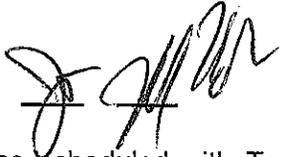


**BOARD OF SELECTMEN
MEETING MINUTES
10/1/13**

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The Board of Selectmen met in the Joseph F. Bilotta meeting room at Town Hall as scheduled with Tom Alonzo, Dave Matthews, Jamie Toale, Robert Ebersole, and Town Manager Kerry Speidel.
Not Present: Paula Bertram

Regular Meeting opened at 7:10 PM

7:00PM PUBLIC COMMENT : None

ANNOUNCEMENTS : None

APPOINTMENTS

7:00 PM Nuisance Dog Complaint – Hearing regarding complaint filed against William Beatteay, 890 Flat Hill Road, owner of “Dagan” male Staffordshire: Mr. Alonzo opened the hearing and read the hearing notice into record. He asked all people who were giving testimony this evening to stand, one at a time, and state their names.

Participants were:

William Beatteay, 890 Flat Hill Rd.
Patricia Beatteay, 890 Flat Hill Rd.
Sabrina Ramondelli, 599 Reservoir Rd.
Sam Ramondelli, 599 Reservoir Rd.
Kathleen Comeau, Animal Control Officer
Chief of Police James Marino

All persons testifying this evening were duly sworn in by the Chair and he outlined the hearing procedure for the participants. He went on to explain that the board will be deliberating on whether or not the dog should be considered a “nuisance” or a “dangerous” dog.

Ms. Speidel read in to record the notice which was sent to Mr. Beatteay on September 19, 2013 along with the official complaint which was made by Mr. Ramondelli. (See Attached)

Mr. Alonzo spoke to say that according to the statute you can complain that the dog is a “nuisance” dog or a “dangerous” dog and clarified that this actually is a “dangerous” dog complaint. He than asked the complainant to come forward to give their account of the incident.

Sabrina Ramondelli, 599 Reservoir Rd. gave testimony on her version of the incident explaining that on July 5th at approximately 9:30AM she was with her friend Nick Jones doing pull-ups on a bar in the trees in the back yard when they saw Mr. Beatteay on the upper deck of his home. She stated that Mr. Beatteay invited them up to the deck for a better view of damage which was done to his boat the day before. As they neared the stairs to the deck she saw the dog, which was on a run that was long enough to reach her. She said that the dog charged to attack her so she turned and the dog bit her on the back and on her leg. Mr. Jones pulled the dog off of her, she proceeded to run up the stairs and told Mr. Beatteay that the dog had bitten her and she needed to go to the hospital. She said that everyone was in shock and she requested that they go back to Mr. Jones’ house where his father transported her to the hospital. Ms. Ramondelli explained the dog bites to the board and said that she received 10 stitches on her leg and 2 stitches on her shoulder. She said that she did not think that the dog was going to bite her and does not want to see this happen to anyone else.

Mr. Ramondelli presented pictures of the dog bites to the board.

Mr. Alonzo asked if there was a report from the doctor concerning this incident.

Mr. Ramondelli replied that there is a written doctor's report but they forgot it at home and he will bring it to the BOS office tomorrow.

Mr. Ramondelli testified that he was at home when the incident happened and received a phone call from Nate Jones informing him that he was taking Ms. Ramondelli to the hospital and explained to him that she was bit by a dog. Mr. Ramondelli contacted the dog officer who returned his call the next day. He was informed that the dog was not licensed in Lunenburg and did not have his rabies shots. He said that the physicians treating her were in a dilemma on whether or not to treat Ms. Ramondelli for rabies or not, an infection had set in, and her leg was lame for approximately 1 month. Thankfully she has healed but will carry scars for the rest of her life on her shoulder and leg. He went on to say that the dog officer informed him that the dog would be quarantined for 10 days due to the fact that the dog did not have his rabies shot. He was told that when the dog had been brought for rabies shots the dog had Lyme disease and therefore could not get them. He said that after the 10 day quarantine thankfully the dog did not have rabies.

Mr. Ramondelli went on to say that this was the worse day in his life, he does not know these people, and they never received a phone call from them inquiring about the status of his daughter.

Kathleen Comeau, Animal Control Officer, read her report on her involvement with this case which included her conversation with Patricia Beateay, owner of the property, her investigation of the dog's medical/licensing history and her conversations with Mr. Ramondelli. Ms. Comeau ended her report by saying that she understands the frustration of both parties and thought it was a bad situation which has happened to good people on both sides. (See Attached Statement)

James Marino, Police Chief, read the preliminary report which was made by Officer Robert DaCosta, (not present this evening), which was the basis for a follow up investigation by Chief Marino. Included in the report/narrative were statements from the defendants, complainants, and the witness were given on their versions of what happened that day. Chief Marino also presented photos of the dog bites to the board. (See Attached Reports)

Mr. Alonzo stated that he would give the board time to review the information that was presented to them by the Chief and then give them the opportunity to questions the people who have already testified.

