

IN BOARD OF SELECTMEN
TUESDAY, SEPTEMBER 6, 2005

Present: Chairman Lawrence W. O'Brien, Selectmen William J. Keller, Jr., and John C. Drobinski.

The statutory requirement for notice having been met, the meeting was convened at 7:30 p.m. in the Lower town Hall, 322 Concord Road.

Opening Remarks

Chairman O'Brien referred residents to the Town's website for information on how they could aid in the Hurricane Katrina relief effort.

Chairman O'Brien reminded residents that school is back in session and urged motorists to be watchful for bikers and walkers as well as parents transporting their children to school, as this presents an overall increase of both pedestrian and local vehicular traffic.

Chairman O'Brien announced that the Reverse 911 training was complete and the system is now operational. He stated it was used recently to notify residents of DPW work in their neighborhood.

Town Manager Valente announced that Sudbury firefighters were active in assisting with Hurricane Katrina rescue efforts.

Agricultural Commission – Interview

Present: John J. Donovan, 26 Old Orchard Road.

Chairman O'Brien announced that Mr. Donovan had been unable to attend the previous interview session and had been invited this evening for that purpose.

Mr. John J. Donovan stated he had lived in Sudbury for over 40 years, noting he was not involved in agriculture, but was a concerned citizen. He stated his belief that agriculture is vital to the Town, and how it helps preserve open space for wildlife and watershed protection. He opined agriculture is a multigenerational activity and that more information on local farmers should be available.

Responding to a question from Selectman Drobinski as to why he should be appointed to this commission, Mr. Donovan stated he has great interest in the matter, and that he has time to become significantly involved, now that he is retired. He opined the commission needs people with a long term commitment to the Town.

Responding to a question from Selectman Keller, Mr. Donovan stated it is crucial to present education to today's children, to let them know milk does not come only from the supermarket, for example, and that all food items have a very natural origin. He stated further he would not want to see Sudbury turn into a bedroom community with no farming activity of its own. Mr. Donovan opined that new homeowners need to understand that agricultural enterprises are 24/7, and they should not move into homes near farming operations only to later complain about the noises, smells or activity.

Chairman O'Brien asked Mr. Donovan if he believed the Commission should serve as an advocacy group. Mr. Donovan responded yes, and that "open farms" are a good idea in order to present information

and eliminate misconceptions. He opined that even the word “farm” is difficult to define, as more innovative methods of producing food such as hydroponics can produce a great deal on a small piece of property.

The Board thanked Mr. Donovan for his time, noting appointments to the Commission would be determined later in the evening. Chairman O’Brien invited Mr. Donovan to stay for the remainder of the evening until the appointments were made.

Town Trust Fund Statements and Beneficiary Requests

Present: Andrea Terkelson, Town Treasurer/Collector and Co-Trustee of Town Donations; David Wilson, Investment Advisory Group.

The Board reviewed a report, dated August 9, 2005, from the Town Treasurer/Collector, submitting fourth quarter FY05 financial statements for the Town Trust Funds. Ms. Terkelson briefly reviewed the reports, commenting on overall performance during that time.

It was on motion unanimously

VOTED: Acting as Co-Trustees of Town Donations, to accept Fourth Quarter FY05 Trust Fund Statements, subject to audit.

The Board reviewed a report, dated September 2, 2005, from the Town Treasurer/Collector, submitting beneficiary requests from Town Trust Funds. Ms. Terkelson noted that some funds are brought to zero, while others retain a significant balance, depending on how the fund was set up and how the funds are earmarked. She noted, for example, that the Town Cemeteries fund disbursement request is approximately half of available monies.

In addition, Ms. Terkelson stated she is preparing a history of all funds for posting on the Town’s website. She opined it is very interesting to learn how each fund was created, its purpose, and general history.

It was on motion unanimously

VOTED: Acting as Co-Trustees of Town Donations, to approve requests of allocations for expenditure from the Town Trust Funds for FY2006, as presented in the Treasurer/Collector’s report of September 2, 2005, as follows:

<u>Trust fund</u>	<u>Amount Requested</u>
Gertrude Farrell	\$ 0.00
Forrest Bradshaw Memorial	\$ 135.00
Goodnow Library	\$ 20,000.00
Lydia Raymond	\$ 400.00
Rhodes Memorial	\$ 1,000.00
Annie Thorpe Fund	\$ 0.00
Cherie-Anne Cavanaugh Fund	\$ 2,000.00
Raymond Mausoleum	\$ 1,000.00
School Fund	\$ 4,568.59
Sept 11 Memorial	\$ 5,000.00
Town Cemeteries	\$ 80,000.00

At this time, Ms. Terkelson asked for the Board's acceptance of revised Town Trust Investment Guidelines, as submitted in her report of September 2, 2005. She stated this document outlines investment policy and procedures for the Town Trust Funds, revised periodically to reflect changes in laws or accounting procedures.

