

**Norfolk Select Board's Open Session Meeting Minutes
September 15, 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 7:05 p.m.

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 September 15, 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.

Ms. Robinson reviewed the agenda.

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

Background: The Select Board conducted a public hearing on this matter on July 27, 2020, and at the end of that meeting decided to continue the hearing until this date so that counsel for the dog owner could obtain a report from a behaviorist, and any other documents could be submitted for the Board's consideration. Included in the Select Board's meeting packet are the following: report from James W. Crosby, additional records from Mr. Beachkofski, Incident Report from resident at 96 Boardman Street, and veterinary bill for Beachkofski's dog Indigo bit in 2017. Mr. Crosby is present to discuss his findings. Mr. Crosby's report has been forwarded to Ms. Bollen who is also present at the meeting. The Select Board can review the attached documents and question the witnesses before deliberating and reaching a conclusion in this case. The Select Board can have one of three outcomes in this case: first to take no action, second that the dog is deemed a "nuisance," and finally that the dog be deemed "dangerous." Should the Select Board decide that the dog is dangerous, the Board can only select from the law one or more of the conditions, and cannot amend any of those conditions.

Town Counsel Peter Mello asked if the technical issue with streaming this meeting has been corrected; he asked Attorney Cohen if the streaming issue has not been corrected, is he okay with continuing the hearing. Attorney Cohen stated it is fine with them to proceed.

Mr. Kalkut reviewed the procedural format for the hearing. He stated that there will be introductory comments from the Chair, swearing in, new evaluation from a dog expert, testimony from the animal control officer, testimony from the Town's dog expert, public comments, closing remarks from the Beachkofskis, closing remarks from Ms. Mitchell, and then deliberations by the Select Board. He conducted a collective swearing in of the witnesses.

Attorney Cohen introduced Mr. Jim Crosby. He asked Mr. Crosby numerous questions which Mr. Crosby answered. Mr. Crosby stated he has been identified as a dog expert and has been accepted as a dog expert in Massachusetts in the past. He reviewed his credentials and areas of expertise as provided on the first seven pages of his report. He noted that he is a retired police officer and a certified animal control officer in the state of Florida. He discussed the materials he reviewed for tonight's meeting which are listed in his provided report. He stated that he had requested Ms. Mitchell take photographs of the dog Annabelle's jaw so he could measure the size of the incisors versus the length and spacing of the canine teeth. He stated these photographs were not included in the meeting materials. He said size and length is significant because the engagement of canine teeth is the central factor in the Dunbar's Dog Bite Scale. He said the Dunbar Scale is currently the best scale to do comparison and analysis of the severity of a dog bite. A numeric level can be assigned to the bite based on measurable criteria. He stated the scale runs from Level 1 to Level 6 which is a human fatality. Level 3 is the first level at which teeth actually puncture skin; probably 95 percent of dog bites are Level 3. He stated that the boy in this case had a Level 3 bite; there were one to four punctures from a single bite engagement with no puncture deeper than half the length of the dog's canine tooth. Attorney Cohen stated that this bite occurred on the dog's property and asked if it is important to look at the facts that occurred prior to the bite. Mr. Crosby said that to interpret any dog bite, the totality of circumstances must be understood. In this case, the bitten child was wearing a hat and protective face covering; faces are very important to dogs. Mr. Crosby reviewed the background of the circumstances. He said that Annabelle reacted by pursing the boy by biting him one time, the dog bit and released, and Annabelle went back to where she was accustomed to being. This tells him that a single engagement is a warning or a communication. The dog is warning or protecting its territory and does not recognize that person to belong there or is a threat. A controlled or moderated bite is normal canine behavior as the dog is attempting to abate a perceived threat. Mr. Crosby stated that Annabelle did not leap up and grab the boy; a disproportionate bite would be a true attack. Mr. Crosby said that a dog of Annabelle's size can do a lot of damage if they would like to. The bite was controlled and moderated, and thus, most consistent with warning or communicating her discomfort and apparent perception of a threat.

Mr. Crosby reviewed his understanding of the facts of an incident between Annabelle and another dog. He stated that this incident allegedly occurred during 2017. In that case, the dog Indigo and Annabelle, according to the report, were chasing a rabbit. A rabbit is an extremely attractive target. Both dogs went after the bunny; as a result, there was a conflict between the two dogs over that resource. He stated that it is common with dogs to have disputes over resource access and to involve teeth; it is normal dog behavior. Attorney Cohen noted a new police report regarding another dog bite occurring on the property in 2018. Regarding receiving this report after the fact, Mr. Crosby stated that in his experience, if it was not reported at the time, he considers it inadmissible. It should have been reported, especially considering in Massachusetts dog bites are mandatory reporting items due to the legal controls on rabies. He said that since it was not reported in a timely manner, he would not allow it to be submitted as evidence. He confirmed the incidents with Annabelle all occurred on her property; this tells him that Annabelle to a normal extent is protective of her family and the property because that is the source of her resources: her food, water, affection and attention, toys, and space where she goes to the bathroom. Dogs will naturally protect resources and that includes the territory they call home. Annabelle was within her own property when this incident occurred, and as such, predictably and understandingly, Annabelle saw something novel, in this case a young man with a mask and a hat on, that she did not understand and appeared to perceive it a potential threat. So, she did the doggie thing. She chased after it, she nipped it once, and it went away. Attorney Cohen read from law the definitions of nuisance and dangerous dog in Massachusetts. Mr. Crosby said in his professional opinion, after reviewing this case, Annabelle was acting reasonably in that she was protecting her