Mr. Alonzo asked Chief Marino in his interview with Mr. Jones, and with the defendants, you indicated that the defendants said that Nick Jones was not supposed to be on the property, do you know why?

Chief Marino replied that Mrs. Beateay did give some reasons why he wasn't allowed on the property, which he did not record, and that she could speak to that question.

Mr. Alonzo asked Ms. Comeau, aside from this particular case have there been other complaints about this dog?

Ms. Comeau replied that she didn't know the dog existed.

Mr. Alonzo asked for clarification concerning the dog not having a rabies shot because it had Lyme disease.

Ms. Comeau responded that it went into the Veterinarian sick at Shirley Animal Hospital with Lyme disease which prevented them from giving him a rabies shot, and that's why the dog was unlicensed. After the quarantine was up and the infection was clear the dog was given the rabies shot.

Mr. Alonzo asked if Ms. Comeau had called the Town in New Hampshire where the dog originally came from?

Ms. Comeau said she had and they told her that the dog was licensed up there until approximately 1 year ago, which eased Ms. Comeau's concerns about rabies, and she believes that the dog has been in Lunenburg for over a year now.

William Beateay, 890 Flat Hill Rd. gave testimony on his version of the incident. Mr. Beatty said that on July 5th he was up on his deck when he noticed Mr. Jones and Ms. Ramondelli on the lower part of his property past the pull up bar walking towards his friend that was fishing on the dock. He told them that he had blown himself up the previous night and not his boat, and they started heading his way. Mr. Beateay went on to say

that on the deck where he was sitting was a broken water tube hanging on the railing which blocked his view of where the dog was and he did not witness the incident, although he could hear the commotion. He said that Ms. Ramondelli was coming up the stairs and asked him for a ride to the hospital. Mr. Beatteay told the board that he does not have a driver's license or vehicle so he could not transport her. Mr. Beatteay said that his friend who is not here tonight saw it happen from where he was fishing.

Patricia Beatteay, 890 Flat Hill Rd spoke to say that she is the owner of the property and that when the dog's rabies shot was due, he was not living with her. Ms. Beatteay's concern was with what she believes is the inconsistency with the reports. Ms. Beatteay displayed different pictures of her property to the board which showed the layout of her property. Ms. Beatteay said she is the owner of the property and never gave Ms. Ramondelli permission to come onto the property, which she believes is inconsistent with Ms. Ramondelli's testimony. She mentioned that Mr. Beatteay's friend who was fishing on the property that day had a female dog with him, which was in heat, that agitated their dog. She said that Mr. Beatteay did not invite them in but rather asked what they were doing there. Ms. Beatteay said that the dog has a problem with his nails, they are difficult to cut and can be very sharp which she believes that the wounds may have been scratch marks. She said that he is a sweet dog, not her dog, but it is her property and she would like this matter to be treated fairly. She also mentioned that Mr. Jones had been told before that he is not allowed on her property.

Mr. Matthews asked if the dog is always restrained.

Ms. Beatteay replied that the dog is never loose.

Mr. Matthews asked if the dog has a history of jumping on people.

Ms. Beatteay replied it's a habit, he doesn't do it all the time, but more so when there is a dog in heat and that he has never injured anyone before.

Mr. Alonzo asked Mr. Beatteay how long he has had the dog.

Mr. Beatteay replied that he's had him since the dog was 8 weeks old and he got him in New Hampshire.

Mr. Alonzo asked why he restrains the dog.

Mr. Beatteay replied because he takes off and it's for his own protection. He also mentioned that the dog is not neutered.

Mr. Alonzo asked Mr. Beatteay if he ever felt the dog would be a danger to anyone?

Mr. Beatteay replied, no, he's jumpy and when he meets new people I have to introduce him to them or he will jump up on them.

Mr. Alonzo asked Mr. Beatteay to state again what the events were of that day.

Mr. Beatteay said that he looked down from his deck and he could see Ms. Ramondelli and Mr. Jones past the pull up bar which was approximately 120' from him. He said he yelled to them "What are you guys doing?" and then they came towards him. They walked down below where he couldn't see them and then he heard the commotion and that's when Ms. Ramondelli came up the stairs. He did not see what happened because of the tube that was hanging over the railing.

Mr. Toale asked Mr. Beatteay what the extent of his conversation was with them.

Mr. Beatteay replied I said I blew myself up last night, I did not say I blew up my boat.

Nicholas Jones, 878 Flat Hill Rd. came forward and was duly sworn in by Mr. Alonzo.

Mr. Jones spoke and said that they had walked over to use the pull up bar and while there they heard Mr. Beatteay yell down to them "Hey check this out I almost blew the front of my boat off last night and you can see it from up here" and that's why we headed over there.

