



STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE

Office of the Commissioner



Steven K. Reviczky
Commissioner

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FINAL DECISION IN THE MATTER OF A DOG NAMED ROCKY

I am the final decision maker in the matter of the appeal of a Disposal Order issued by the Town of Portland, for the dog named "Rocky" owned by Mr. Paul Bell.

A Proposed Final Decision of Hearing Officer Dr. Bruce Sherman was served upon the parties on or about November 29, 2017. With the issuance of the Proposed Final Decision, each party was provided with the opportunity to present exceptions or briefs and to request an oral argument with the Commissioner as the final decision maker. Oral Argument was requested by the dog owner on January 17, 2018 and was held on February 14, 2018. No briefs were filed.

I have read the entire record in this matter, including both transcripts (hearing and oral argument) and all exhibits. Upon due consideration of the entire record, I have determined that the Town of Portland has established, by a preponderance of the evidence in the record, 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. I hereby adopt the Proposed Final Decision of the Hearing Officer in its entirety (attached), *along with the following additional statements*, as the Final Decision in this matter and affirm the Disposal Order.

I note that during the oral argument, counsel for the dog owner made several legal and factual arguments that I am also responding to and incorporating in this Final Decision.

1. First, I do not have the ability to opine on the constitutional components of the oral argument as presented by counsel for the dog owner. The constitutionality of legislative enactments is beyond the jurisdiction of administrative agencies. *See Miller v. Hamden*, 2014 WL 2922647 (May 24, 2014); *Speer v. Norwich*, 2014 WL 4814940 (Aug. 20, 2014).
2. Counsel for the dog owner argued that the Town of Portland did not establish proof that Rocky has a propensity to bite again and without that proof, it was not "necessary" for the animal control officer to issue the disposal order for Rocky. That is not a criteria required by Conn. Gen. Stat. § 22-358 or any other law. But even if it was required, the record in this matter does establish, by a preponderance of the evidence, that Rocky *does* have the propensity to bite again, including the evidence related to the incident involving Mr. Jose Contreras the day after the attack/bites to Mr. Demarest, the aggression Rocky has shown to the animal control officers, and also the report of Michael Schikashio, who determined that the bites to Mr. Demarest were consistent with a Level 3 or Level 4 on the "Dr. Ian Dunbar Dog Bite Scale" (*see* Proposed Final Decision footnotes 5 and 6 describing those levels).

3. The discretion given to animal control officers to make any order concerning the restraint or disposal of a biting dog as they “deem necessary” is necessarily circumscribed and informed by the purpose of these statutes, which is, plainly, to protect the public from biting dogs. The statute reflects the long-standing recognition that use of the police power of the State to protect the public from biting dogs is a necessity. “[Dogs are] still subject to the police power of the State, and might be dealt with, as in the judgment of the legislature is necessary for the protection of its citizens.” *Sentell v. New Orleans & Carrollton R.R. Co.*, 166 U.S. 698, 704 (1897). Conn. Gen. Stat. § 22-358's investigatory and public safety components, necessarily requiring that animal control officers have wide discretion as to how to respond to a given dog bite situation, have been the subject of numerous state court decisions, which have recognized the purpose of the statutes. See *Ancona v. Connecticut Dep't of Agric.*, 2008 WL 5481392 at *4 (Superior Court, New Britain Judicial Dist., Dec. 9, 2008); *Cetnarowski v. Ferris*, 2000 WL 1196445 at *2 (Superior Court, Litchfield Judicial Dist., July 24, 2000); *Richmond v. Thames Harbour Assocs., Inc.*, 1996 WL 62937 at *3 (Superior Court, New London Judicial Dist., Feb. 1, 1996); *Santiago v. Fuller*, 1995 WL 656808 at *5 - *6 (Superior Court, Hartford Judicial Dist., Oct. 31, 1995); *Miller v. Department of Agriculture*, 168 Conn. App. 255,269 (2016), *cert. denied*, 323 Conn. 936 (2016). The language authorizing a government official with animal control duties to make such orders concerning the restraint or disposal of biting dogs as “he may deem necessary” has been on the statute books of Connecticut since at least 1949. Section 3405, contained in Title 22 of the General Statutes, read:

