

**MINUTES OF THE SELECTMEN'S MEETING
JULY 14, 2014**

PRESENT: Daniel Trabucco (Chairman), Arthur P. Boyle, Jr. (Vice-Chairman), Willard J. Boulter, Jr. (Selectman), Michelle Burt (Selectman), Edwin J. Thorne (Town Administrator), William Hart (Animal Control Officer), Don Kernan, Kim Durante, Linda Francescon, Michael Guimares, Jeff McHale, Robert Rearick, Patrick Chilcott, Shannon (Pembroke Mariner Express), Sabrina Chilcott (Executive Assistant), and others.

At 7:00 pm, Mr. Trabucco called the meeting to order.

7:00 REQUEST FOR APPOINTMENT: COMMISSION ON DISABILITIES, PJ LOWE

The Commission on Disabilities has recommended the appointment of applicant Paul James "PJ" Lowe of 19 Champion Way to fill one of the vacancies on the Commission. Mr. Boyle moved to appoint PJ Lowe to the Commission on Disabilities to a three year term to expire in 2017. Mr. Boulter seconded the motion. The vote was unanimously in favor.

7:05 DOG HEARING: DURANTE, 15 DEERFIELD LANE

Pursuant to the provisions of G.L. c.140, sec. 157, at 7:05 pm, the Chairman of the Pembroke Board of Selectman, Daniel W. Trabucco, opened the formal public hearing in the matter of the two boxer mix dogs at 15 Deerfield Lane, Nash and Mia, which the complainant claims ran out of the yard and attacked and bit his dog and himself and which the Animal Control Officer feels endanger the public. The Chairman read the notice of public hearing and the complainant, dog owner and witnesses were sworn in under oath by MaryAnn Smith, Notary Public. Present for the hearing were Animal Control Officer Bill Hart, Kim Durante (dog owner) of 15 Deerfield Lane, Jeff McHale (complainant) of 48 Deerfield Lane, Michael Guimares of 61 Deerfield Lane, and Linda Francescon of 49 Deerfield Lane. Animal Control Officer Hart reminded the Board that there is a standing order voted by the Board of Selectmen in place for this animal to be seized and quarantined should there be a repeat offense. Mr. Hart noted that he was not present at the time of the incident and was notified of it by the police. Mr. Hart was called to 15 Deerfield Lane by the Pembroke Police Department stating that Mr. McHale and his dog had been bitten; Mr. McHale was not present on the arrival of the Animal Control Officer as he had taken his dog to Roberts Animal Hospital for emergency treatment. Mr. Hart contacted Roberts Animal Hospital and was told that Mr. McHale had been transported by Hanover Fire Department to South Shore Hospital for treatment of his own injuries. Mr. Hart requested that Pembroke Police Department accompany him to 15 Deerfield Lane to seize the two animals for transport to the Pembroke Animal Pound. Sergeant Richard McDonald returned to the residence to meet Mr. Hart. Mr. Hart stated that the male boxer mix, Nash, was easier to handle and accepted a leash. The female boxer mix, Mia, was extremely upset and would not accept a leash. Further, Mr. Hart stated it took six days to familiarize Mia to the point where she would accept a leash. Mr. Trabucco requested details of the incident that transpired July 5th. Mr. Jeff McHale of 48 Deerfield Lane stated that it was Saturday at 9:35am in the morning. He stated he always goes to the end of Deerfield Lane and pulls up to the path at the power lines to walk his dog. He stated that on several occasions as he passes by, the two dogs are outside but appear to be within the confines of the electrical fence; in the past, the owners have called the dogs inside as he and his dog pass. On this day, the two dogs were outside and approached to the point where they had stopped in the past or where typically the electric fence is, then in "a matter of two seconds they both bolted". Mr. McHale stated he pulled his dog into his arms by the collar and by the time he had a hold of his dog, one of the boxer mixes had grabbed the leg of Mr. McHale's twenty-five pound Shiba-Inu and the other had latched on to another part of the Shiba-Inu's body. Mr. McHale stated he could not pull away as his dogs leg would have been severed so he fell to the ground to fight back and try to free his dog. Mr. McHale stated that the attack went on for two minutes and each

