

STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL FROM DISPOSAL ORDER
ISSUED BY THE TOWN OF TORRINGTON

"DIESEL"

Owned by: Tina Morey, Jeff Groman

19 December 2013

PROPOSED DECISION

FINDINGS OF FACT:

1. Commissioner Steven K. Reviczky appointed Wayne Kasacek to act as hearing officer in this matter and to issue to him a proposed decision in this matter. Notice of a hearing scheduled for 12/6/2013 was provided via certified mail to the Town of Torrington and its representatives as well as the owner of the canine subject of this appeal.
2. At issue was the appeal of a disposal order issued by the Town of Torrington to Tina Morey and Jeff Groman concerning their dog known as "Diesel", a black with white, male Rottweiler/Catahoula mix of uncertain age.
3. On 12/6/2013 a hearing was held and concluded.
4. Present at the hearing was municipal animal control officer (MACO) Catlin Nield from the town of Torrington. The town was represented by Attorney Raymond Rigat. The dog owner was not present.
5. The testimony revealed that on 6/25/2013 a disposal order was issued as to the canine in question. The order was based upon an incidents occurring on 2/14/2012, 9/10/2012, 11/5/2012, 2/22/2013, 5/31/2013, 6/7/2013 and 6/18/2013. (T-1)
6. In February 2012, Diesel and April were found roaming. It was brought to the owner, Jeffery Groman's attention. He was warned to keep them on his property. Suggestions were made how to improve a kennel area or tying them out to keep them on his property. (TR Pg. 22)
7. In September 2012 Officer Gath and Officer Maiga investigated a complaint of dogs attacking a cat. The complainant Rosalie Bouchard, 241 Heights Drive, Torrington described the dogs. Officer Maiga was familiar with the dogs. Tina Morey and Jeffery Groman were given verbal warnings concerning roaming dogs. (T-9, TR Pg. 22-23)

8. On 11/5/2012 MACO Nield investigated a complaint of 2 roaming dogs. That in the course of her investigation MACO Nield received a verbal statement from Cindy Viarango, the complainant, that the dogs were terrorizing cats in the area. The complainant provided a description of the dogs. (T-7)

9. On 11/5/2012 MACO Nield located 2 roaming dogs which matched the description given by Cindy Viarango and took them to the Torrington pound. That these dogs were known to MACO Nield as Diesel and April, Jeffery Groman and Ashley Beatrice of 1249 Highland Avenue, Torrington, CT were notified that their dogs were impounded. (T-7)

10. On 11/6/2012 Jeffery Groman redeemed Diesel and April from the pound. Jeffery Groman was issued infractions for roaming dogs, Connecticut general statute section (C.G.S. §) 22-364a. (T-7)

11. On 2/22/2103 MACO Nield investigated a complaint of roaming dogs. The complainant Cindy Viarango, 164 Lafayette Street, Torrington. MACO Nield was able to recognize the dogs as Diesel and April. MACO Nield's made contact with Jeffery Groman. Gorman was issued infractions for failure to vaccinate for rabies and for failure to license Diesel and April. (T-8, TR Pg. 22) It should be noted this is a second complaint at this location see item 8 above.

12. On 6/17/2013 MACO Nield received a complaint of 2 dogs attacking a cat. The complainant Sarah Saunders, was able to describe the dogs. MACO Nield made contact with owner of the property Linda Simpson, 195 Allen Road, Torrington where the attack took place. Simpson described the cat as feral, which she had been feeding. Simpson was also able to describe 2 dogs seen in the area. (T-3, TR Pg. 15)

13. On 6/17/2013 MACO Nield made contact with Tina Morey. The dogs Diesel and April were not on the property. Morey was issued infractions for failure to vaccinate and failure to license. (T-3)

14. On 6/17/2013 MACO Nield investigated a complaint of an attack by 2 dogs on a cat. Subsequently MACO Nield made contact with the owner of a domestic cat found severely injured at 38 Apple Street, Jacqueline Jakubiak, Torrington and 2 other witnesses who were able to describe the dogs involved in the attack. The description of the dogs was similar to Diesel and April. (T-3, Tr. Pg. 15)

15. On 6/17/2013 MACO Nield responded to a third complaint of an attack by 2 dogs on a domestic cat at 241 Heights Drive, Michael Bouchard. It must be noted this is the same location noted in item 7 above. MACO Nield learned that the cat at this location was killed by dogs. The description given of the dogs matched Diesel and April and other descriptions given to MACO Nield this date. (T-3, TR Pg. 16)

16. On 6/18/2013 Officer Mathews investigated a complaint of 20 chickens being killed by 2 dogs at 148 Wyoming Avenue, Torrington. The description of the dogs given matched Diesel an April. (T-3, TR Pg. 18)

17. On 6/18/2013 Officer Mathews investigated a complaint of 2 dogs attacking and killing a raccoon and skunk and subsequently trying to gain access to rabbits on 148 Wyoming Avenue Torrington. The body of the skunk was recovered and subsequently tested for rabies and found negative. (T-6, TR Pg. 18)

18. On 6/25/2013 MACO Neild issued a disposal order for both dogs April and Diesel. (T-1, TR Pg. 20) April was ultimately euthanized. (TR Pg. 20)

19. This hearing officer is convinced that the incidents in question did happen consistent with the testimony of MACO Neild and documentary evidence entered into the record. That Diesel did kill at least 1 cat and 20 chickens and caused substantial injury to at least 1 cat on 6/17/2013 and 6/18/2013 while not on the property of his owners. In addition, given the facts and circumstances as described by MACO Neild and the evidence in the record, on several other occasions Diesel has attacked companion animals while not on the property of his owners.

20. It was proven that Diesel certainly has the capacity and propensity to cause physical harm to other poultry and companion animals and therefore the terms of the disposal order are factually and legally justified.

21. This hearing officer believes that Tina Morey and Jeffery Groman are not responsible pet owners as evidenced by the numerous warnings and citations issued by Torrington Animal Control and the fact that after making an appeal of the disposal order neither party was present at the hearing held 12/6/2013.

22. This hearing officer believes that the propensity of Diesel to attack wild animals and companion animals and, the unknown rabies vaccination status of Diesel makes this animal a considerable risk to transmit rabies to companion animals he may attack or humans through contact with companion animals he has attacked.

LEGAL CONCLUSION AND RECOMMENDATIONS:

Connecticut General Statute 22-358 provides that "the Commissioner, the Chief Animal Control Officer... may make any order concerning disposal or disposal of any biting dog or other animal as the Commissioner or such officer deems necessary." It further provides that following a hearing on such order "the Commissioner may affirm, modify or revoke such order as the Commissioner deems proper."

Upon review of the evidence and exhibits of the parties and after much reflection, I propose that the Town of Torrington established by a preponderance of the evidence that:

- A. "Diesel" is an aggressive dog toward companion animals and poultry.
- B. There is no legal requirement that it be proven that "Diesel" is a threat to persons in light of Connecticut General Statute 22-352(h) which provides authority for the issuance of a disposal order where there is proof of attack off property on companion animals, poultry or livestock.
- C. MACO Nield had a substantial and proper basis to support the issuance of the disposal order subject of this appeal. The disposal order was properly issued.

I strongly recommend that the disposal order as to "Diesel" be affirmed as issued and unmodified.

Dated: December 19, 2013



Wayne Kasacek
Duly Appointed Hearing Officer