

The regular meeting of the Board of Selectmen was held Tuesday November 20, 2018 at 6:00 P.M., in the Daniel J. Toomey Hearing Room, Town Hall, Danvers.

Present: Gardner S. Trask, III, Chairman; Daniel C. Bennett; William H. Clark Jr; Diane M. Langlais; David A. Mills

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By a Roll Call Vote, the Board voted 3-0 (Selectman Trask and Selectman Clark late to arrive) to adjourn to Executive Session for the purpose of discussing contract negotiations with non-union personnel, returning to Public Session at approximately 7:00 P.M. in the Daniel J. Toomey Hearing Room.

The Pledge of Allegiance was recited by all in attendance.

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On a motion by Selectman Bennett and seconded by Selectman Langlais, the Board voted 5-0 approve the minutes from November 8, 2018.

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New Business:

Town Meeting Member Bill Bradstreet addressed the Board regarding potential solar power options.

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The Board considered the confirmation of an appointment to the Conservation Commission. Richard Souza appeared before the Board and answered various questions by the Board. On a motion by Selectman Langlais and seconded by Selectman Bennett, the Board voted 5-0 to appoint Richard Souza to the Conservation Commission.

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The Board met an appointee to the Planning Board. Nathaniel Sears appeared before the Board and answered various questions by the Board. On a motion by Selectman Langlais and seconded by Selectman Bennett, the Board voted 5-0 to endorse the appointment of Nathaniel Sears to the Planning Board.

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The Board considered a request by DEEP in connection with the Holiday Festival. Representatives from DEEP addressed the Board and answered various questions regarding businesses placing tables on the sidewalks on Saturday, December 1, 2018 for the Holiday Festival & Tree Lighting. On a motion by Selectman Langlais and seconded by Selectman Mills, the Board voted 5-0 to approve the placement of tables on the sidewalks for the Holiday Festival.

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The Board heard a report from a Danvers Community Access Television [DCAT] representative.

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The Board heard a report from Director of Land Use and Community Services Aaron Henry regarding the following recommendations & Updates to the Traffic Rules & Orders:

1. **Stop Sign at Bow Street & MacArthur Boulevard.** At its meeting of September 26, 2018, DTAC reviewed a safety request for a “stop” sign (which should be accompanied by a painted stop bar) on Bow Street at its intersection with MacArthur Boulevard. DTAC recommends that the Board of Selectmen amend Section 12 of Article VIII of the *Traffic Rules and Orders*, by inserting a new line, in proper alphabetical order, that reads as follows:
 - o Southwest-bound drivers on Bow Street at MacArthur Boulevard.

2. **Speed Advisory Signage.** At two separate meetings, one in November 2017, the other in March of 2018, DTAC heard from residents regarding vehicle speeds. After review and discussion, DTAC recommends that speed advisory signs, used to inform drivers that the recommended speed is below the legal speed limit, be installed near **159 Dayton Street**, and at the beginning of **Putnam Lane**.

On a motion by Selectmen Mills and seconded by Selectman Langlais, the Board voted 5-0 to approve the recommended changes to the Traffic Rules & Orders.

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The Board heard from Police Chief Patrick Ambrose regarding two liquor license violations. Chief Ambrose addressed the Board relative to two violations that occurred November 2, 2018 & November 10, 2018 at the Osborn Tavern. On a motion by Selectman Bennett and seconded by Selectman Langlais, the Board voted 5-0 to direct the Town Clerk to send a certified letter requesting Osborn Tavern to appear before the Board of Selectmen on December 4, 2018 for a hearing relative to this matter.

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The Board considered the “Findings of Fact and Recommended Disposition” of the Hearing Officer (Police Chief) related to an alleged nuisance or dangerous dog. Police Chief Patrick Ambrose addressed the Board and answered various questions by the Board. On a motion by Selectman Langlais and seconded by Selectman Bennett, the Board voted 5-0 to the following findings of facts and recommendations:

**Town of Danvers
Police Department
FINDINGS OF FACT AND RECOMMENDED DISPOSITION FROM
HEARING TO DETERMINE NUISANCE OR DANGEROUS DOG
Trung and Sabrina Nguyen, 32 Burley Farm Road, Danvers, MA
September 19, 2018
INTRODUCTION**

The matter concerns allegations of nuisance or dangerousness of a 7-year old Pitbull named Neeka who resides with her owners Trung and Sabrina Nguyen and their 2 teenage children at 32 Burley Farm Road, Danvers.

On July 12, 2018, Danvers Police officers responded to 34 Burley Farm Road for a reported dog attack. Neeka was identified by officers as the attacking dog. At the August 7, 2018 Board of Selectmen’s hearing, the Board voted that this complaint must be held for a hearing under the provisions of MGL c. 140, s. 157, for determination of “Nuisance or Dangerous Dogs, Orders for Remedial Action.”

