said it was anticipatory that it would be the end of the year; Ms. Mitchell was doing work on her property in Medway. Ms. Van Tine asked Ms. Cohen about what the dog trainer said and was there a plan going forward. Ms. Cohen said she spoke to the trainer, Mr. Tim Morgan of Mulligan Kennels, who said he would evaluate the dog the next day; she did not ask him to do that. In her talk with him, he said he was incredibly busy. He said that the Mitchell's reached out to him after the bite incident. He said he has been to the home for training in 2019; he said that the dog did have triggers with some other animals and some people. He said he brought his own child to the Mitchell's house between 2017 and prior to the 2020 incident. Ms. Cohen confirmed that when she talked to Ms. Mitchell in 2017, she was made aware that Ms. Mitchell said she was planning to move; but, they are still residents in Norfolk. Ms. Van Tine asked that when discussing with Ms. Mitchell about containing the dog, fencing and the enclosure were discussed, what was Ms. Mitchell's response. Ms. Cohen said that Ms. Mitchell said that the house was owned by Ms. Rampino and Ms. Mitchell was moving, so the fencing would not be possible. Ms. Cohen said the gravity of the situations requires more than a runner; in her experience, this dog needs to be behind a physical barrier. Mr. Kalkut had no further questions.

Mr. Kalkut noted that three items were received after the posting of this meeting; all three items are character reference letters for Annabell.

Ms. Kelley Bollen, Certified Animal Behavior Consultant, said that on July 9, 2020, Animal Control Officer Hilary Cohen reached out to her to see if she would review the case notes and testify. She stated that as a Certified Animal Behavior Consultant, she does this occasionally. She reviewed the case and as outlined in her letter, she determined from the father's statement, pictures and reports this was most likely a Level 4 bite. She reviewed that the Dunbar's Dog Bite Scale is used in many countries to determine how safe a dog is after it has bitten. A level 4 bite is a very serious bite; the teeth are sunk into the halfway point of the dog's canine tooth. Most dogs when they bite do not cause injury. The majority of bites in the US are Level 1 or Level 2. This bite went to a Level 4 meaning this dog does not have good bite inhibition. In reviewing the whole case, she did not take into consideration the other dog incident accounts. In this case Annabell has a history with another dog. But, this incident with the child is the most relevant due to the severity of the wound and that the dog was still tethered and could cause this type wound. Annabell is a dangerous dog because when she does bite, she does cause harm. Once a dog has bitten, they are more likely to bite again in the future in the same or similar situation. She believes if Annabell ever got out of the yard or her house, she is a danger to other children in the community. She believes Annabell should be declared a dangerous dog.

Mr. Kalkut asked about the reference to the levels of a dog bite. Ms. Bollen reviewed a Level 1 bite is a warning bite, a Level 2 bite is a bite that did not break skin, a Level 3 bite is when the dog punctures skin but does not sink teeth in, a Level 4 bite is when the puncture from at least one canine tooth went more than half the length of the canine tooth, a Level 5 bite is a multiple bite, and a Level 6 bite is a fatal bite. She said she is basing her determination on the report and the fat tissue coming out of the wound. Ms. Van Tine had no questions. Ms. Mecklenburg asked who usually does the rankings on the bite scale. Ms. Bollen said it is usually done by a forensic investigation if there is a hearing or court case; not every emergency room physician knows the bite scale.

Attorney Mello stated that for clarity, he requested Ms. Cohen's and Ms. Bollen's recommendations.

Ms. Bollen stated that she recommended a secure fence around the yard that does not include a gate and all egress and access is through the home. The fence would have to be high enough for the dog to not jump out and secure under the fence so the dog could not dig out. In addition, the dog would wear a basket muzzle anytime it is taken out of the yard or house because leashes can fail, and if the dog were to escape, it would have a basket muzzle to prevent any serious situation in the future. Ms. Cohen stated she had nothing to add. The interim order stated that when the dog was on a leash, it would be in a basket muzzle. She agreed that the dog should be behind a physical barrier to prevent something from happening in the future.

Attorney Cohen asked Mr. Beachkofski if his son was invited over to the Mitchell's house and how he knows that. Mr. Beachkofski stated the kids are often at each other's houses and have been invited many times. It was a prearranged situation and his son was invited over because the two were playing together and sitting down in that space. Attorney Cohen asked that when his son wrote the incident narratives was Mr. Beachkofski sitting with him. Ms. Durand said she was typing when her son gave his report.