time he would free his dog from one of the boxer mixes, the other would attack his dog. Mr. McHale stated his dog was crying out loudly and he resorted to lying on top of his dog in an effort to protect him and hope the owners of the dogs would come out and assist. Mr. McHale stated his thoughts were that his dog was dying and needed a hospital. He attempted to stand with his dog in his arms and one of the boxers attempted to grasp his dog's throat; Mr. McHale put his hand between the boxer and his dog's throat and prevented the boxer from killing his dog. Mr. McHale stated that the two dogs suddenly stopped; he doesn't know why. He was able to run the twenty-five yards to his car and pull away. Mr. McHale stated that he stopped in front of 15 Deerfield Lane with blood and his dog's feces on his body and clothing and banged on the door. Mr. Anthony Durante opened the door and Mr. McHale saw the dogs inside the house; Mr. McHale stated that Mr. Durante stated "What's going on? What happened? What's up?" Mr. McHale stated he didn't offer to call for help or offer any assistance. Mr. McHale returned to his car and transported his dog to Roberts Animal Hospital. While his animal was in treatment, he telephoned the Pembroke Police to report the incident and an ambulance was called to transport Mr. McHale to South Shore Hospital. Mr. McHale was released from the hospital six hours later and he returned to Roberts Animal Hospital. Mr. McHale stated that his dog has undergone four different surgeries this week. Mr. McHale has suffered an infection from his injuries but states that he expects that he will recover fully. Mr. McHale stated his fear that, had his daughter been walking the dog, she would not have survived. Mr. McHale stated that he has never seen the ferocity and viciousness of this attack before in his life and stated that it was like "two lions after an antelope" and he stated that he will experience nightmares about the incident. Mr. McHale stated his dog had another surgery today; he stated his opinion that the dogs need to be removed from the neighborhood or euthanized. Mr. McHale distributed photos; Mr. Trabucco advised that the Board has seen the photographs as they were part of the police report. Mr. Trabucco stated that Mr. McHale's description of the incident is consistent with the narrative from the police report and the incident report from the Animal Control Officer. Ms. Kim Durante of 15 Deerfield Lane and owner of the two dogs was present. She stated that she has brought two letters from neighbors stating that they have had no incidents with the dogs. Ms. Durante stated that they have never shown aggression to children or invited guests in her home. Her three children, ages 2, 11 and 14, have friends over regularly. Ms. Durante stated that the female boxer mix, Mia, is "extremely scared" and both dogs were rescue dogs that she adopted at 11 weeks old. Ms. Durante stated that she brought detailed information about the two dog's electric collars including the strength and radius that the system allows her dogs to travel. Ms. Durante brought the plot lines of her parcel and details on the NSTAR power line easement at the rear of the property. Ms. Durante stated that it is a reasonable expectation, if you were on someone else's property, that there could be an animal that doesn't like other animals. Ms. Durante attested to the fact that her animals don't like other animals. Ms. Durante stated that each time the Animal Control Officer has instructed her to comply with regulations for securing her animals, she has done so; she has purchased a kennel. Ms. Durante stated that they are never out for more than ten or fifteen minutes early in the morning or late in the afternoon. Ms. Durante stated that she was not home at the time of the incident but her husband had left the dogs outside for five minutes while he went upstairs to turn on the shower. Additionally, she stated that the maximum distance that the dogs can travel with the electric fence is 90 feet. Ms. Durante stated that the power line easement is her private property and the easement is for NSTAR only; she stated that Mr. McHale came onto her property with his dog. Ms. Durante stated that the dogs have never shown aggression to anyone invited to be on her property. Ms. Durante stated that the two dogs must have been within the confines of the electric fence as Mr. McHale stated that the dogs suddenly stopped the vicious attack and he was able to walk away; Ms. Durante stated that the dogs would have followed him and continued unless prevented by the electric fence. Ms. Durante states that she has consulted with

