

TOWN OF HIGHGATE

Selectboard Mtg.

Vicious Dog Hearing

October 26, 2016 @ 6pm

Approved Minutes

NOTE: All actions taken are unanimous unless otherwise stated.

A. Call to Order & Pledge of Allegiance

The meeting was called to order by Chair Chris Yates @ 6:00pm, followed by the Pledge of Allegiance.

Highgate Selectboard Members – Chris Yates, Chair; Sharon Bousquet, Vice-Chair; Randy Connelly; Josh LaRocque; Bruce Butler

Highgate Office Staff – Wendi Dusablon, Town Clerk; Heidi Britch-Valenta, Town Administrator

Public / Other – Kelly Fiorini; Alex Leslie – Local 22/44 News; Vonnie Lamotte – ACO; Melissa Cook; Kathleen Cook; Deborah Allen; Ben Lowell – Constable; Joseph Fiorini; Jeremy Murray; Tom Benton – St. Albans Messenger; Christine Brock; Stephen Brock; Irene Johnson; Jere Johnson; Aaron Barden; Vicki & Tameka Stetson; Richard Wilkens; Herbert Lampman; Nicole Lampman; Jeff Towle – Health Officer; Sharon Mosher; Brian White; Kristy Brow – Asst. ACO; Erin Hakey; Mike Kelly; Michael Wells; Trudy & Todd Booker; Henry Banyea; Danny Ives; Roger Cunningham; Kellie Uzell; Eliza Larson – WCAX News; Gilbert Tremblay

B. Public Comments

None

C. Vicious Dog Hearing – 21 Park Street, Apt. 3

Chris Yates began by reading aloud from the meeting notice for this hearing. Chris asked for any conflict of interest regarding this proceeding. Randy Connelly acknowledged that he and Kelly Fiorini work for the same agency, but do not know each other personally. There were no objections to Randy participating. The incident took place on Friday, October 21, 2016. Brian Cook, father of Kelly Fiorini, contacted the town by phone on Monday, October 24th. A written complaint from Mr. Joseph Fiorini, Kelly's husband, was sent to the town via email with photos. This was also received on Monday, October 24, 2016. Chris read Mr. Fiorini's complaint aloud. On the afternoon of October 21st at approximately 2:45pm the town had received a fax from NWMC regarding the incident, as required by law. The fax was hardly legible. The only part we could read was "Park Street" and that there were three dogs involved. From that we were able to tell that the dogs likely belonged to Michael Kelly of 21 Park Street, Apt. #3 in Highgate. Highgate ACO, Vonnie Lamotte, made contact with Mr. Kelly as well as Mrs. Fiorini over the weekend with regard to the incident. This meeting was noticed on Monday, October 24th. Because of the short timeline to hold this hearing, everyone was noticed by phone, email, some by mail, and also in person by the ACO and Constable. The notice was also in the paper, posted around town, on our website, FaceBook page and digital sign. On Tuesday, October 25th we received, via email, the police report from trooper George Rodriguez. Chris read aloud from the VSP report. This report also included a photo of Mrs. Fiorini's wounds to her forearm. Chris Yates swore everyone in that would be giving testimony at this hearing. Mrs. Fiorini spoke to the incident. She stated that she had stopped to the location (21 Park Street, Highgate) to visit with a friend and smoke a cigarette. The three dogs, pit bulls or pit bull mix dogs, were tied up outside. These dogs belong to Michael Kelly who lives in unit #3. The three dogs are; Saige, a large black colored male; Bella, a small black & white colored female; and Tyson a large brindle colored male (7 months). Saige and Bella are registered with the Town of Highgate for 2016 and were current with their vaccinations at the time of registration. Tyson is not registered with the Town of Highgate and Mr. Kelly stated that he has not received any vaccinations. Gilbert Tremblay is the owner of the property at 21 Park Street in Highgate. This is a six unit multi family dwelling that sits on 1.5 acres. Mr. Tremblay was present for this hearing. He does not want the dogs to remain on the property and believed this is the third bite incident involving these dogs, but this is the first one reported to the town. Mrs. Fiorini

