

THE MARYLAND ANIMAL LAW ADVOCATE

Opinions, News and Commentary from The Animal Law Section

Gary C. Norman, *Chair*
Jan Berlage, *Vice-Chair*
Kathy Anne Mancusi, *Editor*



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Message From The Chair

By Gary C. Norman, Esq.

I am honored to serve you as your Chair. I shall provide an introduction and a sense of the calendar for this year. I am a staff attorney with the federal government, and am an LLM student at American University, Washington College of Law. I am one of the ten 2009 Ten Outstanding Young Americans. My published works as respects animal law, include, a book chapter in the 2009 ABA *Litigating Animal Law: A Complete Guide for Lawyers*. Well. This would appear to be more than enough about me. Importantly, this is to encourage you to be involved with the Section this year as myriad programs will be planned.

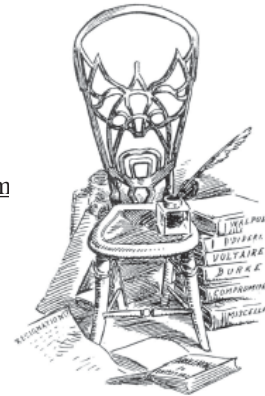
1. In October, we will have our annual "kick-off event."
2. Section Council Meetings are planned for mid November, late March and the end of April.
3. General programs are being planned presently, and will be announced accordingly; that stated, however, the Section is contemplating having programs on health-care issues related to companion animals, a legislative reception, and issues related to agriculture.
4. Additionally, a steering committee, which is composed of members of the Section Council and which is being led by our vibrant section within the MSBA, is planning a regional animal law symposium.
5. Furthermore, the Section is exploring an annual award that will recognize the outstanding efforts of judges, lawyers, legislators, professors, or other legal or policy professionals for advocating, advancing, or litigating animal law issues. The goal is to unveil this award, for the first time, at the 2010 annual program. While the committee for this award will be composed of members of the Section Council, non-Section Council Members is invited to serve on the committee.

As you can read, the Section will be busy this year. My hope, as is certainly the circumstance with the remainder of the Section Council, is that you attend an event, be more involved with the Section by expressing an interest to run for

a seat on Section Council in the spring, or find ways to contribute your talents to the critical work of the Section on behalf of animal law and policy in the state. Please telephone me on my cell at (410) 241-6745 or communicate with me via an e-mail at GLNorman15@hotmail.com if I can be of assistance. Once again, thanks for this opportunity.

Sincerely,

Gary C. Norman
Chair
GLNorman15@hotmail.com



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[WWW.MSBA.ORG/ SEC_COMM/
SECTIONS/ANIMALLAW/](http://WWW.MSBA.ORG/SEC_COMM/SECTIONS/ANIMALLAW/)

Wild and Exotic Animals in Maryland

~or The Story of One Siberian Lynx's Legal Odyssey~

By Anne Benaroya

"Lions and tigers and bears, oh my!" cried Dorothy in the iconic film, *The Wizard of Oz*. All aspects of our culture, from art to religion and science are rife with references to wild and exotic animals. Since ancient times, we have been fascinated with these creatures; we have delighted in their beauty and studied their habitats and behavior for thousands of years. Now many wild and exotic species are threatened or near extinction, a situation that focuses

our attention on our relationship with them more critically than ever before. We now ask ourselves whether these creatures should be "privately owned" and what exactly "private ownership" means. To some people private ownership generates outrage by conjuring images of these creatures abandoned at local animal

shelters after having been exploited by the entertainment industry or a selfish individual; to others private ownership evokes sympathy for the individual or group advocating rescue by a private organization.

Either way, our relationship with these creatures is increasingly controversial and the terms of the debate are changing. These important issues are touched on by the case in this article; however, critical discussion of "private ownership" is beyond its scope. This is a short story about Puddy Cat, a Baltimore County resident who happens to be a Siberian Lynx.

In the spring of 2005 Puddy Cat, a golden-colored lynx cub, arrived at his new home, Eagle's Nest Ranch, a sixteen-acre menagerie in rural Baltimore County. Eagle's Nest's proprietor, Daniel Vitilio, a farmer and wildlife rehabilitator, had joined forces with other like-minded farms and small zoos to rescue a group of lynxes and other wildcats from a Midwestern fur ranch. The project was a success and the playful twelve-week old lynx was to become one of Baltimore County's most familiar residents and a minor celebrity.

