



TOWN OF SHREWSBURY

Board of Selectmen Meeting
Board of Selectmen's Meeting Room
Richard D. Carney Municipal Office Building
100 Maple Avenue
Shrewsbury, Massachusetts 01545-5398

Tuesday, January 07, 2020 - 7:00 PM
MINUTES

Present: Mr. Maurice DePalo, Chairman, Ms. Beth Casavant, Vice Chairman, Mr. James Kane, Selectman, Mr. John Samia, Selectman

Absent: Mr. John Lebeaux, Clerk

Also Present: Mr. Kevin Mizikar, Town Manager, Mr. Stephen Madaus, Town Counsel, Mr. Keith Elmes, Animal Control Officer

Mr. DePalo called the meeting to order at 7:00 PM.

Preliminaries:

1. Approve bills, payrolls and warrants

On a motion by Mr. Kane, seconded by Mr. Samia, the Board unanimously voted to approve warrants 2023, 2050, 2052, 2025, 2054, 2054ME, 2056, 2027 as presented.

2. Approve Minutes of December 10, 2019

On a motion by Mr. Samia, seconded by Ms. Casavant, the Board unanimously voted to approve the minutes as written.

3. Announcements/Reports

None

4. Town Manager's Report

None

Meetings/Hearings:

5. 7:05 pm – Public Hearing – Richard Karowski, of 17 Rice Street, pursuant to M.G.L. Chapter 140, Section 157

Mr. Madaus reviewed a memo dated December 21, 2019 regarding the statutory requirements and process regarding dangerous dog hearings and reviewed options that the board may impose if the dog is named dangerous or a nuisance. Mr. DePalo reviewed the process and procedure in which the hearing will be organized.

Mr. Depalo asked all from the audience that were planning to speak on the matter to raise their right hand and under oath swear to tell the truth the whole truth and nothing but the truth. All said, I do.

Mr. Madaus stated for the record that the Board was in receipt of a copy of the complaint form Todd Brodeur dated November 21, 2019, memo from the Animal Control Officer, Keith Elmes, dated December 30, 2019, and an incident report dated December 10, 2019.

Mr. Brodeur appeared before the Board and stated that he resides at 18 Rice Street with his wife and three children. He believes that they are in an unsafe situation and Bina is a dangerous dog and poses a danger to their pet, children and visitors. On the day of the incident Geronimo was enclosed in their electric fence. The neighbors walk their dog in front of the house on their way to the park. Geronimo is out a lot but abides by the electric fence system. On November 6th, Mr. Brodeur was putting the kids in the car and Geronimo followed him outside, Geronimo went over to visit the neighbors walking Bina. Mr. Brodeur called to Geronimo to have him come back to the house. On this day, Bina entered the yard unrestrained and the dog fight ensued which resulted in a laceration on his back and surgery was needed. Mr. Brodeur felt it was very important to bring this to the Board. Mr. Brodeur discussed another incident that happened summer of last year when his wife JoEllen was out at the mailbox, the neighbor walked down the driveway and Bina lunged at JoEllen and took a snip at her face. He did not make contact but it was a terrifying experience for JoEllen. They did not pursue a complaint at that time, Bina at that time was in training and was a puppy. The children are fearful of going outside, major problem for the family.

Mr. Samia asked how much Geronimo weighs. From the audience, JoEllen replied “42 pounds”.

A neighbor at 11 Rice Street, Curtis Colonero appeared before the Board. He stated that he lives two houses down from Mr. Karowski and his house borders his. His kids are petrified of Bina. He has to review with his children how to protect their heads and bodies from a potential attack and doesn't understand why a dog that seems to be trained is very aggressive and has shown to be uncontrollable in their neighborhood.

Mr. DePalo asked “has the dog been around your children or on your property? I'm curious why they're afraid of the dog.” Mr. Colonero responded that a friend was visiting from Philadelphia and brought her small dog. While the kids were out walking the small dog, Bina was being walked on a leash, but was acting in an uncontrolled manner and was trying to run and attack in a threatening manner. That is why the kids are fearful. He has seen the dog off leash and there is a procedure in the house, when they hear the neighbor calling Bina, the kids are to go inside.