Pursuant to MGL c. 140, s. 157, the Town Manager, by authority of the Board of Selectmen, directed the Danvers Police Chief to hear evidence in connection with this incident and make findings of fact and recommended disposition of the matter. This hearing was scheduled for September 19, 2018 at 6 pm at the Danvers Police Station, 120 Ash Street. The canine’s owners, Trung and Sabrina Nguyen, 32 Burley Farm Road, received notice for the hearing. The owner of the injured dog, Louann Strangie, 34 Burley Farm Road, also received notice for the hearing. Additional, public notification was made in the local newspaper.

EVIDENCE

The following documents were accepted into evidence and made part of the record:

Exhibit 1 - Various police reports from July 12, 2018, June 4, 2016, and November 8, 2016, and photographs taken by the Danvers Police along with a copy of the statute, Chapter 140, Section 157.

Exhibit 2 - A packet of information from Attorney Cohen, representing the Nguyens, which included several photographs of 34 Burley Farm Road and 32 Burley Farm Road, a copy of the K-9 Top Performance report.

Exhibit 3 - Information from the Rybickis, including copies of letters sent and received by the Rybickis and a copy of the medical history or report from Danvers Animal Hospital regarding the treatment of the Rybicki canine, Daisy.

Exhibit 4 - Louann Strangie presented medical records and bill for injuries and photographs of injuries for her 5-year old Goldendoodle, Henry.

WITNESSES

Witnesses who appeared and testified under oath:

Louann Strangie
Officer Scott Frost
Sgt. Richard Barthelmess
Officer Michael Chase
Officer Jason Skane
Michelle Rybicki
Coley Rybicki
Nicole Tran
Sabrina Nguyen
Trung Nguyen

The hearing commenced at approximately 6:15 pm and concluded the same day. Registered Professional Reporter Alexander K. Loos was present. A transcript of the hearing is attached as **Exhibit 5**.

FINDING OF FACTS

On the basis of evidence before me, I, Patrick M. Ambrose, Danvers Police Chief, make the following Findings of Fact:

1. Neeka is a 7-year old female Pitbull owned and residing with Trung and Sabrina Nguyen of 32 Burley Farm Road.
2. On July 12, 2018 at approx. 0846 hrs., Neeka was loose and unattended in the chain link fenced in front yard area of 32 Burley Farm Rd.
3. Neeka escaped the fenced in area and ran onto the property of 34 Burley Farm Road and attacked Louann Strangie's Goldendoodle, Henry. This attack was unprovoked.
4. Louann and daughter Alexandra Strangie made several attempts to separate Neeka from Henry but were unable. It was son Jack Strangie who physically intervened between the two dogs and was able to separate Neeka from Henry after several attempts.
5. Neeka showed no aggressive action towards Louann, Alexandra or Jack Strangie.
6. Danvers Police were called to the scene and were able to document the incident in police report IR#18014731.
7. Trung and Sabrina Nguyen did not dispute the attack of Neeka on Henry.
8. Officers determined that Neeka was able to escape from under the bottom of the chain link fence. Officer noted that this area was "flimsy" and notified Nguyen of the issue. The chain link fence now shows repair.
9. Danvers Board of Health was notified by police of the incident.
10. There was testimony of two prior incidents involving Neeka: one from June 2016 and one from November 2016. However, it was subsequently determined that the November 2016 incident was not caused by Neeka, but another canine in the Nguyen household.
11. Testimony was received from Danvers Police Officer Jason Skane, referring to police report #IR 16010334 dated June 3, 2016, reporting that Neeka ran after and bit a Bichon dog, owned by Coley and Michelle Rybicki, while it was out being walked. This attack was also unprovoked.
12. Testimony was received from Danvers Police Officer Michael Chase, referring to Danvers Police report IR#16022087 dated November 11, 2016. In this investigation, it was

determined that a second Nguyen canine named Lexi, attacked and attempted to bite a dog passing by 32 Burley Farm Road. There were no injuries from this incident. In this report, Sabrina Nguyen acknowledges that although Neeka was in the house at that time, it is Neeka that is known to be dog aggressive. This report and any questions regarding this incident were objected to by Attorney Cohen; however, I find the Officer's documented report and acknowledgement of Neeka's aggression toward other dogs as credible. I further find Sabrina Nguyen's denial of ever making this statement less than credible.

13. A letter was received from dog training company K-9 Top Performance which has been working with Neeka since the July 12, 2018 incident. This letter identifies Neeka as dog aggressive but not human aggressive.
14. Testimony by Nichole Tran, trainer for K9 Top Performance confirms that Neeka is dog aggressive but not human aggressive. She also states that Neeka's dog aggression will not go away completely but can be controlled, if the owners are "more aware of her and her surroundings." Tran also states that even with a fenced-in yard, she recommends the owner be outside to supervise Neeka and, if not supervised, Neeka should be "segregated into a certain room in the house or be crated."

DISCUSSION

This hearing was brought under General Law c. 140, s. 157, which authorizes the Board of Selectmen or their designee hearing authority, Danvers Police Chief, to (a) investigate a dog attack and, following a hearing, to determine if a dog is a nuisance or dangerous dog, and (b) if said dog is deemed a nuisance or dangerous dog, to then recommend remedial action.