It was on motion unanimously

VOTED: Acting as Co-Trustees of Town Donations, to accept revised Investment Guidelines for Town Trust Funds, dated June 9, 2005.

Minutes

It was on motion unanimously

VOTED: To approve the minutes of the regular and executive sessions of August 16, 2005.

Annual Fun Run & Walk

Town Manager Valente stated this is an annual event, and noted the Police Department reported no issues with it.

Selectman Drobinski stated he would recuse himself from discussion of this matter as the event is designed to raise funds for the Eric J. Drobinski Memorial Foundation.

It was on motion

VOTED: To grant permission for the Annual Fun Run & Walk to take place on Sunday, September 11, 2005, commencing at 4:00 p.m. from Lincoln-Sudbury High School, Lincoln Road, to raise funds for the Eric J. Drobinski Memorial Foundation. (Chairman O'Brien and Selectman Keller, aye, Selectman Drobinski, abstain.)

2006 Selectmen Meeting Schedule

The Board reviewed a proposed calendar of dates for Selectmen meetings in calendar year 2006. Chairman O'Brien expressed concern that the September 20th meeting is a Wednesday so that it would not conflict with the State Primary Election on Tuesday, September 19. However, he has a family commitment on that night and would prefer an alternate date. Town Manager Valente stated she would look into an alternate date for that meeting.

It was on motion unanimously

VOTED: To approve the proposed 2006 schedule of Selectmen meetings, with the exception of September 20, 2006.

Sudbury Centre Improvement Advisory Committee – Appointments

It was on motion unanimously

VOTED: To appoint the following individuals to the Sudbury Centre Improvement Advisory Committee (SCIAC), each for a two year term to end on April 30, 2007:

First Parish	Deborah Kruskal, 136 Lincoln Road
Presbyterian Church	Eva M. MacNeill, 54 Brimstone Lane
Sudbury Foundation	Richard H. Davison, 50 Dutton Road, P. O. Box 824
Resident/Neighbor	Scott Carpenter, 38 Concord Road
Planning Board	Joseph Sziabowski, 799 Boston Post Road
Sudbury Historical Comm.	W. James Hodder, 136 Hudson Road
Historic Districts Comm.	Sandra Heiler, 16 Rice Road
Permanent Landscape Comm.	June E. Allen, 515 Concord Road
Board of Selectmen	Lawrence W. O'Brien, 687 Boston Post Road, P. O. Box 711

Fugakyu Café, 621 Boston Post Road:

Change in Manager

Change in Officers, Directors & Stockholders

Change in Premises

Present: Chia-Chow Chen; Feng Hua Chow.

At 8:27 p.m., the Board of Selectmen, acting as the Licensing Authority of the Town of Sudbury, convened a Public Hearing in accordance with Mass. Gen. Laws Ch. 138, on Tuesday, September 6, 2005, at 8:15 p.m. in the Town Hall, 322 Concord Road, for approval of the following three changes requested by Fugakyu Café Corporation, d/b/a Fugakyu Café, 621 Boston Post Road, holder of an All Alcoholic Beverages Restaurant License:

1) change in Manager from Chia-Chow Chen to Feng Hua Chow; 2) change in Officers, Directors and Stockholders, and 3) change in premises, involving expansion of the restaurant to include the unit located at the west end of the building, with the following description:

First floor: kitchen, dinning area, two function rooms, entrances north and west sides and one exit south side. Second floor: six storage rooms, office and locker room.

Town Manager Valente stated that notice of the hearing was advertised in the Sudbury Town Crier on August 25, 2005, and that abutters were notified by certified return receipt mail.

The Board reviewed the following reports:

(1) report, dated August 31, 2005, from the Health Director, approving the expansion with up to 50 seats with the following conditions: a) average weekly water usage must be maintained below 613 gallons per day; peak flow cannot exceed 1,225 gallons per day for any one day and daily meter readings will be kept for review by the Board of Health; b) seating capacity may be increased up to 50 total seats based on maintaining acceptable water usage; if usage exceeds a weekly average of 613 gallons per day, the number of seats must be reduced until the average flow is acceptable; c) all sewerage and kitchen flow will use the existing septic system for the Fugakyu facilities; and d) the exterior grease trap tank must be pumped four times a year.

(2) report, dated September 2, 2005, from the Fire Chief, recommending approval of this plan, and stating the plan appears satisfactory for fire detection and emergency lighting. Access to the building is adequate for firefighting and emergency medical purposes.

(3) report, dated August 30, 2005, from Lt. Richard Glavin, Police Department, expressing concern for adequate parking [addressed in report from Building Inspector].

(4) report, dated September 2, 2005, from the Building Inspector, stating site plan review is not required as this rearrangement of existing uses in a mixed use building does not increase the required number of parking spaces. Mr. Kelly states further the increase of seats does not result in an increase of required parking for the building, though two handicapped accessible spaces are required, one of which shall be located near the proposed accessible entrance of Fugakyu on the west side of the building.