JoEllen Brodeur appeared before the Board to elaborate on the events when Bina lunged at her at her house. She went out to check the mail, and her neighbor Richard Karowski and his employees were walking the dog down the driveway. Within 20 yards the dog began barking and lunging aggressively. The dog was leashed, Bina continued to move forward. JoEllen turned around with mail in her hands and observed what was going to happen as they came near. The dog continued to bark. With a lot of yelling and pulling on the leash, the dog did sit. Ms. Brodeur thought it was safe to move forward and as she did the dog lunged within inches of her face and snapped at her with an intent to harm her. She was waiting for her neighbor to apologize or ask if she was ok. None of that happened, and the neighbors sort of pretended that it didn't happen. JoEllen told her neighbor that her dog scares her. And he said “I know, a lot of people are scared of her” in a proud manner. Since that day, the children were no longer allowed back on her neighbor's property as they used to play with the neighbors son. She really fears Bina, and in her opinion Bina is not a community dog.

Mr. Samia asked in the summer of 2019, how far away was the dog? JoEllen responded that the lunge happened from the end of their driveway to her at her mailbox. Mr. Samia asked if there has there been other instances where the leash has let go. JoEllen responded- multiple. The dog has come in the front yard in multiple instances and had tussles with her dog but there has never been a wound.

Mr. DePalo asked if the dogs have interacted. Was it playful or aggressive? JoEllen responded- never playful. They bark at each other and it's always been Bina coming into my yard. A similar incident happened this summer but there was no blood drawn and no bite, but it was aggressive.

Ms. Casavant asked in past incidents where Bina has entered the yard, how have you taken control of your dog? JoEllen responded that typically these instances happen in the morning between 7am-8 am in the mayhem of getting ready for

school. When we hear barking I will go and call my dog. On both of the occasions we have not broken up the interactions because we are scared of Bina. Typically he gets her back or she comes back to Rich and that's how it ends. Ms. Casavant responded- what about unleashed? JoEllen stated that since the incident and Keith's (ACO) recommendations they have not seen the dog at all, and thinks they are keeping her confined. Often times, the dog has done unleashed training in the driveway or roam their property. The dog has entered our yard when our dog isn't out which is a rare occasion and hasn't happened in a while. Mr. DePalo asked of JoEllen was home for the November 6th incident. JoEllen responded that she was not home.

Jeremy Cohen, Attorney on behalf of Richard Karowski, appeared before the board and asked questions of the plaintiff:

Mr. Cohen - Has Geronimo ever entered the property unleashed?

Mr. Brodeur- yes

Mr. Cohen - Has the dog ever went to the Karowski property?

Mr. Brodeur- not sure it's possible there was one incident when there was a break in the electric fence and the dog roamed but we got him back with no problem.

Mr. Cohen - Can Mr. Brodeur describe (Geronimo siting down in pain)?

Mr. Brodeur elaborated- yes that is true. There was a scuffle, Geronimo whimpered and sat down, I was calling to him and he did not come to me.

Mr. Cohen - How much was the vet bill?

Mr. Brodeur- Geronimo was seen at community animal hospital, was put under anesthesia- vet bill was \$331.96

Mr. Cohen - Did Geronimo have to stay overnight?

Mr. Brodeur- no

Mr. Cohen - Has Geronimo been in in the front yard without the e-collar at any time?

Mr. Broder- yes, he is trained, he doesn't even need the collar. He abides by the boundaries because he is very well trained.

Mr. Cohen - Who provided the training?

Mr. Brodeur- A Company called Dogwatch

Mr. Cohen - Why haven't the Brodeurs put up a real fence?

Mr. Brodeur- respectfully, that's not the issue. The issue is not our dog, the issue is their dog. Our dog has roamed the neighborhood on a few occasions, he is not a nuisance and not a dangerous dog. He's a labradoodle.

Mr. Cohen - Did Geronimo bite Bina?

Mr. Brodeur- I couldn't be sure, it was a scuffle. There are no records or evidence that he did.

Mr. Cohen - Has Mr. Brodeur had the opportunity to see the video of the incident?

Mr. Brodeur- I didn't know there was video.

Mr. Madaus stated that the Board should allow the other party to testify before viewing the video.

The dog (Bina) owner Richard Karowski appeared before the Board.

Mr. Cohen gave a brief opening statement describing what happened and what can be seen in the video. Geronimo has been off the property just as much as Bina has. Geronimo antagonized Bina. The Brodeurs don't have suitable means to protect their dogs. Anything can enter an electric fence. Bina's response was not a disproportionate response to

Geronimo. A \$300 bill was not surgery, it was to clean the wound and send Geronimo on his way. Dogs purposely have extra skin in the back of their neck to protect from attacks. If Bina was trained to attack, she would have gone at a different angle. Bina sent a message, and runs off in a time span of seconds.

Mr. Cohen showed the video of the attack and stated that you see Geronimo charging out and you see Geronimo standing upright and walking away. A 7 second incident.