property and potentially protecting the co-owner, the other young man, from a perceived threat. Her reaction was not disproportionate, it was normal and reasonable. He does not believe Annabelle is a nuisance or dangerous dog. Attorney Cohen asked if two nuisance bites equal a dangerous dog. Mr. Crosby said no unless the state law specifically says so. Attorney Cohen asked that since the June 2020 incident with the boy, has Mr. Crosby spoken with Ms. Mitchell. Mr. Crosby stated he spoke with Ms. Mitchell briefly a couple of times to give her directions on the photographs he wanted her to take and another time to generally talk about Annabelle and the incident. Attorney Cohen said that since the June incident, Ms. Mitchell has shortened the run the dog is on, made sure the dog is never outside without an adult, made sure that when kids are over the dog is inside, and muzzles Annabelle when Annabelle is off the property. He asked if these are appropriate measures and could prevent future incident. Mr. Crosby said they are reasonable choices to reduce, as far as possible, any chance of either of the described incidents to occur again. They are positive measures to enhance the safety of anyone coming on the property and the safety of Annabelle. Attorney Cohen asked if there is a way to train Annabelle. Mr. Crosby said a process called progressive desensitization is effective. He explained the training he would do with Annabelle. He stated that Annabelle is not a threat to the public. He stated that in his career he has determined dogs are dangerous and some have been euthanized. Mr. Crosby said that honestly, in looking at this case, he would have loved to have seen the injuries pre-treatment. In this case, he would not find Annabelle a credible threat to public safety. She has only exhibited threat behavior when predictably reacting to a stranger on her property and in her reaction to the other dog in a dispute over a bunny rabbit in a dog-on-dog interaction.

Select Board members asked questions. Mr. Crosby stated he could not assess the bite. Having seen it only after treatment, he does not know how much of it was caused by a reasonable physician doing his job and cleaning the wound. Mr. Kalkut stated he was under the impression that Annabelle was in training prior to the incident. Attorney Cohen stated he does not know if any of the training that Mr. Crosby explained was part of the curriculum the trainer worked on, but a new trainer could use Mr. Crosby's report to focus on what is necessary. Mr. Kalkut confirmed that Attorney Cohen identified a difference between a nuisance dog bite and a dangerous dog bite. Attorney Cohen referenced M.G.L. Chapter 140, Section 157, page 1, and read aloud a section regarding when a dog should not be deemed dangerous. Ms. Mecklenburg stated that Mr. Crosby reviewed photographs of Annabelle's teeth, but those photos were not shared in the Select Board's meeting packet. She asked what Mr. Crosby learned from the photos. Mr. Crosby stated Ms. Mitchell took the photos. From the photos, he learned that Annabelle's teeth are normal, and the canine teeth from tip to root of engagement, the exposed length, is approximately 5/8 in. within plus/minus error of approximately 1/16 in. Ms. Mecklenburg asked about the ability to assess a dog without meeting the dog. Mr. Crosby said his assessment was based on the reports. He would prefer to have met Annabelle, but due to COVID-19 restrictions, that was not an option. Ms. Mecklenburg asked if Mr. Crosby reviewed the doctors' notes. Mr. Crosby said he did. He said it is difficult to assess the depths of the wounds as tissue swells. There is no indication to what degree of edema or swelling occurred on the leg. Four cm. is a long distance; it is over two inches. He noted that Annabelle only has incisors that are about 1.5 cm. deep. Mr. Crosby discussed the length of the teeth and the size of the bite compared to the size of the teeth. He noted that there was not any deep bruising of the area.

Ms. Van Tine asked Mr. Crosby questions. Mr. Crosby noted some of the materials he reviewed in preparation of his report. He stated he disagreed with Ms. Bollen's report; he does not agree with the analysis that the management strategies are not effective. Ms. Van Tine stated that Mr. Crosby indicated he had spoken with the dog's owner. Mr. Crosby said he spoke with Ms. Mitchell once about the case and two times regarding the photographs that he wanted of Annabelle's teeth for about 20 or

30 minutes. He said that according to the reports, the dog was put out by Ms. Mitchell's mother, and the boys were out in the yard. Ms. Van Tine confirmed that Mr. Crosby did not listen to, watch, or read notes about the July 27, 2020, public hearing. She stated that during the hearing on July 27th, the first time she heard that the bitten boy was wearing a mask was during public comment. She asked where is the evidence that the boy was wearing a mask. Mr. Crosby said it was mentioned in his discussion with Ms. Mitchell. Ms. Van Tine stated that Ms. Mitchell was not present at the time of the incident. She questioned why Mr. Crosby spent so much time in his report addressing Annabelle's breed when there has not been any concern mentioned about what kind of dog she is; why is that information relevant? Mr. Crosby said that he and Attorney Cohen discussed it. It is common across the United States for agencies and legislation to try to attribute breed and behavior as being related. It comes up so often as a question, many times he includes that in his report. Ms. Van Tine addressed information Mr. Crosby wrote in his report about the subsequent alleged incident. She stated that Mr. Crosby wrote that the alleged incident was not reported or mentioned until animal control began digging into possible past allegations. She asked Mr. Crosby how he knew that. Mr. Crosby said that it was stated in the animal control officer's report. He stated that apparently the ACO followed-up and discovered a previous bite to a child, and the report for that case was not generated until after this incident. Ms. Van Tine stated that from the previous hearing, there was a report indicating the child knew the dog had bitten before. She wonders at the idea that Mr. Crosby said the ACO was digging into past allegations, when the parents noted that due to the history of the dog, the child wanted to get out of the way. She said that does not appear to be someone digging into past allegations. Ms. Van Tine asked about the cases Mr. Crosby has been involved with as an expert witness and if they were all about dogs. Mr. Crosby said they all had to do with dogs in one way or another. Ms. Van Tine asked how many cases in Massachusetts were at this lower level, such as municipal cases. Mr. Crosby stated five including this one. Mr. Crosby said his role is to consult on dog behavior. Ms. Van Tine asked Mr. Crosby where he obtained the information that the child was wearing a face covering and hat. Mr. Crosby said this information came from Ms. Mitchell. Attorney Cohen stated he had just provided the unsigned statement from Vincent Brady who stated what the victim boy was wearing. Ms. Van Tine asked where Mr. Crosby obtained the information about a bunny being chased in the dog-on-dog incident. Mr. Crosby stated there were statements that the dog that Annabelle bit was out chasing a rabbit, and Annabelle became part of the chase. Ms. Van Tine confirmed that Mr. Crosby said that this is a relatively minor injury. Mr. Crosby said it would fall under the Level 3 scale. They do not want to judge severity of bites based on medical treatments as different medical facilities and physicians have different practices and procedures. Mr. Crosby said that it is an injury within the Level 3 bite; it is strictly objective. Ms. Van Tine stated that Vincent Brady's statement did not exist at the first public hearing. Mr. Crosby confirmed he probably spoke with Attorney Cohen prior to the first hearing. Mr. Crosby reviewed some of his background and positions held in the City of Jacksonville.

