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RE: **FINAL DECISION IN THE MATTER OF THE APPEAL OF A DISPOSAL ORDER  
PLACED ON THE DOG DEXTER OWNED BY ANNIE AND NEIL HORNISH**

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**STATE OF CONNECTICUT**

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL OF A DISPOSAL ORDER  
ISSUED BY THE TOWN OF SUFFIELD

“DEXTER”

**FINAL DECISION**

I am the Final Decision maker in the matter of the appeal of a Disposal Order issued by the Town of Suffield (“the Town”), for the dog named “Dexter,” owned by Annie and Neil Hornish (“the Dog Owners” or “the Owners”).

A Proposed Final Decision (PFD) of Hearing Officer Carole Briggs was sent to the parties by email on October 20, 2020. With that email, the parties and the intervenor were given the opportunity to file exceptions or a brief and/or to request an oral argument for my consideration. In response, on November 3, 2020, the Dog Owners filed forty-two (42) exceptions lettered A through PP, to the Findings and Conclusions Relating to the Disposal Order and Dexter’s Solitary confinement. On November 3, 2020, the Town issued a request for oral argument on the

proposed exceptions filed by the dog owners. On that same date, the Dog Owners objected to the Town's request for oral argument. On November 10, 2020, I issued a "Response to the Town's Request for Oral Argument on the Proposed Exceptions Filed by the Owners." Thereafter, on November 10, 2020, the Town then withdrew its request for oral argument. No oral argument will be held in this matter and the Dog Owners' objection was denied as moot. On November 10, 2020, the Dog Owners objected to allowing the Town Intervenor to file comments. On November 10, 2020, the Intervenor stated it would not be filing any comments and on November 12, 2020, the Town stated that it will not be filing any comments. For that reason, the Dog Owners' Objection was denied as moot.

I have read the entire record in this matter. Upon careful consideration of the entire record, I have determined that the Town of Suffield has proved, 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(s) has occurred and a Disposal Order was necessarily issued by a municipal animal control officer for public safety. I hereby adopt the October 20, 2020 Proposed Final Decision in its entirety (attached), and in addition to the PFD, I also include the following responses to the Dog Owner's Exceptions. For clarification, the Final Decision in this matter is comprised of both the October 20, 2020 Proposed Final Decision **and** the additional responses included herein. **I affirm the Disposal Order issued by the Town of Suffield for the dog named Dexter.**

I have reviewed and assessed each and every Exemption and the Conclusion stated in the Dog Owners' November 3, 2020 Exceptions. I want to make it clear that even if I did not specifically denote a response to each and every paragraph or to each subpart of each of the paragraphs herein, that I did in fact thoroughly assess each and every Exception.

1. Exception paragraph A: It is not unusual to include photographs of injuries inflicted by a dog bite(s) subject to a Conn. Gen. Stat. § 22-358 Order as evidence during a hearing. That is because photographs assist the Final Decision maker in assessing, for instance, the severity of injuries caused by a bite or bites at or near the time the incident occurred, the number of bites, and/or the location of a bite(s) on a victim. The photographs in the record here were relevant, material and not unduly repetitious. The extent of the injuries sustained by the victim is one consideration of whether a Disposal Order should be affirmed. The dog owners were not prejudiced or prejudged by photographic depictions of the injuries sustained by the victim just because they did not want evidence of the extent of their dog's bite(s) included in the record. Of import, I note that the photographs were just one piece of evidence that I have considered in the totality of the evidence in the record in making my Final Decision, that the photographs did not cloud my judgment, and that I am and remain unbiased. I find that there is no evidence in the record to reflect any bias of the Hearing Officer. Stating that "a picture says a thousand words," does not make the Hearing Officer biased or reflect that she was biased. The Dog Owners' claim that the photographs were non-probative in determining whether the injuries were pre or post mortem or whether the dog was provoked, but those considerations do not bear on the determination of whether the photographs were properly admitted or properly considered. The photographs were properly admitted and properly considered as one piece of evidence in the totality of this record.