Attorney Cohen asked Ms. Cohen to tell the Board about Annabell. Ms. Cohen said she had only seen Annabell once. Both incidents happened after hours. In 2017 the incident was not reported until an hour later. In 2020, due to COVID, she did not go into the home. Attorney Cohen asked if Ms. Cohen had ever evaluated Annabell's behavior. Ms. Cohen said she had not. Attorney Cohen asked when Ms. Cohen became a dog officer. Ms. Cohen said in 1995 or 1996. Attorney Cohen said that in Ms. Cohen's report she reported Ms. Mitchell's unwillingness to put up a fence. He asked that if Ms. Mitchell had put up the fence would Ms. Cohen still have recommended to muzzle the dog. Attorney Cohen asked if the muzzle was due to bite history or not putting up a fence. Ms. Mecklenburg stated that the course of questioning should pertain to Annabell. Mr. Kalkut asked Mr. Cohen to be aware of his questioning. Ms. Van Tine stated that she had no issue with Attorney Cohen's tone, but she is concerned that the questioning is less about Annabell and the dangerousness of the dog than it is about the Animal Control Officer.

Attorney Cohen asked that regarding Annabell, at the June 29, 2020, hearing to extend the restraining order, did Ms. Cohen have an opinion about whether the dog was dangerous. Ms. Cohen said she had not yet spoken to the trainer. It was not until the following day that she reached out to the trainer. Attorney Cohen said that he wants to make sure the Select Board follows the correct law. Attorney Cohen stated Ms. Cohen had received a lengthy voice mail from the trainer. Ms. Cohen stated she is not sure of the exact contents of the voicemail; however, she thinks the phone call conversation was clearer. Attorney Cohen asked when Ms. Cohen determined that she would send this incident to a behavioral consultant. Ms. Cohen said after the June 29, 2020, meeting. Attorney Cohen asked who

paid for the behavioral consultant and if Ms. Cohen had asked Ms. Mitchell to have the dog evaluated. Ms. Cohen said no. Ms. Van Tine said she is not seeing that who paid for the behaviorist relates to the dangerous dog hearing. Attorney Cohen said Ms. Cohen went behind the owner's back to get the dog evaluated. Why did Ms. Cohen not suggest this to the dog's owner? He stated that he does not understand why this information was kept from us. He said that in trying to figure out if Annabell is a dangerous dog or not, did Ms. Cohen speak to the dog's owner about the dog's behavior. Ms. Cohen said that in the two instances she spoke to Ms. Mitchell. Attorney Cohen asked if Ms. Cohen went to the location where the bite happened. He asked if Ms. Cohen asked the dog owner to shorten the tie-out. He asked if Ms. Cohen has asked other dog owners to muzzle their dogs. Ms. Cohen said she thinks so, but Norfolk does not do a lot of dangerous dog hearings. In response to further questions by Attorney Cohen, Ms. Cohen said she spoke with Mr. Beachkofski once and Ms. Durand twice. Attorney Cohen asked Ms. Cohen questions about the 2017 dog bite incident regarding location of incident and bite records. He asked if Annabell has birthed a litter. Ms. Cohen said she did not know. He asked about the dog owner's property in Medway and confirmed Ms. Cohen pulled the assessor's records for the other town, but did not visit the Medway property. He asked what new evidence Ms. Cohen supplied to Ms. Bollen to determine if it was a Level 3 or Level 4 bite. He asked if Ms. Cohen forwarded doctor's information to Ms. Bollen. He asked if at the June 29<sup>th</sup> hearing, did Ms. Cohen know the Town bylaws were out of date. Ms. Cohen stated she does not know if she knew at that time. Attorney Cohen asked when Mr. Tim Mulligan, the dog trainer, did not get back to her, did she reach out to the owner to get the trainer to contact her. Ms. Cohen said at the June 29, 2020, meeting if the trainer gave a set plan, it would change her recommendation for a hearing. She said she could not go forward with any decision, without speaking to the trainer. She stated that the Beachkofski's filed for this public hearing; she did not. When she spoke with Mr. Mulligan, he said he told the Mitchell's they needed to buy a pen immediately. Attorney Cohen asked if Ms. Cohen had a chance to see a report from Mr. Steven Connolly, owner/operator of The Dog House. Ms. Cohen said she saw it. Attorney Cohen confirmed everyone received the letter from the Dog House. Ms. Van Tine said she did not see anything that suggested that Mr. Connolly from the Dog House was a trainer. Attorney Cohen said Mr. Connolly is not a behaviorist; but, he is the only person to submit a report who has spent time with Annabell for a little over one hour. Mr. Beachkofski stated his son submitted a report and has spent time with Annabell. Attorney Cohen asked Ms. Cohen for her opinion if Annabell is a dangerous dog. Ms. Cohen said it would be her tendency to believe that this dog should be managed in such a way that she is not a danger to the community. She said she thinks that Annabell should be labelled a dangerous dog.