Mr. Crosby reviewed that the 2018 bite incident was unreported until recently. Ms. Van Tine asked if this incident would be relevant to the current case. Mr. Crosby said if it were under the same circumstances, he would consider it a flag to address the circumstances to which the incident happened. Ms. Van Tine stated that the report indicates the child was playing in the backyard of the home, the child went to close to where the dog was tied, the dog bit the child twice, Ms. Mitchell carried the child back to the boy's home, and Ms. Mitchell communicated with the child's mother via text messages. Ms. Van Tine asked if that information would be relevant. Mr. Crosby said if the dog bit another child, the circumstances would need to be considered. Ms. Van Tine asked about the possibility of Annabelle having had puppies. Mr. Crosby said just having puppies would not have a lot of effect on Annabelle's behavior overall. He noted that he had never seen a case where an unreported bite was useful information to him. He reiterated that dogs use their teeth to warn and communicate their

discomfort and to try to gain release and space from the threat. Attorney Cohen stated that on July 23rd the 159-page packet received included information as to where the bunny reference came from.

Ms. Hilary Cohen, Animal Control Officer, was asked by Mr. Kalkut if she wanted to add anything. Ms. Cohen said the 2018 incident was investigated because in the initial public hearing it was stated that a prior bite occurred; therefore, she wanted to know about it, so she investigated. She asked that the Beachkofskis and Ms. Bollen, the behavior specialist, be allowed to comment. Ms. Van Tine asked if Ms. Cohen reviewed her background at the initial public hearing. Ms. Cohen said she thinks she did and believes it was part of the public information request from Attorney Cohen.

Mr. Kalkut gave Ms. Bollen an opportunity to comment on Mr. Crosby's presentation. Ms. Bollen provided her opinion that the bite from this incident was most likely a Level 4 bite based on the Dunbar Scale. She discussed the medical report regarding subcutaneous fat protruding from the wound. She disagreed with Mr. Crosby that it was a Level 3 bite. She reviewed that the Dunbar Scale does not indicate that bruising or tearing is needed for a Level 4 bite; the wound may have deep bruising or tearing, but it does not have to. She noted that Mr. Crosby stated that Annabelle only bit one time. She stated that the dog was tethered and the boy was leaving the area. She questioned whether it was the tether that stopped the dog. She stated that Mr. Crosby called it normal dog behavior; she stated that it is not safe to consider this a normal behavior. She stated that if the dog was concerned about the child wearing a mask and hat, the dog could have barked or run toward the boy; there were other behaviors the dog could do that were not biting. Ms. Bollen stated that Mr. Crosby calls the child a potential threat to the dog; she explained that she did not agree with that statement. She explained her recommendation that there needs to be a fence around the yard with no gate allowing access to the dog; this is based on the behavior of children. She discussed the management actions the owner is willing to do now. Her concern is that an unwitting child may come into the yard and with the dog on the tether, it could possibly run to the child. She commented on behavior modification regarding association with children. She stated that she has worked with dogs and progressive desensitization is not the safest thing to do. It is risky to do behavior modification when a child is the target of aggressive behavior. Kids do unpredictable things that can trigger a dog that has a past history with a child. She asked if the son of Ms. Mitchell also had a mask on during the incident. She explained that the previously unreported bite is admissible. She stated that this is a hearing on whether the dog is safe to be in the neighborhood the way she is currently managed. It is relevant to know that this dog has done the same thing to two children with two different levels of bites, Level 3 and Level 4. That tells her that children are not safe to go into the yard when Annabelle is in the yard. She stated that she feels the best course of action is at the very least this dog needs to be confined behind a fence and not put on a tether where children live and play. She stated that she feels Mr. Crosby is comparing this bite to other cases; for Mr. Crosby to say he has seen things that are much worse is not appropriate or relevant. Attorney Cohen stated that Ms. Bollen said in the last hearing that when analyzing these situations, she only looks at the bite. Ms. Bollen said she did not say that; she said that the whole situation needs to be looked at. She discussed that a dog has behavioral options in a situation before reaching a bite. Dogs can be territorial. She said her point is that what matters in this case is that Annabelle ran to the child, bit the child, and broke the skin. Annabelle had other options. She reviewed that systematic desensitization has risks involved when using the process with children. It is a complicated protocol. When a dog bites, it shows the dog has the propensity to bite again.