The plaintiff and defendant described the property lines. Mr. Kane pointed out that Geronimo ran and stopped at the electric fence and then ran the straight line of the fence.

Mr. Karowski showed how he was holding the leash and what happened for Bina to escape the leash. He called for Mr. Brodeur to call his dog but that never happened. Mr. Kane replied- the way you were holding the leash doesn't seem to ensure the security of the dog. Mr. Karowski stated that Geronimo always comes charging out and he asked for Mr. Brodeur to call his dog. As he felt the leash come off that's where you see him try and grab it. Mr. Samia asked- has dog ever broken free from you before? Mr. Karowski- no. My dog has never roamed the house freely stays with her pack. I have videos of every door in the house opened and Bina stays right where she is.

Mr. Cohen stated that a muzzle would be good as backup.

Mr. Samia asked- so you're saying Bina has never been out of the yard? Mr. Karowski responded- we used to have a black lab that would follow my mother-in-law to the mailbox. The lab walked around the property and Bina followed her, that was the only time.

Mr. Kane asked- how do you explain the level of concern from your neighbors? Mr. Karowski responded- JoEllen reached down and touched Bina. She has created this anxiety. I have two neighbors here, and they are the furthest away from me. I have no fence in the front yard, the backyard is fenced in. My neighbors have offered for me to bring my dog through their front yard because they feel terrible. I have Bina, and I would have another German Shepard. I am doing all the things I should be as far as training and having a fence but there is a paranoia with the breed of dog and I am doing the right responsible thing. Unfortunately Bina is the big dog in this situation.

Mr. Kane asked- if there is multiple incidents, wouldn't it be fair to expect the neighbor to have a level concern? Mr. Karowski responded - I have many neighbors that have dogs and there is no issues. I respect that there is a concern.

Mr. Cohen stated that the video shows that the aggression that is claimed is not true. Geronimo would be dead if Bina was aggressive. If there was that much concern Geronimo wouldn't be there without any supervision.

Mr. Samia asked - what's the issue of having Bina in the front yard if Geronimo stays within the boundary? How does a dog barking necessitate an attack? Mr. Cohen responded- if it's all relative, Bina didn't leap a fence, or go through a structure, when she got on Geronimo's property she stayed for seconds. Of course Bina is more aggressive but the point is this is a minor bite from a dog.

Mr. Karowski shared an analogy- If you're walking down the street and someone comes charging at you with a baseball bat you are going to protect yourself. Same with a dog. My dog goes to PETCO, Lowes, and Home Depot all the time. Mr. Samia asked- You walk by other houses all the time, are the dogs in the front yard? Mr. Karowski responded- yes, I walk by all the time, I walk in the park.

Mr. Karowski stated that he has a picture where Geronimo bit Bina in the back of the leg bit her in the back of the leg and Bina was reacting. Ms. Casavant asked-did you continue you walk? Mr. Karowski replied that he walked up the street, composed Bina, waited for Mr. Brodeur to come up in the car, stopped him, asked if everything was ok, and

Mr. Brodeur responded no, and said they were taking it further. At that point, Mr. Karowski called animal control and explained what happened. This is not the first time that Mr. Karowski has had to call animal control. Geronimo has come into their yard several times and they have done the same thing and he grabs Bina and nothing has happened. The electric fence was down a period of time and he gets through. Mr. Karowski stated that he told JoEllen and JoEllen said she didn't see blood so Geronimo must be fine. Bina was 5 months old when JoEllen reached down and approached Bina and Bina jumped. She is now 18 months old and trained.

Ms. Casavant and Mr. Kane agreed that the way Mr. Karowski was holding the leash was incorrect since he lost control of the leash.

Bina's dog trainer, Sol Oven, appeared before the Board. Mr. Oven has owned the company New England dogs since 1973 and trained 15k dogs. He has been training with Bina and Bina is as smart as can be. As far as control, the leash should not have come out of his hands. Mr. Oven stated that Bina is not a dangerous dog, it looks like the dogs were playing. Mr. Oven displayed the correct way to hold a leash and why you don't wrap the leash around your wrist. Mr. Oven stated that Bina was provoked. Mr. Samia responded- how do you know it wouldn't happen with another dog? Mr. Cohen and Mr. Oven responded- a muzzle. Mr. Oven said that the two neighbors should work out a schedule of letting the dogs out. Mr. DePalo stated that the solution would be for Mr. Karowski to be able to control the dog with voice command. Mr. Cohen responded that why the dog is in obedience training.