Any person who shall be bitten, or shall show visible evidence of attack by any dog when such person shall not be upon the premises of the owner or keeper of such dog may kill such dog during such attack or make complaint to the dog warden of the town wherein such dog is owned or kept, and such dog warden shall immediately make an investigation of such complaint, and, if such dog warden shall find that such person has been bitten or so attacked by any such dog when such person was not upon the premises of the owner or keeper of such dog, such dog warden may make such order concerning the restraint or disposal of such dog as he may deem necessary. . . . Any person aggrieved by any such order of the dog warden may appeal to the commissioner of farms and markets, who after investigation may affirm, modify or revoke such order as he may deem proper. Conn. Gen. Stat. § 3405 (1949) (emphasis supplied).

The current-day statute, Conn. Gen. Stat. § 22-358(c), is situated among a group of long-standing provisions whose plain purpose is the prevention and control of the damage done by dogs. See Conn. Gen. Stat. § 22-354 (diseases in imported dogs); § 22-357 (liability for damage to person or property by a dog); § 22-358(a) (allowing the killing of any dog observed worrying domestic animals or poultry); § 22-359 (control of rabies); § 22-364 (prohibition on roaming dogs). The statute that makes dog owners liable for the damage done by their dogs, Conn. Gen. Stat. § 22-357, has been on the state's books since 1798. *Granniss v. Weber*, 107 Conn. 622, 624-25 (1928). It has been determined that the goal of the statute at issue, Conn. Gen. Stat. § 22-358(c), “is remedial and civil in

nature" and is designed to "obviate the threat that dangerous animals pose to the public" *Miller v. Department of Agriculture*, 168 Conn. App. at 269, and also "was intended . . . to protect the general public from contact with diseased dogs," *Wright v. Brown*, 167 Conn. 464, 468 (1975).

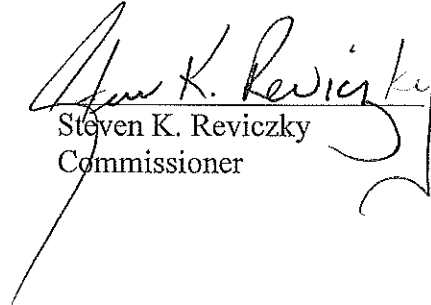
In his discussion at oral argument about the statutory term "necessary," counsel for the dog owner argued that "necessary," must mean, for instance, inevitable, unavoidable, or compulsory. The Connecticut Supreme Court, however, has not defined the term necessary using such extreme or draconian terms. The Connecticut Supreme Court "has long approved of giving the word "necessary," where appropriate, a much more liberal meaning than indispensable," and has held "that its meaning varies depending upon the situation in which it is used and the goals to be achieved. The situation here, as described in the record, establishes that it was unquestionably an appropriate application of the statute to seize Rocky and to issue a disposal order under the circumstances of the vicious attacks and dangerous bites to Mr. Demarest. As described by the victim, Mr. Demarest, he and his wife were on the opposite side of the road from Paul Bell's residence when Rocky ran down Mr. Bell's driveway to him. Rocky charged and knocked Mr. Demarest to the ground. While on the ground, Demarest tried to push Rocky away with his left foot but Rocky bit his ankle. Rocky later latched onto Mr. Demarest's upper shin below his left knee during which time Mr. Demarest was rolling around on the ground and was trying to kick Rocky away with his right foot. Rocky eventually got off of him. Proposed Final Decision (PFD) at #6. Rocky then attacked Mr. Demarest again. Rocky returned a second time to attack and bite Mr. Demarest, knocking him to the ground once again and biting him with a holding grip on his upper left thigh, during which time Mr. Demarest was again rolling around on the ground attempting to again get Rocky off and to stop biting him. Rocky eventually released his grip and "came off of him." PFD at #7. After the second bite and attack on Mr. Demarest, Rocky was growling and snarling his teeth at Mr. Demarest. Rocky again came at Mr. Demarest for a third time and Demarest kicked him in the head. Rocky then went towards Mr. Demarest's wife Maria while she was attempting to escape into a passing car, but (luckily) Rocky did not attack her. PFD at # 8. In his testimony describing the attacks, Mr. Demarest characterized Rocky's behavior as extremely aggressive, and he felt that Rocky was trying to kill him and he was fighting for his life in defending himself against Rocky's attacks. Mr. Demarest testified that he did not provoke the attacks. Mr. Demarest testified that he is fairly fit and was fortunate enough to be able to fight Rocky off, but that he thought many other people would not have been able to do so. PFD at # 9. Mr. Demarest's injuries were so severe that he needed to be transported by ambulance to Middlesex Hospital. PFD # 10. *And see* photos of Mr. Demarest's injuries in Ex. T-9. It is not unreasonable to conclude that if Mr. Demarest had not been fit and/or had he not been able to fight Rocky off, that his injuries could have been even more severe or even life threatening.