Mr. Alonzo asked Mr. Jones did he (Mr. Beatteay) not say what he just said up here?

Mr. Jones replied no, he said I almost blew the front of my boat off last night.

Mr. Alonzo asked Mr. Jones whose property is this pull up bar on?

Mr. Jones replied it's on theirs.

Mr. Alonzo asked Ms. Ramondelli what caused you to go onto their proper?

Ms. Ramondelli replied I wanted to do pull ups, I didn't go anywhere near the water, I hadn't looked at the boat and there was no one fishing. I knew there was someone else there because when the dog attacked me another man came out from the pool room upstairs, I didn't speak to him and I didn't know who he was. The

first thing Mr. Beatteay said to me was not "what are you doing" it was "hey I almost blew off the front of my boat last night you can see it from the top deck".

Mr. Alonzo asked how long did the incident take, not from the time you were at the pull up bar, but from the time the dog attacked.

Mr. Jones replied probably 6-7 seconds.

Mr. Alonzo asked for a final statement from the complainant.

Mr. Ramondelli spoke and said that the BOS has all the information, this is the first time he has seen these people, he has never heard from these people, and don't insult our intelligence with nails. These are not nail scratches you can see the dogs mouth marks on her shoulder and leg. He said he was disappointed beyond words and would like the dog to be put down. We have a Connor Fund in this town which I am sorry for Connor and his family because I almost had a Sabrina fund here. I don't think we'd be talking about this if Sabrina was dead, I'm glad we are talking about it because she is alive. My daughter has scars that will live with her for the rest of her life. Everything has surfaced since this dog attacked my daughter, how did the dog get licensed in New Hampshire if the dog had Lyme disease, I would like answers. Don't come here on TV and insult our intelligence about the dog's sexual habit. You have your pictures, report and my daughter does not lie. The dog was not licensed and the dog officer told me that they could be fined. Nothing has happened to these people or that dog since July 5th and that where my disappointment lies. You spell dog D.O.G not G.O.D, I'm here so that this does not happen to another Lunenburg resident.

Mr. Alonzo asked for a closing statement from the defendant.

Mr. Beatteay spoke to say that he was sorry that this whole thing happened and if she didn't come on my property this wouldn't have happened. My dog has never done anything like this before and I'm sorry, that's it.

Mr. Alonzo asked if anyone from the public had any comments before he closes the hearing. There were none.

Mr. Alonzo spoke to the board saying that Mr. Ramondelli does not have the Doctors report and if we want that to be put into evidence, if we think it will sway this, then we will have to stay this hearing and continue it to the next meeting. If you think we've heard enough we can close the hearing now and go onto deliberation.

Mr. Ebersole said that he was struggling with whether or not it would make a difference if we assume there is a bite vs. a scratch, if we have the discussion based on that, and if we find something we could certainly recess the hearing to a later date.

Mr. Toale said that unless there is something in the Doctor's report that is totally unexpected I don't believe a report on if it was bite, scratch, or undetermined would sway my decision.

Mr. Matthews spoke to say that he would agree with that and thought it would not have a huge impact.

Mr. Alonzo spoke and said that he agrees and pointed out that everyone was properly notified that tonight was the hearing so we can go ahead with deliberation.

The Chair then closed the Public Hearing and opened the board up for deliberation.

Mr. Alonzo pointed out that the first point of deliberation is to decide, because this is a dangerous dog complaint, to either dismiss the complaint or we deem the dog a dangerous dog.

Mr. Ebersole asked for a definition of what a dangerous dog is.

Ms. Speidel said that she did not see anything that defined that and asked if the Police Chief or Dog Officer could speak to that.

Mr. Alonzo said let the record show, because the Police Chief and the Animal Control Officer did not come to the mike, that there is no official definition for dangerous dog, which leaves it up to this board to decide that.

Ms. Comeau spoke and said that she believes it is all under one definition because it's all under one general chapter.

Mr. Ramondelli spoke and informed the board that his wife was on her way to the meeting with the discharge paper from the Doctor.

Mr. Ebersole said that he is struggling with this, knowing how a dog can act, a nuisance dog vs. a dangerous dog seems to be a very strong word, and if a dog gives more than one bite, how do you define if a dog is dangerous. I'm not negating anything that has happened to Ms. Ramondelli but I'm struggling with the definition of a dangerous dog regardless of why someone is on a property or not. Our focus needs to be the activities of the dog not of other people. But if the dog is restrained on a property and someone goes onto that property I question on whether the dangerousness continues.

Ms. Speidel pointed out that nuisance pertains to barking under the statute.

Mr. Alonzo invited Town Counsel up to provide a legal definition for the board.

Attorney Rick Holland, Town Counsel, spoke to say that the definition section appears to be in 136A of Chapter 140 and read the definitions from the General Laws website as follows:

"Dangerous Dog", a dog that (I) without justification, attacks a person or domestic animal causing physical injury or death; or (II) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.

