

2016-059

ROBERT A. DIGNAN, JR.
ATTORNEY AT LAW
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AMESBURY, MASSACHUSETTS 01913
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June 23, 2016

BY HAND DELIVERY

City Council
City of Amesbury
62 Friend Street
Amesbury, MA 01913

Re: Request for Determination of Dangerous Dog

Dear City Councilors,

Pursuant to Massachusetts General Laws, Chapter 140, Section 157, I hereby request a hearing to determine that a dog, to wit a female, Staffordshire Terrier (or similar breed), named Sage, owned by Mr. Damien M. Corcoran of 6 Birch Street, Amesbury, is dangerous and a threat to public safety. Said dog has, on two separate occasions (November 27, 2015 and June 22, 2016), slipped its leash or harness and viciously attacked a Labradoodle owned by me, without warning or provocation, charging from hundreds of feet away.

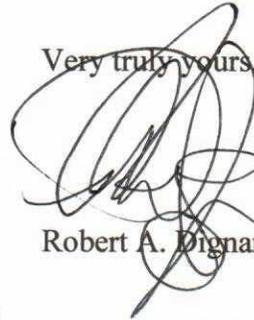
The November 27, 2015 attack occurred in the street in front of 4 Ash Street at approximately 8:00 p.m. and was broken up by me and Mr. Corcoran when he caught up to his dog. This attack resulted in a visit to Newbury Animal Hospital (our regular veterinary service) the next morning, where an abrasion was noted on my dog.

The June 22, 2016 incident occurred at approximately 7:55 p.m. and involved my wife being knocked to the ground in Mr. Corcoran's dog's frenzy to again attack my dog and further resulted in an immediate visit to Veterinary Emergency Critical Care of Newington, New Hampshire, where my dog was treated for puncture wounds to the left foreleg and abdomen and placed on a ten day course of antibiotics. Elyse Smiertelny of 4 Ash Street, Amesbury was walking with my wife and witnessed the second attack, assisting my wife in trying to fend off Mr. Corcoran's dog. My arrival on the scene at 21 Portsmouth Road and taking charge of Mr. Corcoran's dog from his hysterical daughter prevented any further attack, although the dog bared its teeth at me and continued snapping for several minutes as I led it away from the scene with Mr. Corcoran's daughter. My wife sustained scratches and a bruise to her left forearm, although she does not recall whether these injuries resulted from her being knocked to the ground or from the other actions of Mr. Corcoran's dog.

Mr. Corcoran's dog has displayed an ill temper toward my dog at all times since the first attack. It strains at the leash every time it is walked by my property, trying to get at my dog. The vicious disposition of this animal has caused my wife, my son, and I to alter our pattern of walking our dog to avoid any contact with Mr. Corcoran's dog. We have not walked on Birch Street since the first attack last November. If we see Mr. Corcoran walking his dog, we return to our home until we are sure Mr. Corcoran's dog is nowhere in sight. Mr. Corcoran's dog has, on more than one occasion been off leash and loose in the neighborhood. The most recent occurred last week and caused my wife to retreat to the safety of our house (Mr. Corcoran's dog apparently did not see her at that time). Nevertheless, my wife has become fearful of walking our dog in our neighborhood, for her own safety and that of our son, as well as our dog's.

For the foregoing reasons, I respectfully request that Mr. Corcoran's dog be deemed dangerous and that appropriate steps be taken immediately to ensure the public safety.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert A. Dignan, Jr.', written over the typed name below.

Robert A. Dignan, Jr.

cc: Mr. Damien M. Corcoran (by first class mail)

AMESBURY/SALISBURY ANIMAL CONTROL DOG FIGHT REPORT

DATE: TIME: CITY: CALL NUMBER:

REPORTING PARTY

LAST NAME: FIRST NAME: PHONE NUMBER:
ADDRESS: CITY: STATE: ZIP:

OWNER INFORMATION

LAST NAME: FIRST NAME: PHONE NUMBER:
ADDRESS: CITY: STATE: ZIP:

ANIMAL AND BITE INFORMATION

TYPE: SEX: AGE: BREED:
VACCINATED: TAG NUMBER: LICENSED: CITY: STATE:
LOCATION OF BITE: PUNCTURE: SCRATCHED:

ANIMAL INFORMATION

TYPE: SEX: AGE: BREED:
VACCINATED: TAG #: LICENSED: CITY: STATE:
VETERINARY: PHONE NUMBER:
EUTHANIZED: METHOD: LOCATION: PHONE NUMBER:

NARRATIVE:

On 06/22/2016 it was reported by Damien Corcoran that his dog "Sage" a 3 y/o female terrier mix attacked a 3 y/o male Labradoodle named "Clancy" owned by Robert Dignan. Clancy sustained two punctures wounds: One on the left foreleg and the second being the abdomen, neither wound required stitches however Clancy was treated with antibiotics at Veterinary Emergency Critical Care of Newington, NH. Both dogs are registered with The City of Amesbury and current and up to date on all vaccinations.