Attorney Cohen asked Ms. Bollen where she practices. Ms. Bollen said she recently moved to Nevada after more than 20 years in Massachusetts. He asked how often she makes a behavioral assessment without meeting the dog. She stated this is the second time she has done this. She stated that the incident itself is what the opinion is based on. There was no need for any in-person visitation with the dog. There is nothing that anyone can say that will take away the injury to that child in that incident with Annabell. She is basing this on the materials provided by Ms. Cohen with the pictures provided by the father. Attorney Cohen asked about the Dunbar Dog Bite Scale. Ms. Bollen explained the types of bites and stated that this bite is deep injury with tearing of flesh which puts it in the Level 4 bite category. A bite causing significant injury requiring several procedures and plastic surgery indicates a significant bite. She stated she does not need to meet the dog to know the dog is dangerous. She stated that if there were doctor notes she would have read them. Attorney Cohen read the opinion of Mr. Connolly about Annabell after spending one hour with the dog. Ms. Bollen stated in response to Attorney Cohen's questions that she cannot surmise what would have happened if the dog was not tethered. What matters is the incident that occurred with the child. Attorney Cohen said that if the dog was defending itself, the dog's perspective matters. Ms. Bollen stated no one would ever know the

dog's motivation. Bites happen in different situations. When looking at a dog bite situation, we have to look at the severity of the injury. Attorney Cohen reviewed the differences between Level 3 and Level 4 bites. Ms. Bollen stated the level can be determined based on the wound. Attorney Cohen asked that if the boy had been there many times, why was this day different. Ms. Bollen said we are never going to know. Attorney Cohen asked how do we not know that the dog did not think she was protecting herself. Ms. Bollen said the child was trying to move away from the dog. Ms. Bollen said when looking at the bite and trying to determine if the dog may bite again, the question asked is if this dog is dangerous and could the dog cause this degree of injury again. When trying to determine if it is a dangerous dog, all that has to be done is look at the incident to see what occurred. Attorney Cohen said that under MA law, they look at the dog's state of mind; the law requires us to look at the totality of the environment. Ms. Bollen reviewed the degree of injury inflicted on the child. Attorney Cohen asked Ms. Bollen what was the dog's motivation. Ms. Bollen stated that could not be answered as you cannot get into the mind of the dog. She looks at the result of the incident. She said the dog's motivations are not as important as the injury and how severe the injury was. She stated they need to look at if this dog is potentially dangerous in the future. The way to do that is to look at how damaging this bite was; it is known that this is this dog's potential because she just did it. It is the incident itself and the severity of the wound when trying to determine if the dog is dangerous.

Attorney Mello stated that he disagreed with Attorney Cohen's characterization of the MA law. The standards that apply under § 157 are copiously delineated. The MA law speaks for itself. He noted that Attorney Cohen referenced a meeting that occurred on June 29, 2020, and used the word hearing to describe a proceeding which was a meeting in connection with the Town's bylaws. Attorney Cohen confirmed he knew it was not a hearing.

Attorney Cohen asked Ms. Bollen that when she was given the documents to review for this incident, was the MA law submitted as part of it. Ms. Bollen said no.

Ms. Melissa Mitchell, 90 Boardman Street, dog owner of Annabell, gave her testimony without providing a visual/video view of herself on the Zoom platform during the public hearing. She stated she has two dogs. When she rescued Annabell, she was told that Annabell was three to six years old. She has had Annabell for four years; therefore, she believes Annabell is 10 or 11 years old. In response to Attorney Cohen's questions, she stated she was home during the July 2017 dog-on-dog incident. She said she did not remember a conversation with the animal control officer regarding the incident, but the animal control officer did call on the phone and asked if the dog was licensed and had current rabies vaccination. Ms. Mitchell reviewed the incident. She stated she was outside with both dogs on runners. Her dogs started barking. She took Annabell off the runner to bring her inside and Annabell got away because a dog came out of the woods. Annabell grabbed the Beachkofski's dog Indigo while in Ms. Mitchell's yard and then Annabell chased Indigo to the Beachkofski's yard where the mother and the son were home. Ms. Mitchell grabbed Annabell off of the Beachkofski's porch. She said she never saw Annabell bite Indigo. She said she has not seen or been asked to pay a vet bill for this incident.