2. Paragraphs B, C, D, E, F, G, and Y make statements questioning Detective St. John, including statement that he was not credible, that he made things up, that he was not thorough, that his report was false, that his investigation was incomplete and untimely, and also that he was biased. Statements that any witness, here a police officer, created falsehoods and then testified about falsifications under oath, are strong accusations. I do not find that those accusations are substantiated with record evidence. Also, the Hearing Officer, who is tasked with assessing witness credibility at a hearing, believed the testimony of Detective St. John and the Hearing Officer specifically determined that Detective St. John was credible. PFD at p. 27. In contrast, the Hearing Officer did not believe the Dog Owners' version of events. And *See* Exception T discussion of the Dog Owners' theories. The Hearing Officer specifically determined that the Dog Owners' theories (which were in contradiction to Detective St. John and also ACO Selig), were not credible theories. PFD at p. 29. "In determining whether an administrative finding is supported by substantial evidence, a court must defer to the agency's assessment of the credibility of the witnesses and to the agency's right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part." *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 400 (1998). From my reading of the record, I am in agreement with the Hearing Officer's assessments of the witnesses and of their credibility.
3. At the hearing, the Dog Owners testified that Dexter did bite the victim, but they contend that Dexter was provoked, and in Exception Paragraph H, the Dog Owners believe that Dexter was provoked to bite the victim because they allege that Dexter was being beaten by a stepstool. From my review of the record, I disagree with the Dog Owners, and I agree with the Hearing Officer's determination that Dexter was not provoked.
4. The Dog Owners take exception to the weight of evidence given to the statement of witness Elizabeth Nichols, and to crediting the initial statement made by witness Ms. Wosko. Exceptions K and H. The Hearing Officer specifically determined that the initial, spontaneous statements of Ms. Wosko, that were made on the day of the attack, and that corresponded with what was happening at and during the incident, was the more credible version of Ms. Wosko's two different versions. From my reading of the record, I am in agreement with those assessments and I find there was no error in the admission or weight of such evidence.
5. The Dog Owners contend that: "it is possible that the stepstool may have caused some of the injuries." Exception O. From the evidence in the record, the injuries inflicted upon the victim do not appear to all have been caused by "possible strikes," by a stepstool. Exception L. *Assuming arguendo*, that, in an attempt to stop Dexter's attack on the victim, Ms. Nicholls may have accidentally hit the victim with a stepstool that was intended for Dexter, this possibility does not negate or erase all of the other record evidence. Dexter attacked and bit Ms. Janet D'Aleo ("the victim") and her injuries and wounds from Dexter's bite or bites were severe. In affirming the Disposal Order, it is not necessary to parse in any further detail, which of the victim's many serious injuries and wounds were from Dexter's teeth (from his bites), or from Dexter's nails during his attack, in order to reasonably conclude that the bite or bites inflicted by Dexter on the

victim were very serious and that Dexter is a risk to public safety. In affirming the Disposal Order, it is also not necessary to parse, in any further detail, whether the wounds inflicted on the victim were made before or after her death, to reasonably conclude that the bite or bites inflicted by Dexter were very serious and that Dexter is a risk to public safety. Exceptions O, L, S, U, Z, and HH.

6. Despite a *potential* inconsistency with regard to blood on Dexter's muzzle, there is nevertheless a preponderance of evidence in the record that Dexter bit the victim, and that for reasons of public safety, the Disposal Order should be affirmed. Exception M.
7. There is credible evidence in the record that the victim sustained an injury to her hip during Dexter's attack. PFD Findings of Fact 14 and 24. With or without a more particularized determination that this one injury to the victim's hip was caused by a bite from Dexter or by some other means by Dexter during Dexter's attack, there is a preponderance of evidence in the record that Dexter bit the victim, and that for reasons of public safety, the Disposal Order should be affirmed. Exceptions N and HH. Assessing the injuries sustained to Ms. D'Aleo by Dexter in their totality, the manner of Ms. D'Aleo's death, as stated by the Massachusetts Office of the Chief Medical Examiner and as listed on her Death Certificate, is an attack by a dog. Town Exhibits 8 and 9. The evidence in the record presented by the Town, which includes evidence of a bite(s) by Dexter, would support this determination.
8. The Dog Owners acknowledge that the condition of the victim's skin was not the cause of her injuries. Exception P. There is no other evidence in the record, beyond the owners' unsubstantiated assertion, that the victim had friable tissue or that friable tissue could make the injuries much more severe. Exceptions P and Z. Evidence in the record that the victim was coming from a wound clinic where she had been treated for *healed* leg wounds does not provide evidence regarding these assertions. June 2, 2020 Transcript at pp. 40, 86-87.
9. Despite evidence from fact and expert witnesses that Dexter was of a docile nature on certain days, both before and after November 6, 2019, Dexter was obviously not docile on November 6, 2019, when he attacked and bit the victim. There is substantial evidence in the record that on November 6, 2019, Dexter's actions, including his attack and bite(s) to the victim were dangerous, and in light of the totality of evidence in the record, it is reasonable to conclude that Dexter remains a risk to public safety and I agree with the assessment of the Hearing Officer. Exception Q, T, and HH.
10. The Dog Owner's expert Ms. Joyner, did not assess Dexter's behavior on November 6, 2019, she had no knowledge of what happened on that date, and she did not consider Dexter's prior bite history (or any other evidence). PFD Findings of Fact 44 and 49. Dr. Borchelt also did not offer any opinion about Dexter's behavior other than on the date he evaluated Dexter. *See* DO Exhibit 6. Both experts provided their opinions with blinders on – they did not consider or assess the reason that Dexter was in confinement and those experts did not have the benefit of the evidence that is in this record. From my own assessment of the record, I agree with the Hearing Officer's determination that the Dog

