

**Town of Hinesburg, Vermont**  
**Decision – Vicious Dog Hearing, August 12, 2015**

In re: “Tank”

**INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves a vicious dog complaint submitted by Mr. Allen Bickmore.
2. The complaint was received by the Selectboard on August 6<sup>th</sup>, 2015.
3. Mr. Allen Bickmore alleged he was attacked by “Tank,” a 63-pound pitbull owned by Mr. Gary and Mrs. Alicia Marshall of Hinesburg.
4. Mr. Bickmore was on his own premises during the incident.
5. Mr. Bickmore filed a written complaint involving an attack by a vicious dog.
6. Pursuant to 20 V.S.A. § 3546, the Selectboard, at its August 6<sup>th</sup>, 2015 regular meeting, set the date, time, and location for a vicious dog hearing.
7. The vicious dog hearing was warned for and occurred Wednesday, August 12<sup>th</sup>, at 7:00 p.m. in the Main Hall of the Hinesburg Town Hall at 10632 VT Route 116 in Hinesburg, VT.
8. Notice of the vicious dog hearing was posted near the Town Clerk’s office, the Town Administrator’s office, the Post Office, the Carpenter-Carse Library, and on the Town’s website on or before Monday, August 10<sup>th</sup>, 2015.
9. Notice of the hearing was mailed to the Marshalls on Monday, August 10<sup>th</sup>. The Marshalls were notified via telephone on that same day of the date, time, and location of the vicious dog hearing.
10. Written notice was reported as received on Tuesday, August 11<sup>th</sup>.
11. Mr. Marshall received materials, such as the written report compiled by the Hinesburg Police Department, during a visit to the Town Administrator’s office on Tuesday, August 12<sup>th</sup>.
12. Mr. Allen Bickmore, was notified of the hearing date, time, and location.
13. All five Selectboard members were present for the hearing and deliberative session to follow.
14. During the hearing, the following exhibits were submitted to the Selectboard:
  - a. A written complaint from Mr. Bickmore concerning the incident.
  - b. A letter from Mr. Edward Kenney, attorney for the complainant/victim (Mr. Allen Bickmore).
  - c. A report by the Hinesburg Police Department describing the incident on August 6<sup>th</sup>, 2015, along with four other prior incidents involving Tank.
  - d. A report from Town Health Officer Joe Gannon, regarding the prior incidents involving Tank.
  - e. Photographs of the fence, yard, and “coyote rollers” at the Marshalls’ home, along with a photograph of Tank with one of the Marshalls’ sons. During oral testimony, the Marshalls offered to share video with the Selectboard showing unsuccessful attempts by Tank to climb the fence following installation of the coyote rollers.
  - f. A letter from veterinarian Dr. Richard Armstrong, describing the medications prescribed to Tank for anxiety (presented during oral testimony).
15. Oral testimony was provided during the August 12<sup>th</sup> hearing by the following:
  - a. Mr. Allen Bickmore
  - b. Mr. Edward Kenney, attorney for Mr. Bickmore.
  - c. Mrs. Alicia Marshall
  - d. Mr. Gary Marshall
  - e. Mr. Matthew Shagam, attorney for the Mr. and Mrs. Marshall.
  - f. Officer Anthony Cambridge, Hinesburg Police Department
  - g. Mr. Joe Gannon, Hinesburg Town Health Officer
  - h. Mr. Corey Marshall, on behalf of Tank.
  - i. Mr. Jacob Race, on behalf of Tank.

- j. Mr. Leo McCoy, resident of the neighborhood in which Mr. Bickmore and the Marshalls reside.
  - k. Ms. Jane Ledoux, resident of the neighborhood in which Mr. Bickmore and the Marshalls reside.
16. All oral testimony will be summarized in the official minutes of the hearing. The hearing was recorded by VCAM, the community access television entity serving Hinesburg, and is available for review online or by request.

