

STATE OF CONNECTICUT  
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF: APPEAL FROM RESTRAINT ORDERS  
ISSUED BY THE TOWN OF BURLINGTON

"ZOE" and "DOZER"  
Owned by: Cheryl Byrne

November 29, 2016

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 July 21, 2016 was provided via certified mail to the Town of Burlington and its representatives as well as the owner of the canines subjects of this appeal.
2. At issue is the appeal of restraint orders issued by the Town of Burlington to Cheryl Byrne concerning her dogs known as "Zoe" and "Dozer". Zoe is a female Shepherd mix approximately 3 years of age at the time the order was issued. Dozer is male Terrier approximately 3 years of age at the time the order was issued.
3. On July 21, 2016 a hearing was held. The hearing was held open pending the agreement between parties concerning the entering into the record of certain photographic evidence on the cell phone of Cheryl Byrne.
4. On September 22, 2016 this Hearing Officer notified both parties that, to date, the exhibits had not been received and that this hearing was considered closed. No objection was received to the ruling, this Hearing Officer will consider the hearing as having been held and closed on July 21, 2016.
5. Present at the hearing was Mark Andrewsikas owner of the dogs "Moxie" and "Teddy", Amy Harris the wife of Mark Andrewsikas, Paul Jauregi, Andrea Jauregi owner of the dog "Burton" and sister to Paul Jauregi, and Tom Arcari Animal Control officer for the Town of Burlington. The town of Burlington was represented by Attorney Duncan Forsyth. The owner of the dogs subject to the restraint order, Cheryl Byrne, was self-represented.
6. The testimony revealed that on November 7, 2014 restraint orders were issued as to the canines in question. (T-10, T-11) The orders was based upon an incident occurring on November 2, 2014 during which Zoe and Dozer caused

severe injury to a dog owned by Mark Andrewsikas and Amy Harris, both residents of Burlington.

7. On November 2, 2014, Amy Harris' dog Moxie, after getting out of her car parked in her yard, proceeded to run towards the dogs in question. (TR 32)

8. On November 2, 2014, Moxie responded to the verbal commands of Amy Harris to stop and did not leave the yard of Amy Harris. (TR 32)

9. On November 2, 2014, the dogs in question, Zoe and Dozer, entered the yard of Amy Harris and chased Moxie to the front of the residence and proceeded to attack the dog Moxie. (TR 32 - TR 36, R 13)

10. That as the result of the attack on November 2, 2014, the dog Moxie sustained serious injury that required veterinary care. (TR 36 – TR 43, T 19, T 20)

11. That Mark Andrewsikas testified that on March 8, 2013 the dog Teddy and Moxie were attacked by the dog Dozer owned by Cheryl Byrne while in a common area owned by the Garda Lake Association. (TR 20 – TR 25, T 5, T 6, T 7)

12. That as result of the attack on March 8, 2013, Teddy and Moxie sustained injuries that required veterinary care. (TR 25, T 5, T 6, T 7)

13. That Paul Jauregui testified that on October 26, 2013, while walking his sister's dog Burton in a common area owned by the Lake Garda Association, Burton was attacked by the dog Dozer owned by Cheryl Byrne. (TR 54 – TR 60)

14. That as result of the attack on Burton, Burton sustained injuries that required veterinary care. (TR 60 – TR 63, T 14, T 15)

15. Throughout the hearing Cheryl Byrne stated that her dogs Zoe and Dozer attacked as the result of provocation by the other dogs, notably Moxie on November 2, 2014.

16. Cheryl Byrne introduced into the record, statements taken by the Burlington Resident Trooper as evidence that support her testimony that Zoe and Dozer were provoked. (TR 147, TR 149 R 13) When in fact a careful reading of the exhibit R 13, leads this Hearing Officer to conclude that the November 2, 2014 incident did in fact happen as described by Amy Harris.

17. The orders issued in part require Zoe and Dozer to be muzzled and under the control of a responsible individual over the age of 18 when not on the property of Cheryl Byrne. In addition Cheryl Byrne is required to construct a kennel on her property to confine Zoe and Dozer when not within the residence or on a leash

under the control of a responsible individual. (T 10, T 11) This decision was based upon the attack on November 2, 2014.

18. This Hearing officer is convinced that the November 2, 2014 incident in question did happen consistent with the testimony of Amy Harris, and that Moxie did sustain substantial injury during the incident.

19. This Hearing Officer received testimony and exhibits that establish that the conditions of the restraint orders have been complied with.

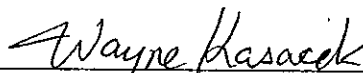
#### LEGAL CONCLUSION AND RECOMMENDATIONS:

Connecticut General Statute section 22-358(h) provides that "such officer, the commissioner, the Chief Animal Control Officer or any animal control officer may make any order concerning the restraint or disposal of such attacking dog 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 Burlington has established by a preponderance of the evidence that Dozer and Zoe can be a threat to companion animals.

I recommend that the restraint orders as to "Zoe" and "Dozer" be affirmed as issued and unmodified.

Dated: November 30, 2016



Wayne Kasacek

Duly Appointed Hearing Officer