Mr. Chia-Chow Chen briefly explained the changes in management and expansion to premises.

Selectman Keller inquired about parking with increased seating. Ms. Feng Hua Chow opined existing parking should be adequate. Chairman O'Brien asked if patrons are parking in the adjacent lot after those businesses have closed for the day. Ms. Chow stated she did not know of that happening so far.

Selectman Keller asked if there was an occupancy limit requirement. Ms. Chow stated she did not know of one. Mr. Keller asked if seats at the sushi bar would remain in the new seating plan. Ms. Chow stated those seats were not intended for indoor seating, but rather a waiting area for take out service.

Discussion about seating continued. Chairman O'Brien asked about occupancy if, for example, a portion of the restaurant were reserved for a special event, in addition to regular patrons. Mr. Chen stated they would not overfill the restaurant beyond seating capacity.

Selectman Drobinski asked about removal of the second floor stairs in the westerly section, and whether there would be enough egress in case of fire. Ms. Chow responded she did not know.

The Board asked the Town Manager to check with the Fire Chief about an occupancy limit requirement and egress in case of fire with the second floor stairs removed.

After discussion, subject to approval by the Alcoholic Beverages Control Commission, it was on motion unanimously

VOTED: To approve the change in Manager from Chia-Chow Chen to Feng Hua Chow at the Fugakyu Café, 621 Boston Post Road, as authorized by the Fugakyu Corporation.

It was further on motion unanimously

VOTED: To approve the change in Officers, Directors and Stockholders of the Fugakyu Corporation, d/b/a Fugakyu Café, 621 Boston Post Road, as set forth on Form 983; and

It was also on motion unanimously

VOTED: To approve proposed changes in the premises known as Fugakyu Café, 621 Boston Post Road, involving expansion of the restaurant to include the westerly unit of the building, subject to a report from the Fire Chief regarding a maximum occupancy requirement and adequate egress in case of fire with the second stairway to the second floor removed.

(NOTE: It was later reported that the Fire Chief stated there is no official occupancy limitation requirement, but that the restaurant should not admit more persons than seating allows. Regarding egress, he stated he would need to review the plans again.)

Dog Hearing – Gijsbertus Brandse, Owners

Present: Betsy DeWallace, Dog Officer; Paul Kenny, Town Counsel; Kevin Stevenson, 46 Atkinson Lane; Sara Sundborg, 73 Willow Road.

At 8:50 p.m. Chairman O'Brien convened a Public Hearing for the purpose of hearing testimony relative to a complaint dated August 24, 2005, by Betsy DeWallace, Dog Officer for the Town of Sudbury, against two Boxer dogs, Rocky and Ozzie, harbored by Gijsbertus Brandse at 82 Old Garrison Road.

The Board reviewed the following information:

- 1) Notarized Complaint, dated August 24, 2005, from the Dog Officer, to the Board of Selectmen against dogs owned or harbored by Gijsbertus Brandse, 82 Old Garrison Road, declaring the two boxers, Rocky and Ozzie to be of vicious disposition, as three joggers were bitten in separate incidents on May 18, 2004 and August 18, 2005.
- 2) Letters, dated August 25, 2005, to dog owner Gijsbertus Brandse, and joggers in August 2005 incident, Kevin Stevenson, 46 Atkinson Lane, and Sara Sundborg, 73 Willow Road, asking for their appearance at a Public Hearing at the Selectmen's meeting on September 6, 2005.
- 3) Report, dated September 1, 2005, from Betsy DeWallace, Dog Officer, submitting information on incidents on May 18, 2004, January 12, 2005, and August 18, 2005, involving two Boxers named Rocky and Ozzie. Ms. DeWallace notes Mr. Brandse utilizes an electric fence to control the dogs, but she recommends further measures. She suggests another fence be installed on the property, in addition to the invisible fence, to keep the dogs confined to the property.
- 4) Reports from the Sudbury Police Department, reporting on incidents involving two Boxers, Rocky and Ozzie, in January 2005 involving the biting of a delivery man by Ozzie and August 18, 2005.

Mr. Paul Kenny, Town Counsel, stated the purpose of the hearing was to address a complaint against two dogs that have repeatedly bitten joggers and other individuals. He stated the process includes review of the complaint, and then a hearing by the Selectmen to consider the complaint. Testimony is elicited from all parties, and the owner has an opportunity to respond. Mr. Kenny stated that, after hearing testimony, the Selectmen have several options: 1) determine no action is necessary; 2) order the dogs restrained in excess of existing leash law. If dogs are loose after this order, any damage done is assessed at three times the cost. The owner is liable for any damage a dog does; the only defense is if a dog reacts after provocation; 3) the dogs can be banished, or 4) the dogs can be declared vicious and ordered to be destroyed.