Attorney Mello said that regarding the procedure for this public hearing, the previous witnesses have provided a narrative to the Select Board of their summary of events, and then questions have been asked by Attorney Cohen and others. With Ms. Mitchell's testimony, Attorney Cohen is asking specific questions and not allowing Ms. Mitchell to provide a narrative summary to the Select Board. He asked if the Select Board would want to hear an introductory summary from Ms. Mitchell. Mr. Kalkut asked if Attorney Cohen would prefer a summary of the incidents rather than the question-by-question line of questioning of Ms. Mitchell. Would it be beneficial for the Select Board to hear a summary first and

then circle back for questions? Attorney Cohen said he wants to get the right decision the right way. He suggested the Select Board ask questions if they would like. Attorney Mello reviewed how this hearing has been conducted so far. Mr. Kalkut asked for a singular presentation from the dog owner and then questions.

Attorney Cohen asked Ms. Mitchell for her summary of the events of the June 2020 incident. Ms. Mitchell continued speaking about the 2017 incident and said her account of the 2017 incident was documented with the animal inspector. She said she did not witness the June 2020 incident with her own eyes. Since the incident, she has had Annabell on a leash when outside, she has been using the muzzle, she is pursuing a new trainer, she is shortening Annabell's runner, and she had Annabell assessed by a behavioral specialist. She said that Annabell does not react unless she feels she needs to protect. Her opinion is that Annabell was trying to protect her "housemate" as the neighbor boy had a mask. She said that the neighbor boy did not have a playdate; however, it is an open-yard thing and the boys go back and forth. This has been hard for her and she cannot imagine how hard it has been for the family. She stated that the children have also been kind of hurt by all this because they have lost a friend. It is a very tough situation. Attorney Cohen asked about the 45-minute delay in getting the boy home after the bite. Ms. Mitchell said the boy did not want anyone called and did not want to go home. She reviewed a prior incident on her property where the neighbor boy was injured and the boy did not want to go home or call his mother. Ms. Mitchell stated that when the boy did not want to go home, her mother, Ms. Mary-Anne Rampino, felt she understood and did not bring the boy home or call the mother. Attorney Cohen asked Ms. Mitchell about her move out date. Ms. Mitchell said they have a deadline of the end of the year to be out of the house. Attorney Cohen asked how she would make the neighbors feel comfortable. Ms. Mitchell said Annabell will never be outside without her, she would make a shorter runner, and use a muzzle anytime leaving the house. Attorney Cohen asked that regardless of the decision that is reached, would Ms. Mitchell continue to muzzle Annabell when she is outside until Ms. Mitchell moves from 90 Boardman Street. Ms. Mitchell said she would. She stated that she would do this to appease other people; she does not think her dog is dangerous.

Ms. Mecklenburg asked if the Beachkofski boy was welcomed. Ms. Mitchell said yes. She stated that when she got home, the boy's wound was bandaged and she asked to see it. She thought the boy needed a stitch or two. Ms. Van Tine asked what if anything can Ms. Mitchell tell about this incident that was reported to happen at 96 Boardman Street about a bite. Ms. Mitchell said she does not know anything about this. Ms. Van Tine referenced the provided letters of support for Annabell: one letter is from Ms. Mitchell's sister and the other is from the sister's friend who lives together with the sister and they share several dogs. Ms. Van Tine asked about the dog playdates the sister and boyfriend arrange as noted in the letter. She asked where the title of animal behaviorist came regarding Mr. Steven Connolly's doggie day care and spa as she cannot find those credentials. Ms. Mitchell said that Mr. Connolly is very good at reading dogs when at his facility, and he looks at their behavior. Ms. Van Tine asked about Mr. Connolly's letter as it says he spent over one hour with Annabell. Ms. Mitchell said she went to his facility, and she was both present and not present at the times when he was observing Annabell. Ms. Van Tine confirmed that Ms. Mary Smith, author of one of the support letters, is Ms. Mitchell's brother's fiancé. She confirmed that Mr. Connolly is not a relative. Ms. Van Tine confirmed that Ms. Smith was in the house at 90 Boardman Street when the biting incident occurred. She asked about Ms. Smith's certification as an EMT. Ms. Mitchell said Ms. Smith has been an EMT for over one year. Ms. Van Tine noted that family and friends may view the dog in a different way than others. Ms. Van Tine confirmed that Ms. Mitchell said that the only person she spoke with regarding the 2017 incident was the animal inspector, Chris Wider, when she was issued the order of quarantine in 2017. Ms. Van Tine noted there was a scuffle with the dogs on her property. Ms. Mitchell said the