Ms. Van Tine asked Ms. Cohen for the age range of the child involved in the newly reported incident. Ms. Cohen said that when she spoke to the parent of the child, at the time of the bite the child was seven years old. Mr. Beachkofski asked why Mr. Crosby did not see the pictures of the bite when it was

part of the 159-page packet. Attorney Cohen said he only had black and white photos and had requested color photos. Mr. Beachkofski stated that everyone else had color photos. Attorney Cohen said he was going to look at the packet. Mr. Crosby said he only saw some poor quality black and white scans; he needed the original xerox images. Attorney Cohen said they were not supplied. Mr. Beachkofski said they were supplied. Mr. Kalkut discussed the value of seeing the shared screen of the Beachkofskis to view the color pictures of the original wound. After discussion, it was determined that viewing the color photographs on a shared screen was not needed.

Mr. Kalkut announced the public comment period. Mr. Michael Hough, 11 Ridge Road, said that masks on children are part of the future. Due to the proximity of residents to the Freeman-Kennedy School, there are going to be kids around with masks and hats on. This should be considered.

Mr. Beachkofski provided his closing remarks. He thanked the Select Board for taking so much time for this matter. He stated the doctor's report discussed the size of the wound. It is not a normal wound; the subcutaneous fat was protruding out of the wound. He noted there has been some debate on the depth of the wound. This was not a small incident. It is a significant event that is part of a pattern for folks who have been invited to that yard to play where this happened. That is the reason he requested a dangerous dog hearing; he wanted to prevent another incident from happening. He stated that M.G.L. talks about specific conditions and what happened was not just barking and growling. No one said the dog was protecting the owners from attack or assault or the dog was being threatened; no one provoked the dog or someone was unauthorized in the premise or the enclosure. He stated that M.G.L. points out that these conditions needed to be happening, and none of these things were happening. He does not want another family to have to go through this.

Ms. Mitchell was asked by Mr. Kalkut if she would like to provide closing remarks. Attorney Cohen said he does not think Ms. Mitchell wants to speak. He stated that she is quite upset; he does not know if she is in a position right now after some of the things she has heard about what is alleged about her dog's behavior. Attorney Cohen told Ms. Mitchell that if she wanted to speak, she should unmute herself on the Zoom application. Attorney Cohen then stated Ms. Mitchell did not want to speak because honestly, you guys do have a tough job to do, but I have to say that some of the questions that have come up, to me, and this is her perception too, which is why she does not want to undergo another cross-examination here. He stated that some of the questions from the elected officials or official appear to be agenda-filled questions, from someone who is not Town Counsel, does not represent the Beachkofskis, and does not represent Hilary Cohen. He said he feels that exposing Ms. Mitchell to questions from the Board, I mean, the irrelevancy of some of the questions to discredit an expert, this is not the applicable forum for it; I know it is fun, but it is not applicable. Mr. Kalkut stated these are closing statements; the intent was to not have a Q and A period be included after. He stated that it was previously identified that Ms. Van Tine would ask Attorney Cohen one question during this period, but there was no intent for a Q and A period following closing statements. Attorney Cohen confirmed that Ms. Mitchell did not want to speak. Attorney Cohen said it is his job to make sure the right answer is arrived at the right way; the right way is by comparing the facts to the law. He stated that this law has a carve out specifically for these instances so dogs are not mislabeled. He stated they have proven this dog was protecting its resources and protecting its property and possibly the people outside and in there. From the dog's perspective, which is what 140, 157 requires you as the fact finder to figure out what the dog's perspective was. Was this dog perceiving a provocation, a threat? He stated it does not matter that the victim is not actually a threat, in the dog's mind, it sees someone on the property who does not belong there, it is a threat. He stated as humans we would not see them as threats, but dogs see these specifically; the law carves out times when dogs see these threats when

they are specifically on their property and protecting it. If this happened at a dog park or a public playground, a completely different set of laws would apply. He stated that here, the remedies that are already in place that we have mentioned are shorten the run, muzzle off property, only out there with the presence of an adult, and if there are any kids out there the dog is in the house. Those are things that are going to prevent this from happening again. And, those are things under a nuisance order that the Board is authorized to do. He said, so, we cannot mistake a quantity over quality in terms of the bites, and again, the facts are these have been single engagement bites and we cannot deal with the what ifs; what is and the facts have shown that this happened on the dog's property. He stated he thinks this is why 140, 157 was written. He said the task you have to do to protect the community while also operating within the law is difficult, but he thinks here it is not because the legislature is telling you what to do. He said if you had any doubt, our expert explains some theories as to what was happening in the dog's mind; and, either way, my client has already put these voluntary remedies in place.

Ms. Van Tine asked about statements made at the July 27, 2020, public hearing. She said she had asked Ms. Mitchell what she knew of the 96 Boardman Street incident, and Ms. Mitchell said she does not know anything about this. Ms. Van Tine said that when she reads the Incident Report of July 29, 2020, it indicates that Ms. Mitchell was home when the incident occurred, and Ms. Mitchell carried the bitten child home. Ms. Van Tine asked Attorney Cohen if he could shed light on this disconnect. Attorney Cohen said that regardless of how Ms. Mitchell answered the questioned, it does not decide whether this dog is a nuisance or dangerous dog.

A motion was made by Mr. Kalkut that the Board close the public hearing to determine whether a dog owned by Ms. Melissa Mitchell is a nuisance dog or a dangerous dog. It was seconded by Ms. Mecklenburg. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

Mr. Kalkut stated that the Select Board would now move in deliberations. He stated that from his perspective, it would be his inclination to discuss this and come up with a determination at tonight's meeting. Ms. Mecklenburg and Ms. Van Tine agreed.

Chair Kalkut called a five-minute recess at 9:51 p.m.; the meeting resumed at 9:56 p.m.

