

**STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE**

IN THE MATTER OF:
ORDER

APPEAL FROM DISPOSAL

ISSUED BY THE TOWN OF FAIRFIELD

“JACK”

Owned by MICHAEL W. KIYAK

PROPOSED DECISION

FINDINGS OF FACT

1. That the Connecticut Department of Agriculture (“the Department”) received appeals from Michael Kiyak ("Mr. Kiyak" or "the dog owner") for disposal orders issued on his German shepherd breed dog “Jack.”
2. That on August 10, 2017, the Commissioner of Agriculture, Steven K. Reviczky, designated Wayne Kasacek as the Hearing Officer (HO) in this matter to render a proposed decision.
3. That on August 10, 2017, a hearing was scheduled for August 17, 2017.
4. That on August 14, 2017, Attorney Stanton H. Lessor representing the Town of Fairfield ("the Town") requested a continuance, which was granted. The hearing was rescheduled for August 24, 2017.
5. That on August 22, 2017, Attorney Thompson G. Page representing the dog owner requested a continuance which was granted. The hearing was rescheduled for September 7, 2017.
6. That on September 7, 2017, a full evidentiary hearing was held and concluded in accordance with the Department's Rules of Practice, the Uniform Administrative Procedures Act, and the Department's Order of Proceeding. Transcript (Tr.) at pp. 2-3 and in its entirety and see Notice of Hearing.
7. Representing the Town at the hearing was Attorney Lesser. The Town presented four witnesses: Mr. Kiyak, Paul Miller a Municipal Animal Control Officer (MACO) for the Town, Emily Quintiliano a Kennel Keeper for the Town Animal Control facility as well as a bite victim, and bite victim Lucy Meehan. The Town submitted Exhibits (Ex.) 1–10.
8. Present at the hearing was the dog owner, represented by Attorney Page. The dog owner did not present any of his own witnesses and did not enter any documentary evidence into the record. Tr. at pp. 43 and 179. The dog owner is an 83 year old man who resides with his 81 year old wife,

Nancy Kiyak, at 61 Lind Street in Fairfield. Nancy Kiyak has Alzheimer's disease and Mr. Kiyak is his wife's care giver. Tr. at pp. 45, 47, and 59. The dog owner requests that the dog Jack be returned to him. Tr. at pp. 50-52, 75 and HO Ex. 1, 3, and 4.

9. The Hearing Officer stated that in rendering his proposed decision, he would be considering all the evidence admitted into the record and his proposed decision would be based on the preponderance of the evidence. Tr. at pp. 2-3.
10. At the hearing, the Hearing Officer stated that this was the opportunity to "hear evidence, testimony, documents, whatever you decide, on the seizure, the retention, [and] the underlying order, and it all [will] be duly considered." Tr. at p. 12.
11. The dog Jack was obtained by Mr. Kiyak in 2014 or 2015, and Jack had previously been living in Florida and while in Florida was named Semper. Tr. at pp. 53, 182-184.
12. Lucy Meehan (hereafter "Meehan") testified that on May 3, 2016, while jogging on Lind Street, a public road, she was attacked and bitten by the dog Jack on her right leg, her arm, and her chest. (Tr. pp. 77-82, and Town Ex. 1). This bite incident is identified as #16-17278.
13. Meehan testified that while jogging she observed a man holding onto a German Shepard. Meehan testified that the dog was pulling at the leash and the leash broke. Meehan testified that after the leash broke the dog attacked her while she was in the road. Meehan testified that after the leash broke the dog bit her in three places resulting in injuries that required medical attention. Tr. at pp. 81- 82, Town Ex. 4, 5, and 9.
14. Meehan's testimony is corroborated by Mr. Kiyak. Tr. at pp. 65-69, 77-82, and Town Ex. 1, 2, and 4. Mr. Kiyak stated that Meehan, "ran over to the other side of the road and went on her knees and I ran over beside her to shield her from my dog because I didn't know if [Jack] was going to attack again." Tr. at p. 68. At the time of this bite incident to Meehan, Jack was a hundred pound dog. Tr. at p. 68. Meehan did not provoke Jack. Tr. at p. 68.
15. Meehan was treated at a walk in clinic on the date of the bite and the nurse at the clinic stated that "the wounds appeared more serious than a regular dog bite." Town Ex. 1 at page 1. This is corroborated by photographs in Town Ex. 9.
16. On May 27, 2016, a Restraint Order was issued for the dog Jack after the Meehan bite incident (Town Ex. 6), and the Town, per Fairfield Police Captain Smith, provided Mr. Kiyak the opportunity to take Jack out of the State of Connecticut. Mr. Kiyak was apparently unable to take Jack out of the State of Connecticut due to personal reasons and he voluntarily brought Jack to the Town animal control on July 15, 2016 to address an impending Disposal Order. Tr. at pp. 62, 71 and 112-115 and Town Ex. 1.