an attorney, had her dogs vaccinated and cares for her dogs. Ms. Durante stated that she feels terrible about the situation and feels awful that it happened; she was away with her children. Ms. Durante stated that her husband was upstairs with the shower on, therefore never heard the incident. Ms. Durante stated that her dogs are territorial when another dog runs onto her property. Ms. Burt asked if this incident occurred because Mr. McHale was on her property. Ms. Durante stated that it did. Ms. Burt advised that the dog needs to be under the owners control at all times. Ms. Durante stated they are controlled by the electric fence. Mr. Boulter explained that the electric fence does not qualify as under the owners control at all times. Ms. Burt explained that the dogs were out alone for five or more minutes; Ms. Durante stated that the electric fence was restraining them on a 90 foot perimeter while her husband jumped in the shower. Ms. Burt stated that the prior incidents involved the dogs being off of the property and Ms. Durante was advised then that the dogs needed to be under the owners control at all times. Ms. Durante mentioned the October 22, 2013 incident whereby a dog was bitten that had entered her property; her dogs bolted through the garage when they saw the other dog on the lawn and the other dog owner took responsibility for the incident. Mr. Trabucco stated that the prior incidents being referred to were the police reports from the two bites November 22, 2012 and November 24, 2012. Mr. Boyle asked Mr. McHale if his dog was leashed and he stated that it was; the only way he was able to retrieve his dog at the onset of the attack was by pulling him upward by his leash. Ms. Durante referenced her plot plan and the nature of the easements; one is a drainage easement and one is a utility easement by NSTAR where there is a rock road. Ms. Durante stated that the easement for NSTAR has signage to keep off. Ms. Durante stated that the setting on her electric fence panel is set at a 5 or at 55-60 feet which doesn't allow for the dogs to travel past the large pile of rocks in her backyard. Mr. Boulter asked whose signage states to keep off the property and asked if Ms. Durante has posted signage on her perimeter or property regarding her dogs. Ms. Durante stated that she hasn't as she wasn't instructed to do so. Mr. Trabucco inquired as to why they haven't been using the kennel if they are not outside with their dogs, or in the shower. Ms. Durante reiterated the point that the incident occurred on her property. Mr. McHale stated that the path under the power lines is a walking area and not on anyone's personal property; he also surmised that the electric fence was not on until the end of the attack when they stopped their aggression. Ms. Durante vehemently stated that this area is her private property with an easement from NSTAR. Ms. Durante stated that there is a rock road in the area Mr. McHale is referencing. Ms. Burt asked how large the parcel is; Ms. Durante stated it is slightly less than an acre. Mr. Trabucco asked Mr. Hart where exactly the incident took place. Mr. Hart stated that he did not witness the incident but Mr. McHale states that the incident occurred far beyond the rock pile and on the path at the power lines. Mr. Hart further stated that there were other incidents with the dogs loose, most recently on March 1, 2013 when they jumped the fence to number 7 Deerfield Lane without their electric collars on. Ms. Durante stated she wasn't home for that incident and that her mother was watching the dogs. Mr. Trabucco asked how it was possible that the dogs could get loose with an electric fence and was it possible that the electric fence doesn't work for all dogs or isn't effective. Mr. Hart stated that the collars were not put on the dogs that day. Mr. Hart further stated that there were two incidents hours apart with two bites to humans on the street on November 22, 2012 as shown in the police reports in the file, and the dogs were wearing their collars. Ms. Durante stated that the two human bite victims from November of 2012 were relatives of a disgruntled neighbor who has since moved. Ms. Durante stated that the March 2013 incident resulted in no injuries. Mr. Trabucco stated that the July 5th incident is not contested or in dispute nor are the facts surrounding the physical attack or injuries. Mr. Trabucco asked if it was possible that these dogs could bypass this electric fence. Mr. Hart stated it is possible. Mr. Hart stated that an electric fence requires proper training of the animal in conjunction with its use. Further, he stated that the batteries in the collars or in the system can weaken and affect the performance. Mr. Hart