4. Counsel for the dog owner argued that Rocky's continued aggression in the pound should not be a criteria for the determination of whether or not to uphold this disposal order and that Mr. Bell did not have notice of this issue prior to hearing. At the hearing, however, Mr. Bell did not object to this type of evidence being entered into the record and he also failed to request a continuance of the hearing to attempt to respond to this type of evidence. See *O'Sullivan v. DelPonte*, 27 Conn. App. 377, 385 (1992) ("failure to request a continuance indicates a willingness to continue with the proceeding."). Also, I have determined that even without the evidence in the record discussing Rocky's aggressive behavior after he bit Mr. Demarest, there is still a preponderance of evidence in the record that the statutory elements for issuance of the disposal order have been satisfied with the attack(s) and bites to Mr. Demarest.
5. Counsel for the dog owner argued that Mr. Bell's behavior should not be a criteria for the determination of whether or not to uphold the disposal order and that Mr. Bell did not have notice of this issue prior to hearing. At least one Superior Court decision has determined that to be inaccurate. See *Cetnarowski v. Ferris*, 2000 WL 1196445 (July 24, 2000) (evidence of the dog owner's responsibility and past conduct properly admitted and is probative). Also, again, I have determined that even without the evidence in the record discussing Mr. Bell's behavior both before and after Rocky attacked and bit Mr. Demarest, there is still a preponderance of evidence in the record that the statutory elements for issuance of the disposal order have been satisfied with the attack(s) and bites to Mr. Demarest.
6. Counsel for the dog owner argued that the Hearing Officer "shut[] down Mr. Bell's completely allowable proper cross-examination." (Oral Argument Transcript at page 21). The Hearing Officer did no such thing. During Mr. Bell's cross-examination of Mr. Demarest, Mr. Bell was simply apprised to ask Mr. Demarest questions, and that during the cross-examination of Mr. Demarest, it was not the time for Mr. Bell to provide his own direct testimony. (See Hearing Transcript (Tr.) at pages 67-68). When told that Mr. Bell could continue asking Mr. Demarest questions, Mr. Bell responded, "I'll leave it at that." Tr. at p. 68. After re-direct examination of Mr. Demarest, Mr. Bell again stated that he did not have further questions. Tr. at page 72. Mr. Bell then testified on his own behalf. Tr. at pages 72-85. In ending his testimony, Mr. Bell stated that he didn't have anything further. Tr. at page 85. The Hearing Officer was very mindful that Mr. Bell did not have legal counsel: "Because Mr. Bell is not represented by legal counsel I'm going to go out of my way to make sure that he has due process." Tr. at page 105. Mr. Bell put on the testimony of one witness and then stated that he did not have any other witness. Tr. at page 119. At the conclusion of the hearing, the Hearing Officer also asked, not one, but two times, if either of the parties had any further witnesses or evidence. Tr. at pages 125 and 131.