"Nuisance Dog", a dog that: (I) by excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or (II) by excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or (III) has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

Mr. Ebersole spoke and said that based on that first definition and the facts of the case it is leading me towards more of a dangerous finding than before.

Mr. Matthews spoke of the conflict of this case saying on the one hand the dog is restrained on the owner's property and is not accessible to people who shouldn't be near the dog. The other side is that there is physical injury to this girl, questionable if it is a scratch or bite, we'll see what the Doctor's report says. If a dog is going to playfully jump on somebody, or in another manner and do damage to them, that is of concern. In consideration of potential for biting I am inclined to deem the dog dangerous and caution what the next steps would be.

Mr. Alonzo asked Attorney Holland to read again #3 of Nuisance dog definition.

After this was read Mr. Alonzo spoke to say the reason why he asked that, between #3 of Nuisance and #1 of Dangerous, as a dog owner, if I was to find the dog guilty of any of these classifications it would be #3 of the Nuisance definition. From what I hear, especially from the injured parties own recounting, the whole thing took 6-7 seconds, that's how long it takes a dog to jump up and how long it takes them to get down. The injuries are horrible to look at but I don't see any other incident with the dog and no evidence of any other aggressive behavior. The fact of who's on who's property is not terribly relevant to me because we are not going to come to the bottom of the complainant saying that we were invited and the defendant is saying they were not.

Mr. Matthews added that you can find this dog dangerous and the remedies can be restrain and/or tether which is the condition it is already in. Where the dog and the person was on the property is relevant to this case. If the dog was restrained you have every opportunity not to make contact with the dog.

Mr. Toale asked what the differences were with the remedies between Nuisance and Dangerous.

Mr. Alonzo said that there were 7 remedies, with the last one being that the dog be euthanized and you cannot euthanize a Nuisance dog.

Mr. Toale went on to say that he is inclined to agree with Mr. Alonzo that it feels more like the definition of Nuisance. The injury is severe but the activity of the dog is not overwhelming and how the owner keeps the dog is a factor.

Mr. Alonzo spoke to say that they had just been presented the hospital report and gave it to the board to review which indicated that this was a dog bite.

After due and diligent discussion, Mr. Ebersole moved to have the dog deemed a Dangerous dog. Mr. Matthews seconded. On vote, motion carried, 3 in favor, 1 opposed (Alonzo).

Mr. Alonzo read into record the options that the board has citing from Chapter 140: Section 157.

- (I) That the dog be humanely restrained; provided, however, that no order shall provide that a dog deemed dangerous be chained, tethered or otherwise tied to an inanimate object including, but not limited to, a tree, post or building;
- (II) That the dog be confined to the premises of the keeper of the dog; provided, however, that "confined" shall mean securely confined indoors or confined outdoors in a securely enclosed and locked pen or dog run area upon the premises of the owner or keeper; provided further, that such pen or dog run shall have a secure roof and, if such enclosure has no floor secured to the sides thereof, the sides shall be embedded into the ground for not less than 2 feet; and provided further, that within the confines of such pen or dog run, a dog house or proper shelter from the elements shall be provided to protect the dog;
- (III) That when removed from the premises of the owner or the premises of the person keeping the dog, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;
- (IV) That the owner or keeper of the dog provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued; provided, however, that if a policy of insurance has been issued, the owner or keeper shall produce such policy upon request of the hearing authority or a justice of the district court; and provided further, that if a policy has not been issued the owner or keeper shall produce proof of efforts to obtain such insurance;
- (V) that the owner or keeper of the dog provide to the licensing authority or animal control officer or other entity identified in the order, information by which a dog may be identified, throughout its lifetime including, but not limited to, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of any such methods of identification;
- (VI) that unless an owner or keeper of the dog provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition, the owner or keeper of the dog shall cause the dog to be altered so that the dog shall not be reproductively intact; or
- (VII) that the dog be humanely euthanized.

Mr. Alonzo opened up discussion to the board.

Mr. Matthews stated that he would be satisfied that the dog be restrained as he currently is, and make sure that people entering the property know that the dog is excitable. As a "side note" he also suggested to the defendant that he neuter the dog.

Mr. Toale stated that he agrees with both points made by Mr. Matthews.

Mr. Ebersole said that the only concern he has is removing the dog from the premises and how it would be handled. Since we don't have a leash law in town, there should be some restriction on restraint when it leaves the property. We are creating a record for this dog and we want to make sure that this does not happen again in the future.

Mr. Matthews moved to implement option (1) and option (3) of Chapter 140 Section 157 as read by the Chair. Mr. Toale seconded. On vote, motion carried 3 in favor, 1 opposed (Alonzo).

Mr. Alonzo gave his reasons for the no vote as being that he did not want the dog to be deemed dangerous and also that the dog is already tied up.

