

Tuesday, April 14, 2020  
Board of Selectmen Meeting Minutes  
Foxborough Town Hall  
Andrew Gala, Jr. Meeting Room  
7:00 p.m.

**Members Present:** Mark Elfman, Chair  
Leah Gibson, Vice Chair\*  
Ed O'Leary, Clerk  
David Feldman  
Chris Mitchell

**Also Present:**  
William Keegan Jr., Town Manager  
Mike Johns, Assistant Town Manager  
Christina Metcalf, Community Info. Specialist

**1. 7:00pm - Citizen's Input: No input**

**2. 7:05pm COVID-19 Informational update – Bill Keegan**

Health Department updated webpage with new food establishment guidelines from the FDA. Updated supermarket guidance was received and shared with the supermarkets in town. The Health Department received homemade masks from Susan Gills and Jaycees, The Board of Health continues to answer complaints and provide clarification of state guidance during the Covid-19 situation. The Massachusetts DPH continues to release updated case counts on their website.

Foxborough currently has a total of 23 current cases, 22 have recovered for total of 45 cases. There have been 318 cases tested negative and no hospitalizations. At the State level, we currently have 26,867 cases with 8.7% of cases hospitalized. The FPD, FFD and SEMRECC assisted the Mass DPH in establishing testing site at Gillette Stadium.

There have been 122,000 tests performed statewide and that level of testing will continue until at least the apex of the cases. Testing is believed to be the key for allowing the economy to re-engage. Pleased with the amount of testing and medical capacity that is being provided by the state. The COVID-19 task force met again and am proud of level of coordination and cooperation we are getting from all our agencies. I believe we can attribute the low number of cases in Foxborough to the cooperation of the public and to the coordination of effort and consistent messaging that we have provided. The masks donated by Susan Gillis has been tremendous.

There are a lot of great stories going on within Foxborough right now. The Veteran Meals program provided by the Massachusetts Military Support Foundation has distributed 500,000 meals. Marc Craig has been working around the clock and with supporting our seniors, coordinating donations of PPE, and giving away toilet paper provided by Next Gen Supply. Recreation is doing their part and putting out programs on Facebook. Uptown Happenings Facebook group is supporting community restaurants for take-out and delivery. Despite all the challenges that are occurring, we have great things going on in our community.

**9. Action Items**

9.01 Motion to accept a \$55.00 donation to Veteran Services from an anonymous donor by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

9.02 Motion to accept a donation of \$50.00 to the Fire Department from an anonymous donor by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

9.03 Motion to accept a donation of \$135.00 to the Boyden Library in memory of Judith Young from Barbara and Bob Howard, Bob Smith and Susan and Saul Marsh by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

9.04 Motion to approve a Common Victualer and 7 day Entertainment License for Starbucks Coffee Store #59326 on 74 Washington Street Foxborough, MA by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

9.05 Zoning Board of Appeals - Re-appointments Motion to reappoint David J. Brown as a Regular Member of the Board for a 3 year term to expire May 1, 2023 by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

Motion to Reappoint Lorraine Brue and Kurt Yeghian as an Associate Member of the Board for a 1 year term to expire on May 1, 2021 by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved, 5-0.**

## 6. 8:10pm Assistant Town Manager's Update – Mike Johns

Shout to people doing great things in the community. Thank you to Mike Webber doing all these meetings. Thank you to the IT team. Thank you to Public safety, dispatch, volunteers, health care providers, and all those who have been staying home.

## 3. 7:15pm Public Hearing - Flynn Dog Hearing

3.01 Hearing to determine whether the dog owned by Deborah J. Flynn and David G. Flynn Jr. is a nuisance dog or a dangerous dog, and based on findings may make such vote to determine the restraint or euthanization of such dog as may be deemed necessary.

E. O'Leary – Read public hearing notice and open public hearing

Kate Connolly – We need to swear in any witness. Making a decision that it is a nuisance or whether the dog is dangerous. If the dog is determined to be a nuisance then the dog would be restrained. If determined if dangerous then there are multiple other things from restraining to euthanization. If that is determined to be appropriate then the dog needs to be impounded for the days need to be appealed for 10 days.