Puddy's legal problems began in late summer 2005 when

Baltimore County Animal Control officers visited Eagle's Nest and reluctantly charged Vitilio with violating the County Code's requirement that he obtain a local "wild animal" permit to keep Puddy. When Vitilio requested a hearing for the violation no one foresaw the twists and turns that would confound county officials and capture the public's mind. For several years Eagle's Nest had been serving Baltimore County as a haven for unwanted or injured creatures; hawks

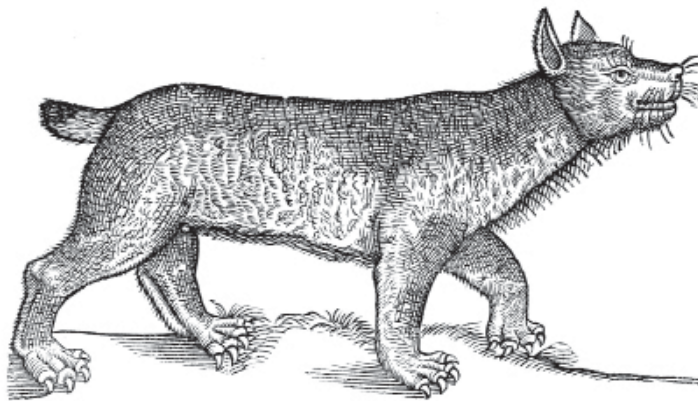
and owls, an American Bison and her calf, an African Serval cat and many others called the Vitilio's ranch "home" until their release or placement elsewhere.

At the time Vitilio received the "wild animal" violation, he already had obtained a U.S. Department of Agriculture Class C Exhibitor's license for

Puddy. The license played a key role in Vitilio's right to keep Puddy at Eagle's Nest while the legal proceedings dragged on. The federal Animal Welfare Act requires zoological parks, animal shelters and other animal care facilities to hold a Class C license for each animal if she or he is a member of a statutorily protected species, such as medium and large felines (lions, tigers, and other wild cat species), non-human primates (great apes, monkeys, lemurs, orangutans, etc.) marine mammals (dolphins, manatees, whales, etc.) and some others.

To obtain the federal license Vitilio's ranch had to pass a rigorous (annual) inspection by the Animal, Plant, Health Inspection Services (APHIS), an enforcement agency within the U.S. Department of Agriculture. The licensing process requires a federal inspector, some of whom are veterinarians, to investigate and certify that the animal care facility complies with stringent federal regulations. The regulations require the inspector to ensure that each animal lives in a proper environment and receives the nurture and stimulation necessary for its species to thrive.

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Wild and Exotic Animals. . .

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Because the purpose of the Animal Welfare Act and its licensing requirements is to protect certain animals in “captivity” the Act does not preempt state regulation designed to protect the public--hence Baltimore County’s “wild animal” licensing requirement. Almost all state and local governments have laws designed to protect the public from zoologically ignorant individuals who would keep Puddy for self-aggrandizing reasons. Like most states, Maryland Criminal statute’s prohibitions on keeping “wild or exotic” animals grant state and local animal control agencies significant powers of search, seizure and forfeiture. Had Puddy not lived in an ideal situation,



the County probably would have seized and relocated him to another farm or zoo at Vitilio’s expense while the legal issues slowly winnowed their way up to the Court of Special Appeals.

Puddy’s legal odyssey began with a hearing on the permit issue at the Baltimore County Animal Hearing Board (AHB); the AHB is a typical Maryland county administrative agency designed to adjudicate animal

control issues. In this case as in most, the initial hearing sets the course for the case since all appeals and judicial review are based upon the evidence adduced at the first hearing. The AHB ruled against Vitilio, finding that he needed the local permit to keep Puddy; the finding was affirmed by the Board of Commissioners on appeal and by the Baltimore County Circuit Court when Vitilio sought judicial review. Puddy’s last hope was in Annapolis, so Vitilio took the case to the Court of Special Appeals.

The Court of Special Appeals issued an unpublished opinion in January 2008. The ruling was a win because the court agreed that although Vitilio did not have a permit, he may not need one because Eagle’s Nest, could fall within the “zoological park” exception to the County’s permit requirement. Since no one had questioned whether Eagles Nest and its 200-plus creatures was a “zoological park” at the initial hearing, the facts were ripe for litigation. Vitilio wasted no time and requested another hearing with AHB, the only agency that had jurisdiction. The clock ticked and the plot thickened.