7. Finally, the Department's Notice of Hearing informed the parties that the hearing would be held in conformance with the Uniform Administrative Procedures Act. There is no requirement that the Department apprise any party that they can or should bring legal counsel. Nevertheless, at the hearing, the Hearing Officer apprised Mr. Bell that if he didn't feel like he could represent himself and get due process, that he could request to end the hearing now and have a continuance if he wanted legal counsel. Tr. at page. 70. Mr. Bell stated that he wanted to continue the hearing. Tr. at page 70.

The Order is Affirmed.

March 14, 2018



Steven K. Reviczky
Commissioner

STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL OF A DISPOSAL ORDER
ISSUED BY THE TOWN OF PORTLAND

“Rocky”
Dog owned by Paul Bell

August 11, 2016

PROPOSED FINAL DECISION

I, Dr. Bruce A. Sherman, the designated Hearing Officer in the Appeal of a Disposal Order issued by the Town of Portland, in the Matter of dog named “Rocky” owned by Paul Bell, hereby issue the Proposed Final Decision in this matter. I have thoroughly reviewed the entire record, including the transcript of the hearing, all of the admitted exhibits, and all other related submissions of the parties. The Proposed Final Decision recommends affirming the Disposal Order as follows:

FINDINGS OF FACT:

1. Commissioner Steven K. Reviczky appointed Dr. Bruce Sherman to act as Hearing Officer in this matter and to issue to him a Proposed Final Decision. Connecticut General Statute (C.G.S.) § 4-179. Hearing Officer (“HO”) Exhibit (“Ex.”) 3. On August 1, 2016, the Notice of Hearing was sent via certified mail to the Town of Portland (“the Town”) and its representatives and the owner of the animal subject to this appeal, Mr. Paul Bell, for a hearing that was scheduled for and was held and concluded on August 11, 2016. Ex. HO 4. There was no request by the parties to continue the hearing, to call additional witnesses, or for any other reason. Transcript (Tr.) at page 125 and in its entirety.

2. At issue is the appeal of a Disposal Order issued by the Town on February 11, 2016 to Paul Bell concerning the dog named Rocky. The Disposal Order was issued as a result of a January 31, 2016 dog bite incident in which Rocky attacked Stephen Demarest. Rocky is

described as a Pit Bull Mix neutered male, black and white in color and approximately 2 years of age. Town ("T") Ex. T-5 and T-8.

3. The Town offered the testimony of Portland Animal Control Officer Karen Perruccio ("ACO Perruccio"), Portland Assistant Animal Control Officer Jean Cassella ("ACO Cassella") and Stephen Demarest ("Demarest"), the victim of the January 31, 2016 dog bite attack and Ex. T-1 and T-3 through and including Ex. T-9 (Ex. T-9 includes pages 1-8, 10-18, 43 and 45). The Town was represented by Town Attorney Joe Schwartz and Assistant Town Attorney Don Griffith. The dog owner Paul Bell, pro se, offered the testimony of Robert Hoover and Dog Owner ("DO") Ex. DO-1 and DO-2.
4. ACO Perruccio has been employed fulltime as animal control officer for the Town for approximately 3 years and part time for approximately 9 years. Tr. at page 28. ACO Cassella has been employed part time for approximately 1 year as assistant animal control officer for the Town. Tr. at page 121.
5. Paul Bell stated that he adopted Rocky from the Portland municipal pound on September 18, 2015 where he had been impounded for roaming. At that time, ACO Perruccio determined that Rocky showed no signs of aggression and was suitable for adoption. According to Mr. Bell, from the date of his adoption to the date of the bite incident on January 31, 2016, Rocky showed no signs of aggression toward Paul Bell or toward other people, including children, or toward other dogs. Tr. at pages 77 – 79, 102, and 110 – 111.
6. On Sunday, January 31, 2016, Stephen Demarest of 43 Old Marlborough Turnpike ("Tpke.") Portland, CT, sustained multiple dog bite injuries when he and his wife, Maria Demarest, were walking on Old Marlborough Tpke. in Portland, CT. Demarest testified that, when he and his wife were on the opposite side of the road from Paul Bell's residence at 187 Old Marlborough Tpke., he observed a dog, later identified as Rocky, run down Bell's driveway toward him. Demarest told Rocky to go home but the dog kept charging and knocked him to the ground. While on the ground, Demarest tried to push Rocky away with his left foot but the dog bit his ankle. Rocky then "latched" onto Demarest's upper shin below his left knee during which time Demarest was rolling around on the ground and trying to kick him away with his right foot. Rocky eventually got off of him. Demarest did not observe Paul Bell in his yard when the dog first ran down the driveway and attacked him. Tr. at pages 49 – 50.