Attorney Mello reviewed the decision points the Select Board has as outlined in M.G.L. Chapter 140, Section 157. He noted the Select Board should be mindful of the terms attack, nuisance, and dangerous dog. He noted he read those definitions aloud at the last hearing. He stated the first decision is to dismiss the complaint or deem the dog a nuisance dog or a dangerous dog. He suggested the Select Board look at the definitions of those terms and the criteria. Mr. Kalkut noted the set of orders for a dangerous dog designation; he asked where the orders were for the nuisance dog designation. Attorney Mello stated the statute is less than explicit regarding remedies available if the dog is deemed a nuisance dog. He read the statute aloud and noted there is latitude to make reasonable determinations about remedies. He stated that the remedies for a nuisance dog would be outside the realm of the remedies outlined with respect to dangerous determination. Ms. Mecklenburg stated that she is looking at the law and the circumstances. There is a dog that has bitten two children. She thinks that it is fairly clear that the dog was not being attacked, harassed, or picked on. The criteria that would eliminate it from being a dangerous dog do not apply here. Ms. Van Tine said she reviewed the law, and the circumstances that apply to the incident do not suggest a dismissal. Mr. Kalkut agreed that dismissal did not seem like a viable option. He confirmed Ms. Mecklenburg was

leaning toward dangerous dog. Ms. Van Tine said she is mindful of the fact that the dog was on its property regarding the incidents with the people. Her focus is on the people. She discussed that the dog went right to bite in the 2020 incident. She noted the points the experts made. She noted that the child bitten was moving to get away, so it may not be that the dog released from the bite. She questioned whether the child sitting and playing would explain or invite this level of a bite, or is it grossly disproportionate to the circumstances or stimuli. It is concerning to her that a dog is a danger when being let out on a run and a child on the premise is not engaged in behavior such as teasing. She noted that there is suggestion that any decision made tonight is based on an agenda. She said that if she has an agenda, it is to make sure the people of Norfolk are safe. She does not know what other agenda there could be. Her job here is to weigh the evidence. She noted the medical records stated the bite was deep and traumatic. She does not see how the attack is not grossly disproportionate to the circumstances. She does not see how a child doing what this child was doing could in any way invite this level of an attack that the child will be scarred with for life. It is her perspective it should be a dangerous dog designation.

Mr. Kalkut stated that they are trying to make the best decision for the safety of the community, and in the best interest of the resident, Ms. Mitchell, and her dog. He noted that clearly Ms. Mitchell cares about her dog very much. He stated that the management of the situation, as identified by Ms. Bollen, is very important. He is happy to hear there have been some actions taken to ensure that certain situations will not happen again; however, when will the next time be that Ms. Mitchell is not going to be there and someone else is accidentally going to let the dog out or accidentally let the kids go into the backyard. He stated the term grossly disproportionate is a very vague term. After hearing everything, he does not believe it is grossly disproportionate, although it is disproportionate. He asked what the ramifications of the two designations are. Attorney Mello said that in terms of statutory construction and looking at the statute and what it says, he read aloud the nuisance and dangerous dog designations. He does not think this has been the subject of explicit and reported case law. He said that as part of an order that accompanies a nuisance determination, the Select Board probably has discretion. If the Select Board deems the dog a dangerous dog, it must order one of the enumerated remedies.

Mr. Kalkut said in terms of remedial action, the enclosure of some kind is one of the actions he would like added, muzzling when out, and proof of insurance in case of any future incidents. He thinks if they could institute those three orders, he does not know if it is outside the scope of a nuisance dog. Ms. Van Tine said from a remedial action standpoint she would like an enclosure, which would not be a run or small pen, without any entry point, muzzle, and the insurance piece in the event there are future management issues. She stated that she wants to make sure the community is protected from the dog. She asked what is the difference between nuisance and dangerous dog if they are getting the same result? Attorney Mello said that as a property owner you may care due to an insurance carrier's review of a policy. With respect to the statute, he explained the difference between the nuisance and dangerous dog and the remedies allowed. Ms. Van Tine asked if the Town puts nuisance dog designation restrictions in place and then the dog owner moves to another town, does the Select Board order not have worth? As well, if the dog is given the dangerous dog designation, and the dog owner moves to another Town, does the dangerous dog designation follow inclusive of the restrictions? Attorney Mello read from the statute. He said that orders issued will be valid throughout the Commonwealth. He explained that the more remedies included from the list in connection with a nuisance dog, the more susceptible the decision becomes. Ms. Van Tine and Attorney Mello discussed the framing of the statute, possible appeal concerns, scenario if the dog bit again, and enforcement capabilities of both nuisance and dangerous dog designations. Attorney Mello stated the statute makes

orders enforceable. Ms. Mecklenburg stated she was hung up on the term grossly disproportionate, as well. She feels that if her rescue dog bit a child and two years later it bit another child, it is a grossly disproportionate response. She stated that she wants to protect the community and would like systems in place to protect the public. She said the law charges the Select Board with a finding of a grossly disproportionate response to the situation. The dog was not provoked or attacked. She reiterated she is not interested in euthanizing this family pet. She would like to require M.G.L. Chapter 140, Section 157, remedies (c) i.-iv. Mr. Kalkut reiterated that he believes it was disproportionate, but is not sure if it is considered grossly disproportionate. Ms. Van Tine reviewed the wording of the statute; she questioned if the dog's reaction to a child sitting in the yard is grossly disproportionate. The child did not do any of the actions as indicated in the statute. She would require remedies (c) ii., iii., iv., and v., with a dangerous dog designation. Attorney Mello discussed the idea of provoking a dog. Ms. Van Tine stated there was no evidence that the child was doing any of the behaviors enumerated in the statute including provoking. Attorney Mello explained that once a determination is made, the Select Board can deliberate about the remedies to be imposed. He read aloud the possible remedies for the dangerous dog designation. Select Board members and Attorney Mello discussed remedies (c) i.-iv. and agreed that (c) i. includes fencing.