17. MACO Miller testified that after the Restraint Order was issued, area residents expressed concern about the safety of residents. (Town Ex. 1), Fairfield Animal Control reopened the investigation to determine whether there were any prior incidents involving the dog Jack.
18. Approximately five months prior to Jack biting Meehan, Mr. Kiyak testified that Jack bit his wife Nancy in their home in 2015 and '16. Tr. pp. 60 and 61. Mr. Kiyak testified that he informed his wife Nancy that the dog Jack was in the garage and that she should not go in the garage. Because of her Alzheimer's disease and lack of memory, Nancy Kiyak went into the garage and Jack attacked and bit her. Tr. pp. 62-63. Nancy Kiyak was treated at a walk in clinic for the bite, but Mr. Kiyak did not report it. Tr. at pp. 63 and 64. MACO Miller confirmed that Jack bit Nancy Kiyak in December of 2015, that Nancy Kiyak was bitten on her arm, in her home, and that Jack was quarantined on the dog owner's property. This bite incident appears to be identified as #15-44885. Tr. at pp. 109-110.
19. MACO Miller testified that he traced the dog Jack to Pasco County Florida through the dog's rabies tag. The investigation revealed Jack, then named "Semper" was involved in a biting incident in Florida. Testimony by Mr. Kiyak confirms the dog Jack's origin and name in Florida. (Tr. at pp. 53, 116-118, and 184 and Town Ex. 3). According to Town Ex. 3, Jack bit an eleven year old boy on his arm while the boy was walking home from school, and the bite required stitches.
20. Based upon his continuing investigation, MACO Miller testified that on July 15, 2016, he issued a Disposal Order on the dog Jack, citing three biting incidents: the bite incident to Meehan, the bite incident to Nancy Kiyak, and the bite incident in Florida (W492574-090414, Pasco County, FL). (Town Ex. 7).
21. On or about December 12, 2016, Jack was being held at the Fairfield Animal Control facility. At that time, Mr. Kiyak was allowed to come in and feed and walk Jack. Mr. Kiyak had asked MACO Miller "not to allow anybody near Jack," because if "somebody go[es] in there and forget to close the guillotine door inside and walk into the run and he's looking for trouble. I didn't want any chances of that happening." Tr. at pp. 72 and 73. On that day, Mr. Kiyak did not have Jack on a leash and was holding him by his choke collar and Jack "broke loose from him." Tr. at pp. 73 and 74. Emily Quintiliano (hereafter "Quintiliano") testified that on December 12, 2016, when she was working at the Fairfield animal control facility, she was bitten on the left wrist by Jack which resulted in scarring. Quintiliano, who has interacted with hundreds of animals, stated that she did not provoke the attack and that prior to encountering Jack she believed that he was under the control of Mr. Kiyak who was visiting Jack and taking him outside. (Tr. at pp. 73-75, 90-103, and Town Ex. 1). During this bite incident, Jack approached Quintiliano quickly, he was barking, continuously growling, and Jack backed Quintiliano down an aisle and against a wall before biting her. Tr. at pp. 92-93. When Jack was getting ready to attack Quintiliano, she unsuccessfully attempted to protect herself from Jack by hitting him with a bowl. Tr. at pp. 99-101. Quintiliano testified that during this incident, Jack was growling, barking, very aggressive and she was very scared. Tr. at p. 102.