On the same date, Wednesday night Sage was being walked by Corcoran's 14 y/o daughter on a leash and harness. Clancy was being walked by Dignan's wife along with their neighbor and witness Elyse Smiertelny of 4 Ash Street Amesbury, when Sage somehow managed to slip out of her harness and charged after Clancy. Corcoran's daughter was distraught and screaming and calling for her father, while Robert Dignan who was inside his residence at the time heard the commotion and ran outside. Robert Dignan evaluated the situation and was able to take control of Sage to stop the attack. In the process Dignan's wife was knocked down to the ground and sustained multiple scratches. Dignan stated that while holding onto Sage she growled and displayed her teeth in an aggressive manner. Dignan took his dog to the emergency vet hospital in Newington, NH for treatment. Corcoran notified Amesbury Police on the night of incident.

This is the first incident on record that has occurred between both dogs, however it was reported an incident occurred on 11/27/2015 but there was never a report filed with the police or Animal Control Officer. The owners stated this incident occurred and did not result in any type of injuries as Dignan was able to react and obtain control of Sage. Although the incident was never reported both parties agreed that it did occur.

The mandatory 10 day quarantine order has been issued for both dogs in accordance with MA. State law.

06/23/2016

Robert Dignan has requested a "Dangerous Dog" hearing in accordance with M.G.L. Ch. 140 sect. 157.

06/24/2016

Mandatory muzzle order issued for Sage until further notice.

06/24/2016

I did have a chance to meet Sage and found her to be a healthy and energetic dog who responded to simple verbal commands from me.

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THE COMMONWEALTH OF MASSACHUSETTS

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TITLE XX	PUBLIC SAFETY AND GOOD ORDER		
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CHAPTER 140	LICENSES		
		PREV	NEXT
Section 157	Nuisance or dangerous dogs; orders for remedial action; appeal; violation of order	PREV	NEXT

Section 157. (a) Any person may file a complaint in writing to the hearing authority that a dog owned or kept in the city or town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

(1) the dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault;

(2) the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of the dog;

(3) the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog; or

(4) at the time of the attack or threat, the person or animal that was attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure including, but not limited to, a gated, fenced-in area if the gate was closed, whether locked or unlocked; provided, however, that if a person is under the age of 7, it shall be a rebuttable presumption that such person was not committing a crime, provoking the dog or trespassing.

The hearing authority shall investigate or cause the investigation of the complaint, including an examination under oath of the complainant at a public hearing in the municipality to determine whether the dog is a nuisance dog or a dangerous dog. Based on credible evidence and testimony presented at the public hearing, the hearing authority shall: (i) if the dog is complained of as a nuisance dog, either dismiss the complaint or deem the dog a nuisance dog; or (ii) if the dog is complained of as a dangerous dog: (A) dismiss the complaint; (B)

deem the dog a nuisance dog; or (C) deem the dog a dangerous dog.

(b) If the hearing authority deems a dog a nuisance dog, the hearing authority may further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior.

(c) If the hearing authority deems a dog a dangerous dog, the hearing authority shall order 1 or more of the following:

(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.

No order shall be issued directing that a dog deemed dangerous shall be removed from the town or city in which the owner of the dog resides. No city or town shall regulate dogs in a manner that is specific to breed.

(d) Within 10 days after an order issued under subsections (a) to (c), inclusive, the owner or keeper of a dog may bring a petition in the district court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, addressed to the justice of the court, praying that the order be reviewed by the court or a magistrate of the court. After notice to all parties, the magistrate shall, under section 62C of chapter 221, review the order of the hearing authority, hear the witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which case the order shall be reversed. A party shall have the right to request a de novo hearing on the complaint before a justice of the court.

(e)(1) Pending an appeal by an owner or keeper under subsection (d), a hearing authority may file a petition in the district court to request an order of impoundment at a facility the municipality uses to shelter animals for a dog complained of as being a dangerous dog. A municipality shall not incur liability for failure to request impoundment of a dog under this subsection.