stated that the dogs became agitated, although she did nothing to provoke them. Mr. Kelly attempted to restrain the dogs but because all three were attached to one lead he was unable to hold onto them. The lead slipped out of his hand and they attacked Mrs. Fiorini. The cable became entangled in Mrs. Fiorini's legs and feet and she was unable to get away. The dog owner, Mr. Kelley, also became entangled. It took approximately five minutes for him to get control of the dogs. Mrs. Fiorini crawled back to her vehicle and was able to call 911. She was transported to the hospital via ambulance. Trooper Rodriguez responded to the call. His report states that the victim told him that all three dogs had attacked her in the yard at 21 Park Street. Trooper Rodriguez left a voice mail message for Highgate ACO Vonnie Lamotte. Mrs. Fiorini was treated at NWMC for puncture wounds and lacerations to her back, legs, head and arms. She received 18 stitches and this was reported to the Town of Highgate via fax, received later at approximately 2:45pm on Friday, October 21st. The fax was of very poor quality, but the information we could get from it was forwarded to the health officer and ACO for follow up over the weekend, which was done. The ACO ordered the dogs quarantined for ten days in the care of Mr. Kelly, which is protocol after any dog bite. This hearing was noticed and all interested parties and abutting land owners were notified. At this hearing, other residents of 21 Park Street expressed fear towards the dogs. Trudy Booker avoids going outside when she knows they are out. Vicki Stetson's young daughter stated she is afraid of them and said the cable they are on is able to reach their front porch. Aaron Barden stated that he has had altercations with these dogs and his jacket was torn. Mr. Barden did inform the dog owner of this incident, but not the town or ACO. Todd Booker will not put his own dogs outside on the lawn because of Mr. Kelly's dogs. Michael Wells lives next door and stated the cable is long enough for these dogs to be on his property also. The dogs have also been seen out of the control of the owner and off the property on more than one occasion. None of these instances have been reported to the town or to the ACO. Jeremy Murray is a member of the nearby church and expressed safety concerns in this high traffic area. He fears that someone could accidentally wander into the area of these dogs. Several family members of the Mrs. Fiorini's were present. Her mother, Kathleen Cook, requested that the dogs be put down. She is an animal lover, but knows had this been a smaller person they could have been gravely or fatally injured. Mr. Kelly stated that the dogs were on his premises at the time of this incident and that he does have a "Beware of Dog" sign. The Selectboard asked questions of Mr. Kelly including any training the dogs may have had and the amount of space he has to contain these dogs safely and effectively. The space is minimal, and the outside space is shared, there are six units in this building. He has looked for a home for Tyson, the youngest dog. Since he brought Tyson into the home it has not been a good situation. The female dog was in heat and the male dogs were fighting for dominance, which likely contributed to this incident. Kathleen Cook provided a photo she took today showing that the dogs were outside the home on their lead, and were not being quarantined inside the home, as instructed. Mr. Kelly said he was right on the porch watching them and that the porch is approximately 50' from the road and the lead they are on is about 25' long. Mr. Kelly describes Saige as very strong and dominant but further stated that it was Tyson that did all the biting in the attack. Mrs. Fiorini disagreed with that statement. She said the two male dogs were definitely involved in the attack and that the female might not have been involved. But because they were all on the same lead, she could have been getting dragged around by the males. The landowner, Mr. Tremblay, has been aware of the problem with these dogs for some time, but has not requested that the dogs be removed from the property. Kristy Brow, Assistant ACO, feels that if the dogs were neutered / spayed and properly trained that they could possibly be rehomed. Bruce Butler disagreed with Kristy about neutering the dogs. There was some question on whether the dogs should be quarantined with Mr. Kelly or elsewhere. There was some conversation about whether FCAR will take dogs in that have exhibited vicious behavior. Jeremy Murray does not believe that Mr. Kelly is properly equipped to deal with the dogs. Mr. Kelly stated he would not justify what happened and he felt terrible about it. Mr. Kelly also said he had been nipped by the Booker's dogs in the past. It was noted we were not here to discuss those dogs. Brian White is a family friend of Mrs. Fiorini and wants the board to think long and hard on this issue. Other neighbors and tenants are fearful of them. He feels pit bulls get a bad rap, but also feels that once an animal bites they will continue to do so unprovoked. Vonnie noted that neither she or the town have even gotten a complaint from any neighbor or tenant in that building regarding the vicious nature of the dogs. We can't help if we don't know. Mrs. Booker stated

