



THE CORPORATION OF
HALDIMAND COUNTY

SPECIAL COUNCIL MINUTES

DATE: February 8, 2016

TIME: 2:36 p.m.

PLACE: Cayuga Municipal Administration Building, Council Chambers

PRESENT:

Council	K. Hewitt	Mayor
	L. Bartlett	Councillor
	F. Morison	Councillor
	C. Grice	Councillor
	T. Dalimonte	Councillor
	R. Shirton	Councillor
	B. Corbett	Councillor
SMT	D. Boyle	Chief Administrative Officer
	K. General	General Manager, Corporate Services
	T. Haedrich	Director, Engineering Services & Roads Operations
	H. Hanly	General Manager, Community Services
	C. Manley	General Manager, Planning & Economic Development
	P. Mungar	General Manager, Public Works
Staff	R. Charlton	Manager, Building & By-law Enforcement
Clerk	E. Eichenbaum	Clerk

CALL TO ORDER

Mayor Hewitt called the Special Council meeting to order.

ROLL CALL

The Mayor and all Members of Council were in attendance.

DISCLOSURES OF PECUNIARY INTEREST

None.

NEW BUSINESS

In accordance with the provisions of the *Statutory Powers and Procedure Act*, R.S.O. 1990, Ch. S. 22, and the County's Animal Control By-law 1396/13, a hearing of the County's Appeals Committee commenced with respect to an Appeal of a Notice to Muzzle issued to Valerie Toth by the Welland and District SPCA under Section 110 of said By-law.

The items were presented as evidence in the hearing:

- 1) Welland and District Humane Society Incident # 10732, Muzzle Order Appeal Brief
- 2) Letter of Appeal dated December 9, 2015 from Appellant, Valerie Toth
- 3) Notice of Hearing dated January 25, 2016
- 4) Haldimand County Animal Control By-law 1396/13
- 5) Aerial Photograph of 10 Clanbrassil and 44 Indiana W.

(b) Hearing Procedure

- 1) Overview of Hearing Procedure – Randy Charlton, Manager, Building & By-law Enforcement
- 2) Randy Charlton – Presenter of Facts

Mr. Charlton provided an overview of the process to be undertaken to hear an appeal related to the incident that took place on November 24, 2015

- 3) Presentation from the Witness, Rochelle Mawhinney

Mrs. Mawhinney explained that on the date of the incident, she was looking after her grandchildren, and her son and daughter-in-law's dog at 44 Indiana Rd. W. in Clanbrassil, near Hagersville. At approximately 3:00 p.m., Mrs. Mawhinney was getting dinner started and let the dog "Mabel" out. The dog was seen about 6 feet away from the house. While Mrs. Mawhinney was turning on the oven, she heard yelping, and when she looked outside, she saw a big white dog on Mabel. She called for help but no-one came. The white dog was pulling Mabel into a decorative garden pond. Mabel is a shih-poo and weighs about 9 pounds.

Mrs. Mawhinney identified the property on the aerial photo. She noted that Mabel was just in front of the garage. Mrs. Mawhinney wasn't able to separate the two dogs so she ran into the house and called 911. An OPP officer came and helped and then two additional officers came to help. Officer Johanna (Vanden Beukel) asked for a shovel to get Mabel out of the pond. A rope was used to help get the dog out of the pond. Officer Johanna suggested getting a crate for Mabel. The space between the first and second attack was approximately 10 to 15 feet.

- 5) Questions from Staff, the Appellant and Council

Mrs. Toth asked where the dogs were when Mrs. Mawhinney first saw them. Mrs. Mawhinney replied that they were 10 to 15 feet from the back of the house, not on the porch. Mrs. Toth asked if Mrs. Mawhinney had grabbed the big white dog, and Mrs. Mawhinney replied that she had grabbed the big dog by the skin, in order to try to get it off Mabel.

- 6) Presentation from the Witness, Constable Joanna VandenBeukel

OPP Constable Johanna Vanden Beukel stated that on November 24, 2015 she was working a day shift from 6 a.m. to 6 p.m. At approximately 3:33 p.m. the 911 operator had received a dropped call from somewhere east of Townline Rd., so she headed that way to see if anyone was in a state of emergency. At 3:34 p.m., she received an update on the situation – at 44 Indiana Rd, there was a neighbor dispute in progress. Constable Vanden Beukel identified Rochelle Mawhinney as the individual she saw when she arrived. She noted that Mrs. Mawhinney was in a state of shock and she saw the shih poo in the decorative pond, trying to keep her head above water. The small dog seemed to have injuries to her rear leg. The grandson arrived home via school bus and she told him to wait in the cruiser.

Officer Vanden Beukel called additional officers and when they arrived, 2 officers held the large sheep dog and removed it and placed it in a small outbuilding nearby. Once the large dog was removed, the small dog could be removed. The sheep dog could be heard scratching inside the outbuilding. Officer Vanden Beukel proceeded to take Mabel to the veterinarian.

Officer Vanden Beukel clarified that the small dog had been on the front porch before being attacked. She first observed the dog about 15 feet away from the house, 6 feet from the edge of the porch. She instructed Mrs. Mawhinney to purchase a leash, and she notified the SPCA of the incident.

7) Questions from Staff

Mr. Charlton asked about the property at 44 Indiana Rd. and Officer Vanden Beukel noted that the property has a long driveway, and the dogs were located close to the house. When she attended the scene, she saw Mrs. Mawhinney holding the sheep dog by the scruff and the little dog was yelping. Officer Vanden Beukel thought it was drowning and had been bitten by the little dog.

8) Statement and Evidence of Animal Control officer, John Hoadley with respect to Service of the Muzzle Order

Mr. Hoadley stated that a dog is at large when it's in any place off leash except your own property, or other property where approved by the owner.

Mr. Hoadley received a belated complaint for an incident at 44 Indiana Rd. W., Clanbrassil. The same facts apply to the complaint as previously recounted by witnesses. Mr. Hoadley indicated that the veterinarian's statement indicated no puncture wounds were found, and some analgesic was provided to the dog.

9) Questions from Staff and Council

Councillor Corbett asked whether either dog was running at large? Mr. Hoadley responded that based on the statements, the Great Pyrenees was running at large, and there is no evidence that Mabel was running at large.

A question was posed regarding the basis for issuing a muzzle order. Welland SPCA staff base the decision to issue an order on the evidence presented and the order is issued under the Animal Control By-law. The criteria in the by-law includes biting or attack.

In response to a question, Mr. Hoadley said there had been no prior engagement with Mrs. Toth's dogs. In response to another question, he noted that dogs can bite and not leave a puncture wound. Mr. Hoadley said that he met "Mina" in the presence of Mr. and Mrs. Toth, and the dog seemed sociable and not aggressive. Based on the evidence, Mr. Hoadley has no doubt that the attack happened at the noted location.

A question was asked about the time period for a muzzle order, and it was confirmed to be in place for the life of the dog. It was also confirmed that it is the SPCA who issues muzzle orders. In response to a question about the dog doing its job as a guard dog, Mr. Hoadley confirmed that the dog doesn't have to wear the muzzle on its own property – only when it leaves its property.

In response to a question about possible recurrences, Mr. Hoadley stated that if this happens again, another Part I ticket may be issued, or SPCA staff may pursue laying a Part III Information which would carry greater fines with it.

In response to an inquiry about a show dog wearing a muzzle, Mr. Hoadley noted that a condition can be attached to a muzzle order for exceptions.

10) Presentation from the owner of Alleged Victim Dog, Bronwyn Mawhinney

Bronwyn Mawhinney described her property as being just under 13 acres in size. The house is located 300 feet from the road. She explained that her dog – Mabel – has been trained and has never left the property. She described Mabel as having suffered from hypothermia, shock and lacerations on the eye resulting from the incident in question. The dog is more anxious since the incident and the veterinarian is recommending anxiety medication. The neighbouring property is about 400 feet away. (Ms. Mawhinney showed both properties on the aerial photo.)

12) Questions from Staff and Council

In response to a question about Mabel's location, Rochelle Mawhinney clarified that the dog was close to the house. She heard the yelping noise 15 to 30 seconds after letting her out, which was not enough time to leave the property.

Mayor Hewitt asked Bronwyn Mawhinney whether she believed that having a muzzle on the dog would resolve the situation, and whether this was an ongoing issue. Ms. Mawhinney responded that she hasn't seen this dog on her property before and doesn't know that a muzzle would prevent a similar situation. She noted that she is looking for accountability for the incident.

Mrs. Toth asked Ms. Mawhinney whether she had considered fencing her property. Ms. Mawhinney responded absolutely not, and her dog is trained.

11) Presentation from the Appellant, Valerie Toth

Mrs. Toth stated that her pasture has a hedge and fence surrounding it. The pasture contains pregnant sheep and a small dog. The Great Pyrenees breed were developed to protect sheep. Mrs. Toth noted that her dog could not have seen a dog from that far away, and contended that the smaller dog must have been on, or close to her property and that her dog Mina broke through a damaged spot in the fence in order to drive Mabel away. Mrs. Toth explained that the dog is off the property when she goes to see the veterinarian, or appears in dog shows.

Mrs. Toth stated that she won't put Mina back in the pasture. If there is no muzzle order, she'll place Mina with an alpaca owner. She will keep Mina until she can find an appropriate owner for her.

14) Recommendation – Randy Charlton

Mr. Charlton explained that Council heard evidence that the attack took place. He explained that a muzzle order is in place when a dog is off its owner's property. Council can uphold or deny the muzzle order, and if upheld, can place conditions on the order.

(c) Council Deliberation

At this time, members adopted a procedure to adjourn the hearing at 3:53 p.m. in accordance with the *Statutory Powers and Procedures Act* in order to deliberate the evidence presented by all parties to the appeal. The meeting was reconvened at 4:02 p.m.

(d) Decision

Resolution 18-16

Moved By: Councillor Bartlett
Seconded By: Councillor Shirton

WHEREAS a Hearing was held on February 8, 2016 to consider an appeal by Valerie Toth to a Notice to Muzzle issued December 8, 2015 by the Welland & District SPCA with respect to a female white Great Pyrenees type dog known as "Mina",

NOW HEREBY BE IT RESOLVED THAT, after hearing the evidence presented, Council orders that the Muzzle Order be suspended for a period of ninety (90) days for the dog "Mina" to be placed with a new owner, and should Mina not be placed with a new owner within 90 days, the Muzzle Order will be reinstated.

CARRIED (6-1)

CONFIRMING BY-LAW

Resolution 19-16

Moved By: Councillor Dalimonte
Seconded By: Councillor Shirton

THAT the Confirming By-law be hereby introduced and given a first and second reading.

CARRIED (Unanimously 7-0)

Resolution 20-16

Moved By: Councillor Corbett
Seconded By: Councillor Grice

THAT the Confirming By-law be hereby introduced and given a third and final reading, be signed by the Mayor and the Clerk, the corporate seal affixed thereto and numbered.

CARRIED (Unanimously 7-0)

ADJOURNMENT

Resolution 21-16

Moved By: Councillor Bartlett
Seconded By: Councillor Morison

THAT this meeting is now adjourned at 4:11 p.m.

CARRIED (Unanimously 7-0)

MAYOR

CLERK