#### **FINDINGS OF FACT**

1. On August 6<sup>th</sup>, Tank scaled a fence 6' in height, at the Marshall residence, charged Mr. Bickmore, and grabbed his right forearm.
2. The attack occurred on the premises of Mr. Bickmore.
3. Mr. Bickmore had been talking amiably with his new neighbor, Mr. Marshall, for an estimated five minutes prior to the attack.
4. Mr. Bickmore did not provoke Tank.
5. Mr. Marshall was present for the attack.
6. Following the initial attack, Tank continued to stare at Mr. Bickmore until Mr. Marshall removed Tank from Mr. Bickmore's premises and returned the dog to the fenced in area on the Marshall property.
7. Mr. Bickmore received medical attention on site for bite marks, bruising, and other related injuries, prior to being transported to the University of Vermont Medical Center via ambulance.
8. The Marshalls did not contest that the incident occurred as described in the written report and as presented during the August 12<sup>th</sup> hearing.
9. According to the report provided by the Hinesburg Police Department, the Marshalls contacted Officer Cambridge on August 6<sup>th</sup>, relaying at that time that an appointment to euthanize Tank had been made at the Hinesburg Animal Hospital. The appointment was later cancelled.
10. The Marshalls' decision to cancel the appointment to euthanize was due to a stated preference by the owners to continue efforts to mitigate or alter Tank's aggressive behavior through measures such as increased medication and environmental modifications (such as the installation of "coyote rollers" to deter the dog from scaling the fence).
11. On June 19<sup>th</sup>, 2015, Officer Cambridge responded to a call concerning a verbal dispute involving the Marshalls and a neighbor, Mr. Dennis Devac. Mr. Devac claimed to have been bitten by Tank, who had scaled the 6' fence prior to this incident. Mr. Devac did not file a written complaint, though the incident is the second involving Mr. Devac within the timeframe covered by the Hinesburg Police Department's report.
12. The Marshalls did not contest that Tank was involved in altercation with Mr. Devac on June 19<sup>th</sup> during the hearing, however, Mrs. Marshall reported to Officer Cambridge that Mr. Devac had spoken inappropriately to the Marshalls regarding his concerns about Tank.
13. On June 11<sup>th</sup>, 2015, a teenage female was bitten twice inside the Marshall home by Tank. The teenage female received a broken jaw, lost a tooth, suffered lacerations to her lips and face, experienced bruising about the face, and received damage to her arm. The injuries to the teenage female's face occurred during an initial attack, with the damage to her arm occurring when Tank attacked again following attempts to subdue him.
14. The teenage female did not provoke Tank.
15. The Marshalls did not contest that the June 11<sup>th</sup> incident occurred as described during the August 12<sup>th</sup> hearing.
16. On May 29<sup>th</sup>, 2015, Ms. Kimberly Gobeille reported to the Hinesburg Police Department that Tank had bitten her teenage son at the Marshall residence.
17. During testimony on August 12<sup>th</sup>, Mr. Corey Marshall testified that Tank had been muzzled prior to the bite on the teenage male, and that the teenage male bitten had requested the removal of the muzzle.

18. On March 24<sup>th</sup>, 2015, Hinesburg Police received a report that Tank had bitten Mr. Dennis Devac on his hand several times.
19. Mrs. Marshall testified during the August 12<sup>th</sup> hearing that the March 24<sup>th</sup> incident had started as a dominance battle between Tank and Mr. Devac's dog, also a pitbull.
20. The Marshalls did not contest that Mr. Devac was bitten during this incident at the August 12<sup>th</sup> hearing.
21. At various intervals, the Marshalls have attempted to mitigate the increasingly aggressive nature of Tank as it relates to his "triggers." Mitigation measures have included:
  - a. Installation of a 6' fence to replace the prior 4' fence. The higher fence was installed in May, in response to the March 24<sup>th</sup> incident involving a neighbor as described above.
  - b. In June, the Marshalls contacted both an animal behaviorist and a veterinarian to discuss behavior modification and training.
  - c. The veterinarian prescribed Prozac, with the dose eventually increased and combined with a prescription for Xanax. The Xanax was prescribed following the August 6<sup>th</sup> incident with Mr. Bickmore.
  - d. A behavior modification plan was authored by the animal behaviorist and relayed to the Marshalls on July 28<sup>th</sup>.
  - e. The Marshalls have muzzled Tank when strangers are in the house, and/or have moved Tank outside of the house.
  - f. Coyote rollers were installed along the top of the fencing, following the August 6<sup>th</sup> incident, to further prevent Tank from scaling the fence.
22. Mr. and Mrs. Marshall have indicated their willingness and commitment to follow through with the behavior plan and medications for the natural life of Tank.