Mr. Cohen stated that Mr. Oven had been working with Bina from September 15, 2018 to June 17, 2019, and Mr. Karowski brought Bina to his house twice in November after the incident to work on what was learned through the training. Mr. Oven saw him again on December 31, 2019 to evaluate Bina. Training is not currently active but Bina still has some sessions left with Mr. Oven.

Mr. Oven stated that from what Mr. Karowski said about the mailbox incident, that JoEllen should have never put her hand down towards the dog, and also that there is no way to make two dogs like each other.

Mr. Samia – When you have a dog, don't you always run that risk?

Mr. Oven – You're always responsible for your dog. If I saw someone do that to my dog, I would stop that.

Mr. Samia – What is success for training? What would be the goal for this training?

Mr. Oven – We still have one session left.

Mr. Cohen – Sol, Can you explain why we train a dog off leash?

Mr. Oven - Accidents can happen and you need to be able to call your dog. When Mr. Karowski said he asked the Brodeurs to call their dog, Geronimo didn't go. When Mr. Karowski called his dog, he came right over to him. To me it's an act of play, and someone got hurt. The leash should have never come out of his hands it was an accident.

Mr. Cohen-what are some of the things you will work on with Mr. Karowski?

Mr. Oven – We will work on making the dog heel even if the dog gets off the leash. In the middle of the mistake, the dog is corrected. I train police dogs and can show you my CV. That incident was an accident and the dog is totally trainable.

Mr. Cohen- Bina will be spayed at 2 years old

Mr. Brodeur stated that he was glad he saw the video. You see Geronimo take a step or two back him and stops, because he is in a great deal of pain. The incident was not long but doesn't need to be. He had no questions for Karowski or the trainer.

Mr. Keith Elmes, Animal Control Officer appeared before the board. Mr. Elmes mentioned that his involvement started in early July. JoEllen did contact him by phone and he spoke to the witness contractor that said he saw the dog lunge at her. There was also a report that Bina bit a Fedex driver. Mr. elmes called Fedex and there was no record of that

incident. On August 30, 2019 Mr. Karowski did call Mr. Elmes because he believes that Geronimo is let out to antagonize his dog. There were no calls until November 6, 2019. Despite what was presented by both sides, that day and that particular incident, the incident on November 6, 2019 is Mr. Karowski's fault. Bina was put on a 10 day quarantine after the bite. Mr. Elmes also advised Mr. Karowski that the dog was not let free in the road. Mr. Karowski took Mr. Elmes through the fenced-in back yard and Mr. Elmes suggested that the dog be muzzled to ensure an incident doesn't happen again. Mr. Elmes suggested that a muzzle and confinement to the backyard is probably the best solution.

Mr. Samia asked Mr. Elmes- In your opinion how often does a dog break skin? Do you see it a lot? Mr. Elmes responded that it could happen at any time, but he doesn't see it a lot, when he does see it, it's a scenario like this. If a dog is provoked he can bite another dog.

Mr. DePalo mentioned that in the Animal Control quarterly report there was 5 dog on dog bites and asked about the severity compared to this event. Mr. Elmes said there were no other events that stood out above a minor puncture wound.

Mr. Cohen asked Mr. Elmes if he took action after speaking to Mr. Karowski in August. Mr. Elmes responded that he had asked Mr. Karowski if he wanted him to talk to the Brodeurs and Mr. Karowski declined.

Mr. Cohen asked Mr. Elmes how he would rate the severity of a puncture wound with a \$300 vet bill. Mr. Elmes replied that he is not a veterinarian and get attest to that. Mr. Cohen asked Mr. Elmes if he saw the 4 other dog bites listed in his quarterly report. Mr. Elmes replied that he often receives reports from a vat and does not see them in person or receive photographs. Mr. Cohen stated that his sense was that Mr. Elmes thought the attack was provoked. If it was provoked, do you think Bina's response was grossly disproportionate? Mr. Elmes replied- No, I don't think her actions were disproportionate but it was Richard's fault for losing the leash.

Mr. Samia asked Mr. Elmes if he got into details when speaking to the contractor witness regarding the mailbox incident. Mr. Elmes stated that the contractor did not mention her JoEllen moving towards the dog but did say that Bina was acting in an aggressive manner growling and barking.

Mr. Cohen asked Mr. Elmes, after the incident happened in November, did you try to talk to them about timing or working out a schedule. Mr. Elmes replied- I did. I asked if they felt Bina was dangerous and is it a good idea to have the dog in the front yard. I did suggest a schedule, they seemed open to it. An electronic fence is a legal method to have your dog confined. I haven't been called to the scene since but did suggest the measures of a muzzle and confinement in the backyard.

