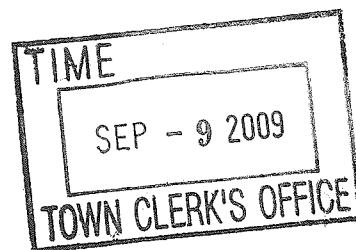


**TOWN OF MILLVILLE
BOARD OF SELECTMEN**

**Minutes of Meeting
Public Hearing**

**August 5, 2009
7:00 p.m.**



Board Members Present: Chairperson Jackie Lima, Vice Chairman Tom Petrowicz and Selectman John Laura

Others Present: Executive Secretary Helen Coffin; Police Chief Ron Landry; Animal Control Officer Gary Fagan; Town Counsel Jason Grossfield

Chairperson Lima entertains a motion to open the public meeting at 7:08 p.m. at the Millville Town Hall.

Motion by Petrowicz, second by Laura, to open the Public Meeting. Motion passes unanimously.

Chairperson Lima entertains a motion to open the duly posted Public Hearing.

Motion by Petrowicz, second by Laura, to open the Public Hearing. Motion passes unanimously.

Chairperson Lima advises that notification of the Public Hearing was sent to all interested parties by letter dated July 8th and the legal notice was published in the newspaper on July 24th. The legal notice is read aloud indicating that the reason for the hearing is to address issues of non-compliance of the Board's March 16, 2009 Kennel Order in connection with the barking dog nuisance at the kennel located at 77 Fisher Street. Chairperson Lima explains the ground rules of the Public Hearing advising that all individuals wishing to speak on the matter must be sworn in.

The following individuals are sworn in by the Chairperson:

Gary Fagan, 4 Eaton Street, Slatersville, RI - Millville Animal Control Officer.
Ben Grant, 43 Maureen Way, Millville, MA - Interested Party/Complainant
Attorney Peter Padula, 247 East Central Street, Franklin, MA - Attorney for Grant
Attorney Warren Heller, 21 South High Street, Milford, MA - Attorney for Shuras
Kathy Shuras, 77 Fisher Street, Millville, MA - Kennel Owner
Ron Landry, 141 Douglas Pike Uxbridge, MA - Millville Police Chief

Chairperson Lima advises that issues of non-compliance are indicated in inspection reports submitted by the Animal Control Officer, Gary Fagan.

Mr. Fagan explains that although not many complaint calls have been received lately, not once has he seen the barking collars on the dogs. He has seen the barking deterrent birdhouses in use from time to time. One of the birdhouses was not in working order and a replacement was purchased. During the last inspection, neither of the birdhouses was turned on and none of the collars were in use on the dogs. A complaint came in early July and none of the collars were in use and only 1 birdhouse was in working order. On August 1st, both the birdhouses were in the off position and no collars were in use.

Attorney Heller advises that there was a delay in the use of the barking collars because the collars were back ordered and took longer than anticipated to come in. After a brief review of the inspection reports he notes that the resident was home during many of the inspection visits. Mr. Heller advises that it was recommended to his client that the barking collars not be worn by the dogs for more than 8 hours at a time. He suggests that perhaps his client should be more vigilant to turn the birdhouses to the on position. With respect to the July 5th complaint, the dogs were only left unattended for ½ hour without the collars on. He indicates that there were many more residents present during the last public hearing in March so the situation must be much better. He is not aware of many complaints. He acknowledges his client was not in compliance with the Order at times but must be careful not to injure the dogs with the collars. Also, it should be noted that the black dogs wear black collars which are difficult to see when on. He reminds the Board that the underlying issue was the barking nuisance which seems to be much better. The birdhouses not being turned on was not intentional.

Attorney Padula advises that there are fewer complaints because his client and the neighbors knew the process was ongoing. His client has indicated that the situation has improved over the past three to four weeks. He asks that the Board base its decision on the inspection reports and compliance of the Order. He feels the brochure for the dog collars would clearly indicate how long the collars could be worn if it posed a safety hazard to the dogs.

Chief Landry advises that there were four calls received in dispatch from March to present. Mr. Grant was the complainant on each call. From the perspective of the Police Department, things appear to be improving. There was nothing significant noted in any of the dispatch logs. The Chief feels residents were foolish not to call if there continued to be a barking nuisance.

Selectman Laura asks if the dogs bark prior to a person entering the driveway or do they only bark upon entering the driveway.

