

BOARD OF HEALTH MEETING

AUGUST 20, 2014

Town Council Chambers of the Town Hall

CALL TO ORDER: Dr. John Straus called the meeting to order at 7:10 PM.

PRESENT: Dr. John Straus, Richard Arnold, Donna Moultrup, Interim Health Director, Kristel Bennett, Chief Environmental Health Officer, Dan Repella, Health Officer, and Karen O'Reilly, Animal Control Officer.

Minutes: Richard Arnold made the motion to approve the minutes of the July 23, 2014 meeting and it was voted unanimously.

Bemis Market – Kristel Bennett reported to the Board that Bemis Market was before the Board for a show cause hearing for suspension or revocation of Bemis Market's Permit to Operate a Food Establishment under Chapter X of the State Sanitary Code 105 CMR 590.000 for a history of repeated administrative order letters. Kristel Bennett informed the Board that the owner of the establishment emailed her the prior week stating that he might need to send a representative the night of the Board meeting. It was noted that there was no representative from Bemis Market at the hearing. The Board decided to move forward with the Administrative Hearing since the owner had requested the hearing be continued from July and was given notice of the hearing. Mrs. Bennett provided an inspection chronology to the Board. Dan Repella informed the Board that the establishment had come into compliance with the last inspection. After hearing the findings and after much discussion thereof, Richard Arnold made the following motion: "Acting under the authority of 105 CMR 590.014(B) the Board of Health hereby suspends Bemis Market's Permit to Operate a Food Establishment for one business day under 105 CMR 590.000 for failure to comply with the requirements of 105 CMR 590.000 and a history of repeated administrative order letters. In addition to the one day suspension, a comprehensive inspection will be conducted after the suspension to determine compliance with the Food Code and 105 CMR 590.000. Should repeated violations be observed during the comprehensive inspection then the owner is required to attend an Administrative Hearing at the September Board of Health meeting. The fee for the comprehensive inspection is \$75.00. Failure to comply with this order may result in a suspension or revocation of Bemis Market's Permit to Operate a Food Establishment." All were in favor. It was voted unanimously.

Dog Hearing – Present for the Dog Hearing was Lauren and Caleb Mills, residents of 50 Bates Rd., and Kathleen Higgins and Mary Limerick, residents of 29 Bates Rd. Dr. Straus called the dog hearing to order at 7:30 PM. The dog owner, Kathleen Higgins, was not present at the start of the hearing but did arrive within minutes of the start.

Ms. Bennett continued to say that the hearing was being held at the request of Karen O'Reilly. Her written request, dated August 11, 2014, stated that:

“Based on past complaints of dogs being unleashed and running at large, and recent complaints received from Ms. Lauren Underhill (Mills) that the two dogs, Benzo and Pia, owned by Kathleen Higgins kept at 20 Bates Road for being unleashed, barking, attacking and threatening attacks toward a resident and dog.

I hereby request that the Watertown Board of Health, who has been appointed the Hearing Authority for handling dangerous and nuisance dog complaints within Watertown, investigate this complaint at a public hearing to determine whether two dogs at 29 Bates Road are dangerous and/or a nuisance.”

The Moderator went on to explain that the purpose of this hearing is to determine whether the two dogs owned by Kathleen Higgins of 29 Bates Road are dangerous and/or a nuisance.

Massachusetts General Law, Chapter 140, Section 136A, Definitions states:

“Dangerous dog” a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) 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.

“Nuisance dog” a dog that: (i) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (ii) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one’s quiet and peaceful enjoyment; or (iii) 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.

Massachusetts General Law, Chapter 140, Section 157, Nuisance or dangerous dogs; orders for remedial action; appeal; violation of order:

“Any person may file a complaint in writing to the hearing authority that a dog owned or kept in the city or town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was reacting to another animal or to a person and the dog’s reaction was growly disproportionate to any of the following circumstances:

Dr. Straus indicated that the full text of Section 157 need not be read. Ms. Bennett then introduced the panel and explained the rules of the hearing. Kristel Bennett will act as Moderator, Dan Repella as the time-keeper, Donna Moultrup will take minutes, and Dr. Straus and Mr. Arnold are the Hearing Authority.

The rules of the hearing are that all persons who wish to speak must sign in, providing name, address and telephone number. Everyone wishing to give testimony will be sworn in all at once

by the Moderator. The primary speakers will be Lauren Mills and Kathleen Higgins and each will be given five minutes to speak. All other speakers will have three minutes to speak. All questions from those giving testimony must be directed to the Moderator.

Ms. Bennett conducted the swearing in of the four speakers: Lauren and Caleb Mills, Kathleen Higgins and Mary Limerick.

The Hearing Authority requested that Karen O'Reilly review the chronology of events prior to the testimony. She reviewed an anonymous complaint from 2008 that two little dogs were always running around off-leash and that people had to slam on their brakes. After Karen's intervention, the dogs were licensed and the case was closed.

In 2013, Ms. O'Reilly received several complaints from Lauren Underhill (Mills) regarding the dogs running off-leash, barking and nipping at her and her dog. Ms. O'Reilly had several conversations with the dog owner and her husband and issued several citations over the year but the complaints continued in the summer of 2013. In May, 2014, the complaints started up again until Ms. O'Reilly requested the dog hearing.

