

**STATE OF NORTH CAROLINA  
COUNTY OF AVERY**

The Avery County Board of Commissioners met in a Special Meeting on Monday, July 18, 2016 at 3:00 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The purpose of the meeting was to hear an appeal on a dangerous dog determination per North Carolina General Statute 67-4.1.

Members Present: Martha Hicks, Chair; Maxine Laws, Vice-Chair; Reo Griffith; Faith Lacey

Members Absent: Blake Vance

**Call To Order**

Chair Hicks called the meeting to order at 3:00 p.m.

Chair Hicks read aloud the notice of the Special Meeting.

Chair Hicks read aloud a statement as follows:

*This is a Special Meeting to conduct a hearing pursuant to Article 1A of Chapter 67 of the North Carolina General Statutes. The purpose of this hearing is to hear the appeal of the determination by Sheriff Kevin Frye that a certain large lab mixed breed dog which weighs between 60 and 70 pounds and owned by John and Linda Tomlinson is a potentially dangerous dog as defined in North Carolina General Statute Section 67-4.1 (a)(2). At the July 8, 2008 regular meeting of the Board of County Commissioners it was determined that the Board of County Commissioners was to constitute the interim Board to hear appeals of the Sheriff's determination that a dog is a potentially dangerous dog. First, since none of the members of the current Board of Commissioners were members at the July 8, 2008 meeting, I would entertain a motion that the current members of the Board of Commission be confirmed as the Board to hear appeals of the determination that a particular dog is a potentially dangerous dog.*

**Motion by Maxine Laws and second by Faith Lacey to confirm the current members of the Board as the Board to hear appeals of the determination that a particular dog is a potentially dangerous dog. Motion unanimous with those in attendance (4-0).**

Chair Hicks continued reading aloud the statement as follows:

*Next, let me state that this is not a formal trial and our attorney advises that formal rules of evidence need not apply. Therefore, we may consider written statements of others and give them the weight we deem appropriate. To that end, we have the written determination by Sheriff Frye which includes the Linville Ridge Security Case Report of Steve Whittington, Director of Security.*

Chair Hicks asked “Do Mr. and Mrs. Tomlinson have a copy of the determination and report?” Ms. Tomlinson said she believed that she did.

Chair Hicks continued:

*If there is no objection from any member of the Board, I believe we should have any persons who wish to present a statement as witnesses to be sworn in. Board members may ask questions of a witness. Mr. or Mrs. Tomlinson may also ask questions of a witness. Also, Mr. or Mrs. Tomlinson may present a closing statement or argument.*

Chair Hicks questioned if there were any witnesses present. Ms. Tomlinson stated she did not know that she was allowed to bring any witnesses.

The clerk swore Ms. Tomlinson in.

Linda Tomlinson introduced herself and her husband John and stated “we have lived at Linville Ridge for 18 years, prior to that I grew up in Todd, North Carolina. This is our third dog we had at Linville Ridge. My husband used to breed and train labs. This is our third lab at Linville Ridge and never had any problems. When we lost our last lab we were devastated and within a week or two we started looking at rescue labs and we found one in Florida. We had to be interviewed by the foster owner and the rescue site to make sure that we would be fit to own the dog. This dog is six years old. When we got the dog he was very high spirited and did not know how to walk on a leash. We knew he needed work. Right away we got a trainer and we knew a lot of things about the dog. The dog gets along with everyone. He is good with most dogs. We get up every morning and walk 3 holes of the golf course with the dog. At some point there would be 13 to 14 dogs walking together. A lot of them were off leash as well as mine. The morning of this incident it was about 40 degrees on Sunday morning, no one was out there. We walked the 3 holes and on our way home I was telling John about what happened the day before with the Hagle’s dog and that is the dog in question that my dog attacked. The Hagle’s dog was left in their house with a pot of something on the stove and the fire department came and she called everyone she knew to go see about her dog. This was the day before. I am telling John the story as we are going to our house. We have one house to go and I see Rose with her dog and I am yelling at her Rose, Rose is Bella ok. We were friends. With that my dog did not recognize anybody and he pulled so hard and broke away and went clearly after her dog. I said Rose I hope everything is ok. She said I will sue you if everything is not ok. I told her that of course we will take care of her dog. We walked away. I called her at home and called the guard gate and explained what happened and the guard said he heard a little bit about that and that the dog went to the vet. I said good, please be sure and send me the bill. It is my dog’s fault. The general manager was out of town and I told the guard about all of it. We hear from the general manager what the vet bill was and I paid the vet bill. I called several times after that to apologize. The reason I am appealing this is because the definition of a potentially dangerous dog is one that kills or inflicted serious injury on a domestic animal when not on the owner’s property. Severe injury means

any physical injury that results in broken bones, disfiguring lacerations, or required cosmetic surgery or hospitalizations; there were none of these. This was not a severe injury. I faxed the vet report to my vet in Florida. He said it did not look like a severe injury. As bad as it was I don't feel like it was severe enough to say that he is a dangerous dog. We have done differently this season, we have a pronged choker collar, electronic collar that we did not leave the garage unless they are put on immediately. We are not taking him on the golf course. We are not even members anymore. We have been shunned from the mountain, we have been told that we have to put a muzzle on the dog. This was a one dog incident."

Reo Griffith questioned if she was admitting that her dog bit another dog. Ms. Tomlinson said yes. Mr. Griffith questioned if she actually paid the vet bill? Ms. Tomlinson said yes that she paid \$500.00.

Faith Lacey questioned why it took so long for this process when this happened September of last year. Sheriff Kevin Frye stated that he had gotten a call from Linville Ridge Security and the general manager on that date on the form and they told me what you have in front of you.

John Tomlinson was sworn in by the clerk. Mr. Tomlinson relayed the same story that Ms. Tomlinson did.

Sheriff Kevin Frye said "I know both sides and both sides seem to be very good people. When I was called to make this ruling I went by what I have always went by before when it says serious injury if a dog has done serious injury to another dog off its property and if it requires medical attention and any sutures or staples, that is the logic I apply to this and that is the reason I enacted the dangerous dog determination."

Chair Hicks asked the board members who vote to uphold the Sheriff's determination that the Tomlinson's dog is a potentially dangerous dog to please raise their right hand.

**Maxine Laws voted to uphold the Sheriff's determination.**

Chair Hicks asked the board members who vote to overturn or reverse the Sheriff's determination to please raise their right hand.

**Martha Hicks, Reo Griffith, Faith Lacey voted to reverse the Sheriff's determination.**

**Chair Hicks stated if there was no further business, the hearing was adjourned at 3:45 p.m.**

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**Martha Hicks, Chair**

ATTEST: \_\_\_\_\_  
Cindy Turbyfill, Clerk