Puddy continued to grow and reached his adult size of 90

pounds in the spring of 2008, nearly three years after the dispute began. Nervously, Vitilio awaited the County’s response at the AHB, although none was forthcoming. After more than a month had passed, Vitilio requested a default against the County for its silence when the AHB failed to rule on the matter. The AHB refused to rule, so Vitilio appealed, which came to naught. At that point, Vitilio petitioned the Circuit Court to issue a writ of mandamus and filed an action for declaratory relief.

Meanwhile, the County Council was quietly working on a legislative “solution”, unbeknownst to Vitilio. Fortuitously, Vitilio learned that the Council had proposed an amendment that would dispense with the “zoological park” exception--the part of the code that Puddy’s case hinged upon. Without the exception, the County could have sent Puddy back to Siberia or worse. When Vitilio learned of the amendment at the eleventh hour, it was in its final stage and needed only to be voted upon. Marshalling their resources, Vitilio and his supporters petitioned the Council and attended the voting session but the amendment was passed unanimously.

Fortunately, Puddy’s story has a happy ending, courtesy of the Constitution. Everyone agreed that Vitilio’s ranch was the only facility to have ever availed itself of the exception to the permit requirement and his request for the exception had been filed months before the amendment had been passed. In an action for declaratory relief and request to enjoin the enforcement of the new law against Eagle’s Nest, Vitilio argued that the amendment would be an unconstitutional Bill of Attainder and Ex Post facto law. To avoid another round of appellate litigation, the County and Vitilio agreed that so long as Vitilio maintains his federal licensure, he may keep Puddy at Eagle’s Nest. However, Puddy is the last Siberian Lynx that will make his home in Baltimore County.



Anne Benaroya has practiced law for 20 years and currently is based in Rockville. Her practice focuses on constitutional law and animal law.

Significant Legislation Affecting Animals: Bills Being Considered by the 2009 111th Congress

By Priya Sharma

Animal protection laws have been growing at unprecedented rate, both in Maryland and on the federal level. Here is a summary of pending bills before the 111th Congress which is currently in session. Individuals can voice their support for any of these bills by calling Barbara A. Mikulski and Ben L. Cardin, U.S. Senators for Maryland, and Donna Edwards and Chris Van Hollen, U.S. Representatives for Maryland.

BILL: H.R. 503/S.727

TITLE: The Prevention of Equine Cruelty Act of 2009

TOPIC: Equine Protection

SUBSTANCE: The purpose of the bill is to ban the transportation and sale of horses for slaughter for human consumption.¹

SIGNIFICANCE: Traditionally, hundreds of thousands of horses in the United States have been slaughtered and sold to foreign companies in Europe and Asia for consumption.² Since 2007, there are no longer any domestic slaughtering plants in the U.S.³ Instead, slaughterhouse middlemen purchase horses at live auctions and then transport them to Canada and Mexico, where horse processing plants are still in existence.⁴ In 2008 over 100,000 horses were exported to Canada and Mexico for slaughter.⁵ The horses suffer greatly during transport as they are not given food or water for over 24 hours and are confined to small spaces.⁶ Once they reach the slaughter house the deprivation of food and water continues-- they are subjected to extreme heat and cold temperatures and are beaten as they are forced into the area where they are slaughtered.⁷ The actual slaughter is another inhumane process as they are often hung by a leg and then have their throats slit.⁸ This bill aims to protect U.S. horses from such a dire fate.⁹

BILL: S. 1076/H.R. 2480

TITLE: The Truth In Fur Labelling Act of 2009

TOPIC: Fur Labelling

SUBSTANCE: The purpose of the bill is to improve the accuracy of fur labelling.¹⁰

SIGNIFICANCE: The 1951 Fur Products Labelling Act requires that items made of fur be affixed with a label indicating from which animal the fur came from.¹¹ However, the law exempts those items which have "a small quantity or value of fur."¹² The 2009 bill proposes that all products made wholly or partially from fur, even those made with diminutive amounts of fur and those which are sold for a very low cost, would have to be accurately labelled.¹³ People

and organizations around the United States are supporting this bill, largely because the fur industry continues to be one of the cruellest industries in the world.¹⁴ Animals trapped for fur suffer for days in the inhumane traps, and those raised for fur on fur factory farms are kept in small confinements without the room to stretch or move.¹⁵ When killed, these animals are often electrocuted or have their necks broken to avoid damage to their coat.¹⁶ This bill seeks to inform the public as to which products contain even trace amounts of fur, so people can avoid all fur products if they choose.¹⁷