that the landlord, Mr. Tremblay, does not even want the dogs there. She does not want to see the dogs die, that is not the answer. She wants them rehomed and trained. Mr. Tremblay agrees, they need a different home. Rich Wilkens, neighbor, suggested the board do a site visit and see the property to have a better visual and perspective. Mr. Kelly said the driveway on the side of the building is his alone and no other units use it. It is a good idea, but already dark for the night. Some in the audience scoffed at this, saying all they need are headlights. Mr. Tremblay said one dog would not be a problem, but three is ridiculous. Mr. Fiorini added that if the dogs are rehomed and put in the wrong home someone else could get bit. He doesn't have to live in Highgate, but do we want to go through this again with another person getting bit or attacked? Kathleen Cook stated that it sounds to her like the dogs have more rights than a human does. Mrs. Cook feels that if her husband had not contacted the town on Monday, October 24th that this entire thing would have been swept under the rug. Heidi Britch-Valenta responded that the Selectboard has an ordinance to follow as well as state statutes. This hearing was not just prompted by her husband's phone call or Mr. Fiorini's email. The town has protocol to follow, and we do. We have had dog hearings in the past and there will be dog hearings in the future. Irene Johnson asked about our ordinance and if Highgate has a leash law. Highgate does not have a leash law. Kristy Brow read something from the internet regarding a "one bite rule". It was noted that what Kristy was reading was not part of Vermont statute. Chris Yates pointed out that as a landlord, Mr. Tremblay can be held liable, because he is aware there is an issue. Mrs. Cook added that the same holds true for the town. Jeremy Murray spoke to holding everyone in the room accountable and referred to priority function and failure to take action. Sharon Bousquet stated that the board takes this very seriously, no one thinks this is a joke. Mrs. Fiorini acknowledged that she knows this, adding that her family just wants the best for her. Mr. Tremblay does not want the dogs to die, he wants animal control to find them good homes, separately. Kristy has already reached out to some contacts she has. The dogs are currently under quarantine right now for ten days. Chris clarified that quarantined means in and out, not tied up outside. Chris also noted that this is a unique situation. This building has six units with several families all under one roof sharing outside space. Prior to this incident we did not have any history on Mr. Kelly or his dogs. Mr. Kelly stated he had a new restraint for the dogs, it is stronger and set up differently. There was no further testimony. Chris noted that the board will go into deliberative session and will issue a written response to Mr. Kelly (dog owner), Mrs. Fiorini (victim) and Mr. Tremblay (property owner) within a few days. Mrs. Booker asked if the other tenants in the building will be notified. Anyone that wants to be notified should leave their contact information with Wendi Dusablon, Highgate Town Clerk. Chris thanked everyone for attending this evening.

D. Other Business – if needed

None

E. Deliberative Session

Motion by Chris Yates to close the hearing @ 7:05pm and to enter into deliberative session to discuss the Vicious Dog Hearing at 21 Park Street. The motion was seconded by Sharon Bousquet – **APPROVED.**

Present for deliberative session: Chris Yates; Sharon Bousquet; Randy Connelly; Josh LaRocque; Bruce Butler; Heidi Britch-Valenta; Wendi Dusablon; Vonnice Lamotte; Kristy Brow; Jeff Towle, Ben Lowell.

Motion by Chris Yates to exit deliberative session @ 8:19pm. The motion was seconded by Josh LaRocque – **APPROVED.**

Motion by Chris Yates to issue an order to impound Saige and Tyson for ten days at Franklin County Animal Rescue. The motion was seconded by Randy Connelly – **APPROVED.**

Motion by Chris Yates to issue a written decision letter on the Vicious Dog Hearing. The motion was seconded by Randy Connelly – **APPROVED.**

F. Adjournment

Motion by Chris Yates to adjourn the meeting @ 8:20pm. The motion was seconded by Sharon Bousquet – **APPROVED.**