## CONCLUSIONS

1. The Marshalls, during the August 12<sup>th</sup> hearing, did not contest that the March 24<sup>th</sup>, May 29<sup>th</sup>, June 11<sup>th</sup>, June 19<sup>th</sup>, and August 6<sup>th</sup> incidents occurred as described above. Five incidents within six months a troubling trend indicating continued, aggressive behavior that may not be correctable regardless of medication and training.
2. The Town Health Officer and the Hinesburg Police Department both recommend euthanizing the dog based upon its history, likeliness to attack again, and the uncertainties related to true behavioral change as opposed to long-term sedation via medication.
3. While the Marshalls have indicated that they will commit to and comply with any and all mitigation measures for the life of Tank, this commitment to medicate and mitigate could be as long as 10 or 15 years. Given the incidents described above, the Marshalls would need to guarantee absolutely that there would not be a single moment of error or complacency – something that is difficult, if not impossible, to guarantee.
4. The Marshalls reside in a densely-populated area, inhabited by numerous young and school-aged children, and full of potential "triggers" for the aggressive behavior already exhibited by Tank.
5. Mitigation measures have come in response to incidents, not necessarily as proactive measures designed to exhibit responsible stewardship or concern for neighbors.
6. The interests of the safety of the neighborhood more immediately and the community generally are paramount when making a decision of this nature.

## ORDER

1. Tank is hereby ordered immediately impounded. The dog is to be impounded off the Marshall's premises as soon as the impoundment facility is identified and available, with all associated costs being the responsibility of Gary & Alicia Marshall. The Marshalls may be the ones to deliver the dog to an impoundment facility as identified by the Town of Hinesburg. Delivery is to be verified by the Hinesburg Police Department or Town Health Officer.

2. Failure to deliver the dog to the impoundment facility will result in Tank's immediate removal from the premises.
3. Prior to impoundment off premises or if the impoundment facility identified by the Town of Hinesburg cannot take Tank for whatever reasons not anticipated as of this writing, the dog will be impounded at the Marshalls residence in the following manner:
  - a. Inside at all times unless on a leash, rope or chain held by either Gary or Alicia Marshall. The dog is not to be outside of the residence with any other individual or family member.
  - b. Tank is to be muzzled at all times, with the exceptions of feeding, sleeping, and training in accordance with the plan outlined by the animal behaviorist.
  - c. Medications will be administered without fail during the impoundment period.
4. The Town of Hinesburg will be solely responsible for determining whether or not Tank will be impounded at the residence, in the event the facility is unable to house him.
5. It is hereby ordered that Tank be euthanized. Tank will remain impounded for a period not less than 30 days from the date of this order. During the 30-day period, the owners may appeal to the Vermont Superior Court. The owners may choose to proceed with euthanizing Tank during the 30-day period.
6. If no appeal has been filed by the conclusion of the 30-day period, Tank will be euthanized at a veterinary facility of the Marshalls' choosing, with all associated costs being the responsibility of Gary & Alicia Marshall. If an appeal has been filed, the impoundment will continue pending further order of the Court, with all associated costs being the responsibility of Gary & Alicia Marshall.

This decision/order was approved by the Town of Hinesburg Selectboard. The Selectboard reached its decision during a deliberative session held immediately following the public hearing pursuant to Title 20, Section 3546 of Vermont Law. For the purposes of the Selectboard's decision, the 30-day appeal period begins with the issuance of this written decision on August 17, 2015.



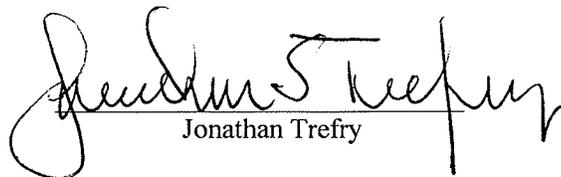
Tom Ayer

Michael Bissonette, Chair

Phil Pouech



Andrea Morgante



Jonathan Trefry

**NOTICE:** This decision may be appealed within 30 days of the date of this decision to the Civil Division of the Vermont Superior Court, pursuant to Rule 75(c) of the Vermont Rules of Civil Procedure.