BILL: H.R. 1326

TITLE: Great Ape Protection Act of 2009

TOPIC: Medical Testing on Apes

SUBSTANCE: The purpose of the

bill is end researchers from conducting invasive biomedical procedures on great apes, and to retire those federally owned chimpanzees that currently reside in laboratories to an animal sanctuary.¹⁸

SIGNIFICANCE: Currently, the United States allows medical testing on great apes. A number of organizations, including the Humane Society, have conducted investigations which show that the apes are routinely subjected to invasive procedures, that infant monkeys are taken away from their mothers and tortured with medical practices, and that the primates exhibit signs of severe physical and psychological distress.¹⁹ Furthermore, maintaining and testing on apes costs U.S. citizen millions of dollars every year, while many scientists posit that testing on chimps does not



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Significant Legislation. . .

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provide accurate medical information due to the significant differences in the biology of chimpanzees and humans.²⁰ The combination of the cost, lack of accurate data that can be gathered, and the severe suffering by the animals is the basis for many of those supporting this bill.²¹

Priya Sharma represents abused and neglected children in civil Child In Need of Assistance proceedings in Maryland.

Footnotes:

¹ H.R. 503, 111th Cong. (2009)

² Animal Welfare Institute

<http://awionline.org/ht/d/sp/i/11222/pid/11222>

³ The American Association Of Equine Protection,
http://www.aaep.org/position_HR503_S727.htm

⁴ Animal Welfare Institute

<http://awionline.org/ht/d/sp/i/11222/pid/11222>

⁵ The American Association Of Equine Protection,
http://www.aaep.org/position_HR503_S727.htm

⁶ Animal Welfare Institute

<http://awionline.org/ht/d/sp/i/11222/pid/11222>

⁷ *Id.*

⁸ *Id.*

⁹ H.R. 503, 111th Cong. (2009)

¹⁰ H.R. 2480, 111th Cong. (2009)

¹¹ 15 U.S.C. § 69b (2007)

¹² 15 U.S.C. § 69 (2007)

¹³ H.R. 2480, 111th Cong. § 2 (2009)

¹⁴ The Humane Society of the United States,

http://www.hsus.org/furfree/cruel_reality/the_cruel_reality_of_fur.html

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ H.R. 2480, 111th Cong. (2009)

¹⁸ H.R. 1326, 111th Cong. § 2 (2009)

¹⁹ The Humane Society of the United States,

http://www.hsus.org/press_and_publications/press_releases/bill_to_end_invasive_chimp_research_introduced_030509.html

²⁰ *Id.*; Release and Restitution for Chimpanzees in U.S. Laboratories, <http://www.releasechimps.org/flawed-science/dangerous-and-unnecessary/>; Akhtar, A. Beyond Animal Research. Physicians Committee for Responsible Medicine (2006). http://www.pcrm.org/resch/anexp/beyond/monkey_0605.html

²¹ *Id.*

Animal Law Section Elects New Officers

THE FOLLOWING PERSONS ARE serving on the Animal Law Section's Council for 2009 to 2010:

Gary Norman
Cheryl Leahy
Jan Berlage
Alan Nemeth
Susan Hankin
Maricruz Bonfante

Robert Malone
James Butler
The Honorable Lenore Gelfman
Katherine Howard
Susan Adams
Alexander Foster

The Animal Law Section Council elected officers at its July 30, 2009, meeting. The officers are:

Chair-elect for 2010-2011: **Jan Berlage**
Secretary: **Susan Hankin**
Treasurer: **Maricruz Bonfante**

Gary Norman is the current chair for 2009-2010.



Licensing Backyard Breeders

By Robert Moore

Forty years ago we bred our eighteen-month-old female Collie, believing it would be a “fantastic experience” for our young daughters. Five adorable puppies resulted, and it truly was an unforgettable experience. For us.

The problem was, we had no idea what we were doing! To our untrained eyes the twelve-year-old male Collie seemed healthy and, at least as far as we ever knew - our knowledge vanishing with the families who took the puppies away - we did not pass along defective genes to infect future generations. We were among those loosely referred to as “backyard breeders,” who indiscriminately breed dogs and cats in their kitchens, basements, yards or otherwise in unsuitable, unhealthy, makeshift locations, ignorant of genetics, the health of the animals and uninterested in the puppies’ ultimate fate.