Beachkofski's dog came onto her property. Indigo kept trying to initiate play with Annabell. The owners came and took Indigo away. Ms. Mitchell said she just does not believe that the incident would have happened if Annabell could have seen the boy; the fact that somebody was masked in the backyard with her child would get any dog upset. Ms. Van Tine asked when it was brought up that the child was masked. Ms. Mitchell said it was stated several times. Ms. Mitchell agreed the child was bit, the bite drew blood, and the child received stitches. She said that the child could have pulled away and that would have caused the child to need stitches. Ms. Van Tine said the child could not be pulling away unless the dog had its teeth in the leg.

Attorney Cohen asked if Ms. Van Tine was cross-examining Ms. Mitchell. Attorney Mello asked if Attorney Cohen was suggesting that Ms. Van Tine could not ask questions. Ms. Van Tine stated that Attorney Cohen intimated the depth and severity of the bite would render it more or less dangerous. She said it is fair to ascertain if the owner acknowledges the severity. Attorney Mello said the use of the words cross-examination by Attorney Mello is incorrect. The Select Board is free to ask the questions they want to ask. There are no cross-examination questions in connection with this process.

Mr. Kalkut stated that there is a lot of interrupting going on at this time; he asked that anyone wanting to speak ask to be recognized to speak.

Attorney Mello stated everyone should be respectful of the process. As a procedural matter, the Select Board is free to ask questions. He stated that it is not accurate to say Ms. Van Tine's questions were cross-examination questions. Attorney Cohen said he wanted to ask questions about the restraining order that he believes was unlawful, but he was shut down about restraining order questions. Mr. Kalkut stated that Ms. Van Tine tied her questions back to the scope and review of previous statements about if Annabell was dangerous. Ms. Van Tine stated she was within the scope of questioning. She stated that she has heard some sort of minimizing of the bite. She is hearing someone talking about minimizing the injury and perhaps, minimizing the incident, and whether the boy was invited on the property and whether the child should have been there. She stated this was not a child doing any of the proscribed things listed in the statute.

Attorney Mello refuted that Attorney Cohen was precluded from or shut off from presenting argument or testimony on a particular issue.

Ms. Van Tine stated that Animal Control Officer Cohen said in her remarks that Mr. Tim Morgan of Mulligan Kennels had discussed that the dog Annabell did have triggers. She asked Ms. Mitchell if Mr. Morgan talked about that with her. Ms. Mitchell said yes. Ms. Van Tine asked what Ms. Mitchell was working on to address the triggers. Ms. Mitchell said Annabell is triggered by wheels; her homework was to tether the dog and have children drive by with bikes and Ms. Mitchell would redirect her. Ms. Mitchell said Annabell was doing quite well. Ms. Van Tine asked if there were any other triggers. Ms. Mitchell said no. Ms. Mitchell stated that Mr. Morgan said that having a pen would appease the animal control officer. She said that she has a pen; it is four-sided, chain link, and about five ft. tall. She stated that when the dog is outside, Ms. Mitchell is with her.

Mr. Kalkut confirmed with Ms. Mitchell the approximate age of Annabell. Ms. Mitchell said she rescued Annabell in 2016. Ms. Mitchell said the little paperwork she had received indicated Annabell did have puppies. Attorney Cohen said he no questions. Mr. Kalkut said the public would now have an opportunity to ask questions.

Mr. Al Quaglieri, Main Street, said he has rescued dogs for over 20 years. The dog types he rescues can sometimes be temperamental and volatile. He stated that his wife was once grabbed by one of the dogs, but the severity of the bite was made worse because she pulled her hand away and ripped the skin. He discussed that in listening to Ms. Mitchell and the expert Ms. Bollen, it seemed like the skin was ripped apart and that could only be done through an intense puncture; from experience, he knows that is not accurate. He thinks Ms. Van Tine made a couple of great points, when she said that the family that knows this dog trusts and loves this dog. But, when the dog saw someone with a mask and a hat on, it acted differently and that is how a lot of dog's act. He stated that if you go to c. 140 §157, it is clear how you have to conduct this hearing. You have to prove some facts. He stated that he does not necessarily think those facts have been proven because the dog was tethered. The person was in the confines of the dog's structure. If you look at §157 number 4, that clearly happened in this incident. It seems to him and the kinds of dogs he has owned and their temperament that this owner has done everything possible post-incident to rectify the issue. His opinion is that he does not believe that this dog is dangerous dog has been proven.