At this time, Mr. Kenny swore in the following individuals: Betsy DeWallace, Sara Sundborg, and Kevin Stevenson.

Chairman O'Brien determined the dog's owner, Gijsbertus Brandse, was not in attendance. Town Manager Valente stated the owner was notified of the hearing by certified mail, return receipt. She had no communication from the owner as to whether he was planning to attend the hearing.

Selectman Drobinski asked if the hearing can proceed if the owner is not present. Mr. Kenny stated the hearing can proceed, and testimony/evidence can be heard, in order for the Selectmen to make a decision. If a decision is made, the owner will be notified and he has ten days to appeal the decision. Mr. Kenny clarified that, if the Board orders a dog to be restrained, the Police Department has the authority to shoot the dog if it is behaving in a dangerous manner. He acknowledged such an action most likely would not occur, but the authority exists. The police officer is indemnified under state statute, so no action could be taken against the police officer.

Mr. Kenny asked Ms. DeWallace if she was familiar with the dogs in question, Rocky and Ozzie. She responded she had not met them personally, had attempted to do so this past weekend, and was unable to do so. She said, "I just think these two dogs working together, at some point, are going to do some serious damage."

Mr. Kenny: Can you tell the Selectmen about these two dogs?

Ms. DeWallace: It is basically bites on moving objects, people jogging, or whatever. The two of them together could pull someone down. They haven't but they certainly could. They are good sized dogs.

Chairman O'Brien: What is the size of these dogs?

Ms. DeWallace: A medium sized dog, very quick, 60 to 80 pounds on average. They are both neutered males.

Mr. Kenny: Are both dogs registered in Town? Have you had occasion to check the registration?

Ms. DeWallace: They are both registered, and the paperwork lists Mr. Brandse as the owner, which is why he has been listed on the dog complaints.

Mr. Kenny: Have you seen the police reports regarding these dogs and recent incidents?

Ms. DeWallace: Yes, I have seen the reports.

Mr. Kenny: Were these reports initiated by a police officer investigating the dogs? And, if so, under what conditions?

Ms. DeWallace: The officer was investigating the dogs biting people in two separate incidents. Mr. Kevin Stevenson and Sara (Sally) Sundborg. I met Mr. Stevenson tonight, and have talked with Mrs. Sundborg.

Mr. Kenny: Let the record show the police reports are dated January 12, 2005 and August 18, 2005.

Ms. DeWallace: The January incident involved a delivery man, while the August incident involved Mr. Stevenson and Mrs. Sundborg, approximately 5 minutes apart.

Selectman Keller: Let the record show that the Board received a packet containing all pertinent reports and documents. This hearing involved the August biting incidents only. (addressing Ms. DeWallace) Please tell us about the first incident involving the dogs, in 2004, and what the disposition was at that time?

Ms. DeWallace: That incident involved a doctor from Colorado, and was handled by the Assistant Dog Officer Ms. Paula Adelson. The dogs were quarantined, the owner fined, and I believe the owner appealed the fine.

Mr. Kenny: Can you look at the documents and see if it refreshes your recollection?

Selectman Keller: I want to know if any fines were paid.

Ms. DeWallace: I really don't know, but I don't think so.

Mr. Kenny: Let me call your attention to another document. Let's look at a letter from Ms. Paula Adelson to Dr. David Trevarthen. Does it appear that the owner attended the hearing?

Ms. DeWallace: It appears he did not, according to Paula's comments in the letter.

Mr. Kenny: Now the next incident occurred on August 18? Is that a fair statement? Is that the next incident?

Ms. DeWallace: The next incident was in January of 2005, involving a delivery man at the house, who was bitten by one of the dogs.

Mr. Kenny: Was that incident reported to the police and do you have that document before you?

Ms. DeWallace: Yes, it was reported, and I do have the report.

Chairman O'Brien: On the incident with the doctor from Colorado, the documents indicate the fine was appealed, and the court date postponed as the Assistant Dog Officer was unable to attend. A letter of August 18 from Ms. Adelson indicated the dog's owner did not attend, and urged the doctor to sign a complaint order. What happened with that process?

Mr. Kenny: I am assuming that the District Court has issued a notice on the complaint, and we have not been notified, or Mr. Brandse did not appear. We only know he did not pay the fine. He is already in contempt and in default by failing to appear. Failure to appear is a civil infraction; failure to pay the fine after non-appearance is a criminal infraction. At this time, Mr. Brandse appears to have both civil and criminal infractions.

Selectman Keller: Any fine on the January incident?

Mr. Kenny: No, there was not.

Selectman Keller: Let's hear from the witnesses so they can tell us what happened. (addressing Mrs. Sundborg) Can we assume your incident occurred first?