7. Demarest testified that Rocky returned a second time to attack and bite him, knocking Demarest to the ground once again and biting him with a holding grip on his upper left thigh, during which time Demarest was rolling around on the ground attempting to again get Rocky off and to stop biting him. Rocky eventually released his bite grip and “came off of him”. At this time Demarest observed Paul Bell on the side of the road on his property. Tr. at pages 50 – 51.
8. Jennifer Bell, who is no relation to Paul Bell, was driving on Old Marlborough Tpke. and came upon Demarest lying on the ground as Rocky was biting him. Ms. Bell sounded her vehicle horn several times in an attempt to get the dog away from Demarest. After Rocky released his bite grip after the second attack, Ms. Bell pulled her vehicle up to try to place it between Rocky and Demarest. After the second bite and attack on Demarest, Rocky was growling and snarling his teeth at Demarest. Rocky again came toward Demarest for a third time, and Demarest kicked him in the head. Demarest testified that Rocky then went toward his wife Maria while she was attempting to get into Jennifer Bell’s car but the dog did not attack her. Tr. at page 51 and Ex. T-3.
9. In his testimony describing the attacks, Demarest characterized Rocky’s behavior as extremely aggressive, that he felt the dog was trying to kill him and he was fighting for his life in defending himself against Rocky's attacks. He also testified that he did nothing to provoke the attacks. Tr. pages 50 – 53. Demarest testified that he is a fairly fit person and was fortunate enough to be able to fight Rocky off but he thought many other people would not have been able to do so. Tr. at page 55.
10. Portland Police Sergeant Cunningham¹ responded to the scene and reported that, on his arrival, he observed EMS personnel assisting the victim Demarest. Demarest was transported by ambulance to Middlesex Hospital for further treatment of his injuries and released on the same day with instructions to see his primary care physician for follow-up treatment (which he did the next day, on Monday, February 1, 2016). Sergeant Cunningham met with Demarest at Middlesex Hospital and observed his injuries. The next day, February 1, 2016, the case investigation was assigned to ACO Perruccio. Ex. T-3 and Tr. at pages 63, 71 and 29.

¹ The Portland Police Department Incident report, entered into the record as Exhibit T-3, identifies the investigating officer ID as “Cunningham.” On direct examination, ACO Perruccio identified the responding Portland Police Officer as “Sergeant Cunningham.” Tr. at page 29.