A motion was made by Mr. Kalkut that the Board deem the dog Annabelle as a dangerous dog. It was seconded by Ms. Mecklenburg. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

The Select Board and Attorney Mello commenced discussion about the desire by the Select Board for a requirement of a fence.

A motion was made by Mr. Kalkut that under the designation of the dog Annabelle as a dangerous dog, the Select Board moves to implement the remedies available in M.G. L. Chapter 140, Section 157, (c) i., iii., iv., and v., and that as part of (c) i., the Select Board requires the installation of a fence (and to the extent that such relief is determined by a Court to be unavailable under (c) i., the dog shall be "confined to the premises of the keeper of the dog" under (c) ii.), and also the Select Board's order shall be described in a written decision to be presented and approved by the Select Board at its next meeting, and an appeal window would begin at the issuance of the written decision and order. It was seconded by Ms. Mecklenburg. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

COVID-19 Updates

Ms. Robinson stated that Norfolk has had a total of 42 cases of COVID-19 with one active case. She noted that yesterday was the first day of school; overall, it went well. She stated the governor issued a new order on restaurants regarding outdoor dining allowing it to go beyond November 1, 2020. She noted that currently Novatos Bar and Grill does outdoor dining; her office is reaching out to them regarding their plans.

Mr. Kalkut asked if there was a timeline to open Town Hall. Ms. Robinson stated the Town Hall is open by appointment.

Public Comment

None.

Action Items

Please consider approval of two items regarding the Lakeland Hills 40B project at 144 Seekonk Street
Ms. Robinson stated that at its meeting on August 19, 2020, the ZBA approved a comprehensive permit for a 40B development named Lakeland Hills. This project is located at 144 Seekonk Street and will be comprised of 44 units of housing, of which 25 percent will be affordable. This project was proposed three years ago, and when it was submitted to the Town, it was for 104 units. Many aspects of the project have changed in those three years, and due to that Attorney Dan Hill, Counsel for the ZBA, recommends that the details be memorialized in a memorandum of agreement (MOA) which is included in the Select Board's meeting packet. She noted that one of the conditions in the MOA (item G.6) provides the Town with a gift of \$25,000 for "any future improvements that might further improve traffic safety on Seekonk Street in the area of the property." These funds would be deposited in a gift fund account for this purpose, and if not fully spent five years from the date of the issuance of the final occupancy permit, would then be transferred to the Town's sidewalk fund for use by the Town wherever it determines it is needed. She stated that gifts to the Town should be formally accepted by the Select Board. She noted that the Town has received signed copies of the MOA from developer Mr. Edward O'Harte.

Attorney Hill stated he was the Town's special counsel on 40B matters. He said this project was originally proposed in 2017 for 104 units. Public hearings were conducted, and the number of units was reduced to 84. There was much concern about impact issues, and the ZBA pressed the developer to reduce the project to 44 units. The developer now has a much less dense project on the 22 acres. The ZBA is pleased that impacts such as safety and traffic have been mitigated. He reviewed the three-fold purpose of the MOA: give enforcement rights beyond zoning enforcement remedies to enforce the commitments of developer, eliminate any risk of appeal to the State Housing Appeals Committee (HAC) by the developer, and give the Town a recorded land use restriction. He stated that with the MOA all the commitments made by the developer are locked in. Mr. Christopher Wider, ZBA Chair, stated agreement with Mr. Hill's remarks.

Ms. Mecklenburg questioned the advantage of the MOA for the developer. Mr. Hill stated it is an agreement between all the stakeholders. The developer can move forward knowing they have the backing of the Town.

A motion was made by Mr. Kalkut that the Board vote to approve a memorandum of agreement for the Lakeland Hills development project between the Town of Norfolk and Edward and Sandra O'Harte. It was seconded by Ms. Van Tine. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

A motion was made by Mr. Kalkut that the Board accept a gift in accordance with G.L. c.44 §53A in the amount of \$25,000 for future traffic safety improvements in the area of the property and furthermore, any funds remaining after receipt of final occupancy permits for the project may be deposited into the Town's sidewalk fund for use by the Town. It was seconded by Ms. Van Tine. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

Please consider designating the Municipal Approving Authority(ies) for Remote Learning Enrichment Programs

Ms. Robinson said that children in Norfolk returned to school using a hybrid model where three days per week they are not at the school. As such, the children need a place to be when they are not at the school. She stated that the State issued an executive order late last month that provides several ways that communities can expand access to child care as children return to school. The program enables

programs to be set up to accommodate more children being in a supervised environment on the days they are not in school. A step in becoming approved to offer such a program requires that the municipal CEO, which in Norfolk is the Select Board, decide who will be the Municipal Approving Authority (MAA), and then that person or persons verify that a program is eligible once it has been determined that the program meets the new requirements. She stated that Recreation Director Ann Proto has been diligently working to organize programs for Norfolk children. She anticipates being able to offer such a program at the Norfolk Library, Recreation Office in Town Hall, the Grange, and St. Jude's Church, which hopefully will provide services to as many as 70 children. Recreation is well versed at program development and anticipates they could have the program begin as early as September 21, 2020. Ms. Robinson recommended that Superintendent Allardi be designated as the MAA for programs run by Recreation. She noted that Forekicks in Norfolk plans to offer a program; she recommended Ann Proto be designated as the MAA for this, as well as any other Town entities that decide to establish a program. Once entities receive a letter of approval from the MAA, they then must submit a package to the State for final approval before commencing a program.