stated that deterrent of the fence must be greater than the enticement on the other side. Mr. Hart stated he has spoken with the Durante's before about maintaining the electric fence and the dogs have broken through it before. Mr. Trabucco stated that the Board has ordered permanent fencing before with underground anchoring in other cases. Mr. Hart stated that there have been many incidents with these dogs, escalating in aggression as each attack is more severe. Mr. Hart stated that his opinion is that the neighborhood is not safe and that the owners do not have the ability to keep the dogs from leaving the yard. Mr. Hart cited the existing kennel and its lack of use. Mr. Hart stated that the installation of a fence does not guarantee public safety as the owners must maintain the fence and the dogs must be monitored for digging under the fence. Mr. Boyle asked what options are available; Mr. Hart stated that banishment is no longer an option. Any town the dogs may be moved to or rehomed to must approve the dogs entering the town and these dogs have several aggressive incidents that will be disclosed as dangerous. Mr. Hart stated that Mia is extremely fearful and her natural instinct is to bite when afraid. Mr. Hart stated that Nash is the instigator but could be carefully and selectively rehomed, while Mia could be returned with serious restrictions imposed, thereby separating the dogs; Mr. Hart feels that this approach is risky to all parties. Mr. Trabucco stated that Massachusetts General Law doesn't allow for banishment if dog is deemed dangerous, which these dogs have proven to be with five incidents. Mr. Boulter stated that this situation warrants consideration by the town to humanely euthanize the two dogs; the owners are absent or leave the dogs outside while showering after the dogs have been loose and have bitten before. Mr. Boulter stated that this most recent event of owner absence resulted in a man and his dog being torn apart. Ms. Linda Francescon of 49 Deerfield Lane stated that the neighborhood does not feel safe with these "vicious" dogs in it. Ms. Francescon stated she will not walk her dogs in her own neighborhood; she stated that she drives in and drives out past the house. Mr. Michael Guimares of 61 Deerfield Lane stated that he lives in the neighborhood with his wife and four children; his children walk by the house every day without incident. Mr. Guimares stated that he would like to work together in the neighborhood to accommodate the animals but he understands the Board has a difficult decision. Mr. Guimares stated that the dogs were protecting their property. Mr. Boulter agreed with this assessment and stated that the dogs protected their property at the expense of Mr. McHale and his dog. Mr. Boulter stated that the Board must weigh the safety of the residents; the previous restrictions placed on the animals and their owners have not been successful. Ms. Durante stated that Mr. McHale was trespassing on the path under the power lines; Ms. Burt stated that even if so, children ride their bikes in these areas, people walk in these areas and residents are required to be in control of their dogs at all times. Ms. Durante stated that she will watch over them more closely and there hasn't been an incident in one year. Mr. McHale stated that Ms. Durante has seen him walk his dog there several times a week for months and asked why she has never told him it was her property. Ms. Durante stated that she didn't want any problems. Mr. Boyle moved that the Town of Pembroke Animal Control Officer to take possession and custody of the two dogs in question and that he keep them for a period of ninety days; if after ninety days he can find no suitable home for them or a town that will accept them, then they are to be humanely euthanized. Ms. Burt seconded the motion. The vote was unanimously in favor.

Mr. Trabucco advised Ms. Durante that she has a right of appeal of this decision by appeal to the Plymouth District Court within ten days pursuant to G.L. c140, sec.157.

Mr. Boyle moved to close the hearing at 8:01 pm. Mr. Boulter seconded the motion. The vote was unanimously in favor.