Mrs. Sundborg: Yes, I was first. I was coming up Old Garrison from French, and the two dogs came out. One came out, and he started growling at me, really ferociously. He bit my ankle, and the other dog came out and bit my wrist. I kept my hands like this (motioned with hands in front of her) walked backwards and kept yelling to Stay, Stay. I got away from their driveway and waited for a car to come by, and then I heard yelling, really scary yelling. He was yelling as much as he could. I heard the dogs barking and everything. I went to a nearby white house and asked a woman to call the police as the dogs were attacking

this man. The woman said she had had trouble with these dogs before, and she said she would call. I came out of the house and didn't hear the dogs barking anymore. So I walked up Old Garrison, came upon Mr. Stevenson and we talked about the dogs. I said I was going to call the police.

Mr. Kenny: Can you tell me where did the dogs come from?

Mrs. Sundborg: They came down their driveway and out into the road.

Mr. Kenny: Do you know who owned the home?

Mrs. Sundborg: No, I did not know who owned the home. I'd seen the dogs before, usually in the back yard. I knew they had an electric fence in the front yard. They are very scary. I saw a neighbor leaving his house one morning, and asked if he knew who the owner was. A few days later, I was running by the house, and I saw the owner, and he stopped his car to ask if I had gotten bitten. I told him his dogs were the fiercest I'd even seen. He said he was sorry, that he had the fencing and would try to get more fencing. They were scary. I've run that road for 29 years now. They've only lived in the house about six years or so.

Chairman O'Brien: Do you know how long the dogs have been there?

Mrs. Sundborg: I think a couple of years at least.

Selectman Keller: My wife mentioned this is your usual route. She usually walks it. Have you seen these dogs on the property?

Mrs. Sundborg: I've seen them on the property, and heard about them from other runners who warned me about them.

Selectman Keller: Do you know what the electric fence collars look like on the dogs?

Mrs. Sundborg: No, I do not.

Selectman Keller: Typically they have a black box on them at the bottom, about one inch square. Many companies have a green collar with a black box with prongs on it that deliver the electric shock.

Chairman O'Brien: When the dogs came off the property, did they come out of an open garage door or anything like that?

Mrs. Sundborg: No, not that I could see. I think they were on the driveway and they just came out. The driveway is pretty long.

Chairman O'Brien: Typically an electric fence is buried under the grass.

Selectman Keller: Yes, it has to make a circumference around the property.

Mrs. Sundborg: He told me that sometimes electric storms play havoc with the collars. I don't know if that is true.

Chairman O'Brien: Did you require any treatment?

Mrs. Sundborg: No. I don't think electric fences work with those dogs.

Chairman O'Brien: Have you changed your run around, time of day or anything?

Mrs. Sundborg: I knew they were on quarantine, and then we were away.

Chairman O'Brien: I wouldn't want you to change something you have been doing for 29 years.

Selectman Drobinski: I have heard electric fences don't always work. If the dog sees something he really wants to go after, he will go through the fence. Sometimes it works, sometimes it doesn't. It's not an adequate deterrent, especially with larger dogs.

Selectman Keller: You can get bigger collars with bigger prongs. It's a training tool, and if the dog is well trained, it works pretty well. If they are not well trained, or if the owner is non consistent with the animals....once the dogs truly learn, the dog does not even have to wear the collar. I have an electric fence, and the dog doesn't go near the fence. Obviously there is a problem here.

[Mrs. Sundborg leaves the witness chair]

Mr. Kenny: The delivery person attacked in January was Mr. Jose Yeb of Randolph, Mass. He was working in Sudbury at the time.

Mr. Stevenson takes the witness chair.

Mr. Kenny: Can you tell the Selectmen your name and address?

Mr. Stevenson: Kevin Stevenson, 46 Atkinson Lane.

Selectman Keller: Tell us what happened.

Mr. Stevenson: I typically run from Atkinson down Dutton Road to Old Garrison up to French and back up. It so happens this morning as I was going through Old Garrison and it all happened so suddenly that I have two dogs jumping on me. One jumped, I guess took a nip off the side of my ribcage, and the other dog bit my calf, and the one that jumped bit my other calf. And you're right, I was screaming for someone to take these dogs off me. It was kind of a shock at the time. You asked about the size of the dogs. I guess when you have two fairly large dogs coming after you, they're big. After that, I do recall, that the dogs stopped and then raced back onto the property. A little verbal exchange between myself and a person from the house, and they asked if I'd been trespassing. I said no, I was in the middle of the road going up to French. I was pretty shocked and started walking home. There was a police officer/cruiser driving by and I flagged it down. We talked about it, the officer helped me get some medical help and took me home. I have often been hesitant to run down that road, but did notice a bunch of wild turkeys on the road that didn't seem to be bothered.

Selectman Keller: Did you happen to notice if they were wearing the collars?

Mr. Stevenson: No, I didn't notice. There was a lot going on.

Selectman Drobinski: They're short-haired dogs and I think you'd notice if they were wearing the collars.