Owners' experts did not provide opinions addressing Dexter's behavior on November 6, 2019 and that without such assessment, those experts could not properly or credibly speak as to whether or not Dexter is a risk to public safety. "In determining whether an administrative finding is supported by substantial evidence, a court must defer to the agency's assessment of the credibility of the witnesses and to the agency's right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part." *Bancroft v. Commissioner of Motor Vehicles*, 48 Conn. App. 391, 400 (1998) (emphasis added). Exceptions R, T, KK, and LL.

11. In his testimony, owner Neil Hornish testified that no autopsy was performed. June 4, 2020 Transcript at p. 96. If it is accurate that no autopsy was performed, I do not find error that the victim's family chose not to perform an autopsy, or that an autopsy report is not a part of the record, in order to reasonably conclude, on this record, that the bite or bites inflicted by Dexter were very serious and that Dexter is a risk to public safety, and that the Disposal Order should be affirmed. Exception V.
12. It is not a failure of proof under the UAPA or the Department's Rules of Practice for a party to decide not to call a particular witness. From the record at issue, in affirming the Disposal Order, I find that the Town met its burden of proof. Exceptions W and Y.
13. In Exception X, the Dog Owners state that the Town did not meet its burden to show that there was a Level 6 bite because "[b]ites occurring post-mortem do not apply to the Dunbar Scale." Even assuming that such statements are accurate, *i.e.*, that certain of the bites by Dexter to the victim occurred after the victim had died, or that post-mortem bites do not apply to the Dunbar scale, it is unsettling that the owners believe there is a meaningful distinction to be made. A life was lost here. Statements by the Dog Owners, such as those made in Exception X, led me to determine that the dog owners were not credible and led me to question the judgment of the Dog Owners in their assessment of Dexter's bite(s) and attack on Ms. D'Aleo, their assessment of Dexter's role in Ms. D'Aleo's death, and their inability to view this situation with sufficient objectivity. Even if the statements made in Exception X are accurate, from this record, the bite or bites inflicted by Dexter were very serious, Dexter is a risk to public safety, and the Disposal Order should be affirmed.
14. The Dog Owners' Exhibit Z is a confusing argument about spoliation of evidence relating to the holding of Dexter in isolation at the Town facility. I found no reference to spoliation of evidence in the hearing transcript. I do not agree with the Dog Owners' theory/conclusion, which appears to be: that because Dexter is being held at the Town facility by himself, and because a dog behaviorist(s) did not find him aggressive during their evaluation at the Town facility, that this is evidence that Dexter was provoked on November 6, 2019.
15. That the Intervenor victim may have a civil case related to his matter has no bearing at all in my decision to affirm the Disposal Order and I know nothing about such other civil matter. Exception AA.