Ms. Speidel informed the defendant that an order will be drawn up based on the decision of the board this evening and she then read the findings. She said that it will be sent to the defendant via Certified mail and told him that he has 10 days from receipt of the order to file an appeal through the District Court.

Mr. Alonzo spoke to say that the Dog Hearing was concluded and thanked all who came forward this evening.

Troy Daniels asked Mr. Alonzo if he could ask the Animal Control Officer a question to which he replied not now but in Public Discussion later.

8:00 PM – Green Community Task Force: Fuel Efficient Vehicle Policy; Membership & Quorum Issues:

John Londa, Director of Facilities for the School Department came before the board as a member of the Green Community Task Force to discuss the adoption of a fuel efficient vehicle policy. (See Attached)

He explained that the policy would state that when the Town purchases vehicles in the future that fuel efficiency be considered, recommendations would be given on what kind of fuel efficiency should be expected as published by the Dept. of Energy Resources on the Green Communities website. Most of the Towns vehicles would be exempt because they are heavy duty vehicles. This policy would only pertain to 4 vehicles that the Town currently owns which are 2 sedans & 1 light pickup truck in the School Dept. and the Fire Chief Command car. All vehicles would be inventoried once a year and this policy would require that all Town Depts. that have vehicles bring forward a replacement plan within a 10 year period, through the Capital Planning process. Of most concern is the Fire Chief Command Car which is a 2007 Expedition that currently gets 14 MPG and Mr. Londa recommended that it should be replaced with a vehicle such as a Jeep Grand Cherokee which gets 18 MPG. He also touched on the Anti-idling Policy which states that no employee shall allow operation of the engine of a motor vehicle while a vehicle is stopped for a foreseeable period of time in excess of five minutes, unless such operation is necessary.

Mr. Londa stated that they did not expect any action on this tonight but they are looking to submit an application for Green Communities Designation by October 30, 2013 at 5PM so they would like it approved sometime in October by the BOS.

The Green Community will also be bringing to the BOS an Energy Reduction Policy sometime in the near future.

Mr. Ebersole asked if the proposed policy was similar to what other communities have?

Mr. Londa replied that this is based upon a template that the Dept. of Energy Resources provides for communities that are looking to establish themselves as Green Communities and that they (Lunenburg Green Community) have modified it slightly.

Mr. Ebersole mentioned that if the policy that is to be voted on is substantial then all BOS members should be present for the discussion. He felt that Ms. Bertram should be present for her input.

Mr. Alonzo stated that this has been discussed before and does not believe that Ms. Bertram's vote would change the outcome.

Mr. Matthews moved to approve the Fuel Efficient Vehicle Policy. Mr. Toale seconded. On vote, motion carried, 4 in favor, 0 opposed.

Mr. Alonzo asked Mr. Londa if he was prepared to discuss the membership and quorum issue.

Mr. Londa replied that he was not.

Ms. Speidel spoke to say that when this Task Force was formed a couple of years ago alternates needed to be appointed because so many people were interested in joining. As time has gone on and the Task Force has moved into different areas not all of the positions are filled right now. We have a number of staff members that serve as advisors and the Chair has asked that their status be transferred to a voting member. Ms. Speidel does not feel it is appropriate to have staff people as voting members to committees. She understands the concern and thinks it could be resolved by the BOS changing the membership. Currently there are 7 members, 4 appointed by the BOS and 3 staff advisors.

Mr. Alonzo stated that according to Town Counsel a quorum is considered a majority of the total membership, whether those seats are filled or not. He then took the opportunity to make an appeal to the public saying that

there are 3 openings on the Green Community Task Force and 3 openings on PACC and if anyone is interested please fill out a talent bank form and apply.

Mr. Ebersole recommended that the BOS come up with a job description of what the Green Communities does so if people decide to become involved they know what it entails and what qualifications would be helpful for that committee.

Ms. Speidel said that they do have a charge which was approved by the BOS.

8:30 PM – EPG/NuGen Solar Project – West Street/Electric Ave; PILOT Agreement: Ms. Speidel spoke to say that there is a request before the BOS this evening for consideration of entering into a PILOT (Payment in Lieu of Taxes) agreement for the project formerly known as the EPG project which NuGen will be purchasing.

Mr. Matthews requested clarification on the PPA (Power Purchase Agreement) with EPG before we discuss this request. There is an indication that the new owner would not want to honor that agreement. We had a Town Meeting vote which authorized us to sign PPA's and PILOT's. If there is not going to be a PPA for EPG now known as NuGen on Pleasant St. then we have nothing to talk about. If there is no PPA then there is no PILOT.