Mr. Stevenson: That's true.

Selectman Keller: Can't work if you don't put it on the dog. But it's not enough for these dogs.

Mr. Stevenson: These folks did have the electric fence that went under the driveway as well as around the yard. I know the driveway had been replaced recently.

Selectman Keller: They can get through. The whole idea of these fences is to provide a barrier, but if they run through a few times, they don't mind the zap. They get zapped going through, and zapped coming back through.

Mr. Kenny: Did someone call the dogs off?

Mr. Stevenson: I didn't actually hear someone, but they did run back, and I think someone was waiting for them in the driveway. It's a pretty long driveway.

Mr. Kenny: Did they come down to inquire as to your condition?

Mr. Stevenson: No, there were a few words on my end, and the only response was whether I'd been on the property. As a matter of fact, I don't know if they knew I'd actually been bitten.

Selectman Drobinski: Did they also hear your yelling?

Mr. Stevenson: I'm sure they did. The bite marks were fairly visible too.

Mr. Kenny: Is there anybody here representing the dog owner? [No response] The hearing procedures list that the Board may now make a recommendation relative to these dogs. If I may sum up what we've heard here today, these dogs bit and caused someone to go to the Mass General Hospital in 2004, again in January of 2005. In 2004, they were cited under town bylaw, a fine was appealed, but they did not care enough to appear in court and have done nothing thus far. In August of 2005, Mr. Stevenson did say someone was at the end of the driveway, and though they may not have seen he was bitten, they did inquire if he had been on the property, which, incidentally, if he had been, is not an excuse for the dogs to bite anyone. The person harboring the dogs was notified by certified mail, return receipt returned to the Town, and they have not shown any consideration for the dogs' behavior and circumstances. I would suggest that the only course of action is to order the dogs destroyed. To banish them would be to send the problem to another community, which could be with more disastrous results. From what we've seen thus far, it is unlikely these people would obey any orders you issue.

Selectman Keller: If we were to order them restrained, and then they were observed by a police officer on the loose, could they be shot and destroyed on sight?

Mr. Kenny: Yes, they can do that, but I only said that to tell you what the standpoint is from the law. But I find it difficult to believe that would happen unless the officer were being attacked themselves.

Selectman Drobinski: I don't think they would discharge a firearm. I would recommend that the Board declare these dogs are vicious, that a person was injured, and come up with a recommendation from that.

Selectman Keller: I move that we declare the two dogs in question as “vicious” under our bylaw.

Selectman Drobinski: Second.

Chairman O’Brien: It has been moved and seconded that the dogs be declared “vicious”. Any further discussion on that declaration? All in favor. [Ayes all around]

Selectman Drobinski: I hate to have any dog destroyed. I’m sure these animals are loved by their family. Unfortunately we had two adults attacked, and I mean by that, that it was not children or an elderly person.

Mr. Stevenson: I’d hate to see them hurt too. I’m a big dog lover. If there is some way, I’m really disappointed the owner has not shown up tonight, to demonstrate that these dogs are not a problem.

Selectman Drobinski: We have to make a decision. If it was a young child or elderly person, it could have been really serious. We have banished only one dog, or was it two?

Ms. DeWallace: One incident, two dogs.

Selectman Drobinski: The individual attacked was bitten on the face and seriously injured. We could order further restraint, and ask the family to come in to talk about it.

Chairman O’Brien: The reason I asked about the licensing, is that we have here two people who are runners, fairly fit, strong, and in one incident, the skin was broken, and a visiting family [the Colorado family], plus the delivery person. While I agree with you that destruction is not my first choice, there seems to be a pattern of behavior. I think we also have owners who a) cannot be responsible in controlling their dogs, and b) have no regard for the legal process and appear in court. It takes some nerve to not appear in court. I think we would really be testing our luck to require a kennel or high fence, as dogs are pretty ingenious in finding ways to get out, dig under it, gnaw through it, and there is always the chance that a door is open. I see a pattern from the dogs, and a pattern from the owners.

Selectman Keller: What’s the significance of our ordering restraint of the dogs, in terms of the owners?

Mr. Kenny: Ordering restraint of the dogs is legal notice to restrain the dogs completely, in addition to what the bylaw orders. Restraint would require the dogs be kept inside the house or fencing put up to accomplish that.

Mrs. Sundborg: It would have to be a serious enclosure to make sure they cannot escape, and have the Dog Officer check it out.

Mr. Kenny: In another incident, an enclosure was ordered, Betsy looked at it and decided it was a good fence, and the dogs dug under it, and they ended up putting in concrete. Those owners showed up at the hearing and tried to work with us to resolve the matter.

Selectman Drobinski: What was the last dog hearing we had?

Selectman Keller: Sulkowsky. But he didn’t bite anyone.

Selectman Drobinski: He was just running around the neighborhood visiting people. But he was also a big dog, and scary looking.