16. Conn. Gen. Stat. § 22-358(c) Order authority provides that a municipal animal control officer may issue an order as such ACO deems necessary. Exceptions BB and CC (and see also Exception PP) primarily addresses a challenge(s) to the constitutionality of this aspect of Conn. Gen. Stat. § 22-358(c), as it relates to holding Dexter in Town custody during the pendency of the appeal. A constitutional determination is beyond the scope of an administrative agency decision. The Exceptions also allege seemingly unrelated interpersonal communication difficulties between the parties outside of the hearing venue itself (*e.g.*, refusing to communicate, or to mediate, and “stonewalling”), and problems obtaining each other’s evidence. For purposes of a response here, the UAPA and the Department’s Rules of Practice, do not speak to providing discovery amongst the parties in the same fashion as in a Court proceeding. *See* Conn. Gen. Stat. § 4-177b. In order to facilitate a virtual hearing, the record reflects that the parties all agreed to provide one another their lists of witnesses and their proposed exhibits prior to the virtual hearing, pursuant to a Pre-Hearing Management Order and that this occurred.
17. Exception DD is a constitutional challenge to Conn. Gen. Stat. § 22-358(c), as it relates to holding Dexter alone while in Town custody during the pendency of the appeal. A constitutional determination is beyond the scope of an administrative agency decision.
18. The owners state that fact alternatives to “disposal” were not weighed and balanced adequately, or at all. I have reviewed the entire record and have assessed the preponderance of evidence in the record as to whether the Town’s Disposal Order should be affirmed, revoked, or modified. In doing so, I did carefully assess alternatives to this Disposal Order, and have determined otherwise, and again find that there is a preponderance of evidence in the record that the Disposal Order was properly deemed necessary by a municipal animal control officer for public safety. Exception EE and HH.
19. Exception FF provides statements about the Dog Owners’ opinion about the nature of their dog and about the victim Intervenor’s civil case. I have approached this case as a fair and impartial decision maker, with a background as a licensed veterinarian, and use of the word “desperately,” in the PFD and use of the term “vicious mauling,” did not compromise my judgment, nor create heightened emotion, and neither of these words/terms impacted this Final Decision. *See* previous comments provided for Exceptions X and AA.
20. The standard of proof in administrative hearings is the preponderance of the evidence standard. *Jones v. Connecticut Med. Examining Bd*, 309 Conn. 727, 734-35 (2013). Exception GG.
21. The Dog Owners state that ACO Selig is not competent to serve as an expert in dog behavior. Exception II. The owners do not state or argue what further, or what other qualifications an animal control officer would need to possess, beyond those possessed by ACO Selig, in order to provide opinion testimony that a biting dog is dangerous to the public. Here, Conn. Gen. Stat. § 22-358(c) is triggered after an animal bites an individual. After an individual is bitten, and after an investigation, an animal control officer may issue a restraint or disposal order. Based on both ACO Selig’s investigation,

and his experience and training, it was appropriate for him to provide opinion testimony about the bite incident and temperament of Dexter. The qualification of a witness as an expert is well within the Hearing Officer's discretion. *Cetnarowski v. Ferris*, 2000 Conn. Super. LEXIS 1961 at \*7-8.

22. I have reviewed Exception JJ, and the information therein has no bearing on my determination that the victim's injuries and wounds from Dexter's bite or bites were severe and that there is a preponderance of evidence in the record that the Disposal Order was properly deemed necessary by a municipal animal control officer for public safety. I again note that the UAPA and the Department's Rules of Practice do not speak to providing discovery amongst the parties in the same fashion as in a Court proceeding, and it was the Dog Owners' determination that they did not want to proceed with the hearing on the initial hearing date set by the Department, and that they requested (and received) additional time.
23. The Dog Owners' experts both evaluated Dexter on a particular date, which was after, but not including, the events of November 6, 2019. *See* previous discussion in ¶10. On the date of their evaluations, the Dog Owners' experts did not determine that solitary confinement was negatively impacting Dexter, and they did not determine that Dexter was the subject of psychological abuse or cruelty. Exceptions LL, MM, and NN. In addition, the Dog Owners have stated that in light of the COVID-19 pandemic, the Town's visitation policy was understandable. HO 26 at p.5. The pandemic health crisis remains today. The Hearing Officer previously ruled on Dexter's confinement and visitation in HO Exhibits 18 and 27 and in the PFD. I agree with those determinations and find nothing contrary in law or in the record.
24. Exception OO repeats the Dog Owners' previous exceptions. None of the information in Exception OO alters my decision that Dexter is a dangerous dog and that the victim's injuries and wounds from Dexter's bite or bites were severe, and that there is a preponderance of evidence in the record that the Disposal Order was properly deemed necessary by a municipal animal control officer for public safety.
25. I have reviewed and assessed the owners' Conclusion on pages 10-11.

PROPOSED FINAL DECISION ATTACHED AND INCORPORATED HEREIN.

Date: December 21, 2020  
SO ORDERED.



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Bruce A. Sherman, DVM, MPH  
Director, Bureau of Regulatory Services  
Final Decision Maker