Attorney Holland, Town Counsel spoke and said that he has been provided with an assignment agreement that indicates that the PPA that the Town signed with EPG has been assigned to NuGen. As it stands now the counter party under the PPA is NuGen and it's still a live agreement unless it can be terminated in accordance with its terms or the parties agree mutually to terminate. NuGen has presented a PILOT agreement which is virtually identical to the agreement which was done with the Chase Rd. project. The Representative from NuGen is here to talk tonight about what could be a solution to the inability of EPG to build this project out. Attorney Holland went on to say that he only knows what he has been told, and has no reason to disbelieve it. The fact that EPG has assigned this agreement to NuGen indicates that EPG is unconfident that they are going to be able to build out this project by December 2013.

Dan Poydenis, Representative for NuGen Capital thanked the BOS for adding them to the agenda this evening and updated the board on the Pleasant St. project. He went over the history of the Pleasant St. property which is owned by Twin City Baptist and is in bankruptcy. In order to pull the property out of bankruptcy it needs to be purchased, rather than leased and the purchase needs to happen before October 8, 2013. The consequence is that there is now a purchase of land rather than a lease which is an additional \$200,000 in cost in land acquisition transactional costs. It became clear that the lease agreement would not work and is not something that could contain site control for the project. Because we do have the other project in town and we do have a PPA with that project as well as a second PPA with the North Central Mass Development Corp. we are able to take those additional costs and amortize them over the two projects and not just one. We are able to give the Town its full capacity as expected between the two projects albeit at one site, while allowing a private entity to contract for 265 Pleasant St.

We are here asking for a PILOT that is taxed at the same rate as the other project in town and the result of this would be that the town has the exact same capacity under PPA but at two separate sites which would be owned by NuGen.

Mr. Matthews asked when it's all said and done, would we be getting all of our credits from the Chase Rd. property.

Mr. Poydenis replied yes but the same number of credits would be delivered to you.

Mr. Matthews spoke and said that the value of the credits will diminish when you combine them and we will end up with the credit value we get from Chase Rd. vs. the better credit value that we were to receive from West St.

Mr. Poydenis replied that the calculation of the credit would be different and explained the different rates along with how the Town could benefit from this along with the risks that could be incurred. He said that the net benefit to the Town could be greater due to the fact that they can build to full capacity on both sites. The Town's taxes are linked to the capacity that is built as are the permits also.

He said that bottom line is we don't think that the existing PPA can be honored considering the deadline to reach operation is 12/31/2013. In our estimation, that's just not possible.

There are some regulatory restraints that make it complicated to have public and private PPA's on the same parcels. This is the solution which has been cleanly approved by Unitil that would allow the Town to get the exact same capacity it had previously, allow maximized increase to the tax base, and maximize the permits.

Mr. Matthews asked if any governmental net metering credits would be maxed out at Chase Rd.

Mr. Poydenis replied that is correct.

Mr. Matthews said that you are going to build the West St. site, and you have a private deal with somebody so I'm not sure it has any benefits to the Town.

Mr. Matthews asked Mr. Poydenis why do you need a PILOT?

Mr. Poydenis replied that he thinks that a PILOT similar to the Chase Rd. project provides a level of certainty with the Town and the Developer. He believes that the Assessor would say that the PILOT rate that is agreed to in the Town is among the highest he has seen in the Commonwealth. There may not be a benefit to the Town with a private PPA but there is certainly a benefit to the Town with taxes.

Mr. Alonzo stated that going back to Mr. Matthews original statement, there is no PPA between the Town and NuGen for the Pleasant/West St. site because we are not buying any power from you there. We told the Town that we would not enter into a PILOT if we did not have a corresponding PPA with the facility. If the PPA on Pleasant/West St. goes away then we would not be entering into a PILOT, because the solar company would be on their own, they don't need the PILOT and we can just tax them. For the record I personally agree with Mr. Matthews.

Mr. Matthews spoke to say that he cannot support a PILOT because he told the people of this Town that if there was not a PPA that we would benefit from we are not going to do a PILOT and that's how it was voted at Town Meeting. Until we have a further conversation with the Town to change it, we can't do it.

Mr. Ebersole asked the Chair if we would be able to negotiate a PILOT 1 year from now?

Mr. Alonzo replied if all the parties were still intent on doing it then yes.

Mr. Poydenis said that they would continue to work with the Town and come back sometime in the future for another PILOT request.

Attorney Rick Holland spoke and clarified that the PPA contract is "still alive" and will expire in accordance with its terms, if it doesn't get built out by 12/31/2013 it can be terminated or it could be mutually terminated before that if that were the board's wish.

CURRENT BUSINESS

1. General discussion regarding Open Meeting Law and/ or quorum: Mr. Alonzo began the discussion by explaining again the legal definition of "quorum". He added that if there are vacancies it does not change the quorum requirement. He added that regarding the Open Meeting Law everyone on a committee /board, elected or appointed are given a copy to review. He then asked to discuss if there were observed potential violations of it, where and who do they get addressed to.

Mr. Alonzo began by saying that as far as posting or agendas, this should be addressed with the Town Clerk.