Respectfully submitted by,

_____ Wendi Dusablon, Highgate Town Clerk

Minutes approved by,

_____ Christopher Yates, Chair – Highgate Selectboard

Town
Of
Highgate

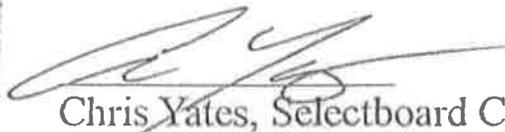
WARRANT

To; VONNIE LAMOTTE, ANIMAL CONTROL OFFICER
AND ENFORCEMENT OFFICER FOR THE TOWN OF
HIGHGATE

By the authority of the State of Vermont, you are hereby
commanded forthwith to impound two Pitbull dogs, Sage
and Tyson, owned by Michael Kelley, located at 21 Park
Street, Highgate Falls, that were the subject of a vicious dog
hearing before the Highgate Selectboard on October 26,
2016. These dogs are ordered to complete a 10 day quaran-
tine at the Franklin County Animal Rescue located in St. Al-
bans, VT.

You are also commanded to order the quarantine of a third
dog, known as Bella, within the dwelling of the Owner for
10 days. Bella is to remain in the dwelling except to be let
out on a leash with the owner present. This order is clear
that the owner must be with the dog at all times it is outside
of the dwelling.

SO ORDERED this 27th day of October 2016 by the Highgate
Selectboard.



Chris Yates, Selectboard Chair
On behalf of the Highgate Selectboard

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Jeff Towle
Health Officer

Vonnie Lamotte
Animal Control Officer

Christopher Yates
Randy Connelly
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ORDER

Pursuant to the duly adopted Dog Control Ordinance of the Town of Highgate (Ordinance) and 20 V.S.A. Chapter 193, a written complaint was received relating to 2 dogs owned by Michael Kelley (Owner) who resides at 21 Park Street, Highgate Falls, VT in a multi unit rental property owned by Gilbert and Marie Tremblay (Landlord), of 4 Tremblay Road, St. Albans, VT. A duly warned and noticed hearing was held at the Town Offices at 6:00pm on October 26, 2016. At that hearing, evidence was taken from witnesses, including the victim of a dog attack, the Owner, and the Landlord.

Based on the complaints and the evidence received at the hearing, the Selectboard determines that the dogs so identified, as Sage, a large black Pitbull, and Tyson, a 7 month old brindle Pitbull, unprovoked, did menace, attack and seriously wound one woman. It was also determined that Sage had unprovoked, menaced and bitten another resident of the building previously. Therefore, the Selectboard so orders the dogs held in quarantine at a qualified facility, the Franklin County Animal Rescue, in St. Albans, Vermont.

It is also ordered that Bella, a small black and white Pitbull, be quarantined within the Owner's dwelling for at least 10 days, but the quarantine shall continue until the dog is vaccinated.

SO ORDERED this 27th day of October 2016 by the Highgate Selectboard.


Chris Yates, Selectboard Chair
On behalf of the Selectboard

**TOWN OF HIGHGATE SELECTBOARD
FINDINGS OF FACT, CONCLUSIONS & ORDER
VICIOUS DOG HEARING**

This matter came before the Town of Highgate Selectboard following the Hospital Report of a vicious dog attack on a woman at 21 Park Street in Highgate Falls on October 21, 2016. Upon Investigation, Vonnie Lamotte, the Highgate Animal Control Officer, did determine that 3 Pitbull mix dogs residing at 21 Park Street in a multi-family rental property with their owner, Micheal Kelly did attack Kelley Fiorini. Following contact with the Victim, the ACO reported her findings to the Selectboard. The Selectboard called a hearing on October 26, 2016 at 6:00pm and provided notice to all interested parties.

