

**TOWN OF  
EAST MONTPELIER, VERMONT SELECTBOARD**

**VICIOUS DOG HEARING DECISION & PROTECTIVE ORDER**

In the matter of:       Oakley, a dog owned by:  
                                  Reuben Adams  
                                  515 Brazier Road  
                                  East Montpelier, Vermont

**INTRODUCTION AND PROCEDURAL HISTORY**

1. This proceeding involves a vicious dog complaint submitted by Kimberly Swasey, of 235 Wheeler Road in East Montpelier, and received by the Selectboard on May 30, 2017.
2. In accordance with the Town of East Montpelier, Vermont Dog & Wolf-hybrid Control Ordinance, the Selectboard duly scheduled a vicious dog hearing for June 5, 2017, 6:00 p.m. at the East Montpelier Municipal Office Building.
3. On May 31, 2017, notice of this vicious dog hearing was mailed by certified mail, return receipt requested, to Reuben Adams, owner/keeper of the dog Oakley. The return receipt is dated June 1, 2017, and signed by Reuben Adams.
4. On May 31, 2017, notice of this vicious dog hearing was emailed to Kimberly Swasey, who acknowledged receipt and waived delivery by postal mail.
5. On or about June 1, 2017, public notice of this vicious dog hearing was posted on the East Montpelier website (<http://eastmontpeliervt.org>), both inside and outside the East Montpelier Municipal Office Building, at the East Montpelier Post Office, and at the East Montpelier Elementary School. Further, notice was provided by mail to abutting neighbors of 515 Brazier Road, by email to the East Montpelier Citizens List, which includes members of the public and media requesting notice of Selectboard meetings and hearings, and by posting on the East Montpelier Front Porch Forum.
6. Present and participating at the June 5, 2017, hearing were the following members of the Selectboard:

Seth Gardner, Chair  
Gene Troia  
Amy Willis

Board member Kim Swasey recused herself from the hearing and sat in the audience due to her status as complainant; board member Carl Etnier was absent.

7. During the course of the hearing the following exhibits were submitted to the Selectboard:
- Vicious Dog Complaint Form from Kimberly Swasey
  - East Montpelier Animal License #172, dated March 23, 2017, and Rabies Vaccination Certificate #32562, both for Oakley, dog of Reuben Adams
  - East Montpelier Town Health Officer David Grundy's Animal Bite Report of an April 4, 2017 incident with listed victim Andrew Tripp and listed dog owner Reuben Adams
  - East Montpelier Town Health Officer David Grundy's Animal Bite Report of a May 28, 2017 incident with listed victim Kimberly Swasey and listed dog owner Reuben Adams
  - Written statement by dog owner Reuben Adams

## RELEVANT TESTIMONY

Chair Gardner opened the hearing by reading the notice and the complaint, ensuring that the complainant understood the hearing procedure, and determining that there were no Selectboard conflicts or ex parte communications. Complainant Swasey, a member of the East Montpelier Selectboard, recused herself and sat with the audience during the hearing.

Witnesses at the hearing included the complainant Kimberly Swasey; complainant's daughter Kaylee Swasey; Brazier Road resident Julie Vogel; East Montpelier Health Officer Dave Grundy; and, East Montpelier Constable and Animal Control Officer Sandy Conti. All were sworn in by Selectboard Chair Seth Gardner.

Prior to inviting the complainant to provide testimony, Chair Gardner noted that the dog Oakley's owner, Reuben Adams, was not in attendance. Chair Gardner read Mr. Adams' written statement into the record.

Notable aspects of the oral testimony included:

- Complainant Swasey described the May 28, 2017 incident. She and two of her daughters were riding their bicycles south on Brazier Road. Biking slowly up a steep hill, Ms. Swasey was set upon by the dog Oakley and bitten on her right flank. She fought off the dog and biked home. She went immediately to the CVMC emergency room, where the wound was irrigated, treated with lidocaine, and bandaged; significant bruising ensued. Ms. Swasey missed part of the next day at work due to discomfort.
- Ms. Swasey in the past often ran along Brazier Road with her dogs. She was well aware of Oakley, who would charge down the Adams' driveway barking ferociously. The aggression appeared to be aimed at Ms. Swasey's dogs, not towards her.
- Ms. Swasey believes Oakley was lying in wait, in the bushes by the Adams' driveway, and stated that the dog exploded out of its hiding place to bite her.