Approximately two-thirds of the estimated 53 million dogs in the U.S. come from backyard breeders, the single greatest cause of the pet overpopulation crisis in this country.¹

The Humane Society of the United States (“HSUS”) estimates six to eight million dogs and cats enter shelters annually, of which no more than three to four million are adopted, the rest being euthanized.² One can approximate that for every dog or cat produced by a backyard breeder, one dog or cat is euthanized in a shelter.

Local animal control authorities, on those rare occasions when these breeders come to their attention, may be able to rescue, to a shelter, dogs found in egregious conditions. Those lucky enough to be rescued often are poorly socialized or sick leading to inevitable euthanization. These breeders, unwilling to invest in essential veterinary care, are more than willing to give up puppies and adults with health issues

A “successful” backyard breeder, i.e. one who continually procures dogs from various sources, including “free to good home” ads, and is able to net a profit in the absence of facility and medical overhead expenses, may expand to become a “puppy miller,” supplying dogs to indiscriminate puppy mill retailers.

By contrast, reputable breeders, including “hobby breeders,” i.e. those who breed seriously and selectively, carefully screen for health and potential hereditary problems, maintain meticulous records of medical care, do not give up

the puppies until approximately eight weeks of age, do not breed the females before maturity, do not over-breed the females and generally follow the adopted dog’s experience. Normally these breeders offer to take “defective” dogs - those with temperament or health issues - back.

Potential hereditary issues may include eye problems that threaten discomfort and blindness, and hip and joint abnormalities that can predict future handicaps and expense. In addition, hearing, heart, hemophilia, digestive, epilepsy, allergies, temperament and other problems may be routinely detected by proper veterinary care.

Everyone agrees our species has created a burgeoning problem by carelessly over breeding our pets, resulting in health problems for the adults and sentencing untold thousands annually to premature death. Many of these doomed innocents are healthy, but can find no home because of irresponsible, misguided behavior.

The City of Gaithersburg enacted, on July 20, 2009, Section 4-8.1 Breeders and Litter Permits, Municipal Ordinance No. 0-9-09, amending Chapter 4, *Animals and Fowl*, of the City Code in an effort to begin addressing this issue. Section 4-8.1 reads, in pertinent part:

(a) Every person who resides within the city who intentionally or accidentally permits the breeding of a single dog or cat or makes a single dog or cat available for breeding shall obtain a breeders permit . . .

The ordinance further authorizes no more than one litter during any 12-month period, from a female at least 2, and no more than 6, years old, and requires proper body weight to be maintained before and after whelping.

This law is admittedly controversial as evidenced by some public comment and discussion among city council members, some of whom considered it unnecessary legislation that would restrict law-abiding citizens. Others fear it will not only be impossible to enforce, but will actually encourage owners to not register their pets.

Clearly, some pet owners will refuse to either register their pets or obtain a breeder’s license. These are very likely

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Commentary: Bear Wisdom

By Sarah Minick

With arms stretch high above my 5'2" frame, I run onto our deck and yell in a loud, but calm voice, "That's MY corn. That's MY garden. Get out. Go away, and don't come back!" From inside, I heard the sharp thwack of snapping corn stalks like the pop of a small gun. And now a hundred yards away, I am shocked to see a mother black bear and her two cubs having breakfast on our ripening yellow kernels. I watch her for a minute in a stunned silence-to see a bear in the wild is a magical experience. But I know the worst thing people can do is feed and humanize bears. When people and bruins become too familiar, the bears lose, often with their lives.

Then I remembered that's my corn! So I stand tall and try to look even taller by raising my arms. I don't wave them or scream nonsense syllables. Sometimes bears don't recognize us and become confused, and a confused bear turned curious may venture closer to investigate. I want this mama to have no questions that indeed I am a human being, and indeed she is invading my turf. I holler for her to leave, and it works. She walks to the garden's edge, her two cubs following, her sleek profile shining midnight black in the morning sun. One cub stands on his hind legs, sniffing the wind, trying to figure out the danger. Then I bellow again, "I am a human. Take your cubs and leave." The troop turns and trots away, disappearing into the canopy of leaves.

Human-bear conflict occurs more often these days because many people now live in bear territory. Most of these interactions don't harm humans. Linda Masterson, author of *Living with Bears*, explains, "There are approximately 900,000 black bears in North America. Every year people have millions of interactions with black bears. Yet between 1900 and the summer of 2005 records reveal that just 57 people in North America were killed by black bears." She continues, "To put that in perspective, 50 people in the United States die every year from bee stings."