(2) A justice of a district court, upon probable cause to believe that a dog is a dangerous dog or that a dog is being kept in violation of this section or in violation of an order issued under this section by a hearing authority or a court, may issue an order: (i) of restraint; (ii) of confinement of the dog as considered necessary for the safety of other animals and the public; provided, however, that if an order of confinement is issued, the person to whom the order is issued shall confine the dog in accordance with clause (ii) of subsection (c); or (iii) of impoundment in a humane place of detention that the municipality uses to shelter animals; or (iv) any other action as the court deems necessary to protect other animals and the public from the dog.

(f) A justice of the district court shall hear, de novo, an appeal filed under subsection (d). Based upon credible evidence and testimony presented at trial, the court shall, whether the dog was initially complained of as a nuisance dog or as a dangerous dog: (i) dismiss the complaint; (ii) deem the dog a nuisance dog; or (iii) deem the dog a dangerous dog. The decision of the court shall be final and conclusive upon the parties.

(g) If a court affirms an order of euthanasia, the owner or keeper of the dog shall reimburse the city or town for all reasonable costs incurred for the housing and care of such dog during its impoundment and throughout the appeals process, if any. Unpaid costs shall be recovered by the municipality in which the owner or keeper of the dog resides on behalf of the hearing authority by any of the following methods: (i) a lien on any property owned by the owner or keeper of the dog; (ii) an additional, earmarked charge to appear on the vehicle excise of the owner or keeper of the dog; or (iii) a direct bill sent to the owner or keeper of the dog.

All funds recovered by a municipality under this subsection shall be transferred to the organization or entity charged with the responsibility of handling dog complaints and impoundment. If the organization or entity falls under the management or direction of the municipality, costs recovered shall be distributed at the discretion of the municipality.

If the court overturns an order of euthanasia, the city or town shall pay all reasonable costs incurred for the housing and care of the dog during any period of impoundment.

(h) If an owner or keeper of a dog is found in violation of an order issued under this section, the dog shall be subject to seizure and impoundment by a law enforcement or animal control

officer. If the keeper of the dog is in violation, all reasonable effort shall be made by the seizing authority to notify the owner of the dog of such seizure. Upon receipt of such notice, the owner may file a petition with the hearing authority, within 7 days, for the return of the dog to the owner. The owner or keeper shall be ordered to immediately surrender to the licensing authority the license and tags in the person's possession, if any, and the owner or keeper shall be prohibited from licensing a dog within the commonwealth for 5 years. A hearing authority that determines that a dog is dangerous or a nuisance or that a dog owner or keeper has violated an order issued under this section shall report such violations to the issuing licensing authority within 30 days.

(i) Orders issued by a hearing authority shall be valid throughout the commonwealth unless overturned under subsection (d) or (f).

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CITY OF AMESBURY

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CITY CLERK
E-mail: bonnijo@amesburyma.gov

62 FRIEND STREET
AMESBURY MA 01913
TEL: (978) 388-8100
FAX: (978) 388-8150

June 30, 2016

Damien Corcoran
6 Birch Street
Amesbury, MA 01913

Dear Mr. Corcoran:

As you are aware, Mr. Robert A. Dignan filed a Request for Determination of a Dangerous dog with the City Clerk's Office to determine if your dog, Sage, is dangerous and a threat to public safety.

The City Council will hold a public hearing on July 12, 2016 to hear testimony from you, Mr. Dignan and the animal control officer. The meeting begins at 7:00 pm.

Please plan to attend this meeting. All parties will be sworn in prior to testimony.

The agenda is not set for the Council meeting as it does not close until July 1, 2016 and with the holiday will not be set until after approval by the City Council President on or about July 6, 2016. The agenda will be posted on the City website by July 8, 2016 for your viewing or you can call our office and we will email you a copy.

I am enclosing a copy of the animal control officer's report for your review.

If you have any questions regarding this matter, please do not hesitate to contact the Clerk's Office.

Sincerely,

Bonnijo Kitchin, CMMC
City Clerk



CITY OF AMESBURY

BONNIJO KITCHIN, CMMC
CITY CLERK
E-mail: bonnijo@amesburyma.gov

62 FRIEND STREET
AMESBURY MA 01913
TEL: (978) 388-8100
FAX: (978) 388-8150

June 30, 2016

Robert A. Dignan, Jr.
6 Ash Street
Amesbury, MA 01913

Dear Mr. Dignan:

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Please plan to attend this meeting. All parties will be sworn in prior to testimony.

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Bonnijo Kitchin, CMMC
City Clerk