B. Keegan – Swearing in of Kaycee Bailey, Animal Control Officer.

Kaycee Bailey – Read her report of incident into the record. Patrolman Kelly Colvin statement read into the record.

KC – The ACO needs to state her recommendation of whether this dog is a nuisance or dangerous dog.

KB – I recommend that this dog be determined a dangerous dog and be euthanized.

M. Elfman –asked Kaycee to go over the Dr. Ian Dunbar bite scale.

KB – The scale primarily refers to bites on humans but can be used to refer to dog bites on animals. I would say this is a level 4 or 5 because it was death of dog and not a human. A level 4 bite is one to four punctures from a single bite with at least one puncture deeper than half the length of the dog's canine teeth and may also deep bruising around the wound where the dog bore down, or lacerations in both directions. A level 5 bite is a multiple bite incident with at least two level 4 bites for a multiple attack incident with at least one level 4 bite in each. The bite to person considered level 4. And the fact that Lincoln did bite the puppy and handler so severely is considered level 5 bite.

ME – Letter from Debbie and David Flynn read into the record. Letter/email from Melissa O'Connor and Jamie Kelly read into the record.

C. Mitchell – What can we do? Can we rehome?

KB – We can't order them to re-home or dog. In place of euthanization, we can put other options on the table and then they can choose to re-home the dog and to let the people know who are taking the dog that it has been deemed dangerous or a nuisance.

CM – they owned for two years and is this the first incident?

KB – Yes, this is first incident.

E. O'Leary – I'm not in favor of euthanization but in favor of rehoming, I would have the dog removed from the community.

ME – We have two options and rehoming is not one of them. We have to decide if Lincoln is a nuisance or dangerous. And then either euthanize or restriction

KB - There are 7 options, one includes euthanasia, one is humanely restraining, and another is confinement. The latter options have state guidelines that need to be followed.

B. Keegan – Third option is rehoming and/or return the dog back to the original owners if not the only options is to euthanize the dog. Make sure that the new owner is aware of this incident when rehoming.

KC – You cannot order the dog to be rehomed, there is only the seven provisions provided in Chapter 140 section 157 if the Board determines it's a dangerous dog. If the dog is determined to be dangerous and then is held for 10 days while the Flynns can appeal they can use that time to find another home should they be able to do that it would be their responsibility to tell the new owners the decision of the Board. Does anyone know if the Flynns have contacted the rescue or the previous foster home?

KB- The Board of the rescue met and they are interested in taking dog back but not sure when they would be able to schedule transport, the rescue in Kentucky but has not foster homes given the current situation with the virus.

KC – If the Board determines Lincoln is a dangerous dog then I recommend the dog should be impounded. If there is any possibility that the dog can be rehomed, fully understanding that the Board cannot order that, and pending appeal if the owners find someone who is willing to take the dog provided that they informed them that the dog has been deemed a

dangerous dog by the Board of Selectmen, than they can transport the dog to someone with that information written in writing.

BK – It then falls back to the owners to make those arrangements if they don't want the dog euthanized to make those arrangements within the 10 day appeal period.

D. Feldman – Can we put interim measures in place to afford the owners an opportunity to secure a new owner?

KB – We have a town bylaw that states we can issue a muzzle or restraint order for 14 days and can be extended to whatever the Board sees fit.

BK – Could the dog be kenneled for a 14 or 21 day period?

KB – That is not written into by laws to kennel the dog. In order for us to take the dog at this point it would have to be determined that we would be euthanizing the dog. With the muzzle or restraint order if the dog is seen out then we could take the dog into the kennels then.

BK – If the order were to euthanize the dog but give a longer period of time as part of the order could that be done as part of the order, Kate?

KC – Yes, there is an appeals period. We have to consider during the COVID-19 emergency courts are only hearing emergency cases and I don't think that this would qualify as an emergency if the Board did decide it was a dangerous dog and if the Board did decide to euthanize. The dog would have to be kenneled during the appeal process. If the owners appealed it could on for quite a bit of time.

DF – If we could put in an interim order to restrain and muzzle the dog for 21 days and continue the hearing and if the dog can be rehomed by the owner, so the dog isn't euthanized and put guarantees in place and if after 21 days then take a hard vote if it hasn't been resolved.

