

APPROVED

BOARD OF SELECTMEN / SEWER COMMISSIONERS DANGEROUS DOG HEARING CONTINUED

Thursday May 10, 2018, 6:00 PM – Richmond Town Hall, 1529 State Road

PRESENT: Mr. Alan Hanson, Chair; Mr. Neal Pilson, Selectman; Mr. Roger Manzolini, Selectman; Mr. Mark Pruhenski, Town Administrator

GUESTS:

It being 6:00 PM, Mr. Hanson called the meeting to order. He noted that the discussion at the end of the previous meeting concerned fencing requirements.

Mr. Manzolini suggested that the Board go through the Orders of Condition one at a time and vote on them one at a time. Mr. Pilson agreed that there are orders that the Board had agreed on at last night's meeting but that had not been put in the form of a resolution and an order. He suggested that they go through the half dozen conditions that the Board wishes to impose before they get to the issue of fencing and the ultimate number of dogs that will be allowed to remain on Mr. Gardner's property, two issues that had been left for discussion at this meeting.

Mr. Pilson went over the issues that were agreed upon last night: That within two weeks the dogs must be identified in a visible fashion at all times – perhaps with colored collars and an updated copy of that list shall be provided to the Town Clerk.

All dogs on the premises must be spayed or neutered within thirty days.

That the owner of the dogs must provide proof of insurance in an amount of not less than \$100,000, insuring the owner against any claim of injury and a copy of the proof of insurance shall be furnished to the Town Clerk annually. Mr. Pruhenski advised the Board that the Proof of Insurance received at yesterday's hearing was reviewed by him and the town's counsel and found that it was simply a homeowner's policy, having nothing at all to do with dogs. Mr. Pruhenski wondered if Mr. Gardner would be required to obtain liability insurance specifically having to do with the dogs on his property. This issue will need clarification.

That Beware of Dogs signs must be prominently displayed on the property. Mr. Manzolini objected to that wording for the sign and proposed that a more effective wording would be Warning: Dangerous Dogs. The Board has declared the dogs as dangerous and a Beware of Dogs wording is innocuous. Mr. Manzolini wants Warning: Dangerous Dogs in 2-inch block letters, visible under all lighting conditions and at all means of entry onto the property.

That self-closing gates be erected that are locked at all times and professionally installed and maintained. Gates are to be a minimum of six foot in height and opaque so that the dogs

cannot see out through the fence. The gates are to be locked or unlocked only at the site of the gate and no remote-control device is to be provided to unlock the gates from inside the house.

No more dogs will be acquired by the property owner or allowed on the property and that by attrition, the total number of dogs on the property be reduced to a maximum of four. The Board believes that four dogs is more than sufficient to safeguard the livestock on the property and in greater numbers there is a likelihood that a "pack mentality" will take over and become dangerous.

Mr. Pilson then turned to the option in the statute to deal with an order for confinement of the dogs. He noted that there are several factors to be taken into consideration: the size of the property, the proximity of the property to several neighboring properties whose owners testified last night about the anxiety and fear they are subjected to on almost a daily basis by threatening dogs. One of the neighbors fears for the safety of their two-year old daughter and their dog has been so totally intimidated that it will not move off their porch and their own safety; there has been testimony that the dogs get out of the property on occasion. Mr. Pilson believed, therefore, that the Board should discuss imposing a condition that the owner have a professionally constructed a six-foot high, opaque fence that the dogs cannot see out of and that the fence be located a minimum of 50-75 feet inside of Mr. Gardner's property where it abuts a neighbor's property and home. Mr. Pilson then looked at the plot map and noted that there are large areas of Mr. Gardner's property that do not abut directly to any neighbor. The fencing at those points could be closer to his property line. But where the property line is directly abutting a neighbor, these dogs are threatening and aggressive and the neighbors are concerned that if the dogs ever were able to come through or over the fence that exists they could be physically harmed. In order to protect those neighbors and anyone walking by the property or driving by on the road running alongside the property, the Board must demand sufficient fencing of a type to reasonably expect those safeguards to be in place.