The Selectboard held a public hearing on October 26, 2016. Those in attendance included:

THOSE PROVIDING TESTIMONY:

Kelley Fiorini, The Victim
Joseph Fiorini, Husband of the Victim
Michael Kelley, Dog Owner
Gilbert Tremblay, Landowner of 21 Park Street
Vonnice Lamotte, Animal Control Officer
Jeff Towle, Highgate Health Officer
Ben Lowell, Town Constable
Kristy Brow, Assistant Animal Control Officer
Kathleen Cook, Mother of the Victim
Melissa Cook, Family of the Victim
Christine Brock, Family of the Victim
Stephen Brock, Family of the Victim
Irene Johnson, Family of the Victim
Gere Johnson, Family of the Victim
Aaron Barden, 21 Park Street
Vicki and Tameka Stetson, 21 Park Street
Micheal Wells, adjoining property owner
Todd and Trudy Booker, 21 Park Street
Jeremy Murray
Brian White

OTHERS: Henry Banyea, adjoining property owner, Danny Ives, Roger Cunningham, Kellie Uzell, Erin Hakey, Sharon Mosher, Deborah Allen, Richard Wilkens, Herbert and Nicole Lampman.

MEDIA: Tom Benton, ST. Albans Messenger, Alex Leslie, Local 22/ Fox News, Eliza Larson, WCAX News

Based on the above mentioned public hearing, testimony, and evidence submitted the Selectboard enters the following Findings of Fact, Conclusions and Order.

FINDINGS OF FACT

NOTE: Any and all relevant evidence presented to the Board, including the complaint, police report, photos, testimony and the minutes of the hearing conducted by the Town of Highgate

Selectboard shall be considered part of the Findings of Fact and kept as part of the permanent record of this issue. This official record shall provide additional basis for the Board's decision.

1. Michael Kelley (Dog Owner), who resides at 21 Park Street, in Highgate Falls, VT possesses three Pitbull breed dogs known as Saige - a large black male; Bella - a small black and white female; and Tyson - a large, 7 month old, brindle male. The three dogs have not been neutered or spayed. Sage and Bella are registered with the Town for 2016 and were current with vaccination at the time of registration. Tyson is not registered with the Town and the Owner stated that the dog has not received vaccinations.
2. Gilbert Tremblay (Landowner) of 21 Park Street, the 6 unit multifamily dwelling on a 1.5 acre property located on Parcel #0020042005 was present for the hearing. Landowner testified that he does not want the dogs to remain on the property. Upon receiving notice of the hearing, Landowner informed the Town that he believed this was the third bite incident with Dog Owner's dogs.
3. Kelley Fiorini (Victim) was present and testified that she had stopped at 21 Park Street to visit a friend, Amanda Sandborn. She pulled into the driveway and was smoking a cigarette with her friend when the dogs became agitated. The Dog Owner attempted to restrain them but the three dogs were tethered to one lead and they broke free and attacked the Victim. The cable they were tied to became tangled around the Victim's leg and the dogs continued to bite the Victim and she was unable to get away. The Dog Owner also became tangled in the cable and was dragged around the lawn with the Victim. The Dog Owner was able to get control of the Dogs, after what he stated to be approximately five minutes, which allowed the Victim to crawl back to her car and call 911. The Victim was taken to the Hospital by ambulance.
4. Vermont State Police Officer, George Rodriguez (Officer) responded to the call and submitted to the Town a photo of the Victim's injury and summary of the event which was read into evidence at the hearing. It stated that Victim stated all three dogs had attacked her without provocation in the yard at 21 Park Street on October 21, 2016. Officer left a message with the Vonnice LaMotte, Highgate Animal Control Officer, (ACO) following the attack.
5. The Hospital treated the Victim for puncture wounds and lacerations on the back, legs, head and arms. The Victim received 18 stiches and the Hospital faxed a report to the Highgate Town Clerk's Office late in the afternoon on Friday, October 21st. The fax was forwarded to the Health Officer but it was very poor quality and difficult to read. An address of Park Street was determined and the ACO visited the site on Saturday morning and made contact with the Dog Owner and then the Victim on Saturday evening. The ACO ordered the dogs quarantined for ten days in the Dog Owner's care and then reported back to the Selectboard on Monday, October 24th.
6. The Selectboard scheduled a Vicious Dog Hearing for Wednesday, October 26th at 6:00pm and provided notice to the all interested parties by phone or hand delivery. Interested parties included the Dog Owner, Victim, Landowner, all residents of 21 Park Street and all adjoining properties.