11. As a result of the dog bite attack, Demarest suffered serious bite wounds resulting in emotional trauma and a lengthy period of healing and recuperation. Demarest testified that his physical wounds,² which caused him significant pain for a week or two after the attack, took about a month and a half to heal and for him to return to normal physical activity (five to six weeks). Demarest was in physical therapy treatment by for several weeks. Demarest testified that he still has scars present from the bite wounds. Demarest received treatment from a therapist for emotional pain and flashbacks which he still occasionally experiences. Tr. at pages 52 – 55.
12. Paul Bell testified that on January 31, 2016, he was outside of his house with Rocky, and then left Rocky unattended when he went into his basement. While in his basement, he heard what he described as “horrific screaming” and noticed Rocky was not behind him. Paul Bell tried to get outside but couldn’t run due to injuries suffered from a from a July 4, 2013 motorcycle accident. Once outside, Mr. Bell noticed Rocky at the feet of Steven Demarest who was on the ground and was kicking at Rocky. Paul Bell said he told Demarest to stop kicking Rocky because he was afraid that if he did so, Rocky might “reengage” with Demarest which the dog did. Paul Bell called to Rocky but could not get to him until the dog was trying to get into Jennie Bell’s car. Tr. at pages 79 – 81 and 86 – 89.
13. ACO Perruccio testified that she learned of the dog bite incident when she arrived at work on February 1, 2016 and reviewed Sergeant Cunningham’s police incident report. Ex. T-3. On the same day, she issued a 14-day off property quarantine order. Tr. at pages 29, 33 – 36 and 46.
14. ACO Perruccio testified that she and ACO Cassella visited Demarest, three days after the January 31, 2016 incident, and took a statement from Demarest³ and photographs of his wounds. Tr. pages 30 – 31 and Ex. T-1.
15. The next day, on February 1, 2016, Rocky was involved in another incident in which he displayed aggressive behavior. Jose Contreras of 16 Freedom Way, (Portland, CT) reported to Portland animal control that on February 1, 2016, he was walking on Old Marlborough

² See Tr. at pages 55-66 for testimony from Demarest in which he describes his wounds suffered in the dog bite attacks and photographs in Ex. T-1 and T-9.

³ ACO Perruccio stated that she and ACO Cassella took “their statement” which leads this Hearing Officer to the assumption that a statement was taken from both Steven Demarest and his wife Maria Demarest.

- Tpke. when Rocky ran down the driveway of 187 Old Marlborough Tpke., stopped in front of him and then attacked a bag he was carrying. Paul Bell heard Contreas yelling and was successful in calling Rocky back. Paul Bell stated that he did not consider the behavior that Rocky exhibited toward Jose Contreras as aggressive. Tr. at pages 36 – 41, 90 – 91 and Exs. T-6 and T-7.
16. On February 11, 2016, ACO Perruccio issued a Disposal Order on the dog Rocky pursuant to C.G.S. §22-358(c) as a result of the bites and attack on Steven Demarest. ACO Perruccio testified that she issued the Disposal Order because of the severity of the attack, that it was the first dog disposal order she had issued, and the most severe bite incident she had investigated since being employed as an ACO for the Town. ACO Perruccio further justified issuance of the Disposal Order by describing Rocky's aggressive behavior after entering the pound on February 1, 2016, which differed from Rocky's behavior while originally in the pound prior to his adoption. . ACO Cassella, who also had interaction with Rocky at the pound, corroborated ACO Perruccio's observations regarding Rocky's aggressive behavior. ACO Perruccio stated that she considered issuing a Restraint Order but determined she should not do so, even with the provisions recommended by Michael Schikashio. Tr. at pages 29, 41 – 45, 110, 114, 121 – 125 and Ex. T-8.
17. Paul Bell stated that he adopted Rocky from the Portland municipal pound on September 18, 2015. From the date of his adoption to the date of the bite incident on January 31, 2016, Paul Bell stated that Rocky showed no signs of aggression toward him or toward other people, including children, or toward other dogs. Tr. at pages 77 – 79.
18. Paul Bell testified that, at his request, Michael Schikashio ("Schikashio"), who lists "Certified Dog Behavior Consultant"⁴ among his credentials, conducted a behavior evaluation on Rocky at the Portland municipal pound on June 16, 2016, and issued a report of his findings and recommendations. Schikashio concluded that Rocky's attack on Demarest "may be attributed to 'territorial behavior' in which a dog may be motivated to protect his property." Schikashio's report referenced and included "Dr. Ian Dunbar's Dog Bite Scale." Dr. Ian Dunbar's Dog Bite Scale is "an assessment of the severity of biting problems based on an