Ms. DeWallace: He would just run around town, like he owned it.

Chairman O'Brien: Well, we issue this decision and they can appeal our decision?

Mr. Kenny: Yes, they can appeal the decision to the District Court in Framingham. They will have a hearing before a Clerk Magistrate, and if they don't like that determination, they can appeal that to the judge.

Selectman Drobinski: We know that process already. [pause] It's not a happy situation.

Chairman O'Brien: It's difficult that the owners are not here, made no attempt to contact, not a phone call, email, or even snail mail, and apparently, from reading all the correspondence, there would have been at least one grown child who could have come down, even if the owner were away.

Selectman Drobinski: They could also have asked the hearing be continued. I just feel that we shouldn't really take the chance in allowing restraint, and then having something happen. It's just not a good situation, the viciousness of the attack, the two dogs together.

Chairman O'Brien: It's that pack mentality. Betsy, is this breed on the "vicious" list?

Ms. DeWallace: I don't think so.

Mr. Kenny: If you look at Paula Adelson's letter, she mentions that the breed is on that list.

Chairman O'Brien: I understand what you're saying. Mr. Stevenson and Mrs. Sundborg, that area is a mixed population, from the very young, babies in strollers to senior citizens. It's an area where your kids could conceivably be walking over to the Fairbank Center, using walkways, and such.

Selectman Keller: Can we order them destroyed, but give them an opportunity to come to the next meeting to discuss it?

Selectman Drobinski: If you do that, then order them restrained totally in the meantime. If they don't show up at the next meeting, then order the dogs destroyed. They can explain to us why the dogs behave as they do.

Selectman Keller: And what they're doing about it.

Selectman Drobinski: I would agree with that. Order the dogs restrained, can't get out of the house, if they are seen on the street, they are picked up. If the owners do not show up at the next meeting, we order the dogs destroyed.

Chairman O'Brien: Can we structure that in such a way that, if they were to be picked up by the Dog Officer in the meantime, they would be held until the hearing?

Selectman Keller: Can we do that?

Mr. Kenny: What I would suggest is you order the dogs restrained, continue the hearing to the next meeting, and advise them that the clear indication is that they will be destroyed if there is no further information as to why they should not be put down. That would do two things: 1) notify them there is potential they will be destroyed, they will have notice, and 2) gives them an opportunity to come defend them. In the meantime, order the dogs restrained. Under the statute, they can be picked up and what's going to happen then, is that the dogs cannot be released without a court order. We can hold them without any liability. You still have all your options open.

Chairman O'Brien: I would like to add something to that. I would like it to be defined as "house arrest", that they are in the house all the time except to be walked, and then always on a leash. That's the only option. The electric fence is not an adequate deterrent. And when on the leash, controlled by an adult who can handle the dogs. And be restricted to the owner's property.

Mr. Kenny: I think it's perfectly appropriate for the Board to determine the manner of restraint.

Chairman O'Brien: Will the letter be sent from your office?

Mr. Kenny: My office will draft it for sure, and it may come from my office or the Town Manager's.

Chairman O'Brien: I move we order the dogs to be totally restrained, within the house, and when being walked, always on a leash outside the house. And that the hearing is being continued to the 20th, and at that time a final decision will be made as deemed appropriate.

[At this time, there was brief discussion relative to scheduling the continued hearing on the 20th of September. The time was fixed for 9:15 p.m.]

Chairman O'Brien: In the letter, I would not mince words that the Board is prepared to have the dogs put down.

Mr. Kenny: We will make sure the owners are aware of the gravity of the situation.

Town Manager Valente: In order for this letter to be sent out in a timely manner, perhaps you want to designate the Chairman to approve it on behalf of the Board.

Selectman Keller: Can we have a police officer deliver it?

Selectman Drobinski: I move we authorize the Chairman to edit and approve the letter documenting these proceedings and to have the letter delivered to Old Garrison Road.

Mr. Kenny: May I suggest you have the Police accompany the Dog Officer?

Chairman O'Brien: Yes, include that.

It was on motion unanimously

VOTED: To declare the dogs as vicious and order that the dogs be restricted at all times to the inside of the owner's dwelling except when they are required to be walked for hygienic purposes, at which time they are to be restrained on a suitable leash; and it was further

VOTED: In the event that the dogs are not confined in accordance with this Order, any officer or enforcement authority is directed to pick up and confine them at a suitable place or to destroy them in accordance with the provisions of M.G.L. c. 140, s. 164; and it was further

VOTED: To continue this hearing until 9:15 p.m., September 20, 2005, to provide an additional opportunity for Dr. Brandse to give testimony after which the Selectmen will deliberate further in this matter.