Ms. Casavant asked if the Brodeurs had a fenced in backyard. Mr. Brodeur replied- yes, there is a physical fence.

Mr. Kane asked Mr. Elmes if he thought Bina was a nuisance or a dangerous dog. Mr. Elmes replied that it was not for him to decide, however, if nothing changed then there is a chance that this would happen again.

On a motion by Ms. Casavant, seconded by Mr. Samia, the Board unanimously voted to close the hearing at 8:49 pm.

Members of the Board discussed whether Bina was a dangerous or nuisance dog and potential remedies. Mr. DePalo asked Mr. Elms his preference on a remedy, to which Mr. Elmes replied that his preference would be a muzzle anytime in public, if not at least on Rice Street.

On a motion by Ms. Casavant, seconded by Mr. Kane, the Board unanimously voted to deem Bina a nuisance dog based on the information provided relative to the incident on November 6, 2019 and that Bina is a nuisance dog, as

defined in MGL c. 140, §136A, because Bina has “threatened or attacked...a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.”. The Board deliberated and voted to Order the owner or keeper of Bina to take the following remedial actions to ameliorate the cause of the nuisance behavior:

1. The owner must have Bina complete obedience training from a professional dog trainer, approved by the Town’s Animal Control Officer, said training to start within thirty (30) days from the date of this Order and the owner shall furnish to the Animal Control Officer sufficient evidence of completion of the obedience training within seven (7) months of the date of commencement of said training;
2. Whenever Bina is to be walked in public, including at parks, Bina must be securely and humanely muzzled, using a basket type muzzle, and be leashed on a non-retractable leash that is no longer than six feet; and
3. Bina shall not be allowed to roam freely in the front yard or driveway at 17 Rice Street, where there are no physical barriers. Bina may be off-leash only in the fenced-in backyard area at 17 Rice Street.

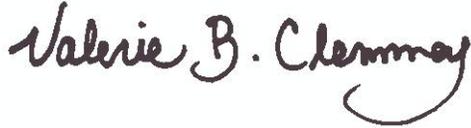
On a motion by Mr. Kane, seconded by Ms. Casavant, the Board unanimously voted to authorize the chairman to sign the finding and order on behalf of the Board of Selectmen.

Correspondence: The Board of Selectmen will review and possibly act on the following:

6. Letter, dated December 9, 2019, from Governor Charles D. Baker and Lt. Governor Karyn E. Polito, re: Firefighter Turnout Gear Grant Program Award- so noted
7. Letter, dated December 9, 2019, from Governor Charles D. Baker and Lt. Governor Karyn E. Polito, re: Washer-Extractor Grant Program- so noted
8. Letter, dated December 10, 2019, from Kevin Mizikar, Town Manager, to Thomas Turco, Secretary, Executive Office of Public Safety and Security, re: Request for Release of Funding Public Safety Feasibility Study- so noted
9. Letter, dated December 11, 2019, from Nick Repekta, Highway Division Manager, re: Snow Storm Report of 12/11/2019- so noted
10. Email, dated December 12, 2019, from Kumpal Madrasi, 45 Patricia Road, Marlborough, re: Proclamation Request for Yoga Awareness from Shrewsbury- so noted
11. Letter, dated December 13, 2019, from Rajiv Dayal, India Society of Worcester, PO Box 136, re: Expansion of 152 Main Street- so noted
12. Letter, dated December 16, 2019, from Rabbi Michoel Green, Chabad of Westborough, 54 South Street, Westborough, re: Lighting of the Menorah on the Town Common December 22nd- so noted
13. Letter, dated December 18, 2019, from Nick Repekta, Highway Division Manager, re: Snow Storm Report of 12/17/19- so noted
14. Letter, dated December 19, 2019, from Andy Truman, Town Engineer, re: Puriton & Route 20 Modifications Public Information Meeting
15. Email, dated December 23, 2019, from James Vuona, Fire Chief, re: Thank You Letter from Incident on 9/10/18
16. Email, dated December 23, 2019, from Page Czepiga, MEPA, re: Notice of Comment Period Extension - EEA No. 16129 - Shrewsbury Landfill Phase V Footprint Modification – Shrewsbury- so noted
17. Email, dated December 27, 2019, from Page Czepiga, MEPA, re: Notice of MEPA Consultation Session - EEA No. 16129 - Shrewsbury Landfill Phase V, Section VII Baseline Footprint Modification- so noted
18. Email, dated December 28, 2019, from Pamela Crandall, 5 Applewood Circle, re: Trash Complaint- so noted
19. Letter, dated January 2, 2020, from Nathaniel Mahonen, Bohler Engineering, 352 Turnpike Road, Southborough, re: Final Environmental Impact Report for Centech Park North- so noted
20. Email, dated January 3, 2020, from Keith Elmes, Animal Control Officer, re: Quarterly Warrant- so noted
21. Letter, dated January 3, 2020, from Nick Repekta, Highway Division Manager, re: Snow Storm Report of Monday December 30, 2019- so noted

On a motion by Mr. Kane, seconded by Mr. Samia, the Board unanimously voted to adjourn at 9:21 pm.