7. Joseph Fiorini, husband of the Victim submitted a formal complaint of the incident with photos of the injuries. This information was read into the record at the hearing.
8. At the Hearing more than one resident at 21 Park Street expressed apprehension toward the dogs. Trudy Booker stated that she avoids going outside when the dogs are outside. Vicki Stetson's daughter was present and said she is afraid of the dogs and their cable allows them to reach her porch. Aaron Barden, was present and he said the dog had attacked him and torn his jacket. Barden stated he had informed the Dog Owner of the incident. Todd Booker said he won't put his dogs out on the lawn because of the dogs. Adjoining property owner, Michael Wells, said the cable the dogs are tied to is long enough to extend onto his property. He also said the dogs have been seen out of the control of the owner and off the property on more than one occasion.
9. Jeremy Murray, who described himself as a member of the adjacent church and that the Dog Owner's location it is a high traffic area with a 'convoluted' driveway and road system that could allow someone to accidentally wander into the dogs area into peril.
10. The ACO clarified that the previous concerns and incidents had not been reported to the Town or something could have been done sooner. The audience suggested they were afraid to complain about the dogs.
11. Family members of the Victim requested the destruction of the dog to prevent further incident. They stated that a smaller person could have been gravely injured.
12. The Dog Owner pointed out that his dogs were on his premises at the time of the attack and that there is a '*Beware of Dog*' sign posted. The photos of the property showed a small, inconspicuous, placard located on the door to the apartment.
13. The Dog Owner responded to questions from the Selectboard to indicate that Tyson has 'nipped' at people before. He also stated that he does not have a dedicated space for the dogs on the lawn. He ties all three dogs to a chain connected to the porch. He stated that the dogs have become more aggressive since he adopted Tyson four months ago and they are vying for dominance. Since quarantined, the Dog Owner still ties the dogs in the same place and watches them from the house. He stated that his porch is approximately 50' from the road and the dog's chain allows them within 25' of the road.
14. The Dog Owner stated that Saige is trying to remain dominant and has become more aggressive in the last four months since he adopted Tyson. He described the dog as extremely strong and able to break leashes frequently. The Dog Owner said that Saige did not participate in the attack. The Victim disagreed with this statement. The Police Report stated that all dogs participated in the attack.
15. The Dog Owner stated that Bella is a small female and not aggressive. Because she is not spayed the two males fight over her. He stated that Bella did not participate in the attack but was tied to the other two and could not get away. The Victim conceded that might be possible and said she could believe that Bella was trapped but not an aggressor.

CONCLUSIONS

The Town of Highgate Selectboard reviewed reports and photos, heard testimony from interested parties, the ACO, and Assistant ACO. The Selectboard is comprised of residents of the Town and depends largely upon state statute, ordinances and specific topic literature to guide them in decision making. They make no claim of expertise on the topic, however in this instance the combined knowledge of the ACO, and Assistant ACO and Selectboard members includes a fair depth of knowledge to arrive at reasonable conclusions regarding the evidence presented.

1. The Victim was viciously attacked by at least two (Saige and Tyson) of three dogs that were tied together and was bitten by Tyson and potentially by Saige. The attack and bites occurred on the common land owned by the Landowner and utilized by all tenants of 21 Park Street. This attack and the bites violate both the Highgate Ordinance - Dogs and [Wolf Hybrids] and the parallel State statute, 20 V.S.A. § 3546(a). The Victim was encountering the dogs for the first time and did not provoke the dogs in any manner.
2. The Victim suffered substantial injuries and trauma as a result of the attack. The Victim required immediate, emergency medical attention as a result of an attack. This need for medical attention requires the Town to investigate the attack and bite pursuant to the Highgate Ordinance - Dogs and [Wolf Hybrids] and the parallel State statute, 20 V.S.A. § 3546(a).
3. The Dog Owner's apartment is within a 6 unit rental property surrounded by common lawn shared by residents of the other five rental units. The Dogs are not confined behind a fence and the area is within close proximity to the other apartments, the driveway to the property, and to the road.
4. The 'Beware of Dog' sign the owner has posted is very small (estimated 2" x 4") and located on the door to the apartment within the area the dogs occupy. The sign provides little to no warning to visitors approaching the area, and the property is in a high density location that is rife with potential for accidental encounters with the dogs.
5. The other residents of 21 Park Street are afraid of the dogs and have also suffered aggression from the dogs in the past but have chosen not to inform the authorities of their concerns.
6. Adjoining property owners have similar anxiety regarding the dogs.
7. The dogs have been seen loose and outside of the Dog Owner's apartment on more than one occasion.
8. The Landowner has been aware of the problem for an extended period of time but has failed to address it adequately. He has requested the Dog Owner get rid of the dogs but has not insisted upon it. Neither has he reported the untenable situation to the Town or made any effort to make the situation safer for the other tenants of the building, adjoining landowners, or the general public. In so doing, he has allowed the situation to escalate to a dangerous level.
9. Saige is a very large dog with signs of aggression and significant strength. The Dog Owner has stated that Saige did not bite the Victim but also stated that he pulled Saige off the Victim and put him in a head lock to save the Victim. This denotes Saige's active