- Kaylee Swasey testified that the dog jumped up at her mother, not targeting the bicycle.
- Julie Vogel, of 423 Brazier Road, an abutting neighbor to Reuben Adams, testified that she and her family have lived next to Mr. Adams since March, 2010. In July of that year, while walking with her 4-month-old daughter strapped to her in a carrier, she was attacked by Oakley and a second dog living in the Adams house at the time. A neighbor chased the dogs away. She has since been very cautious in walking or running near the Adams property, but has experienced subsequent incidents where Oakley has charged off the property towards her. Her husband once had to rescue a bicyclist from Oakley. Her kids call Oakley “killer dog” and stay in the house when he is out.
- Ms. Vogel and both Swaseys testified that Oakley does not stay on his property. He roams along the road and around the neighborhood.
- Animal Control Officer Conti explained that, in his official role, he’s often had to go to the Adams property at all times of the day and night to deal with incidents involving Oakley, generally when Oakley is barking outside and Mr. Adams is not reacting to correct the situation.
- Discussion between Health Officer Grundy and Animal Control Officer Conti regarding the April 4, 2017 incident elicited the fact that no one knew if Mr. Tripp had required medical care.

## **FINDINGS OF FACT**

1. On April 4, 2017, Oakley attacked and bit Andrew Tripp on his left calf while Mr. Tripp, a U-32 coach leading a group of student runners, was bicycling on Brazier Road. It is unknown whether Mr. Tripp needed medical care. The incident occurred off Mr. Adams’ property.
2. On May 28, 2017, Oakley attacked and bit Kimberly Swasey on her right flank while she was bicycling along Brazier Road with her daughters. Ms. Swasey suffered significant injuries and required medical care. The incident occurred off Mr. Adams’ property.
3. Oakley has been a part of the neighborhood for approximately 8 years. During that time there have been a number of unprovoked incidents of aggressive behavior on the part of Oakley. The neighbors alter their activities to avoid or otherwise protectively monitor Oakley when he is outside. Oakley is the cause of a general neighborhood concern for personal safety and the safety of children, visitors, and pets.
4. The East Montpelier Animal Control Officer has had to respond to numerous incidents involving Oakley’s behavior over the years, often dealing with outside barking during the night. Mr. Adams is, in his own words, “a negligent, irresponsible pet owner.”

## CONCLUSIONS OF LAW

The standards for judgment on the issue of a vicious dog are set out in Section 10 of the East Montpelier Dog & Wolf-hybrid Ordinance. The Selectboard has reviewed the pertinent section of the ordinance in light of the Findings of Fact and concludes that the evidence clearly shows a pattern of unprovoked attacks and aggressive behavior on the part of the dog Oakley. The Selectboard therefore concludes, under Section 10(C) of the East Montpelier Dog & Wolf-hybrid Ordinance, that the dog Oakley is a vicious dog.

## DECISION

Based on the foregoing findings of fact and conclusions of law, the East Montpelier Selectboard finds that the dog Oakley has exhibited a pattern of dangerous behavior, including the unprovoked May 28, 2017 biting of Complainant Swasey, and has been adjudged a vicious dog. Therefore a protective order will be rendered.

## PROTECTIVE ORDER

Based on the foregoing facts and circumstances, and pursuant to 20 V.S.A. §3546(c), the East Montpelier Selectboard hereby orders that the dog Oakley be rehoused outside of East Montpelier by Tuesday, June 20, 2017. If the dog Oakley remains in East Montpelier past the June 20, 2017 deadline, Oakley will be impounded and humanely destroyed.

Until such time as the dog Oakley can be relocated outside the East Montpelier boundaries, Oakley shall remain in the custody of owner Reuben Adams. Oakley shall remain confined to the owner's house except for short stints outside while under the owner's direct physically-connected (by leash) control. Oakley must remain on the owner's property located at 515 Brazier Road at all times until final transport beyond the East Montpelier border. All associated costs of Oakley's care and relocation shall be the responsibility of the owners.

Failure to comply fully with the conditions set forth in this order shall subject the owner, Reuben Adams, to the penalties provided for in 20 V.S.A. §3550.

Dated this 9<sup>th</sup> day of June, 2017.



Seth Gardner  
Chair, East Montpelier Selectboard

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