The Board of Selectmen directed that it be made clear to Mr. Brandse that, based upon the history of attacks and evidence provided at this hearing, in meeting its responsibilities to protect the future safety of residents and visitors, **it is the Board's intention to order that the two Boxer dogs be destroyed.** The owner should further be advised that the hearing is to be continued on September 20, 2005, to allow him the opportunity to convince the Board otherwise. Failure of the owner to appear will not prevent the Board from finalizing its decision.

The hearing concluded at 9:52 p.m.

Agricultural Commission – Appointments

The Board reviewed a letter, dated August 26, 2005, from the Agricultural Steering Committee, with additional recommendations as to appointments. The Board briefly discussed various individuals and what they could bring to the Commission. Town Manager Valente will research whether Associate Members would be allowed, given that the Commission was created by Town Meeting vote.

After discussion, it was on motion unanimously

VOTED: To appoint the following individuals to the Agricultural Commission:

Karen Hodder, 136 Hudson Road, for a two-year term to end September 6, 2007
Laura Bartlett Abrams, 24 Goodman's Hill Road, for a three-year term to end September 6, 2008
Jennifer Churchill, 999 Concord Road, for a two-year term to end September 6, 2007
John Donovan, 26 Old Orchard Road, for a three-year term to end September 6, 2008
Meghan Taylor, 246 Horse Pond Road, for a one-year term to end September 6, 2006

Sudbury Housing Authority Report

The Board reviewed the following information:

1) report, dated September 6, 2005, from the Town Engineer/DPW Director, regarding the Sudbury Housing Authority Report dated July 26, 2005, with the following comments: a) most Town-owned land has been considered several times and he knows of no other suitable Town-owned land, b) replacing units in North Sudbury makes sense, but the area is in Zone II and would be restricted to discharge of any sewerage disposal system no greater than 550 gallons per day, and c) does not recommend CPA funding to buy 40B units to use as rentals as there are inherent problems in renting. Mr. Place further recommends the SHA re-evaluate the DPW site, Robbins Road, Old Framingham Road and lots in tax title before seeking CPA funding.

2) report, dated August 10, 2005, from the Town Planner, with the following comments: Initiative 2: could be done with minimal disturbance to neighborhoods with slightly larger replacement units and noting construction costs to renovate may be slightly higher than new construction; Initiative 3: not recommended

-- home ownership appears to be a greater need than rental housing, and these units would not increase our affordable housing stock; Initiative 1: one previously considered parcel may prove to be adequate, and opines more parcels may fit criteria – suggests funding be sought to investigate further.

3) report, dated August 10, 2005, from the Conservation Coordinator, recommending the Selectmen not support any of the initiatives as the proposed plans are contrary to Master Plan recommendations, or not fiscally sound, and more creative thinking and process is necessary. She offered several thoughts and recommendations.

4) report, dated August 31, 2005, from the Health Director, stating: North Sudbury Home Replacement Project will be limited by the Title 5 restrictions in a Zone II aquifer protection area. The existing houses are grandfathered for the number of existing bedrooms but an increase in the number of bedrooms for a duplex or triplex must meet 10,000 SF of lot area per bedroom. In most cases they may only be able to replace what they have. If I receive a list of addresses , I will look at the lot sizes and number of existing bedrooms.

Discussion. The Board wanted Town Counsel's opinion on whether the Board of Appeals can require a 40B developer to sell units to the SHA, and could SHA then offer them as rentals or if home ownership would be required. The Board also wanted to know if the SHA had funding sources other than CPA funds.

Cable Television Franchise – Verizon

Town Manager Valente asked for the Board's input on whether the Town should send another letter to officials regarding the proposed changes in the licensing process for cable television franchises, in response to a communication from the Jeff Winston, Chairman of the Cable Television Committee on the matter.

After discussion, it was agreed to send a second letter to elected officials restating the Town's position, expressing concern over the proposed legislation which, if passed, would change licensing processes for cable television franchises and eliminate any control communities currently possess.

Colonial Fair and Muster of Fyfes and Drums

It was on motion unanimously

VOTED: To grant a special permit for the Companys of Militia and Minute of Sudbury to hold a Colonial Fair and Muster of Fyfes and Drumbs on the grounds of the Wayside Inn from 10:00 a.m. to 5:00 p.m. on Saturday, September 24, 2005 (rain date September 25), subject to meeting the requirements of the Police, Fire and Health Departments and obtaining permits for any tents from the Building Inspector.

Volunteer Recognition Reception – September 17

Town Manager Valente announced that the Volunteer Recognition Reception will be held from 11:30 a.m. to 12:00 noon on Saturday, September 17, as part of Sudbury Day.

Executive Session

At 11:05 p.m. it was on roll call

VOTED: To go into Executive Session for the purpose of advising the Town Manager relative to contract negotiation. (Chairman O'Brien, aye, Selectman Keller, aye, Selectman Drobinski, aye).

Chairman O'Brien announced that regular session would not reconvene following Executive Session.

There being no further business, the meeting adjourned at 11:17 p.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk