

A workshop of the Town Board of the Town of Moreau was held on September 27, 2011 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of discussing proposed changes to the Town's Dog Law.

Supervisor Jenkins called the workshop to order at 6:01 p.m.

The Town Clerk called the roll.

Town Board Members Present

Tom Cumm	Councilman
Gina LeClair	Councilwoman
Todd Kusnierz	Councilman (Arrived at 6:15 p.m.)
Preston Jenkins	Supervisor

Town Board Members Absent

Bob Prendergast	Councilman
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Also Present: Jeanne Fleury, Town Clerk; Rudy Klick, Special Projects Aide; Karla Buettner, Attorney for the Town; David Taube, Post Star Reporter; Brittany Creel, Village Resident; Sandy Stanton, Town Resident; Paul Joseph, Highway Superintendent (Arrived at 6:25 p.m.); Jesse Fish, Water Superintendent (Arrived at 6:28 p.m.); Reed Antis, Planning Board Alternate and Town Resident (Arrived at 6:39 p.m.); Peggy Jenkins, Town Assessor (Arrived at 6:39 p.m.); Vince Sporrer, Town Resident (Arrived at 6:41 p.m.)

Supervisor Jenkins welcomed everyone to the workshop and briefly recapped the proposed changes to the Town's Dog Law, Chapter 59 of the Town of Moreau Code.

The proposed changes are as follows:

Section 59-5 Restrictions

The first sentence in Section 59-5 currently reads:

"It shall be unlawful for any owner of any dog in the Town to permit or allow such dog to:"

The proposal is to change this sentence to read:

"It shall be unlawful for any owner of any dog in the Town **to engage in the following conduct or** to permit or allow such dog to:"

The proposal is to also add the following language to Section 59-5:

"(f) Harbor or keep a dog which has attacked a person in a place where that person was lawfully present."

"(g) Treat the dog in a cruel or inhumane manner."

"(h) Allow the dog to defecate on public lands, streets, roads, highways or any other public place with immediately remaining such defecation."

Section 59-7 Seizure of Dogs at Large

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The proposal is to add the following language at the end of the current Section 59-7:

"Notwithstanding the foregoing, at the discretion of the Dog Control Officer, any dog found to be running at large or that has bit any person may be immediately delivered to and confined in the Saratoga County Shelter for a minimum of a ten (10) day period."

Councilman Cumm stated that a change is needed in the proposed wording in Section 59-5 (h) and he deferred to Attorney Buettner to provide the wording for the change.

Attorney Buettner suggested that in order for Section 59-5 (h) to read in such a way that it makes sense, that the words in Section 59-5 (h) "with immediately remaining" be removed and replaced with the words "without immediately removing".

With this change Section 59-5 (h) would then read:

"Allow the dog to defecate on public lands, streets, roads, highways or any other public place without immediately removing such defecation."

Supervisor Jenkins referred to the proposed change in Section 59-7 and said that essentially the Dog Control Officer (DCO) is required to have the dog confined to the Saratoga County Shelter for a minimum of a 10 day period. He would have discretion on this, but it would be based on instructions of what "we expect". If we have an incident involving an attack and a bite, then that dog should definitely go to the shelter for a minimum 10 day period. The only other exception to this would be if there is a bite situation and it is a family dog and the bite involves a family member, then it is up to the Dog Control Officer as to whether or not the dog would be allowed to go back to it's owner or to the shelter. This is not clear in the law, but this is how we are going to operate. He said the problem the Dog Control Officer had with the "one bite rule" is that many times dog bites occur in a home and involve a household child and sometimes it is playful and sometimes it is a serious attack. In this instance it would be the Dog Control Officer's discretion as to whether or not the dog stays with the family and the family takes the responsibility. This gives the family the discretion to decide whether or not to follow the ten day rule, when it involves a family member and it is a family issue. He stated that the law makes it clear that the dog, after the first bite, would go to the shelter for a minimum of 10 days and hopefully within that time frame there would be a hearing in court on the bite case.

Brittany Creel, mother of a child who was bitten by a dog on Feeder Dam Road, asked Supervisor Jenkins if this was something he was going to hold the Dog Control Officer responsible for and Supervisor Jenkins said yes and "we would".

Brittany Creel stated that if a dog bites, regardless if it is a family member or a stranger, that dog should be confined to give the DCO and Shelter time to observe the dog, check the dog's shot records and license records. She stated that the DCO had that discretion last time to take the dog so it isn't really changing anything.

Supervisor Jenkins said it would, because that dog attacked a person in a place where they were lawfully present.

Brittany Creel stated that Section 59-7 isn't specific enough.

Supervisor Jenkins stated that Section 59-7 is primarily talking about a dog that is on the loose and hasn't bitten anyone, which in that case the DCO has the option of taking it to the shelter for a minimum 10 day period.

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Brittany Creel stated that a dog running at large doesn't have anything to do with a dog that has bitten someone inside a household and asked if she was correct in this assumption.

Supervisor Jenkins replied, basically yes. He said it is the experience of the DCO that family dog bites are very common.

The Town Clerk stated that she thinks there is a problem with the way the proposed change to Section 59-7 is written. She stated that she thinks it should read "any dog found to be running at large **and** that has bitten any person may be immediately delivered to and confined in the Saratoga County Shelter for a minimum of a ten (10) day period." The word "and" should replace the word "or". She said the way the proposed change to Section 59-7 is written, a dog running at large and that hasn't bitten anyone could be picked up by the DCO and confined in the shelter for a minimum of ten days and the owner of the dog would have to pay impoundment fees for ten days at least. She stated that this is contradictory to the NYS Agriculture & Markets Law that has established an impoundment schedule and fee structure.

Brittany Creel stated it is contradicting Section 59-12 also where the period for impoundments is outlined.

Supervisor Jenkins said he understood, but the Town can make a law more restrictive than the state law.

The Town Clerk said her concern is that a dog owner would have to pay a minimum of \$100.00 for a ten day impoundment for a dog that is running at large and hasn't bitten anyone.

Supervisor Jenkins said maybe it should be a separate clause. He said normally in the case of a dog running at large the DCO tries to track down the owner rather than taking it to the county shelter.

Supervisor Jenkins then said that if a dog is running at large and hasn't bitten anyone then we should follow the state impoundment guidelines.

Attorney Buettner stated that Attorney Auffredou wrote these proposed changes and she is coming in on this at this stage, but her reading of this section is that it is not mandatory that a dog running at large be impounded for ten days and it is not mandatory that if a dog has bitten someone it has to be impounded. It is at the discretion of the DCO.

Supervisor Jenkins said maybe we should reword it so it reads, unless released by the shelter earlier. We are talking about a dog running at large that hasn't bitten anyone.

Attorney Buettner stated that if they look at Section 59-7 it already describes the running at large and that is in conformance with NYS Agriculture & Markets Law. She suggested they not include the words "running at large" in that section. That would alleviate the confusion.

Councilman Cumm stated that Section 117 of the NYS Agriculture & Markets Law is pretty specific, and rather lengthy, and describes what the duties are of the DCO and the Town's responsibility in respect to impoundments. He agreed with what Attorney Buettner said about separating the wording.

Councilwoman LeClair stated that if someone's child is at her house, and she isn't responsible for her dog, and doesn't put it away, and the child is playing, and the child is bit by her dog then she doesn't think she should be able to say that it is a friendly bite and make the decision of whether or not the dog should stay in the household.

Supervisor Jenkins said that is the DCO's discretion not the dog owner's. The DCO should discuss it with the owner of the dog and family of the child that is bit. This is something he should be doing.

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Councilwoman LeClair stated that she has a major problem with people who don't take responsibility for their animals and allow them to put children in a position where something happens, whether it is on the street or in their household. She doesn't have a lot of tolerance for it.

Supervisor Jenkins said he doesn't either.

Councilwoman LeClair said she knows he doesn't.

Councilwoman LeClair asked if these changes give the DCO the ability to say "your dog bit her child, in your house, the dog is gone until it is determined that the dog needs to still be there?"

Attorney Buettner said she believes it does. It reads "at the discretion of the DCO". She assumes that the DCO knows his job and knows these dogs. If he says the dog has to be put somewhere for ten days then she believes this protects the Town in that respect.

Councilwoman LeClair said she is concerned for the Town, but she is also concerned with reoccurrence. We all see people walking their dogs on the street and they have no control over their dogs. We see dogs lunging on their leashes and it may be a friendly dog, but there is lack of control over people's animals. She is concerned over whether or not these proposed changes will cover us in these situations. Will it protect a child in another person's household and will it keep this from happening again?

Attorney Buettner stated that the proposed changes allow the DCO to assess the situation and use his discretion to remove the dog. It doesn't mandate the DCO to do so. If that is the Board's desire they could change the language.

Councilman Cumm asked if it was clear cut that a dog would have to be impounded if it bit someone off premises.

Supervisor Jenkins replied yes.

Councilman Cumm said if someone is walking on the street or sidewalk and a someone else's dog bites them, then the dog should be impounded immediately for whatever period of time is required in the NYS Agriculture & Markets Law.

Attorney Buettner said that is in Section 59-5 and there is no discretion there.

Brittany Creel was of the opinion that the wording that is in bold in Section 59-7 is a continuation of the propose language change in Section 59-5 that reads "harbor or keep a dog which has attacked a person in a place where that person was lawfully present". She said that in general a dog at large is not a dog that is attacking someone. She suggested they add a clause about a dog that is attacking someone in Section 59-5 (f) where it talks about a dog that has attacked a person.

Brittany Creel also said she has a problem with the word "discretion". The DCO used his "discretion" when he met the dog (she was referring to the incident when her daughter was attacked by a dog on Feeder Dam Road) for 5, 10 or 15 minutes and determined the dog was fine. He made this decision in in a split second, or five minutes, or a walk around the block with the dog. A ten day impoundment would allow a better assessment of the situation and allow other people see how the dog acts outside the home or around other people rather than standing right next to it's owner, because the owner of the dog was not standing next to the dog when it bit her daughter and if he had been maybe the dog would have behaved differently.

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Supervisor Jenkins stated that under Section 59-5 (f) the dog would have been impounded.

Councilman Cumm stated that in Section 59-7 there are two statements that contradict each other. He read the first sentence in Section 59-7 that reads as follows: "Any dog found to be running at large in violation of Section 117 of the Agriculture & Markets Law, whether licensed or unlicensed, will be seized by the Dog Control Officer" and then one sentence later it reads "any dog found to be running at large or that has bit any person may be immediately delivered to and confined in the Saratoga County Shelter". He said the the word shouldn't be "maybe", it should be "immediately delivered".

Supervisor Jenkins didn't agree. He said the first part of that section refers to dogs that are running at large and not doing anything wrong other than just getting loose.

Councilman Cumm stated that the statement should be separated out then so that it reads "if the dog is found to be running at large it is at the discretion of the DCO to impound the dog." Then a separate section that reads "If a dog has bitten a person off the property then that dog should be immediately impounded." He said it doesn't read that way right now.

Supervisor Jenkins replied no, because it is a different section of the law. One is on seizure and the other is on the person who is handling the dog. Section 59-5 (f) are rules and restrictions for dog owners. They can't harbor a dog if it has bitten someone.

Councilwoman LeClair said it doesn't define what happens to that dog. If her dog bites someone she might send it to someone else's house. She isn't allowed to harbor the dog, but someone else could. She asked if this section would allow that to happen.

Supervisor Jenkins said it would probably allow it, but they were going to set some basic rules that the DCO will have to follow as to what and what not to do, and if he doesn't follow them then maybe we will have to get another DCO. He said if they put too much in the law it will be too confusing.

Attorney Buettner said it sounds like what Councilman Cumm said is that Section 59-7 contradicts itself with the wording "running at large" in the second sentence. She said they could separate it into two different paragraphs and change the caption of Section 59-7 to "Seizure of Dogs" and refer back to Section 59-5.

Councilman Cumm asked if what she was saying was that it would read "Notwithstanding the foregoing, any dog that has bitten any person must be immediately delivered and confined in the Saratoga County Animal Shelter for a minimum of ten days."

Attorney Buettner stated that if the Board wants to change it from "may" to "must" they could. She said there is a dog at large and there is a dog that has bit and they could say "that has bit any person" and refer it back to Section 59-5.

Councilman Cumm said there should be a distinction between the dog that is running at large and the dog that has bitten someone. He is concerned about the dog that is running at large. It shouldn't be running at large, but it hasn't harmed anyone. If it has bitten someone then it should be immediately picked up and delivered to the animal shelter. He thought that was what they were looking at here.

[Councilman Kusnierz entered the workshop at 6:15 p.m.]

Councilwoman LeClair said if we put the word "may" in there, then that protects the person who has an old dog that may bite them and they go to the doctor and then it has to be reported. If we put the word

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"may"

in there then it makes it doable and at the discretion of the DCO.

Attorney Buettner said this was correct.

Councilwoman LeClair agreed with Councilman Cumm that it should be separated out.

Attorney Buettner said they could make it two different sections 59-7 and 59-8 and renumber the rest of the sections. The captions would be "Seizure of Dogs at Large" and "Seizure of Dogs in Violation of Section 59-5".

Councilman Cumm asked Councilman Kusnierz what he thought.

Councilman Kusnierz stated that he thought they were trying to immerse themselves in the judicial process and the dangerous dog statute under the Agriculture & Markets Law is adequate. Every situation has a different set of circumstances and that is why the court system is involved. The state law is very clear as to what constitutes a dangerous dog and it gives the judicial authority to deem what is dangerous. Because a dog bites somebody does not mean it is dangerous. He said maybe he doesn't understand what our ultimate goal is here by tinkering with our current law.

Supervisor Jenkins stated that if this issue had been taken into court on the second or third day rather than the time period that lapsed then the second person may not have been bitten. However, the judge sent the dog home anyway. Essentially we aren't going to be able to override the judicial system. Our goal is to not have a dog bite a second person. Our DCO handles dogs all the time. He trains dogs for the prison system for the NYS Police. Dogs have great sensitivity to people who like them and don't like them. When he took the dog for a walk on a leash, and was told that stones were being thrown at the dog, then he assumed that was what happened. Supervisor Jenkins stated that in his opinion this dog has problems and he wouldn't want to live next door to it. He said it is a tough issue, but our court system moved too slow on it. It was a serious bite and when he asked Brittany Creel how many stitches were required, Brittany replied 36 stitches. The dog needed to be harbored someplace else to rest and get away from it.

Councilman Kusnierz said everyone knows the statistics that over 2/3 of all dog bites that take place in the U.S. involve someone who knows the dog or a family member. If a dog bites a family member are we going to say it must be confined.

Councilman Cumm said no and Councilwoman LeClair said they talked about changing the word to "may".

Councilman Cumm said if the dog bites a family member it is a different circumstance.

Councilman Kusnierz said not according to this draft.

Supervisor Jenkins stated that the DCO feels that there would be too many cases to respond to, because most of the bites occur in the home. What this dog did in the Creel incident was violent. In a case like this the dog should go away for ten days. If it had gone to the shelter then it would have been licensed and given a rabies shot like all dogs that go to the shelter. If you seize a dog that is just loose then he assumes the NYS Agriculture & Markets Law is sufficient. A dog that bites should go to the shelter for ten days and during that ten day time frame it would give the dog a chance to calm down and they could determine if it is a dangerous dog and supply that information to the courts.

Councilman Kusnierz asked how they arrived at the ten day period.

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Supervisor Jenkins stated that in the recent dog bite case a second person was bitten within a ten day period.

Brittany Creel stated that in regards to the ten day period, she was told by Saratoga County that they hold dogs for a minimum of ten days when a dog has attacked and bitten someone . She isn't sure where they got the ten days from. She said the ten days is contradictory from Section 59-7 over to Section 59-12 where it reads five days. She feels like the Board is trying to put two different things into one paragraph, running at large or a dog that has attacked.

Supervisor Jenkins said they could override the ten day period to a longer period of time or override the fines to larger fines.

Brittany Creel stated that she was concerned over the fact that the DCO could impound a dog for ten days and then the owner reads the law and sees the five day period in the law.

Supervisor Jenkins said if a dog is seized and hasn't done anything then as soon as the owner goes to redeem the dog it will be released as long as it is licensed and has had a rabies shot.

Brittany Creel asked if they were going to remove the clause "to be running at large" in Section 59-7.

Supervisor Jenkins replied yes, it doesn't belong there. We are talking about a dog bite.

Brittany Creel said again that she has a problem with the words "at his discretion". She said obviously the DCO is comfortable around dogs, and knows how to handle dogs, and he isn't a seven year old child skipping down the road. The reason for taking a dog after a bite is to get a better assessment of the dog and to check the license and shot records, which wasn't done before. It would also have given her time to go to court, while the dog was confined, and file a complaint requesting a dangerous dog hearing. The court has 48 hours to hold a dangerous dog hearing from the time a complaint is filed. It gives a buffer.

Supervisor Jenkins said they couldn't tell the judges those things. We could discuss it with them.

Brittany Creel said the court told her they have 48 hours to give notice to the dog owner to appear in court.

Brittany Creel said she begged, and begged, and begged, and went to the court, and asked for a dangerous dog hearing, because she felt it was a dangerous dog. If the dog jumped on her daughter whether intentional or not, it did serious damage to her daughter's face. She said the Town wants to make sure the dog is assessed and checked out and if the court deems the dog is fit to go back to the owner then that is what the court deems, but at least we can do whatever we can as a Town to prevent a second dog bite.

Supervisor Jenkins said that is why he wants it to go to the county, so a second bite doesn't occur. However, there has to be some discretion relating to bites that occur within a household to a family member.

Brittany Creel said that isn't specific in the law. It reads "at his discretion". Her discretion is completely different than Mr. Styczinski's.

Supervisor Jenkins said if they go back to Section 59-5 (f) the owner cannot harbor or keep the dog that has attacked a person. Section 59-5 has to do with how it affects the owner. If a dog bites a person off its' property it can't go back to the owner. It has to go to the shelter where they will verify that it has been

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licensed and has had a rabies shot and they will evaluate the dog.