Mr. Hanson wanted to change the word "opaque" to read solid fencing through which the dogs would be unable to see to the other side. (i.e. a picket fence would not be acceptable)

At this point, Mr. Manzolini wished to vote on each of the agreed-upon conditions.

1. On the order to physically identify each of the dogs – Question: Is it reasonable and why so?

These dogs have a history of attacking humans and the average citizen cannot identify which dog attacked him.

2. All dogs are to be spayed or neutered within 30 days within filing of the order. Question: Is it reasonable and why:

There is testimony to indicate that a spayed or neutered dog behaves less aggressively generally.

3. Section 157 C IV – the owner of the dogs must provide proof of insurance in an amount of not less than \$100,000. Question: Is it reasonable and why?

This is what Massachusetts General Law requires.

4. Signage: Warning – Dangerous Dogs signs made of 2-inch block letters, visible in all lights must be installed: Question: Is it reasonable and why?

At the hearing the dogs were determined to be dangerous and it was obvious that the public needs to be warned in a clearly visible way. In two of the incidents testified to, the attacks took place inside the gates of the property.

5. Self-Closing, Locking Gate: Question: Is it reasonable and why?

In one of the incidents on record, the gate was blown open by the wind and in another case the gate was left open. Therefore, a self-closing, locking gate is reasonable to prevent the gate from being opened by anyone outside the property.

6. There will be no new dogs to be acquired or to be on the property once the number of dogs has been reduced through attrition to a maximum of four. Question: Is it reasonable and why?

It would be unreasonable to continue to allow more than four dogs on the property as dogs in large numbers tend to develop a “pack mentality” in which even otherwise docile dogs can act aggressively. Given the three attacks that have occurred in the past months, it is reasonable to take whatever action we can to eventually reduce the number of dogs on the property and to limit the eventual number of dogs that will ever be on the property at one time.

A discussion of the reasonableness of the eventual number of dogs to be allowed on the property ensued. The consensus was that the required number of dogs to be allowed on the property at any time would be four.

Mr. Pilson moved that the six conditions discussed above be adopted as part of the Board’s order. Mr. Manzolini seconded the motion and it was adopted by unanimous consent with the exception by Mr. Hanson of #6.

7. Fencing: A professionally installed, six-foot, solid fence (so that the dogs cannot see through it where it exists alongside the neighboring properties at 2209 State Road and 24 Lenox Mt. Road), to be installed one-foot below grade and electrified at both 18 inches and 24 inches high along the entire perimeter of the fence and maintained live at all times. That there be no entry point along the perimeter of the fence except for a vehicle access point and an entry point at the house. All entry points will have the same self-closing, self-locking mechanism. The fencing will be placed on the property at a setback of 50 feet where practical, but no less than 35 feet from the property line at the State Road Line and the Lenox Road line (assuming that the 50-foot distance will not bring the fence up to the door of the house). Where the Gardner property abuts its

neighbors, the fencing shall be set back 50 feet from the shared property line where practical and no less than 35 feet.

Mr. Pilson summed up the discussion to indicate that the concern of the Board is to provide protection and relief from harassment by the dogs of the proximate neighbors. On the back part of the property, which does not abut any property containing a home, the fencing may be sited at Mr. Gardner's property line. A rough drawing of the Gardner property map, notated with set-back and opacity requirements for the fencing, was submitted to Mr. Pruhenski for inclusion with the orders.

A further discussion ensued concerning the specific properties of the fence's opacity. The purpose of having the fence be opaque is to address the testimony of the Gardner property abutters that the dogs congregate at the existing fence, see the people in their yard and behave aggressively, creating anxiety and robbing them of the enjoyment of their property. Fencing at those locations are to be 6 feet above grade and one foot below grade, professionally installed and maintained. The non-opaque portions of the fence shall be at or within 50 feet of the property line and may be a normally constructed, professionally installed and maintained sheep fencing that will be electrified at 18 and 24 inches along its entire perimeter and maintained live at all times. It was noted that such fencing would have a side effect of protecting the herd of sheep from predators.