Mr. Ebersole added that the Town Clerk does not enforce, the Town Clerk receives and posts. If a committee holds a meeting and did not post the Town Clerk is not authorized to enforce it. If the Town Clerk see's something wrong with the posting, technically the Town Clerk does not have the duty to say this isn't right. He said that he didn't believe that the Selectmen have the authority to do it and technically it should go to the Attorney General. He went on to say that we should not be going to the State if we really don't need to but rather we should come up with a process by which we let people know that there's a mistake, it needs to be corrected, and follow up on it. Ultimately if it's not corrected, it will go to the Attorney General.

Mr. Alonzo stated that he believes that the enforcement of it lies solely with the Attorney General

Mr. Ebersole stated that the BOS leads by example and does a very good job of it. He commended the Town Manager and the Recording Secretary for having improved clear agendas and for having minutes that are what they should be. This is not happening consistently across the Town. He would like to require additional

training for committees that the BOS oversees along with encouraging elected boards to do the same and if someone does not do it on a committee that we appoint, we should not re-appoint them.

Mr. Toale spoke to say that he believes the point that needs to be made is the difference between willful misconduct and just making a mistake. He feels that after reviewing the Open Meeting law the first step would be to notify the body that isn't following open meeting law, as long as they make that public, acknowledge and deliberate on the complaint, then remedy it, the communication with the Attorney General's office should only be to say that we took care of it. Then we go to the next step.

Mr. Alonzo said that he would totally support that.

Mr. Ebersole spoke to say that we still have some committees that are not following the Open Meeting Law and he considers this willful because they consistently don't do what they should do as a minimum. If you look at their minutes you don't know what happened and if you look at their agenda you don't know what's going to happen unless you attend the meeting and that necessarily does not match what's on the agenda. His concern is that the Open Meeting law is to eliminate much of the secrecy concerning deliberations and decisions. We need to be creative in finding a way to inform these people that they are not doing it correctly.

Mr. Matthews added that there is a challenge in that because we are individually elected boards, when we are talking about other elected boards and committees. There is a good reason why there is a separation of authority and power between these boards. It could be a slippery slope if we get into a place where we are enforcing the specifics of what other elected officials and boards are doing and it could quickly go the wrong way.

Mr. Ebersole suggested that the first step would be to send letters, and be specific, to people informing them that they need to do some things different and he would prefer not to get the Attorney General involved unless needed. He recommended that when the BOS continues their discussion on policies that they add what we as a board feel comfortable doing regarding the Open Meeting Law for the committees that the BOS supervise. We do not have a process on how to deal with people who are not complying.

Mr. Alonzo added that in a way we do have a procedure, by following the Open Meeting Law you would file a complaint. If as you suggest before you get to that, we have a non-Open Meeting Law prescribed mechanism that someone informally informs the board, then I can see that as a policy. If we are just going to file a complaint that will force them to respond to the Attorney General then we don't need a separate procedure, and it gets to frighten off people who may want to serve but are now nervous about getting involved for fear of being penalized at the State level for not doing something.

Mr. Ebersole mentioned that there are also people who do not want to get involved because of what goes on at certain boards and are unsure that there is a process where they can be protected.

Mr. Alonzo spoke to say that he agrees with that statement and we should have an informal policy along with instructive materials on minutes and agendas.

Mr. Ebersole would like to see training with Town Counsel for the boards then for people who take the minutes do additional training along with talking to administrative people as well.

Mr. Matthews mentioned that if there is a meeting that went on where obviously there was not a quorum, and the minutes are accepted and posted, and if the Town Clerk is not responsible for enforcement, there seems like there is a disconnect there.

Ms. Speidel commented and said that she would be happy to speak to the Town Clerk about the enforcement issue. She went on to say that she is regularly asked by the Town Clerk about items on the agenda and things that appear in the minutes so she knows she is regularly reviewing our minutes and has pointed out things to her that are not quite right and this has been very helpful.

Mr. Alonzo spoke to say that it's upon all as committee, board, commission members, whether elected or appointed, that within your own committee you need to police that. If you are attending these meetings and

feel that something wasn't posted, you make people aware of that. He believes the first line of action should be an informal one, let people know and give them a chance to correct it, then take it from there.

2. Minutes/Warrants/Action File Issues

Minutes: 9/17/2013

<u>Warrants:</u>	#7P-14	9/23/2013	\$640,474.99
	#17-14	10/2/2013	\$259,256.42
	#16-14	10/1/2013	\$329,939.04

Action File Issues: Mr. Matthews asked what was going on with the construction on Whalom Rd. He said there are trenches with no signage or warnings regarding uneven pavement which makes it dangerous especially at night.

Ms. Speidel replied that it is a Water District project and she will pass this along to the Superintendent. Also mentioned was that the road opening permits have been delegated to the DPW.