Mr. Kalkut asked if Ms. Mitchell had offered to cover medical expenses for the child hurt in the incident. Ms. Mitchell said no. Mr. Beachkofski pointed out that the remainder of the sentence that Mr. Quaglieri had read aloud in the MA general law is important as the person was authorized to be in the enclosure and had an authorization to play.

Mr. Quaglieri stated that when there is a tether and a structure and you are on private property, it is deemed to be an area that should not be infiltrated when you own a dog. Children wandering on properties do not have the inherent right to go on people's property within an area that a dog has been retained and structured.

Mr. Kalkut called for closing remarks.

Attorney Mello clarified for Ms. Mitchell that c. 157 includes among the potential orders that a hearing authority can determine, provided that there is a finding that the dog is dangerous, that the dog can be confined to the premises of the keeper. He read the text of the statute. He asked if Ms. Mitchell purchased a dog run that would satisfy those requirements. Ms. Mitchell said she got a pen which has sides but no roof.

Mr. Beachkofski said there had been comments regarding the wound and whether it was indicative of a dangerous animal; he would be happy to screen share pictures to show the magnitude of the wound as there may have been lack of clarify with the photos provided. Mr. Kalkut stated that he would not need to see the photos. Ms. Van Tine agreed she did not need to see the clearer photographs of the wound to formulate an opinion. Ms. Durand stated that when the second procedure, the plastic surgery, was done, the doctor estimated that there was approximately 50 stitches. She stated that she can request said medical report. Ms. Mecklenburg asked the Beachkofski's about the plastic surgery. She confirmed that there was missing skin in the wound; therefore, the skin could not be reattached. Mr. Beachkofski continued with his closing remarks. He asked if the Connolly's that live at 92 Boardman Street are related to or know the Connolly mentioned throughout this hearing. Ms. Mitchell said he is not related to them at all. Mr. Beachkofski discussed the children playing in each other's yards. He stated that to say his child was an unauthorized presence in the yard/confine is not the case. He noted the dog has triggers around wheels. He has also heard that the dog has triggers around kids, hats, masks, and maybe there are other triggers; it is concerning about how to manage a response with so many triggers. He said he knows mistakes happen. This is not a question of whether or not we can prevent

mistakes from happening. But for a dangerous dog hearing, what are the consequences of mistakes happening. This has to be behavior based and on the consequences of mistakes. He stated his son did not tell him that he did not want to go home after he was bitten. Mr. Beachkofski stated that regardless of whether a child says they do not want to go home, it would be responsible to send the child home in a timely manner when they are injured. He stated he did not want to ask Ms. Mitchell to pay the veterinarian bills the first time in 2017; they thought they would just cover it. His is surprised that since they did not ask Ms. Mitchell to pay, it is being implied that maybe nothing did happen or there was not a puncture wound. He would be happy to provide the vet records regarding that wound in 2017. He will also provide emergency room documents regarding the plastic surgery for his son. He reviewed the comment about someone pulling away when a dog is biting. He stated that he does not imagine anyone being bitten by a dog would say to themselves that I will just let the dog hold on to me until the dog removes his mouth and then I will move away. The idea that the damage was self-inflicted is offensive on the nature of what someone is expected to do when a dog is biting. He responded to the comment about what was different this time. He stated the adult behavior was different this time. Usually, the adult that lets Annabell out signals to the children that the dog is being let out; that did not happen this time. He does not want the next time a mistake happens to impact another family in this way. The dog is dangerous as defined by law and the risk should be mitigated by the law. There is a history of things happening and mistakes being made. He noted that licensing of the dog in the Town only happened after the 2017 incident. Due to the incident unreported at 96 Boardman Street, there has been no behavior change as to how the dog has been managed. Things only change after things are reported and that is why he felt the mandate to bring this forward to the Select Board for determination. He is asking they look at the evidence to determine if the dog is dangerous per the law and if so follow the prescribed legal options on how to deal with that.