⁴ Michael Schikashio was not present at the proceeding to establish his credentials that would qualify him as an expert in dog behavior, to substantiate his reported findings and recommendations or to be cross examined.

objective evaluation of wound pathology." Schikashio did not personally see Demarest's wounds or witness the attack. From photographs Schikashio was provided by ACO Perruccio, he assessed the bites as being consistent with Level 3⁵ or Level 4⁶ on a scale of 1 to 6, but indicated that a definitive level could not be established at the time because the photographs did not allow for the determination of the depth of the bite wound. Schikashio recommended that Rocky be released back to Paul Bell's custody but only under certain provisions of restraint and behavior modification training. He concluded his report with: "I make no warranties or guarantees of Rocky's future behavior." Paul Bell testified that he would be able to comply with a restraint order prescribing certain restrictions and provisions as recommended in Schikashio's report. Tr. pages 84 and 97 and Ex. DO -1.

19. When questioned about Schikashio's findings, ACO Perruccio, who observed Demarest's wounds, assessed the bite severity to be a Level 4. Tr. at page 101.
20. Robert Hoover testified that, as a friend of Paul Bell, he wanted to help him take care of Rocky because of Paul Bell's physical limitations due to his injuries. Hoover stated that he found Rocky to be affectionate and showed no signs of aggression. Tr. at pages 116 -119.

⁵ Level 3: "Prognosis is fair to good, provided that you have owner compliance. However, treatment is both time consuming and not without danger. Rigorous bite-inhibition exercises are essential. "

⁶ Level 4: "The dog has insufficient bite inhibition and is very dangerous. Prognosis is poor because of the difficulty and danger of trying to teach bite inhibition to an adult hard-biting dog and because absolute owner-compliance is rare. Only work with the dog in exceptional circumstances, e.g., the owner is a dog professional and has sworn 100% compliance. Make sure the owner signs a form in triplicate stating that they understand and take full responsibility that: 1. The dog is a Level 4 bitter and is likely to cause an equivalent amount of damage WHEN it bites again (which is most probably will) and should therefore, be confined to the home at all times and only allowed contact with adult owners. 2. Whenever, children or guests visit the house, the dog should be confined to a single locked-room or roofed, chain-link run with the only keys kept on a chain around the neck of each adult owner (to prevent children or guests entering the dog's confinement area). 3. The dog is muzzled before leaving the home and only leaves the house for visits to a veterinary clinic. 4. The incidents have all been reported to the relevant authorities –animal control or police. Give owners one copy, keep one for your files and give one copy to the dog's veterinarian. "

LEGAL CONCLUSION

Connecticut General Statute §22-358(c)⁷ provides that “the commissioner, the Chief Animal Control Officer, any municipal animal control officer . . . may make any order concerning the restraint 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 careful consideration of the entire record, including the hearing testimony and exhibits, and, after much reflection, I find that there is a preponderance of the evidence in the record to recommend affirming the Disposal Order on the Rocky.