Mr. Fagan responds that on one occasion he heard the dogs on Fisher Street, however, normally they start barking when he goes down the driveway. Prior to the issuance of the Order the barking was non-stop. Recently they seemed to quiet down once he is on the property. It is difficult to compare the difference in the duration of the barking between prior to the issuance of the Order and now but he acknowledges that he knows the birdhouses do work. They are installed on the left hand side of the house.

Chairperson Lima questions if it is possible that somebody intentionally turns them off.

Mr. Fagan feels anything is possible but the individual would have to walk down the driveway in order to do so.

Mrs. Shuras advises that one of the birdhouses was defective and was replaced. She is laid off from her job so is home all day now. When the family is away on vacation, the dogs are placed in a kennel. She did not hold a karate camp this year so as to avoid any hassles. The dogs are older in age and it is not her intention to obtain any additional dogs once these dogs are gone.

Chairperson Lima confirms that Mrs. Shuras understands that when she or her husband leaves the home or the dogs are left unattended, the collars should be on. This decision was made by the Board based on the theory that if they were home they would silence the dogs when barking. Mrs. Shuras must maintain the birdhouses daily... perhaps this could be done while feeding. Progress is being made and she does not wish to go backwards.

Mr. Grant informs that the past 3-4 weeks have been a little better but prior to that it had been the same. They were building their case by videotaping the dogs while barking. The barking seems to be 5-10 minutes at a time now, rather than the hours at a time that had previously been the case. The biggest help has been the change in feeding time.

Chairperson Lima is glad to hear of the improvement and seeks a recommendation from Town Counsel.

Attorney Grossfield feels this is a neighbor driven process. The Board found the condition of excessive barking based upon the guidance of the Animal Control Officer. The Shuras' approved the Board's Order. An appeal was filed by Attorney Heller. A magistrate would review the facts of the case and may support that the Board acted in a valid manner. However, it may be difficult to uphold the Order if not many residents testify. One possibility is to include a condition in the kennel license. He is not sure there is sufficient evidence to support taking more severe action. If Mr. Fagan testifies in Court that there is no excessive barking – judgment will not come to the Board's favor. Attorney Heller has informed Attorney Grossfield that he is looking to work something out and has agreed to dismiss the appeal if the Board agrees not to take any further action beyond the original Order.

Attorney Heller has a problem making the conditions as part of the kennel license. He suggests an extension of the probationary period and he would agree to continue the case before the magistrate. He suggests a date during December/January to come back for review and Mr. Fagan will continue to spot check and address complaints. He does not want to waive his clients' rights yet.

Chairperson Lima appreciates the progress made but reminds the Board that by Mrs. Shuras' own admission, she is still not compliant with the Order. She does not want to go backwards... progress has been made, but we are still not there.

Attorney Grossfield advises that the Town could always file a complaint to enforce the Order if the Board chooses to extend the Order another six months, keeping status quo.

Attorney Padula asks that the Board not base its decision on the appeal issue. He acknowledges that things are better and moving forward but complaint calls were not made because the neighbors did not want to stir things up.

Chairperson Lima is leaning towards including the conditions into the kennel license.

Selectmen Laura and Petrowicz feel the best course of action is to extend the probationary period...this will not jeopardize the Board from taking future action. Town Counsel confirms that if the Order is extended but problems arise in a few weeks, the Board has other options. Selectman Laura would like more time to get a better idea of the progress being made.

Chairperson Lima is concerned that if the Order is overturned at appeal, the Board will be back to square one. She feels fines should be issued for any future non-compliance.

Lengthy discussion follows among the Board members concerning the advantages and disadvantages of each of the options presented.

Motion by Petrowicz, second by Laura, to keep the current Order by extending it through December 31, 2009 and to authorize the Animal Control Officer to take enforcement action by assessing penalties for violations of the Order.

Discussion – Attorney Heller states that if the Board votes to affirm the motion on the floor he will personally guarantee that he will take action to notify the Uxbridge Clerk of Courts to continue the appeal date – such date to be acceptable to Attorney Grossfield.

Motion passes unanimously.

The Board schedules a date to revisit this matter for Tuesday, November 17, 2009.

Motion by Petrowicz, second by Laura, to close the Public Hearing. Motion passes unanimously.

Motion by Laura, second by Petrowicz, to adjourn the meeting at 9:00 p.m. Motion passes unanimously.

Respectfully submitted,


Helen M. Coffin



Jackie Lima, Chairperson



Thomas Petrowicz, Vice Chairman



John Laura