Attorney Cohen stated that Ms. Mitchell was deferring her closing remarks to him. He stated that the catalyst for this was the grandmother's error. The hearing authority must be look at the dog's behavior under that circumstance. They must protect the public from dangerous dogs. But, it is also important to protect the public's due process and the right to a fair hearing. MA general law does not acknowledge the Dunbar's Dog Bite Scale. He reviewed G.L. c. 140, § 157 a 1. He read the text aloud and said the dog was defending itself. He stated that we have some evidence that this dog was in protective mode. It was protecting the son that lives in the dog's house. MA general law requires the hearing authority to determine the dog's state of mind. He read the text aloud regarding G.L. c. 140, § 157 a 3. which discusses provoking the dog. He said the injured boy was not doing anything physically to provoke the dog; but, from the dog's perspective, she sees her housemate and sees a boy with a mask and hat and in this dog's mind, knowing those circumstance and that this has not happened before, and on the dog's own property, you have got to look at the law in relation to all the facts not just what the behavioral expert assumes on the scope of the bite. In this dog's mind, there was an attack pending and this was an assault. This dog did this on his own property. You can look at the circumstances and know the dog was in protective mode. In the scheme of bites, dogs that are dangerous that have intent to kill, maim, or destroy do not bite like this. We have not been able to identity that the dog's response was in proportion or not to seeing the boy there. He said that they should suspend the hearing and allow Annabell to be evaluated by a behaviorist on our end. He stated that behaviorists' reputations are so important that you cannot buy an opinion. They should be allowed to have their own behaviorist evaluate the dog. There is a series of tests. We have only heard of one trigger and that is wheels. Is a person on the property with a mask and hat on scary enough for the dog to react the way it did? He stated that the statute requires them to look at the circumstances of the dog's behavior. The real test is can you match the facts up with the governing law; the Town's bylaws do not control here. He contended there is not enough information. There should be one more

piece. We have to find a behaviorist in a short period. Until then, current things remain in place. He is asking the Select Board do this in lieu of not finding the dog dangerous.

Attorney Mello asked Attorney Cohen to specify his remark of what is in place that would continue. Attorney Cohen said muzzle when outdoors, the dog is only outside if Ms. Mitchell is outside, and no one else walks the dog is what is in place right now.

Mr. Kalkut reviewed that the Beachkofski's want the dog deemed dangerous and that Attorney Cohen wants to suspend deliberations until they have their own evaluations and continue to do what is currently in place until then.

Attorney Cohen said that Ms. Mitchell would agree to the permanency of these things until she moves out if the dog is not labelled dangerous. If for any reason she does not move out by January 1, 2021, she has violated this agreement. He stated that we cannot agree on whether it is a dangerous dog, but we can agree on the way to handle this.

Attorney Mello noted that as Attorney Cohen wants to submit additional information, the hearing should not be closed. Mr. Kalkut asked the Select Board if they would consider Attorney Cohen's alternative about having another assessment done by a behaviorist before closing the hearing. Ms. Van Tine stated she is torn on the idea of extending the hearing with all the current structures in place. Her issue is that when she looks at Ms. Bollen's letter, why was there not a call from Attorney Cohen for an extension of the hearing or a call for a consultant sooner when he received the letter. She was aware of the letter since at least last Thursday that a behavioral consultant was retained. Why was it that we had to wait until 10:23 PM to determine the need for an alternative consultant?

Attorney Mello said there is no one-size-fits-all answer. It is the Select Board's discretion. As a practical matter, he does not know when Attorney Cohen got the report, probably before last Thursday. Would it have been more appropriate to request a continuance of the hearing sooner? He can see it from both perspectives. From his perspective, it seems like a reasonable request. He noted Ms. Mitchell is agreeable to continue with the status quo conditions that currently exist. His opinion is that this is a reasonable request. Ms. Van Tine said it was important to get all the information. She wants Annabell and Ms. Mitchell to get a fair hearing. Ms. Mecklenburg agrees with a fair hearing. She thinks it is the Select Board's responsibly to come to a decision. She noted that when this hearing reconvenes, she hopes they could get to this point in the hearing quickly.

Mr. Kalkut stated the same type of hearing procedure would be done. The expert used could provide their input and questions would be taken. Then, the Select Board would make deliberations. Ms. Van Tine added that if the hearing is being left open for the potential of the additional expert, there needs to be a date certain so it does not become a race to move out of town before the expert is secured; and, if there is other new information that is secured from others than this expert, it be allowed to be brought forward. Attorney Mello stated he thought that would be appropriate. Ms. Van Tine said to the degree the experts have competing information, if we end up with medical records enabling people to look at bite depth, those reports would be relevant. Attorney Mello stated that would be appropriate from a procedural perspective.