⁷ Full text of subsection: “If such officer finds that the complainant has been bitten or attacked by such dog, cat or other animal when the complainant was not upon the premises of the owner or keeper of such dog, cat or other animal the officer shall quarantine such dog, cat or other animal in a public pound or order the owner or keeper to quarantine it in a veterinary hospital, kennel or other building or enclosure approved by the commissioner for such purpose. When any dog, cat or other animal has bitten a person on the premises of the owner or keeper of such dog, cat or other animal, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may quarantine such dog, cat or other animal on the premises of the owner or keeper of such dog, cat or other animal. The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary. Notice of any such order shall be given to the person bitten by such dog, cat or other animal within twenty-four hours. The owner of such animal shall pay all fees as set forth in section 22-333. On the fourteenth day of such quarantine the dog, cat or other animal shall be examined by the commissioner or someone designated by the commissioner to determine whether such quarantine shall be continued or removed. Whenever any quarantine is ordered under the provisions of this section, notice thereof shall be given to the commissioner and to the person bitten or attacked by such dog, cat or other animal within twenty-four hours. Any owner or keeper of such dog, cat or other animal who fails to comply with such order shall be guilty of a class D misdemeanor. If an owner or keeper fails to comply with a quarantine or restraining order made pursuant to this subsection, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may seize the dog, cat or other animal to ensure such compliance and the owner or keeper shall be responsible for any expenses resulting from such seizure. Any person aggrieved by an order of any municipal animal control officer, the Chief Animal Control Officer, any animal control officer or any regional animal control officer may request a hearing before the commissioner within fourteen days of the issuance of such order. Any order issued pursuant to this section that requires the restraint of an animal shall be effective upon its issuance and shall remain in effect during any appeal of such order to the commissioner. After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper. Any dog owned by a police agency of the state or any of its political subdivisions is exempt from the provisions of this subsection when such dog is under the direct supervision, care and control of an assigned police officer, is currently vaccinated and is subject to routine veterinary care. Any guide dog owned or in the custody and control of a blind person or a person with a mobility impairment is exempt from the provisions of this subsection when such guide dog is under the direct supervision, care and control of such person, is currently vaccinated and is subject to routine veterinary care.”

The record establishes that while walking with his wife Maria on Old Marlborough Turnpike in the vicinity of Paul Bell's residence, Stephen Demarest suffered unprovoked and vicious dog bite attacks by the dog Rocky. Rocky, owned by Paul Bell, was the biting and attacking dog. Rocky bit and attacked Demarest not just, once but twice. In both instances Rocky knocked Demarest to the ground and then proceeded to bite him while Demarest attempted to defend himself. Rocky latched on and held onto Demarest for at least two of the bites, resulting in severe injuries. Rocky maintained his biting grasp on Demarest while on the ground, making any escape from the attack more difficult. Although (and fortunately) not life-threatening, Demarest's injuries were severe and could reasonably be assessed to be at least a Level 4 dog bite attack as described in Dr. Ian Dunbar's Dog Bite Scale. Ex. DO – 1. It is reasonable to assume that if Demarest had not or was unable to fight back against Rocky, his injuries could have been even worse, or that the biting and attack would have continued.

The very next day after the Demarest attack, Rocky again displayed aggressive behavior when he ran off of Paul Bell's property onto Old Marlborough Turnpike where he confronted Jose Contreras and attacked a shopping bag that Contreras was carrying. Paul Bell was aware of Rocky's escape from his property and attack on Demarest the previous day but he did not take adequate measures to control Rocky to prevent him from running into the street and threatening another member of the general public. Paul Bell did not classify this behavior as aggressive. In addition to the severity of the bites, the extent of Demarest's serious injuries, the unprovoked nature of how the attack occurred, how the bites and attack continued while Demarest tried to defend himself, and the assessment of Schikashio and the dog bite scale, Bell's failure to control Rocky and his belief that the dog's behavior in the Contreras incident was not aggressive, further support ACO Perruccio's justification for the issuance of the Disposal Order as the only adequate means to safely protect the public from Rocky's aggressive and dangerous behavior. I found ACO Perruccio, ACO Cassella, and Steven Demerest to be credible witnesses.

Given the totality of the evidence, I find that there is a preponderance of the evidence in the record to affirm the Town's disposal order and therefore provide this recommendation to the Final Decision maker.

Dated: November 29, 2017



Bruce A. Sherman, DVM, MPH
Hearing Officer