22. On December 24, 2016, MACO Miller issued a second disposal order on the dog Jack citing the bite incident involving Quintiliano (Dog bite incident #16-49225), in addition to the three previous bite incidents involving Jack. (Town Ex. 8).
23. MACO Miller has been an animal control officer for twenty-nine years and has come in contact with thousands of animals. Tr. at pp. 106, 122-123. He has not been involved in many biting instances where disposal orders are issued and he does not issue them lightly. Tr. at pp. 123 and 126. In this case, MACO Miller assessed the seriousness of the bite, the number of bites, and past history. Tr. at pp. 123-124. MACO Miller testified that Jack is "mean and aggressive" and "is one of the most dangerous dogs I've ever seen." Tr. at p. 124.
24. MACO Miller's "primary concern is for the safety of Nancy Kiyak. If [Jack] goes back to the Kiyak household and she mistakenly gets involved in contact with this dog, and she's already been bitten once by this dog and it could be an extreme injurious situation and my biggest concern is it would be a fatal situation." Tr. at p. 126. MACO Miller thinks that Jack could kill Nancy Kiyak. Tr. at p. 126. See also Tr. at p. 163.
25. MACO Miller testified that Jack should stay in protective custody in animal control for the pendency of this case and that it would be dangerous to release Jack. Tr. at p. 126. MACO Miller testified that given the biting incidents, he thinks Mr. Kiyak has difficulty controlling Jack. Tr. at p. 128.
26. MACO Miller testified that Jack is a clear and present risk and threat to public safety and that he is dangerous to anyone he comes in contact with. Tr. at pp. 144 and 166 (and see Tr. at pp. 167-168: MACO Miller does not let subordinates in the kennel have any contact with Jack because he is concerned they'll be bitten). MACO Miller testified that his training and experience provided him with the guidance and the knowledge he needed to make judgments on dogs and certain behaviors they exhibit or have exhibited. Tr. at pp. 154-155.
27. MACO Miller considered the number of bites and the severity of the bites to reach his conclusion that Jack is of vicious propensity stating "this dog is one of the most aggressive dogs I've ever seen." (Tr. at pp. 123-124).
28. Veterinarian John T. Kristy's statement corroborates the testimony of witnesses and bite victims with regard to the temperament and aggressiveness of the dog Jack. Dr. Kristy's report states that Jack was "too dangerous to handle for a reasonable physical examination," that in the examination of Jack he "feared for his own safety," and that Jack is "large, strong and aggressive, and should be handled with extreme caution due to the potential for extreme physical injury." (Tr. Pg. 120 and Town Ex. 10).
29. During his testimony, Mr. Kiyak stated that Jack "is not very dangerous." Tr. at p. 57.

30. At the conclusion of the hearing on September 7, 2017, both parties stated that they had presented everything they wished to get into the record. Tr. at pp. 191-192.
31. At the conclusion of the hearing on September 7, 2017, both parties were provided with the opportunity to present post-hearing briefs and/or findings of fact. Tr. at pp. 192-195. Thereafter, the Town submitted a Memorandum of Law and Proposed Findings of Fact. The dog owner did not submit either.

Conclusions of Law and Recommendation

Connecticut General Statute § 22-358(c) provides, in pertinent part, that "... any municipal animal control officer . . . may make any order concerning the restraint or disposal of any biting dog . . . as . . . such officer deems necessary."