3. Committee Report: Board of Health; Building Reuse Committee; Capital Planning Committee; Finance Committee; Library Board of Trustees; MPO; Planning Board; PACC; School Committee; School Building Committee; Sewer Commission; MA Broadband;

Board of Health – Mr. Ebersole thanked the BOH for posting their minutes but had no additional information since the last meeting.

Building Reuse Committee – Mr. Toale reported that they met last evening and are making considerable progress. Next meeting will be next Monday.

Capital Planning Committee – Mr. Toale reported that they will meet tomorrow morning and they will begin the reviews of the budget submissions.

Finance Committee – Mr. Toale reported that the only agenda item was a tour of the Regional Dispatch facility which occurred last Thursday.

Library Board of Trustees – Mr. Ebersole reported that this board met last Thursday where they talked about budget transfers and will plan for this fiscal year so they can expend their funds in a timely manner. There was an Open Meeting law issue concerning when they meet at the library, and the library closes while the meeting is still in session. They will need to leave one door unlocked for people to be able to attend the meeting. The library has been painted and all Town Depts. involved were thanked.

MPO- No Report

Planning Board- No Report

PACC- Mr. Ebersole reported that the BOS will be meeting with PACC on October 15th.

School Committee- Mr. Matthews reported that they met last week where they reviewed enrollments which continue to decline. The Lacross team is moving forward and is being supported by fundraising. MCAS results were reviewed and Representative Benson was at this meeting to discuss a State law which will allow towns to establish stabilization funds for Special Education funding.

School Building Committee- Mr. Matthews reported that they met last night and received estimates for construction from both the Construction Manager, the OPM & Designer. Cost estimations at this point are \$74,235,771.00. The committee wants to stay under \$75M. Expected reimbursement from the MSBA is at 58.25% however they don't reimburse for asbestos removal, only cover site costs at 8% of construction costs, and will only reimburse at approximately \$291.25 per square foot. Currently we are at \$360.85 per square foot and based on the input of the OPM the \$360 number is closer in reality and actually lower than the buildings they have been doing lately. Our real reimbursement rate is just over 48%. The committee voted to accept this and move it forward to the MSBA, where the MSBA will review and likely make changes. A sub-committee has

been set up to go through line by line through the plan proposal to see where they can reduce building costs. The goal is not to compromise on the quality of the building but perhaps on the aesthetics or the fields.

Ms. Speidel added that preliminary discussions were held on the tax bills which if we were to pay back over 20 years, the impact to the average household would be approximately \$650.00 and if it were 30 years it would be \$525.00 per year.

Mr. Matthews mentioned that he had gone to the tour of the Regional Dispatch and reported that they are in good shape to set up with the 911 EMD. He explained that in dispatch, once you are on a medical call, you can't come off of that call and no other activity could happen. We would have had to double up our staffing to make that happen locally here. He reassured the public that our dispatch center is still being used as a backup if needed. He also mentioned that another benefit of the Regional Dispatch is that they have a greater access to grants than we would because we don't tend to qualify.

Ms. Speidel added that the Regional Dispatch was just awarded over \$400,000 in grant funding. The meeting with the BOS, Regional Dispatch Director and the Lunenburg Police & Fire Chiefs should be happening at the end of this month.

Sewer Commission- Mr. Ebersole reported that this commission is continuing with the delayed finish of Lancaster Ave extension, they have clarified their requirements for the Lunenburg Village 40B project, the Fitchburg IMA is still progressing, Highfield Village behind Walmart has finally submitted a sewer plan, and they are still seeking people for the Pratt St. extension.

MA Broadband- No Report

4. Town Manager Reports or Department Reports: No Report

APPOINTMENTS/RE-APPOINTMENTS/RESIGNATIONS None

PUBLIC COMMENT – Mr. Ebersole mentioned that he had spoken with the Director of the Regional Dispatch where he learned that 70% of emergency calls in Massachusetts are now coming from a mobile device and if you are telling an E911 where you are, 70% of those calls don't do that. They are working on improving that as well as dealing with texting to E911 to improve ways of communicating with E911.

Mr. Ebersole said that Ms. Bertram, Mr. Toale and himself attended the Unutil hearing where Ms. Bertram gave a very impassioned plea and the Town was very well represented.

Troy Daniels, Main St. spoke to the BOS about his concern about a comment made earlier regarding tying/chaining your dog out saying that there are some restrictions in General Law under Animal Cruelty about this. He was hoping that the BOS or the Animal Control officer could look at this further at a later date.

Mr. Alonzo replied that the statute is very clear about what we can't do and the law says to "humanely" restrict the animal and they are talking about dog runs.

Being no further business Mr. Matthews moved to adjourn the meeting. Mr. Toale seconded. On vote, motion carried, 4 in favor, 0 opposed.

Regular Scheduled Meeting adjourned at 10:30PM

UPCOMING MEETING SCHEDULE

October 8, 2013

October 15, 2013

October 22, 2013

*Respectfully Submitted,
Susan Doherty, Recording Secretary
Board of Selectmen*