KB – You could continue the hearing and then vote on whether it's dangerous or not. The O'Connor's don't want the dog in the area. Can continue without determination but continue it to a date certain and put some interim measures in place. You can make the decision to continue and put at the request of the owner to rehome and put restraints in the meantime. If there is no restraints the town may have an issue. .

BK – You may want to consider kenneling as the only option. It removes the dog from the neighborhood and it takes the onus off the Board for any potential danger occurring in the neighborhood again.

ME – Kaycee, can we put up as a restriction the Flynn's kennel the dog at their own expense?

KB – I don't know of any reason why we couldn't.

CM – We would probably have to deem the dog dangerous tonight to make that happen.

KB – If we deem the dog dangerous tonight they would only have 10 days to appeal it and I don't know that we can give the order of 21 days.

BK – Can you order in such a way that the dog will be euthanized 21 days from now if not rehomed? Also order to kennel the dog.

KC – If the order is to euthanize 21 days from now that gives them the chance to rehome the dog and that still only have 10 days to appeal it.

ME – We won't be here in 21 days so we would have to have it in 14 or 28 days.

BK – Either way is fine as long as the dog isn't in the neighborhood.

CM- If we continued to the May 12<sup>th</sup> board meeting we would have a decision within the timeline given by the victim dog's owner to have acquired their new puppy and have Lincoln out of the neighborhood.

LG – Are there any concerns from humane perspective of kenneling the dog?

KB – It's not ideal for a dog to be living in a kennel if we weigh the dog vs safety of the neighborhood. It will still be fed and interacted with as well by the Flynn's and will still be stimulated mentally and get everything that it needs but not ideal for a dog but if we are looking safety for a neighborhood vs a dog in kennel for a few weeks.

DF – issued muzzle and restraints in the pass

ME – We should get the dog out of the neighborhood

BK – If the victim dog owner's had not stated in their letter that they wanted the dog out of the community I would feel differently but their concern is something happening again.

LG – Should we follow up with victim dog owner, if we have this continued, can we get them on video?

ME – We need to make the decision tonight. I like giving the 28 days with the dog out of the neighborhood to find a new home. Do we deem the dog dangerous tonight or in 28 days?

CM - if they find that they can rehome the dog do we have to make the decision that it is a dangerous dog at all? I'm fine with 28 days, with the dog is fenced in and they talked about getting an electric fence. I don't think that the kennel would be good for the dog.

DF – If we continue the hearing then we don't, if we make a determination that it is a dangerous dog tonight then they have an appeal. I agree that it wouldn't be good for the dog in the kennel.

ME – I'm leaning toward the kennel.

MJ – Question to ACO Bailey, if this is level 4 or 5 dog bite and is there some liability on the Board or Town with this evidence if something isn't done.

KC – There is no liability on the Board. Out of the ways to restrain kenneling isn't one of them but they can voluntarily kennel the dog. The Board isn't involved in any rehoming because it's not allowed to be. There is no liability without determination. If you don't make a determination tonight because you want to continue the hearing to have owners of both dogs to appear that would be a reasonable decision for the Board. I would recommend to make restrictions to restraint and defer to ACO to which method she would recommend.

ME – One of the reasons to postpone is giving Flynn's the opportunity to rehome the dog.

KC – Continue it to give a chance to rehome and/or to give the chance for either dog owner to appear at continued hearing.

LG – I'm curious what Kaycee thinks, what is a safe and humane way to control the dog while the situation is figured out?

KB – We have to look at it as a safety issue and there are concerns with the neighbors about the dog being there. While it's not the ideal situation to have dog in kennel for any length of time we need to consider the neighbors and their safety and kennels give peace of mind. It gives the owners time to rehome and ensure safety and have the option to see the dog.

BK – There is an unspoken thing and the neighbors probably don't want to come forward and saying something that will impact their dog. They may say privately they are scared to say publicly. Everyone ones is going to be hard-pressed about what is the right decision here, there is no easy choice.

DF - there are a lot of dogs in that neighborhood.

ME – I'd like to see a motion to continue this for 28 days until our meeting on the 12<sup>th</sup> and to allow the Flynn's to rehome but have the dog kenneled.