Respectfully Submitted,

A handwritten signature in black ink that reads "Valerie B. Clemmey". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Valerie B. Clemmey
Administrative Assistant to the Board of Selectmen

Referenced Materials

Memo dated December 31, 2019 from Stephen Madaus, Town Counsel, re: Statutory Requirements and Process
Regarding Dangerous Dog Hearing
Dog Hearing Procedure Jan 7, 2020
Finding and Order of January 7, 2020

Memorandum

TO: Maurice M. DePalo, Chairman
Shrewsbury Board of Selectmen

CC: Kevin Mizikar, Town Manager

FROM: Stephen F. Madaus, Town Counsel 

DATE: December 31, 2019

RE: Statutory Requirements and Process Regarding Dangerous Dog Hearing

I understand that the Board of Selectmen (the “Board”) received a written request for a Dangerous Dog Hearing from Mr. Todd Brodner of 18 Rice Street, Shrewsbury. The complaint is dated November 19, 2019 (the “Complaint”) and concerns a dog named Bina, owned by residents at 17 Rice Street.

Pursuant to MGL c. 140, section 157, the Board will serve as the “hearing authority” for the Town of Shrewsbury (the “Town”), to investigate and process the Complaint. The Board is scheduled to consider the Complaint at a public hearing on Tuesday, January 7, 2020.

I am writing to provide the Board with an outline of relevant statutory provisions the Board must be aware of and adhere to when conducting the public hearing.

Definitions

Preliminarily, it is important for the Board to be aware of some of the statutory definitions applicable Dangerous Dog Hearings. The defined terms are found in Section 136A of Chapter 140.

An “attack” is defined as “aggressive physical contact initiated by an animal.”

A “dangerous dog” is defined as a dog that either: (1) without justification, attacks a person or domestic animal causing physical injury or death; or (2) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

MIRICK O’CONNELL

ATTORNEYS AT LAW

A “nuisance dog” is defined as a dog that: (1) by barking excessively or other disturbance is a source of annoyance to a sick person residing in the vicinity; (2) by barking excessively causes damage or interference that would disrupt a reasonable person’s quiet and peaceful enjoyment; or (3) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

In addition, Section 157 of Chapter 140 provides that the hearing authority may not find a dog to be dangerous solely based on growling or barking, the breed of dog, or if the dog was reacting to another animal or to a person and the dog’s reaction was not grossly disproportionate to the following circumstances:

- (1) The dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault;
- (2) The person who was attacked or was threatened by the dog was committing a crime on the owner or keeper of the dog or their property;
- (3) The person attacked or threatened by the dog was teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog; or
- (4) At the time of the attack or threat, the person or animal that was attacked or threatened breached an enclosure or structure where the dog was kept and the person or animal was not authorized by the owner of the premises to be in the enclosure. This includes, but is not limited to, a gated, fenced-in area if the gate was closed. If the person who was attacked or threatened is under 7 years of age, there is a rebuttable presumption that they were not committing a crime, provoking the dog or trespassing.

Hearing Process

After receiving a complaint, the Board, as hearing authority, must investigate (or cause the investigation of) the complaint. As part of the investigation, the Board is required to hold a public hearing *including an examination under oath* of the individual who filed the complaint, to determine whether the dog is a nuisance dog or a dangerous dog.¹

Based on the evidence and testimony presented at the public hearing, the hearing authority shall, if the complaint is for a *dangerous dog*: (i) dismiss the complaint, (ii) deem the dog a *nuisance dog* or (iii) deem the dog a *dangerous dog*. Finding a dog to be either a nuisance dog or a dangerous dog dictates the scope of remedial actions the Hearing Authority may order.

Remedial Action the Board May Require

If the Board determines that a dog is a *nuisance dog*, the Board may order the owner or keeper of the dog to take remedial action to ameliorate the cause of the nuisance behavior. If the

¹ For purposes of process, it may most efficient to administer the oath to all persons who are likely to offer testimony at the public hearing, en masse.