Conflicts often occur during warmer months when bears try to fill their hungry stomachs just about any way possible. Backyard birdfeeders, trashcans, and pet food bowls become prime targets-lots of calories for little work. If people take this food away, usually the bears move on.

"Most people want to be thin," reports Masterson. Yet "all bears want to be fat." To make it through their long hibernation, black bears eat ravenously when berries and acorns ripen. According to Masterson, these creatures "forage up

to 20 hours a day, trying to get in the 20,000 or more calories they need to gain 3 to 5 pounds a day."

Sometimes people mistakenly think bears are fat furry creatures meant to provide entertainment. My dental hygienist told me they had a bear visiting their trashcans during the night. After their son's birthday party, her husband purposefully propped the leftover cake on top of the trashcan and then went out later to view the show. Luckily the bear had moved on and didn't attend this second party.

Purposeful feeding of bears is highly unwise and can be illegal. If a bear loses its fear of humans, it must often be killed. As the saying goes, "A fed bear is usually a dead bear."

When human-bear encounters increase, people can help keep bears safe and in the wild. Bring in bird feeders in the summer months or string them so they are bear proof. Empty outside trashcans promptly, and enclose them to keep bears out. Also remove pet food bowls after feeding so that no kibble remains for other creatures.

Finally keep in mind that "the best way to deal with bear conflicts is to prevent them from happening by making sure bears aren't attracted to your home, yard, or neighborhood," says Masterson. She continues, "If you live in bear country, you and the bears are sharing space. Your

[*Ed.Note:* The hunting of Black bears in Maryland is prohibited by MD. CODE. ANN. NAT. RES. Section 10-423. However, this year there is a lottery for black bear hunting. See www.dnr.state.md.us; tab "wildlife", then under "Education" heading hit "Black Bear Conservation Program", then "Black Bears in Maryland". At this site see also *Living with Black Bears* and *The Black Bear Management Plan for 2004-2013*.

Maryland has set up a program which permits the state to reimburse individuals who have sustained damage to agricultural crops as a result of a black bear. See NAT.RES. Section 10-423.1. Proceeds from the sale of conservation bear stamps or decals at a cost of \$5 each help sustain this program. The stamps and decals may be purchased from the Department of Natural Resources.]

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Backyard Breeders. . .

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the same folks who already ignore registration laws; when found, they are subject to penalties under existing laws.

Enforcement obviously won't be simple, as the animal control staff has no intention of making bed checks; however, when a neighbor complains, for example, about excessive barking, the responding officer will now have a tool hitherto unavailable should he discover a family of puppies.

The goal is neither to raise revenue from a nominal breeder's license fee, nor to harass residents and task an overworked animal control staff with additional enforcement responsibilities. Nor is the intention to prohibit responsible pet owners from breeding their dog or cat.

The purpose is to educate the public regarding the responsibilities of conscientious pet ownership, the obligations assumed when bringing living animals into being. Animal control staff will have an opportunity to hand out materials, and possibly discuss, such responsibilities with those seeking a license to breed their pet.

This is not a naïve, unsophisticated proverbial stab in the dark; it is, rather, an honest effort to begin addressing a serious reality. I, for one, would fancy displaying a framed breeder's license were I intent on raising and selling offspring of my Golden Retriever.

Robert Moore has a general law practice and has been practicing law for 30 years. He is the Chair of the Gaithersburg Animal Control Board.

Footnotes:

¹ 2001-2207 Almost Home Daschund Rescue Society, <http://www.almosthomerescue.org>

² Statistics provided by The National Council on Pet Population, Study and Policy, Updated July 7, 2008

Bear Wisdom. . .

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job is to make sure the bear doesn't find any reason to linger at your place."

In my garden an hour after mama bear and her cubs depart, I am surprised by another discovery: bears eat corn just like we do. I imagined the creature chomping down through husk to devour kernel and cob whole. But not so. While she sat among the broken stalks, her massive claws delicately peeled back the husk. Then she nimbly cleaned out each kernel from the cob, even rotating it between her paws to get the last bite.

I relish my memory of this visiting trio of beautiful creatures, but in the future, we're guarding our patch with an electric fence.

Sarah Minick teaches reading in Virginia. She's a knitter and basket maker and hikes and gardens with her husband and three dogs. Distributed by Bay Journal News Service.