Motion to continue the finding with regard to the matter before us at this point to a date certain being May 12, 2020, but the animal itself must be kenneled and not allowed into the neighborhood at the owner's expense by E. O'Leary 2<sup>nd</sup> D. Feldman.

Discussion: KC- This was not one of the 7 options under Chapter 140 section 157 but it certainly is a reasonable one that restrains and protects the neighborhood.

CM – all for the putting it out to May 12<sup>th</sup> but not comfortable with kenneling.

LG – Should we do it sooner rather than later?

DF – if we weren't in a nationwide shutdown I would say yes, do it in two weeks but they may require more time because of this.

BK – This would also be motivation to rehome and get this situation resolved.

CM – How much to kennel? I would be more comfortable having parties in attendance to speak too.

KB - \$20 a day to kennel.

LB – I don't expect to hold the public hearing and have neighbors coming but we should afford the opportunity for everyone to attend virtually.

BK – I want to be clear that they were afforded the opportunity to attend and chose not to. The both gave statements in writing to not have to appear tonight.

**Approved 4-1. Chris Mitchell dissenting.**

ME- One of the hardest things to do as a Board is a dangerous dog hearing. Some of us have done them before and some of us this is our first time. We tried to address that at the fall meeting. The Board of Selectmen at the time in conjunction with the animal control officer Kaycee put forward a warrant. I think Kaycee at the time you have wanted to update some policies and bylaws and the Board of Selectmen wanted to have a bylaw change to allow the Board at their of discretion to allow independent reviewer to hear cases like the one we just heard. The Commonwealth allows for Town's to allow a Town Manager to hear these very difficult cases. It does require bylaw change and we try to that bylaw forward last fall. It was reminder, the people who came before us and sent letters tonight are our friends, our neighbors and our fellow townspeople.

For the Board of Selectmen to decide to allow an independent reviewer, our Town Manager, to hear these cases will take an unbelievable amount of pressure off of the members of the Board. We are not averse to pressure, certainly budget issues, hiring and firing issues but this is a unique situation and I'm sure the Board of Selectman will bring forth another warrant in the fall to allow us to move this case to an independent reviewer and I would like the community to rethink this at that time to allow us at our discretion to allow us to move that case to an independent reviewer.

DF – These are the worst, especially with all parties present and we are deciding the fate of a family member. That is how a lot of families deem their pets. We deal with anything that's thrown at this Board but a dangerous dog is the worst.

LG – To add, and completely agreeing with all that, if we were to adopt this by-law and have this independent reviewer or a board of 3-5 people it would be a public hearing but not in a televised way. It's hard for neighbors in a situation like this, there's a tragedy, and everyone wants to work to an outcome.

#### **4. 7:45pm - 2020 Town Elections and Town Meeting Discussion – Bob Cutler & Frank Spillane**

##### **4.01 Discussion and possible vote to postpone & reschedule the 2020 Town Election and Annual Town Meeting**

Bob Cutler – the State had passed a bill to postpone Town Election but not for Town Meeting, it has been now been approved. We are all in agreement that Town Elections will be June 8<sup>th</sup> and Town Meeting will be June 15<sup>th</sup>.

Motion to postpone the municipal elections for the Town of Foxborough, scheduled for May 4, 2020 to June 8, 2020 pursuant to section 1 of Chapter 45 of the Acts of 2020 and because of the state of emergency declared by the Governor pursuant to Executive Order 591, Declaration of a State of Emergency to Respond to COVID-19 by E. O'Leary 2<sup>nd</sup> by D. Feldman.

Discussion: LG – How does this work with folks that are up for re-election?

BC – Anyone that is currently in the position will be in that position until voted on and voted in.

CM - What happens if this goes longer than June 8<sup>th</sup>?

BC – It needs to be done by June 30<sup>th</sup>, if it goes longer there would be more legislation.

FS – If we have the election we probably would have Town Meeting but if there is an issue than we can continue Town Meeting into the next fiscal year.

CM – Is there the same stipulation to have Town Meeting by June 30<sup>th</sup>?

BC – If it gets worse than more will have to.

CM – Will everything will be posted?