7:15 ROBERT REARICK, K & T FOOD CONCESSION: MOBILE FOOD VENDOR PERMIT

Mr. Rearick was present before the Board on his request for a Mobile Food Vendor permit to engage in food concessions at Magoun Field and the Community Center basketball courts as approved by the Recreation Commission. Mr. Rearick has also met with the Planning Board and is not parking his food trailer overnight; it will be removed each day, therefore he requires no site plan. Ms. Burt inquired as to whether he plans to meet with the Fire Chief; Mr. Rearick stated he does. Mr. Boulter moved to grant the application of Robert Rearick d/b/a K & T Concession for a Mobile Food Vendor Permit to be exercised at Magoun Field and the Community Center basketball courts pending inspection by the Board of Health. Mr. Boyle seconded the motion. The vote was unanimously in favor.

REQUEST FOR APPOINTMENT: RECREATION COMMISSION, GINGER COMEAU

The Recreation Commission has recommended the appointment of applicant Ginger Comeau of 229 Plymouth Street to fill the vacancy on the Commission. Mr. Boyle moved to appoint Ginger Comeau to the Recreation Commission for a three year term to expire in 2017. Ms. Burt seconded the motion. The vote was unanimously in favor.

CONSIDER COMMON VICTUALER'S LICENSE APPLICATION OF COLETTE BAYLES D/B/A "THE KITCHEN" AT THE OCSA AT 159 FOREST STREET

Colette Bayles is applying for a common victualer's license on behalf of her new company The Kitchen catering cooking at the Old Colony Sportsmen's Association at 159 Forest Street; she prepares breakfast Saturdays and Sundays from 9:00 am to 2:00 pm for members, guests and others. The Board of Health and Building Department have signed off on the application. Mr. Boyle moved to grant a common victualer's license to Colette Bayles on behalf of The Kitchen Catering to be exercised at 159 Forest Street. Mr. Stone seconded the motion. The vote was unanimously in favor.

CONSIDER FY14 YEAR END BUDGET TRANSFERS

Town Accountant Michael Buckley is requesting that transfers be made to close fiscal year 2014. Mr. Thorne stated that once voted, they will go to the Advisory Committee. The year end transfers include nine items for a total of \$20,269.00. Mr. Boyle moved to approve the FY14 year-end transfers as recommended by the Town Accountant and Town Administrator. Mr. Boulter seconded the motion. The vote was unanimously in favor.

ACKNOWLEDGE RETIREMENT ANNOUNCEMENT: MARY WILLIS, COUNCIL ON AGING DIRECTOR

Mr. Boulter stated that Mrs. Willis has been an asset to the Town for many years and has earned her retirement. Mr. Boulter moved to accept Mrs. Willis' announcement of retirement; Mr. Boyle seconded the motion. The vote was unanimously in favor.

CONSIDER ROAD CLOSURE: CURVE STREET FOR PEMBROKE ARTS FESTIVAL, SATURDAY AUGUST 9 FROM 12:00 PM TO 4:00 PM

Police Chief Richard Wall has recommended the closure of Curve Street during the Pembroke Arts Festival Antique Car Show on August 9 from 12:00 pm to 4:00 pm as requested by PAF Chairman Kyle Harney in the interest of public safety. Mr. Boyle moved to closure of Curve Street August 9 from 12:00 pm to 4:00 pm; Mr. Boulter seconded the motion. The vote was unanimously in favor.

PEMBROKE DRUG PREVENTION COALITION REQUESTS FOR APPOINTMENT

Mr. Boyle moved the appointment of Stephen Kirby, Judi McAuliffe, Deneen Caprio, Matt Caprio, Colleen Wainwright and Tracey White to the Pembroke Drug Prevention Coalition. Ms. Burt seconded the motion. The vote was unanimously in favor.