It is undisputed and supported by testimony that on July 12, 2018 Neeka was outside in the fenced in area of 32 Burley Farm Road and unsupervised. At that time, Neeka did escape the fenced area and did attack another dog residing at 34 Burley Farm Road and in doing so did cause significant physical injuries.

Further testimony and medical bills from an earlier incident, which occurred on June 3, 2016, is strong evidence of a propensity to commit unprovoked attacks on other dogs. Both confirmed attacks caused serious injuries.

Additional testimony and written documentation presented by the Nguyens at the hearing confirm Neeka's dog aggression. Specifically, a letter from K9 Top Performance, which states that Neeka is dog aggressive. Subsequent testimony by K9 Top Performance trainer Nichole Tran confirms Neeka's dog aggression. Both the letter and Tran's testimony state that Neeka is not human aggressive. Mrs. Strangie also testified that Neeka showed no aggression towards her, her daughter or her son during the dog attack.

Since the July 12, 2018 incident, the Nguyens have brought Neeka to a professional K9 trainer to correct her dog aggression and continued training is recommended by the trainer. The Nguyens have also recognized the need to keep Neeka out of the front chain-linked area of the yard and only let her out in the backyard, which has a solid fence.

RECOMMENDED DISPOSITION

Based upon the foregoing facts and evidence, I find that canine Neeka is a dangerous dog, as defined by M.G.L. c.140, s. 157. This dog has committed unprovoked attacks on at least two dogs, causing serious injuries to both dogs. Additionally, a professional K9 trainer has deemed Neeka to be dog aggressive. The level of aggression displayed by Neeka demands implementation of solutions that best assure that Neeka is properly secured.

Therefore, in accordance with Mass. General Law, it is recommended for the Danvers Board of Selectmen to order that the Nguyen canine, Neeka;

1. When not confined to the home, must at all times be humanely restrained, supervised, and confined to the rear yard of 32 Burley Farm Road; and that all fencing remains secure and subject to inspection by the Danvers Board of Health or its agent. On or before December 18, 2018, the Nguyens shall provide visual documentation of all the restraint mechanisms and fencing that are in place at 32 Burley Farm Road.
2. When Neeka is removed from the premise of 32 Burley Farm Road, Danvers, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 6 feet in length. The owner or keeper of the canine must at all times be present with and retain close supervision of Neeka.
3. Trung and Sabrina Nguyen shall provide proof of insurance to the Board of Health within thirty (30) days in an amount not less than \$100,000, insuring the owners against any claim, loss, damage or injury to persons, domestic animals or property.
4. The canine Neeka shall be properly licensed and vaccinated.
5. The Nguyens shall continue with professional obedience training to correct the dog aggression and, on or before December 18, 2018, shall provide to the Board of Selectmen a written training plan prepared by the professional trainer. Proof of such training sessions and recommendation of any other corrective action shall be provided to the Board of Health.
6. The full reimbursement for medical costs for the treatment of the injured dog owned by Louann Strangie and full reimbursement for the medical costs for the treatment of the injured dog owned by Michelle and Coley Rybicki within thirty (30) days.
7. Any violations of this disposition will be considered in violation of an order as defined in M.G.L. c140, s. 157 (h).

Per Order of the Hearing Officer:

Date:

Patrick M. Ambrose, Chief of Police

Date

Gardner S. Trask III, Chairman, Board of Selectmen

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The Board discussed Fiscal Year 2019 Strategic Objectives and the Town Manger’s Fiscal Year 2018 evaluation. On a motion by Selectman Bennett and seconded by Selectman Langlais the Board voted 5-0 to approve a 3% increase to the Town Manager’s Salary. A motion by Selectman Bennett and seconded by Selectman Clark to add 1% of the Town Manager’s FY’18 base to his 457 account. An amendment by Selectman Langlais and seconded by Selectman Mills to make the contribution 1.5% was voted 3-2 (with Selectman Clark and Selectman Bennett opposed). On the amended motion of contributing 1.5% of the Town Manager’s base salary to his 457 account, the Board voted 4-1 (with Selectman Bennett opposed) to approve the contribution of 1.5%. The Town Managers five work objectives for Fiscal Year 2019 were approved by the Board and include:

- 30% - Smith School
- 20% - Long-term Water planning
- 20% - Downtown zoning
- 15% - Economic development
- 15% - Open Space preservation

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The Town Manager provided an update to the Board on items of interest, as follows:

- Financial Summit will be part of December 4, 2018 Selectmen’s meeting

Correspondence, Selectmen “New Business,” previous “New Public Business” updates and Selectmen closing updates were provided, as follows:

- Sunday A.M. events
- Les Misérables
- Senior Center Activities
- MAPC meeting
- Regionalization
- Happy Thanksgiving

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On a motion by Selectman Clark and seconded by Selectman Langlais, the Board voted 5-0 to approve the following consent calendar items.

☞ Consent Calendar ☞

Gas Storage

- J.A. LLC, d/b/a Concord Gas, 112 Water Street

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The Selectmen closing comments were offered, as follows:

Remember active service members and Veterans.

The meeting was adjourned at 9:50P.M

Attest: Joseph L. Collins
Town Clerk