BC – Everything will go up, including acts, statute, and sample ballot.

CM - With this motion do we need to put provisional date in case things change?

BC – Wouldn't need to because you would have to take another vote to change it again.

FS – Since the Board vote to postpone the Town meeting I don't need to be involved as of yet unless Town Meeting is moved because we don't think it would be in the best interest of the Town to gather on the June 15<sup>th</sup> date. I think it was the right by the Selectmen to move the election and Town Meeting to June. It was the easiest and cleanest way to get both of these done. Thank Bob for all this work and keeping on top of it and all the legislation that has been changing. The second thing to ask that the warrant be out in a timely manner and have public be informed about it.

BC – I have been working on the warrant with Katie Lang and Christina Metcalf. It will post it in a timely manner. It will need to be posted on the website and town social media accounts.

#### **Approved 5-0.**

Motion to postpone the Annual Town Meeting, scheduled for May 11, 2020, to June 15, 2020 based on the recommendation of the Town Moderator and due to the state of emergency declared by the Governor pursuant to Executive Order 591, Declaration of a State of Emergency to Respond to COVID-19 by E. O'Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

#### **5. 8:00pm - Local options regarding real estate taxes**

##### **5.01 Discussion and possible vote to adopt local options regarding real estate tax bill due date and real estate exemption applications deadline.**

BK – The legislation that was just spoke about also includes options to move the due dates for local real estate tax bills. This also provide an extension for real estate exemption application deadlines to June 1<sup>st</sup>.

CM – Can the Acts be sent?

MJ – Yes, they will be sent.

Motion to extend the due date of real estate property tax payment from May 1, 2020 to June 1, 2020, under “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19,” Chapter 53 of the Acts of 2020 Section 10A by E. O’Leary by D. Feldman.

Discussion: BK – The motion that was just read is essentially the Act.

CM - not opposed to any of this but would like the documentation.

LG – This means you have until June 1<sup>st</sup> to pay your taxes without penalties or late fees. This information should go out on the website along with how to pay your bills to the Town.

BK – You are able to pay your tax bill online, mail it to the Town Hall or drop it in the overnight box at Town Hall.

**Approved 5-0.**

Motion to extend the due date for real estate property tax exemption applications from May 1, 2020 to June 1, 2020, under “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting From COVID-19,” Chapter 53 of the Acts of 2020 Section 10B by E. O’Leary by D. Feldman. **Approved 5-0.**

### **7. 8:20pm Town Manager's Update**

The Town Warrant, FY21 Budget, and Capital Plan will all be presented to the Board and also will give indication of revenue, projections, and give indication of where we are currently. I do expect some recommendations on the budget to change and to place most of new positions on hold to understand where things stand financially. I’m not sounding the alarm but we won’t know how the financial assistance from the federal government and/or from the state. And we will also have a better picture of our overall revenue at this time. The biggest impact will be meals and hotel and payment of taxes will be slower because of loss of jobs. The things we don’t know is when the economy is going to come back and how it will impact concerts, soccer, football. We want to have a better understanding of that and go into this town meeting conservatively.

We had a major storm and people lost power and to my understanding all should have power back and it took a bit longer but it was restored. Grateful for the efforts of National Grid to get things back online as soon as possible.

CM – Tree and Park did a great job.

BK - Thank you to the Public Works and Tree and Parks, for the fine work you did and responding under difficult circumstances.

### **8. 8:30pm - Selectmen's Update**

LG - New business – With the reappointments that we done in the action items, it made me think of getting a handle early on of boards and committees with the less active boards. We talked about reaching out to all the chairs to make sure that everyone that wanted to be reassigned for the next term still wanted to be. We could have some departments who may not have a lot to do right look into this for the May/June appointments.

ME – Thank you to the School Department. Amy Berdos, Tina Belanger and the School Committee and teachers are doing an excellent job and are way above the curve to keeping our students engaged. I think they are doing an outstanding job. I also would be remiss if I didn’t mention IT allowing for virtual classrooms, they have done an outstanding job.

### **10. Adjourn**

Motion to adjourn by E. O’Leary 2<sup>nd</sup> by D. Feldman. **Approved 5-0.**

*\*Attendees participated remotely*