Ms. Proto stated that she is working with St. Jude's Church and the Grange to secure space and make sure the Internet is up to speed. She stated that the organizations that can offer remote learning need a license to offer care during school hours. Ms. Mecklenburg stated it sounds like this program would be an asset to the community. Ms. Van Tine asked how the program would be paid for. Ms. Proto said it was fee based.

A motion was made by Mr. Kalkut that the Board vote to appoint two persons as Municipal Approving Authorities on behalf of the Town of Norfolk; School Superintendent Ingrid Allardi for programs to be offered by the Norfolk Recreation Commission, and Ann Proto for all programs offered by independent entities within the Town of Norfolk. It was seconded by Ms. Van Tine. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

Please consider approval of the request by the Garden Club of Norfolk to use Town Hill/Gazebo to hold a club meeting to dedicate the Tree to Essential Workers on Saturday, October 17, 2020, from 10 AM to noon, with a rain date of Sunday, October 18, 2020, from 1 PM to 3 PM

Ms. Robinson stated that over the summer the Select Board met with representatives of the Garden Club to obtain their permission to plant a tree on Town Hill to dedicate to essential workers. The club is now requesting permission to have an event on Town Hill to dedicate the tree on Saturday, October 17, 2020, with a rain date the following day. All departments have no concerns about the event.

A motion was made by Mr. Kalkut that the Board vote to approve of the request by the Garden Club of Norfolk to use Town Hill/Gazebo to hold a club meeting to dedicate the Tree to Essential Workers on Saturday, October 17, 2020, from 10 AM to noon, with a rain date of Sunday, October 18, 2020, from 1 PM to 3 PM. It was seconded by Ms. Van Tine. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

Please consider approval of the following two licenses to Zelus Beer Company for pop up beer and BBQ events on Town Hill on Sundays beginning September 20th

Ms. Robinson reviewed that included in the Select Board's meeting packet is a request from Zelus Beer to hold a series of "beer and BBQ" events on Town Hill starting Sunday, September 20, 2020, through October. They are a brewery in Medfield that has held similar events there on Saturdays in conjunction with a BBQ restaurant. She stated that it is her understanding that these have been popular with residents, and thus this company is requesting to provide similar events in Norfolk on Sundays. She

stated that this request, if granted as requested, would enable them to have seven events from September 20 through November 1, 2020, with possibly one less if the Garden Club rain date is needed on October 18th. Zelus is prepared to meet the normal requirements for a one-day license, and the State's orders related to the COVID pandemic. They would bring and set up tables and chairs for patrons, erect tents, and if approved, offer live music, amplified enough so those in attendance can hear it. They plan to abide by the request to remove everything after an event so mowing and such can take place, will rope off the area where beer is sold, and will only need electricity if they have music. Although some details are still being worked out, they also plan to handle removal of trash generated. As the Library is closed on Sundays, parking is adjacent to the event. While there is enthusiasm about this for Norfolk's residents, she noted that the Town has generally not rented Town Hill to for-profit entities, with the farmers' market and Cactus Society being exceptions. If this event is successful, Town Hill rules may need to be revisited and modified for the future. Secondly, the BBQ tent would be of a size that requires a permit; a commercial tent permit is \$500. Furthermore, if the tent is erected on a Sunday, it would mean an employee needs to come in to do the inspection on that day, which also represents a cost; this is in part why the fee is charge. Outside of this, there would be no income to the Town to pay for these costs. The fees for the one-day beer licenses would be \$25 per each day, and \$100 for the entertainment license and that would cover all of the events.

Mr. Geoffrey Pedder, founder Zelus Beer, stated they have done many of these events in towns over the years; they are currently doing such events in Medfield. They sell beer and have a food vender on premise. They carefully follow safety regulations for coronavirus and have tables and chairs outside. They are based in Medfield and been around since 2017. All their beers are low alcohol level. He stated they may not use all the event dates requested; however, it is easier if all the dates are requested at once. He asked about putting up a sandwich board for advertisement. Ms. Robinson noted that sandwich board requests are handled separately.

Mr. Kalkut asked if there was any feedback about the events from Medfield. Ms. Robinson said there are no issues with the events in Medfield that she is aware of. She stated that she had no information about Medfield's COVID numbers. Mr. Kalkut stated that being as new as this event is, he would be hesitant to approve all the dates at once. He would feel better about executing one event and then returning to the Select Board to review it. Ms. Van Tine said she supports additional opportunities for folks to get together, but agrees with Mr. Kalkut about not approving all the dates at once. Ms. Mecklenburg noted concern about COVID safety as case numbers are creeping up. Mr. Pedder spoke about the safety requirements for people eating and drinking with their masks off; he noted that people can only take off their masks when sitting down and eating or drinking. He stated that patrons can only purchase drinks if they have purchased food. He noted there is a limit of 50 people allowed at an outdoor event. Mr. Kalkut proposed to approve the event for two of the next three Sundays, collect information about the experiences, and bring the item up again at the October 6, 2020, Select Board meeting.