Board determines a dog is a *dangerous dog*, the Board shall order one or more of the following remedial actions:

- (1) that the dog may be humanly restrained (but the Board cannot require the dog be chained, tethered or otherwise tied to an inanimate object including, but not limited to, a tree, post or building);
- (2) that the dog may be confined by the owner or keeper, indoors or outdoors, in a secured enclosure such as a locked pen or run on the premises of the owner or keeper, however, the enclosure must have a secure roof and protect the dog from the elements. If the enclosure has no floor, the sides must be embedded at least two feet into the ground;
- (3) that when the dog is removed from the property of the owner or keeper the dog must be securely and humanely muzzled and restrained with a chain or device with a minimum strength of 300 pounds and measuring less than three feet;
- (4) require the owner or keeper provide proof of at least \$100,000 in insurance against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts of the dog or proof that reasonable efforts were made to obtain an insurance policy. The owner or keeper can be required to provide documented proof of insurance or provide proof of efforts by the owner or keeper to obtain such insurance if the Board requests it.
- (5) order the owner or keeper of the dog to provide to the Town Clerk (as the licensing authority) and/or the Town's Animal Control Officer information by which the dog may be identified, throughout its lifetime, including, but not limited to, photographs, videos, veterinary examination, tattooing and/or microchip implantations or a combination of any such methods of identification;
- (6) absent the opinion of a veterinarian to the contrary, order the dog be spayed or neutered; or
- (7) order that the dog be humanely euthanized.

The statute prohibits a hearing authority from directing that a dangerous dog be removed from the town in which the owner of the dog resides.

Appeals

Once the Board issues its order/decision, the owner or keeper of the dog has 10 days to appeal the decision to the District Court. Upon an appeal, a clerk magistrate will hear the witnesses, review, and affirm the local hearing authority's decision unless it appears that the decision was made without proper cause or in bad faith. The District Court will hear the appeal *de novo*, meaning the court will take the hearing authority's findings into consideration but does not have to defer to them.

During the appeals process, the Board may petition the District Court to impound a dangerous dog. If the court affirms an order of euthanization of a dog, the owner or keeper of

the dog must reimburse the Town all reasonable costs incurred, if any, for the housing and care of the dog during its impoundment throughout the appeals process. If the court overturns the euthanization order, the Town must pay all reasonable costs incurred for the housing and care of the dog during the period of impoundment.

Please contact me if you have any questions concerning this memo.

The Board of Selectmen has scheduled this dog hearing to take testimony and consider evidence to determine whether there is a dogs owned or controlled by Mr. Richard Karowski, residing at 17 Rice Street, which may be found to be nuisance dogs or a dangerous dogs pursuant to General Laws Chapter 140, Section 157.

The dog in question is Bina, tag # 2291, residing at 17 Rice Street

1. The law requires that the Board of Selectmen investigate complaints of this nature and also requires us to conduct “an examination of oath of the complainant.”
2. As such, I will ask that all those who will testify be sworn in first. This includes those on all sides of this issue. I ask that all that wish to be heard on this matter to stand up. I will ask that you remain standing so that I may swear you in as a group.
3. Please raise your right hand: Do you swear to tell the truth, the whole truth and nothing but the truth. If so, please state, “I do”.
4. This is the order in which we will proceed.
 - a. I will ask that the complainant testify first. That will be Mr. Todd Brodeur.
 - b. I will then ask that to hear the comments of the other witnesses
 - c. I will then allow Mr. Karowski or his attorney the opportunity to question the witnesses.
 - d. I will then hear from our Animal Control Officer: Keith Elmes
 - e. I will then hear from the dog owner: Mr. Karowski and/or your attorney if you wish
 - f. In all cases any questions should be directed through me. I ask that you be courteous
 - g. Once the questioning is concluded, I then will ask Mr. Karowski if he has any witnesses and if so, we will hear their testimony.
 - h. At the conclusion of that testimony I will ask the Board for a motion to close the hearing and then the Board will go into a deliberation phase to make a finding. This will be done in open session and a

motion will be made by a member of the Board of Selectmen as to our findings. Those findings can be any of the following:

- i. There is no finding that the dog is either a nuisance or dangerous and the complaint is dismissed
 - ii. The dog is deemed to be a nuisance or
 - iii. The dog is deemed to be dangerous
 - i. If the dog is found to be an nuisance then I will ask the opinion of Dog Officer Keith Elmes to make a recommendation to the Board to mitigate the dogs behavior
 - j. If the dog is found to be dangerous then there are a number of actions that may be taken but I will reserve the right to discuss those options only should we get to that point.
5. I will start with the testimony of Mr. Todd Brodeur