Testimony by Lauren Mills:

There have been several incidents of the Higgins' dogs, off-leash, chasing her dog. Ms. Higgins yells at her and states that she has lived in the neighborhood much longer than she has. She states that her dogs would not chase her if she were a good person; that she is a dog hater. On May 13th she and her dog were walking on the way back to their house when both dogs came at them barking and nipping; one of them slammed into her dog. Her dog did not bite back. The dog owner's husband yelled at his wife that the dogs do this all the time. She unfortunately has to pass by the dog owner's house because it is situated at the bottom of a "Y." There is no other route she can take. The dogs, as well as the owner, are aggressive. It is their responsibility to leash the dogs. Dr. Straus asked what kinds of dogs they were. Lauren said that she didn't know exactly what kind but that they were small. She said that neither she nor her dog have been bitten by the dogs. Mr. Arnold asked if the dogs chased her and her dog. She responded that they chase both her and her dog; that they are coming from the front of their house. She was asked if she has noticed other dogs being chased and she responded, a few. She moved into her house in August, 2012.

Testimony by Caleb Mills:

Mr. Mills stated that he wanted to support his wife's testimony. His wife teaches so she is home more in the summer and walks the dog. The possible confrontations cause apprehension. They have asked respectfully to leash the dogs. The owners dismiss the requests. They mock them because the dogs are small. They have not gotten the message from the citations. He and his wife are really looking for a better solution, one that will be more final. This summer it has happened to him also. He has also seen one of the dogs, off-leash, unsupervised defecating on another neighbor's lawn.

Testimony by Kathleen Higgins:

Ms. Higgins stated that she has lived in her current house since March, 2007; she lived at 33 Bates Rd. previously, which had a large backyard. The dogs were used to their surroundings and

the backyard before they moved. Now the grandchildren and the dogs live with her and there is no backyard. The dogs, Benzo and Pia, are well known, and liked, in the neighborhood. Benzo, the more confident one, would greet neighbors and their children. There was a yellow lab who use to live where the Mills now live and the dogs would play together. They consider the whole area as their territory. They are never out without family members around. She described times when different family members would go out and leave the doors open behind them and the dogs would run out, but that someone was always there. She is not aware that anyone else has described her dogs as aggressive. Since the most recent ticket and a threat of a \$300 fine, about the second week in July, she has obtained two dog enclosures which together can provide an area in which the dogs can stay when they are outside. The neighbor kids actually go inside to play with the dogs. Dr. Straus asked if she was disputing any of the statements in the testimony that had been given. She stated that she was not disputing the fact that her dogs did bark and were off-leash; she was vehemently disputing the fact that her dogs were aggressive and attacking anyone.

Testimony by Mary Limerick:

Ms. Limerick, daughter of Kathleen Higgins, gave copies of letters from neighbors to Dr. Straus. She stated that Benzo was her dog and Pia was her brother's dog. She is especially concerned about Pia being kicked during one of the incidents. She stated that Ms. Mills refused to talk about the situation with her. Ms. Mills says thing(s) to her mother and her mother gets very upset.

Hearing all testimony, Dr. Straus asked Ms. Mills if the enclosure had been working. She said that it had been working, but that they wanted to make sure that it remained in use. She said that they were better for a couple of weeks after one of the citations, but then everything returned to the way it was.

The Moderator stated that, hearing all testimony, the hearing was now closed, at 8:10 PM. She stated that the Board would deliberate and make a decision later in the evening and the decision would be available no later than September 3rd. It will be available in the Health Department and the Town Clerk's office and will be mailed to participants in the hearing.

Wonder Café – Kristel Bennett reported to the Board that Wonder Cafe was before the Board for a show cause hearing for a suspension or revocation of Wonder Café's Permit to Operate a Food Establishment under Chapter X of the State Sanitary Code 105 CMR 590.000 for a high number of critical violations documented at the August 13, 2014 comprehensive inspection and a history of repeated violations. Present from Wonder Café was Sue Chen. Mrs. Bennett provided the inspection chronology to the Board. Dan Repella discussed the August 13, 2014 inspection and the August 20, 2014 reinspection. Ms. Chen discussed the inspection and agreed to do what was needed to comply with the Health Department. After hearing the findings and after much discussion thereof, Richard Arnold made the following motion: "Wonder Café located at 58 Mt Auburn Street shall retain the services of a Professional Food Consultant who is able to speak the primary language of the staff. The Professional Food Consultant must complete monthly audits for a period of six months and train the staff in the proper procedures for maintaining compliance with the Food Code. Wonder Café shall provide a copy of the Professional Food Consultant

service contract to the Health Department by September 8, 2014. The Professional Food Consultant shall provide a copy of a completed audit to the Health Department by the September Board of Health meeting for review. Wonder Café and the hired Professional Food Consultant must attend the September Board of Health meeting to provide an update to the Board. Wonder Cafe is required to maintain compliance with Chapter X of the State Sanitary Code 105 CMR 590.000, should inspection reports reveal trends in non-compliance, repeated violations, and a high number of violations of 105 CMR 590.000 then Wonder Café's Permit to Operate a Food Establishment may be suspended or revoked before the Board of Health." It was voted unanimously.

Executive Session – The Board went into Executive Session at 8:35 PM to discuss the Dog Hearing findings. Dr. Straus closed Executive Session at 9:14 PM.

School Garden Letter – Donna Moultrup and Kristel Bennett presented a letter to the Board and held a discussion regarding the Health Department's recommendation for school gardens and the use of school garden produce in the schools. The Board reviewed the recommendation letter and asked that it be forwarded to the School Department and the he Wellness Committee.

Next Meeting: Thursday, September 25, 2014

Adjourn: Meeting was adjourned at 9:45 PM.

Respectfully submitted by Kristel Bennett, Chief Environmental Health Officer