CONSIDER AWARD OF AUDITING SERVICES CONTRACT

Mr. Thorne advised the Board that one of the thirty-eight recommendations made by the DOR was to put out an RFP for auditing services. Accordingly, Michael Buckley prepared and distributed an RFP. The proposals Prepared by Sabrina Chilcott

were opened July 3, 2014 at 10:45am and the lowest qualified proposal was submitted by Roselli, Clark and Associates. Mr. Boyle moved to award the financial auditing services contract to Roselli, Clarke and Associates. Mr. Boulter seconded the motion. The vote was unanimously in favor.

RECOGNIZE CONTRACT AWARD: AUCTIONEER SERVICES

Treasurer Kathleen McCarthy has recommended the retention of the Zekos Group for another year based on performance and qualification and experience as an auctioneer of municipal properties. Mr. Boyle moved favorable action on the recommendation of the Town Administrator and Town Treasurer; Mr. Boulter seconded the motion. The vote was unanimously in favor.

CONSIDER CHANGE IN CVAA: 99 RESTAURANT, CHANGE IN DIRECTORS AND OFFICERS

Mr. Boyle moved to approve the application of the 99 Restaurants of Boston, LLC d/b/a the 99 Restaurant & Pub at 166 Church Street, license # 9060 00051 for a change of officer and directors. Mr. Boulter seconded the motion; the vote was unanimously in favor.

CONSIDER ONE-DAY SPECIAL LIQUOR LICENSE: REPUBLICAN TOWN COMMITTEE, AUGUST 1 FROM 6:00 PM TO 11:00 PM

Patrick Chilcott was present before the Board on behalf of the Republican Town Committee's application for a one day liquor license to be exercised at their lobster supper fundraiser at the Pembroke Historical Society building at 166 Center Street on August 1 from 6:00 pm to 11:00 pm. Mr. Boyle moved approval of a one day liquor license to serve beer and wine for the Republican Town Committee on August 1 from 6:00 pm to 11:00 pm. Ms. Burt seconded the motion. The vote was unanimously in favor.

CONSIDER THE MINUTES OF JUNE 16, 2014

Mr. Boyle moved to accept the minutes of June 16, 2014 as presented. Ms. Burt seconded the motion. The vote was unanimously in favor.

TOWN ADMINISTRATOR'S REPORT

Mr. Thorne advised that an informational session will be held in the Veteran's Hall on Wednesday night regarding proposed improvements to Herring Run Park that will be included in an application to the Community Preservation Committee by the August 15th deadline for use of CPA funds. All are encouraged to attend as public comment and feedback is crucial to the process. Ms. Burt inquired as whether this plan will address handicap access to the park; Mr. Thorne stated it does. Additionally, Mr. Thorne requested a vote of the Board in support of the High Street and Mountain Avenue heavy vehicle exclusion request that Pembroke is submitting. Mr. Boyle moved to support a heavy vehicle exclusion on High Street from Barker Street to the Duxbury Town Line and on all of Mountain Avenue. Ms. Burt seconded the motion. The vote was unanimously in favor. Mr. Thorne stated that the Board has received his FY14 End-of-Year Solid Recycling & Solid Waste Report for further discussion at the next meeting. Mr. Trabucco requested that the report be posted on the town website on the BOS page and the Recycling page.

UPCOMING ISSUES

Mr. Trabucco stated that on July 28th at 7:00 pm the Pembroke Watershed Association will be present with an update by Ray Holman and Hal Johnson and at 7:30 pm there will be a public hearing on a CVAA application of iGolf Centers, Inc.

At 8:25 pm, Ms. Burt moved to enter executive session to conduct strategy sessions in preparation for negotiations with non-union personnel or to conduct collective bargaining sessions or contract negotiations with non-union personnel and to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares. Mr. Trabucco so declared and Mr. Boulter seconded the motion.

By roll call vote: Mr. Boyle - yes, Ms. Burt - yes, Mr. Trabucco – yes, Mr. Boulter – yes.