If the hearing authority deems the dog a dangerous dog, then they shall order one or more of the following:

1. That the dog be humanely restrained
2. That the dog be confined to the premises of the keeper of the dog.
Confined shall mean securely confined indoors or confined outdoors in a securely enclosed and locked pen or dog run
3. That when removed from the premises of the owner that 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 3 feet in length
4. That the owner provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against an claim, loss, damage or injury to persons, domestic animals or property resulting from acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued
5. That the owner of the dog provide to the licensing authority or animal control officer information by which a dog may be identified, throughout its

lifetime including, but not limited to, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of any such methods of identification

6. That unless an owner provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of medical conditions that the owner shall cause the dog to be altered so that the dog shall not reproduce
7. Or that the dog be humanely euthanized

The owner may bring petition in the district court within 10 days of this hearing to have it reviewed by the court or a magistrate of the court.



TOWN OF SHREWSBURY

Richard D. Carney Municipal Office Building
100 Maple Avenue
Shrewsbury, Massachusetts 01545-5338

FINDING AND ORDER

Pursuant to the provisions of G.L. c. 140, §157, the Shrewsbury Board of Selectmen (the "Board") held a public hearing on Tuesday, January 7, 2020 concerning a complaint received from Todd Brodeur of 18 Rice Street, Shrewsbury, of an incident on November 6, 2019 regarding a dog named "Bina," Tag No. 2291, owned by Richard Karwowski of 17 Rice Street, Shrewsbury.

At the hearing, the Board read the notice of the hearing, received an overview of the requirements of G.L. c. 140, §157 from Town Counsel, and then swore all witnesses under oath. The Board received testimony from Todd Brodeur, Jo-Ellen Brodeur, Mr. Curtis Colonera of 11 Rice Street, Richard Karwowski, Mr. Sol Oven, a dog trainer who stated he worked with Bina on behalf of Mr. Karwowski, and the Shrewsbury Animal Control Officer, Keith Elmes. Mr. Karwowski was represented at the hearing by Attorney Jeremy Cohen. The Board also took and reviewed the following evidence:

1. The complaint letter by Todd Brodeur, including a photo of the Brodeur's dog, named "Geronimo", dated November 21, 2019;
2. An Incident Narrative Report, No. 2019000033617, prepared by the Animal Control Officer, dated November 26, 2019;
3. A written report of the Animal Control Officer to the Board dated December 30, 2019; and
4. A video submitted to the Board by Mr. Karwowski and his counsel, purporting to show the incident that occurred on November 6, 2019 involving Bina and Geronimo.

On the testimony and evidence presented, the Board found the following:

The dog Bina is a *nuisance dog*, as defined in MGL c. 140, §136A, because Bina has "threatened or attacked...a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances."

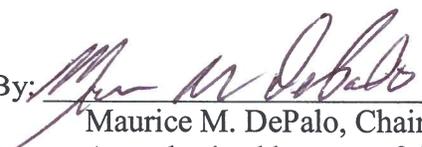
The Board deliberated and voted to Order the owner or keeper of Bina to take the following remedial actions to ameliorate the cause of the nuisance behavior:

1. The owner must have Bina complete obedience training from a professional dog trainer, approved by the Town's Animal Control Officer, said training to start within thirty (30) days from the date of this Order and the owner shall furnish to the Animal Control Officer sufficient evidence of completion of the obedience training within seven (7) months of the date of commencement of said training;
2. Whenever Bina is to be walked in public, including at parks, Bina must be securely and humanely muzzled, using a basket type muzzle, and be leashed on a non-retractable leash that is no longer than six feet; and
3. Bina shall not be allowed to roam freely in the front yard or driveway at 17 Rice Street, where there are no physical barriers. Bina may be off-leash only in the fenced-in backyard area at 17 Rice Street.

Be aware that G.L. 140, §157 (h) provides that if an owner or keeper of a dog is found in violation of an order, the dog shall be subject to seizure and impoundment by a law enforcement or animal control officer.

Pursuant to G.L. c. 140, §157 (d), if you are aggrieved by this decision, within ten days of this Order you may bring a petition in the Westborough District Court for the Order to be reviewed.

This Order is issued on behalf of the Shrewsbury Board of Selectmen this 10th day of January, 2020.

By: 
 Maurice M. DePalo, Chairman
 As authorized by vote of the Board of Selectmen
 on January 7, 2020.

cc: Keith Elmes, Animal Control Officer
 Sandy Wright, Town Clerk, Licensing Authority

Served in hand:  Date: 1/10/20


 Officer's Signature Date: 1/10/20