participation in the attack. Saige poses a serious threat to neighbors and potentially to his owner if he is left in the current situation for much longer. Neutering the dog, providing adequate separation from other dogs, physical exercise and behavior modification training might be helpful in curbing aggression but it is evident the current owner cannot provide any of the needed changes. The owner stated as much in his testimony more than once.

10. Tyson is a younger, smaller dog, demonstrating aggression toward other dogs and humans. Tyson actively participated in the attack and was pulled off the Victim to allow her to get away. It is more likely that neutering the dog, providing adequate separation from other dogs, physical exercise and behavior modification training could be useful in curbing aggression because of his age, but it is evident the current owner cannot provide any of the needed changes. The owner stated as much in his testimony more than once.
11. Bella is a smaller female dog for which there are varying reports of participation in the event. The Victim originally reported that all three dogs had attacked her. The Police Report states this and the investigating officer said he believes all dogs were involved in the attack. The Victim conceded during the meeting that it is possible that Bella was not a primary aggressor and may have also been trapped and dragged by the cable. Bella appears to have less aggression and may not pose an obvious threat if provided with the appropriate separation from dogs, exercise, spaying and training.
12. The Dog Owner is not a landowner and does not have the capability to create a suitable environment for the dogs. Because he can't erect a fence to separate the dogs from the neighbors there remains a constant threat of incident. The Dog Owner projects affection for the dogs but his actions seem to portray a lack of understanding of basic needs of the animals. By keeping three, intact dogs in a tiny apartment and providing them limited opportunity to exercise he has created a volatile environment. The two unneutered dogs are vying for the female dog in heat. The lack of outdoor space that allows them to expend energy while remaining separated from the public is both detrimental to the dogs and dangerous to the public. The Dog Owner has acknowledged his inability to provide them with adequate exercise opportunities and his desire to get rid of one of the dogs.
13. The Landowner has stated his desire to have all of the dogs gone but stopped short of saying he would demand it. He suggested he would be agreeable to one of the dogs staying. He is not in favor of any fence or structure being erected and doesn't feel the size of the lawn area would allow for this so the Dog Owner would still have to provide for adequate outdoor time in a safe and appropriate environment.
14. While the Dog Owner is a renter of an apartment on the property and states that a percentage of the outdoor area is dedicated to his apartment, based on the testimony of the Landowner the Selectboard finds that the site is lacking a delineation of area designated for various apartments and rather that the lawn serves as common area. The Selectboard finds rather that the Dog Owner's location in a multifamily dwelling with ambiguous boundaries means that the dogs were on common land. When the dogs broke free from their confinements they further exceeded any perceived outdoor area dedicated for the Dog Owner's usage and the attacked occurred off premises of the

Dog Owner.¹

¹ We would note that both the Highgate Ordinance - Dogs and [Wolf Hybrids] and the parallel State statute, 20 V.S.A. § 3546(a) use the same language regarding location of where a dog bite occurs "[w]hen a domestic pet [dog] or wolf-hybrid has bitten [or attacked] a person while domestic pet [dog] or wolf-hybrid is off the premises of the owner or keeper...." (Emphasis added, [brackets] shows Ordinance departure from Statute). Neither the Ordinance, nor the Statute defines the term "premises." The Vermont Supreme Court has held as follows:

The modern view of the landlord-tenant relationship favors a new approach which recognizes that a lease is essentially a contract between the landlord and the tenant wherein the landlord **promises to deliver the demised premises in habitable condition and the tenant agrees to pay rent.** In light of this relationship...every lease, regardless of its express conditions, includes an implied warranty of habitability. The landlord is understood to provide and maintain premises that are safe, clean and fit for human habitation. Weiler v. Hooshiari, 2011 VT 16, ¶5 (citations and punctuation omitted, emphasis added). Black's Law Dictionary also distinguishes "premises" from "demised premises" (leased property).

Black's Law Dictionary, 8th Ed. at 1219. It is clear that the Dog Owner's Apartment constitutes demised premises. However, the premises are not owned by the Dog Owner, but rather by the Landowner. The Dog Owner merely has the right to inhabit the demised premises. The common grounds of the property, rightly remain the premises of the Landowner, not the Dog Owner (tenant) and the Landowner has an obligation to insure the safety of those premises that he maintains ownership over pursuant to the implied warranty of habitability. Therefore, the Selectboard finds that the common property where the Victim was attacked, were not the premises of the Dog Owner, but of the Landowner and as such the attack occurred "off the premises" of the Dog Owner. Indeed, even if the biting and attack had occurred inside of the Dog Owner's apartment, it would not have occurred on the "premises" of the Dog Owner, but rather on the demised premises of the Dog Owner. However, we do not need to address that scenario in this decision.

ORDER

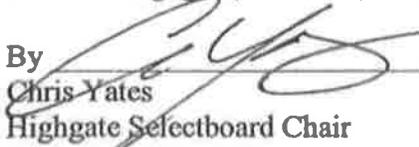
The Selectboard has placed great importance on the outcome of the meeting and has acted conscientiously but swiftly in good faith to protect public safety and to avoid further damage to man or animal. Based on the Findings of Fact and Conclusions set forth above, the Town of Highgate Selectboard issues the following conditions:

1. The Dog Owner must surrender the male dogs, Saige and Tyson to the ACO to be placed in quarantine at the Franklin County Animal Rescue effective immediately for a period of 10 days.
2. The Dog Owner immediately must place Bella in quarantine at his dwelling at 21 Park Street for a minimum of ten (10) days but the quarantine shall continue until Bella has

received rabies vaccinations. Quarantine shall mean the dog requires constant supervision and shall not be left unattended outside. A violation of this order will result in fines and impoundment.

3. Following quarantine, the Dogs, Tyson and Saige, are ordered to be surrendered to the ACO to be placed with a qualified animal rescue service immediately for evaluation to determine if they are suitable dogs for rehabilitation and relocation. If the qualified animal rescue service determines the dogs are unable to be rehabilitated and relocated, they must be humanely destroyed.
4. Upon completion of quarantine, the dog Bella is ordered to remain under the control of her owner at all times. When Bella is outside of the dwelling she must remain on a leash or a secure tether at all times. If the Dog Owner is unable to control the dog and it is off premises, the Owner will be fined, and impoundment may be ordered.
5. Dog Owner is responsible for vaccinating and registering the dog Bella annually with the Town of Highgate. If Dog Owner fails to register the dog Bella, Dog Owner will be fined and the dog will be impounded.
6. Dog Owner is limited to maintaining one dog and shall not be allowed to possess or care for any other dogs and is also prohibited from allowing any other residents within his apartment to possess any dogs.
7. Condition 6 above is subject to the approval of the Landlord who may otherwise require the removal of all dogs from the premises based on his own authority as the property owner and Landlord, but may not override this Order by allowing more than one dog.

Dated at Highgate, Vermont, this 28th day of October 2016.

By 
Chris Yates
Highgate Selectboard Chair

Selectboard Members participating in this unanimous decision: Sharon Bousquet, Bruce Butler, Randall Connelly, Josh LaRocque, Chris Yates.

Appeal Information: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the Selectboard. Such appeal must be taken within 30 days of the date of this decision pursuant to 24 V.S.A. Section 4471. Notice of the Appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Administrative Officer, who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice to every interested person.