Councilman Kusnierz asked if the concern is over that an owner will not confine a dog.

Supervisor Jenkins replied by recapping again what happened in the Creel dog bite incident.

Brittany Creel reiterated what occurred in the dog bite incident.

Supervisor Jenkins said if it is a serious bite then he doesn't care if it is a family member that is bitten or not, the dog should go to the county shelter for ten days.

Councilman Kusnierz stated that the State Law is clear that if the DCO says the dog shall be confined and it isn't then it is a violation of the State Law.

Brittany Creel stated that what she is saying is that she doesn't think the DCO made the best decision and he doesn't have the best judgment. The Board is leaving an important matter up to one person's judgment, who is very comfortable being around animals, and who knows animals, and knows how to control animals. She doesn't think it is right to leave everything up to him.

Supervisor Jenkins said they weren't. He referred to Section 59-5 again.

Councilman Cumm stated that Section 59-7 contradicts Section 59-5.

Supervisor Jenkins said that Section 59-7 is about seizures and Section 59-5 is about what a dog owner can and should do.

Sandy Stanton asked if when a dog is running at large and bites somebody where they lawfully can be, then this section is still saying it is up to the discretion of the DCO.

Supervisor Jenkins said it is up to his discretion in some instances, but he can't override the law and Section 59-5 (f) says that the dog can't go back to the owner.

Councilman Cumm asked Attorney Buettner what the solution is here.

Attorney Buettner said it appears there is some confusion here and they need to work on the language a little bit. She asked if the Board wants to include something about family members. She asked if the Board wants to incorporate into the section on seizures a referral back to Section 59-5. She thought what she was hearing was that Section 59-5 deals with what dog owners cannot do and Section 59-7 is relating to dogs and what they cannot do, so to speak, and there appears to be some discord between the two sections. She said perhaps they need to massage the language somewhat to make it clearer as to what happens to the dog and what happens to the owner.

The Town Clerk asked if the Town could make that decision per Section 59-5 (f). She asked if wouldn't that be a court decision as to whether or not the owner can continue to harbor the dog or not.

Councilman Kusnierz said it doesn't allow for due process and he has a major problem with that. When a dog attacks a person, there are always two sides to every issue. There could be a legitimate reason why it happened. He isn't saying that is always the case and in the Creel dog bite incident he wasn't saying that was the case, but we have a court system where both sides can be heard. We shouldn't be taking away the due process rights of our residents.

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Brittany Creel asked Councilman Kusnierz what he thought would be a legitimate reason for a dog to attack a person where that person is lawfully present.

Councilman Kusnierz replied trespass.

Brittany Creel replied that if they were trespassing then they weren't lawfully present.

Councilman Kusnierz said that could be open to interpretation.

Brittany Creel stated that if her daughter was on their property then is she lawfully present or not. If she had a dog and that dog was protecting her house and a person came into her house and the dog bit that person, they aren't lawfully present.

Councilman Kusnierz asked if they should define "lawfully present" or is that something that is COmmon Law.

Attorney Buettner replied that lawfully present is Common Law. Lawfully present is where you have permission of the owner or you are a licensee or invitee and the owner knows you are going to be there and they would not have a claim of trespass against you.

Vince Sporrer asked if a salesman walks in the door is he lawfully present.

Attorney Buettner said it would be on a case by case basis. There is case law on who is a licensee or invitee.

Supervisor Jenkins suggested they work on draft #3.

Councilman Cumm agreed with Councilman Kusnierz on his statement about due process.

Councilman Kusnierz stated that Section 59-5 (g) is not necessary in his opinion. NYS Agriculture & Markets statute is clear on animal cruelty and how animals must be treated and we don't need to codify it on the local level.

Councilman Kusnierz stated that Section 59-5 (h) doesn't read right and the Board advised him that they noticed that too and it will be changed. It was brought up before he entered the workshop.

Councilman Kusnierz asked if there are any other municipalities around the area that have written a law to accomplish what we are trying to do here.

Attorney Buettner said she could research that. She didn't draft these changes, but her inkling is that this wouldn't have been drafted as such if there wasn't a template or something similar out there.

A motion was made by Councilman Cumm and seconded by Councilwoman LeClair to close the workshop at 6:50 p.m.

Roll call vote resulted as follows:

Councilman Cumm	Yes
Councilman Prendergast	Absent
Councilwoman LeClair	Yes
Councilman Kusnierz	Yes
Supervisor Jenkins	Yes

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Workshop adjourned.

Respectfully submitted,

Jeanne Fleury
Town Clerk