Completion of this fencing will be no later than 60 days from the receipt of this order and the Town of Richmond reserves the right to conduct periodic unannounced inspections of the fencing as the Town sees fit, to verify that the electricity is operational and that the fencing is intact.

"Warning Dangerous Dogs" signs will be posted every hundred feet along the perimeter of the fence, except as otherwise agreed to by the Town.

Are the conditions noted above reasonable and why? The opacity of the fence and other specific conditions imposed are reasonable because testimony at the hearing indicated that the threatening behavior of the dogs was often initiated by the dogs' seeing people on the other side of the existing fencing. Solid fencing through which the dogs cannot see will help to mitigate that disturbance. The statute provides that the dogs be confined in a securely enclosed and locked dog-run area upon the premises. The Board decided that, given the size of the property and that these are herding and protective dogs and that they have a purpose to protect the owner's sheep from predators; that it would be reasonable to demand enclosure of a much larger area consistent with the size of the property and that Richmond is a rural community. This order appears to be a reasonable limitation on the ability of the dogs to travel on the property. The Board also

notes that the owner presently has over 20 dogs and confining that number of herding and shepherd dogs to a small run or pen would be unreasonable. The decision was, therefore, to allow fencing of a much larger area that would effectively provide security for the neighborhood and allow the dogs to protect the owner's sheep and other livestock.

The reasonableness of a 50-foot setback for the fencing. The Board determined that such a setback was reasonable to allow the abutting neighbors to enjoy their property without the constant harassment of the dogs.

Mr. Pruhenski asked the Board to approve #7 at this time. Once that is done, he will submit the information to the attorney to have the official order written up correctly. Mr. Manzolini asked that the Board be notified of any subsequent dog bites that occur. Mr. Pilson clarified the process as follows: If a person bitten by a dog goes to the hospital for treatment of his wound(s), the hospital is required to notify the Dog Officer in the town where it occurred. Mr. Manzolini wanted to order that Mr. Gardner personally notify the Board within 24 hours of every dog-human incident and in every case of a dog leaving the property. Mr. Pruhenski will add that directive to the order.

At this point, Mr. Pilson moved that the Board adopt the additional list of conditions as outlined above. Mr. Manzolini seconded the motion and it was passed by unanimous roll-call vote as follows: Mr. Pilson – aye, Mr. Manzolini – aye, Mr. Hanson – aye.

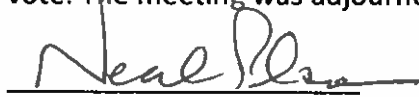
Mr. Pruhenski outlined the process from this point – The information voted on today will be forwarded to the Town's attorney who will draft the official letter and send it to Mr. Gardner. The letter will be submitted to the Town Clerk, at which time a ten-day window of opportunity begins for Mr. Gardner to file an appeal.

Mr. Manzolini then raised a further requirement for the fencing. It was determined that the issue would be handled with the addition to the motion on the floor that "the plans for the fencing will be subject to the approval of the Richmond Selectboard." Mr. Pilson moved to add the above motion to the one on the floor. The motion was seconded by Mr. Hanson and adopted by unanimous roll-call vote: Mr. Pilson – aye, Mr. Manzolini – aye, Mr. Hanson – aye.

As deliberation on the orders was completed, Mr. Pruhenski had one unanticipated item to cover. The solar project at the school will require a Special Town Meeting and he requested some dates for that. He cautioned that there are steps that must be taken in advance of that meeting that would require the dates be sometime at the end of June or early July. Mr. Pruhenski suggested July 11th which the Board agreed to. He will

determine if the necessary parties will be available on that date and advise the Selectmen via email.

Mr. Hanson moved to adjourn. The motion was seconded and carried by unanimous vote. The meeting was adjourned at 8:02 PM

A handwritten signature in black ink, appearing to read "Neal Pilson", written over a horizontal line.

Neal Pilson, Chairman