This statute further provides "Any person aggrieved by an order of any municipal animal control officer... may request a hearing before the commissioner... After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper." This hearing was held in accordance with the Department's rules of practice, its Order of Procedure, and the Uniform Administrative Procedures Act. *See Miller v. Department of Agriculture, et. al.*, 168 Conn. App. 255, 258 n.3 (2016).

I have carefully reviewed this entire record, including all filings with the Department, all testimony, all of the exhibits, and I have also carefully assessed and weighed the evidence that was entered into the record over an objection. I found each of the four witnesses to be honest and credible. I found MACO Miller's testimony and his assessment of Jack's temperament to be credible and reliable, and the reasons he provided for the Disposal Order were corroborated by other evidence in the record, including the testimony of both victim Meehan and Quintiliano, and also by the testimony of the dog owner. With that said, in light of so much contrary evidence in the record, I nevertheless disagree with Mr. Kiyak's statement that Jack "is not very dangerous" and disagree with his position that the dog should be returned to him.

The Town of Fairfield has proven to this hearing officer by a preponderance of the evidence that Jack is a dog of dangerous propensity and that the orders were necessarily issued to protect public safety, which includes the safety of Nancy Kiyak. This hearing officer finds MACO Miller has expertise in the assessment of aggressive or dangerous dogs, given, as he provided in his testimony, his twenty nine years as an Animal Control Officer, training that he has received in the course of his employment, and training with the National Animal Control Officers. This hearing officer finds the testimony of Emily Quintiliano to be credible and reliable as she has had considerable experience handling dogs of all temperament during her ten years as a kennel keeper. Ms. Meehan's testimony of how Jack attacked and bit her and the injuries she sustained was also credible and reliable.

During the hearing Attorney Page, on behalf of Mr. Kiyak, attempts to make the argument that "public safety" is not a justifiable reason to issue a disposal order or to hold a dog during the pendency of a hearing. This hearing officer rejects those arguments as C.G.S. § 22-358 concerns itself with a number of issues such as killing dogs while they are attacking livestock or pursuing deer, quarantine biting

animals to observe for signs of rabies and the issuance of restraint and/or disposal orders on animals who bite, all of which directly pertains to the interests of public safety. With respect to public safety, it is apparent from the record that Mr. Kiyak is unable to control Jack because Jack bit Nancy Kiyak, Meehan, and Quintiliano while Mr. Kiyak was present and that Jack broke free of Mr. Kiyak for two of those bites. Evidence in the record leads to the reasonable conclusion that this would be the case during the pendency of this appeal and thereafter. MACO Miller went so far in his testimony to state that he does not want Jack to be returned to Mr. Kiyak because Jack could kill Nancy Kiyak. Again, it is a reasonable conclusion that this would be the case during the pendency of this appeal and thereafter.

Attorney Page made it known in the proceedings that he had filed suit on behalf of the Kiyak's in Federal Court (and may even have served papers for the suit during the hearing. Tr. at p. 191) and his opening and closing statements focused on alleged procedural, and potentially constitutional, violations, including an unsubstantiated statement that questioned this hearing officer's ability to render an unbiased decision. At no time did Attorney Page offer and argue by way of witnesses or documentary evidence that Jack was not the dog that bit these victims, that Jack was not aggressive or dangerous, that the bites were not serious, or that Nancy Kiyak or other residents would not be in danger if Jack was returned home. In addition, no other alternative to a disposal order was presented that could have been considered by this hearing officer as an alternative to the disposal order.

The Town of Fairfield has provided, by a preponderance of the evidence in the record, that Jack is a dog of dangerous propensity and that the statutory elements for issuance of a disposal order have been satisfied in that a bite has occurred and a disposal order was necessarily issued by an animal control officer for public safety. This hearing officer strongly recommends that the disposal order at issue be affirmed.

Wayne Kasacek 24 Oct 17
Wayne Kasacek
Hearing Officer