Attorney Cohen stated that if the expert said this was a dangerous dog, then he and his client would accept that. Attorney Mello asked if it would make sense for anyone who would like to submit information be allowed. Attorney Cohen said the expert has to see all the information. Ms. Robinson

stated that she wants to make the Select Board aware that Ms. Bollen's report was provided to Attorney Cohen on July 20, 2020. She clarified that banishing the dog from Town is not the direction the Select Board is taking. She stated that the next Select Board meetings are scheduled for August 11, 2020, September 1, 2020, and September 15, 2020.

Mr. Kalkut stated he would like to get the best information possible. He said that the August 11, 2020, Select Board meeting date is probably too aggressive; September 1, 2020, would be an appropriate time with receiving the report at least one week before the meeting. Ms. Mecklenburg and Ms. Van Tine agreed. Attorney Cohen stated the report would have to be in by August 24, 2020. He stated that he cannot commit that someone could do the evaluation and prepare a report by then. He would think September 15, 2020, would be better. Ms. Van Tine noted the election primary is scheduled for September 1, 2020, and the Select Board may wish to have a shorter meeting on that night. It was suggested to continue this public hearing to September 15, 2020, to take into consideration a third-party behavioral assessment of Annabell which the Select Board would have in hand by September 8, 2020.

Ms. Robinson clarified the dates the documents would be needed based on the dates the documents are required to be posted for the meeting; the report would be needed by September 1, 2020, so others can receive and review the report and get additional information. Attorney Cohen confirmed the agreement that the report would be due on September 1, 2020, but he stated that if he just cannot get it done, he will email Attorney Mello and ask for a few more days. He stated the animal behaviorists are a busy group. Mr. Beachkofski stated he does not follow why an attorney that specializes in this area is taking more time. He asked what else he would need to submit. Mr. Kalkut stated that if the hearing were to be continued, the only thing needing to be submitted would be new materials.

Attorney Cohen reviewed two names of behavioral specialists. He stated that he does not have anyone lined up. He stated that he will call in a favor and try to get this done. He thinks this timeline is tight. He wants the person to be able to evaluate the dog and see the dog. Attorney Mello stated that to be clear, Attorney Cohen would provide the expert. He confirmed that any additional materials that people want to submit will be allowed. Mr. Kalkut summarized that they will continue the public hearing to September 15, 2020, with a vetted report, and then go into deliberations regarding the determination if it is a dangerous dog. The completed assessment would be received by September 1, 2020, with an asterisk that there may be a few days delay with that.

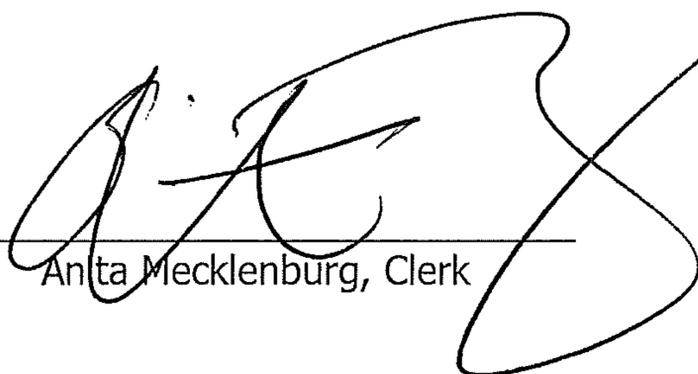
Attorney Mello pointed out that Ms. Mitchell will abide by the currently existing conditions regarding the dog muzzling and the like. Mr. Kalkut stated that should severe delays be run into, he does not want to push the September 15, 2020, date to conclude the hearing. Ms. Van Tine said she would be comfortable given the period of time from when the Select Board was first notified of the incident and an attorney was retained to the September 15, 2020, continued hearing date, that if there is no expert or report from Attorney Cohen, she would like to proceed with the hearing without the expert. Ms. Mecklenburg agreed.

A motion was made by Mr. Kalkut that the Board vote to continue the dangerous dog public hearing to September 15, 2020, at 7:00 PM. It was seconded by Ms. Van Tine. A friendly amendment was added by Mr. Kalkut as outlined by Attorney Mello stating the terms summarized with the submission of an expert report by September 1, 2020, and the continuation of the agreement to continue the conditions with respect to muzzling and the like for the dog. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

At 10:53 p.m. the meeting adjourned. No motion or second was made; no vote was taken.

The next meeting of the Norfolk Select Board is scheduled to be held remotely on Tuesday, August 11, 2020, at 7:00 p.m.

This is a true and accurate report of the Select Board's remote meeting of July 27, 2020.



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Anita Mecklenburg, Clerk