A motion was made by Mr. Kalkut that the Board vote to approve the use of Town Hill on two Sundays beginning September 20th through October 4th to Zelus Beer Company, and further, to issue one-day beer and wine licenses for those two Sundays during this period. It was seconded by Ms. Van Tine.
Discussion: Mr. Kalkut stated that Mr. Pedder could select the two Sundays within the time period. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

A motion was made by Mr. Kalkut that the Board vote to issue an entertainment license to Zelus Beer Company for the amplification of music in connection with Beer & BBQ events on two Sundays from September 20th – October 4th. It was seconded by Ms. Van Tine. **Discussion:** Ms. Robinson confirmed that Police Chief Stone had approved. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

Discussion Items

Please discuss a proposed update to the Town's General Bylaws – Animal Control regulations

Ms. Robinson stated that earlier this year it was identified that the Town's animal control regulations are not up to date, especially with state law regarding the handling of nuisance or dangerous dogs. The law on this topic changed significantly in 2012, and the Town has not revised the bylaws in accordance with that. She stated that ACO Hilary Cohen, Town Clerk Carol Greene, and she have spent time this summer reviewing approved bylaws from other communities and present the attached draft for discussion. The main areas that are different from the current version include: references to Massachusetts G.L. c. 140, §§136A – 174F; shortened the licensing period to March 31st (state law) and revised the late fee; updated the language on restraining orders for situations where there is a time period for a dog hearing decision as has recently been experienced; reduced the amount of time to keep dogs impounded and added cats to this list; and clarified the violations and penalties regulations and set two different structures, one for dogs roaming at large, and one for dogs deemed a nuisance or dangerous. She noted that this document has not yet been reviewed by Town Counsel. She stated that the Select Board may wish to proceed to have this on the fall town meeting warrant, or, for more time to consider it, have it on the spring annual town meeting warrant.

Ms. Mecklenburg said it sounds like a positive step forward. She suggested fall town meeting be kept short and held to more pressing matters due to COVID. Ms. Van Tine agreed with moving this item to spring town meeting. Ms. Robinson explained she does not know what enforcement authority the Town has under the current bylaws; she is going to check with Town Counsel. Mr. Kalkut noted that currently the fall town meeting is light. Perhaps it is better to wait to the spring due to the logistics. Ms. Robinson requested the Select Board's feedback so the bylaw can be ready for spring town meeting.

Please review a draft list of warrant articles for the November 17, 2020 Special Town Meeting

Ms. Robinson stated that the warrant for the fall Town Meeting closed on September 10, 2020, per the Select Board's vote last month. A list of articles that contain either regular business for the Town or articles requested by other boards is included in the Select Board's meeting packet. She reviewed the list of articles and noted that no citizen petitions have been received. Although the list is currently short, items that would be under the Select Board's purview may need to be added as time gets further into the fall. She noted that both the middle school and high school are currently reserved to hold town meeting; she does not know if outdoors would be good for the mid-November town meeting.

Ms. Mecklenburg reiterated that in this current environment, it would be best to hold a short town meeting.

Please discuss website posting of board correspondence

Select Board members confirmed they have not seen any new correspondence.

Town Administrator Updates

Ms. Robinson stated that building the new Holbrook Street well is about to get underway. She explained that an alert has been placed on the Town's website indicating that people are posing as

town assessors in order to gain entry to people's homes; do not let them in. She stated that the Town of Norfolk assessors will arrive to a home in a vehicle with the Town of Norfolk seal, and the assessor will provide identification. She noted that winter is coming and there is a dearth of snow plow contractors. The Town will be advertising soon for snow plow drivers. If anyone is interested in plowing, please contact the Town as we count on hiring people to meet the residents' expectations for snow removal.

Report of Warrants

The following warrants have been signed:

- 08/28/2020 04P21 & 04PS21 \$449,896.98
- 09/01/2020 09V21 \$847,786.81
- 09/08/2020 10VS21 \$82,240.39
- 09/08/2020 10V21 \$101,728.43

A motion was made by Mr. Kalkut that the Board approve four (4) warrants for the period August 28, 2020 – September 8, 2020, as printed on the agenda for this meeting. It was seconded by Ms. Mecklenburg. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

Approve Minutes

Please consider approval of the minutes

A motion was made by Ms. Mecklenburg that the Board vote to approve the minutes of the August 18, 2020, and September 1, 2020, regular meetings. It was seconded by Ms. Van Tine. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye; All were in favor.

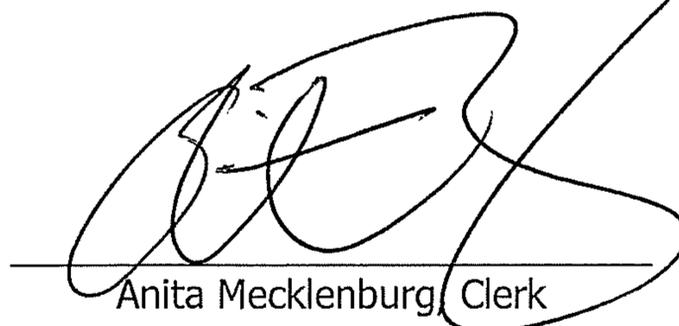
Ms. Robinson stated that the July 27, 2020, meeting minutes for the dog hearing have not yet been voted on. Those minutes, and the minutes from tonight's continued dog hearing, as well as the written document for the remedies assigned with the designation of dangerous dog, will be provided at the October 6, 2020, Select Board meeting.

Mr. Kalkut noted that this was a long meeting, but it was warranted to give the attention needed to the dog hearing process.

At 12:30 a.m., a motion was made by Mr. Kalkut to adjourn the meeting. It was seconded by Ms. Van Tine. A roll call vote was taken as follows: Mr. Kalkut – aye; Ms. Van Tine – aye; Ms. Mecklenburg – aye. All were in favor.

The next meeting of the Norfolk Select Board is scheduled to be held remotely on Tuesday, October 6, 2020, at 7:00 p.m.

This is a true and accurate report of the Select Board's remote meeting of September 15, 2020.


Anita Mecklenburg Clerk

TO: ANITA

**DOCUMENTS TO SIGN
BY OCTOBER 14TH**

THANK YOU.

JUDITH