



STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE
Office of the Commissioner



Bryan P. Hurlburt
Commissioner

860-713-2501
www.CTGrown.gov

August 17, 2022

Via email and Certified Mail

Teresa Balkus-Bouthet
14 Parkwood Drive
Windsor, CT 06095
treebee527@sbcglobal.net
and

Attorney Cassandra Dulepski
Polinsky Law Group
890 West Blvd.
Hartford, CT 06105
cld@polinsky-law.com

Don Melanson
Chief of Police
Windsor Police Department
110 Addison Road
Windsor, CT 06095
melanson@townofwindsorct.com

Mary C. Deneen, Esq.
O'Malley, Deneen, Leary, Messina & Oswecki
20 Maple Avenue
P.O. Box 504
Windsor, CT 06095
mary.deneen@omalleydeneen.com

Jonathan Almonte
18 Parkwood Drive
Windsor, CT 06095
c/o
Kiara Hernandez
Kiarahernandez91@aol.com

IN THE MATTER OF:

**FINAL DECISION IN THE MATTER OF THE APPEAL OF RESTRAINT ORDERS
PLACED ON THE DOGS UNIQUE, REMY, AND BLUE OWNED BY JONATHAN
ALMONTE AND KIARA HERNANDEZ**

I am the final decision maker in the matter of the appeal of three Restraint Orders for the dogs named Unique, Remy and Blue owned by Mr. Jonathan Almonte and Ms. Kiara Hernandez (“Dog Owners” or “Owners”). Each of the three Restraint Orders was issued by a Town of Windsor municipal animal control officer (“the Town”) on August 26, 2021.

A Proposed Final Decision of the Hearing Officer was served upon the parties on or about June 24, 2022. The Proposed Final Decision was accompanied with notice that each party had the opportunity to present exceptions or briefs and make requests for oral argument to the final decision maker. The Town submitted an exception to the Proposed Final Decision by an email dated June 30, 2022. The Dog Owners also submitted an exception to the Proposed Final Decision by an email dated June 30, 2022. The Intervenor filed a brief titled “Request for Reconsideration of Proposed Final Decision” dated July 8, 2022, and submitted via email on the same date. The Intervenor subsequently submitted a second brief titled “Amendment and Conclusion to Request for Reconsideration of Proposed Final Decision” dated July 9, 2022, and submitted via email on the same date.

Finally, the Intervenor submitted an email on July 10, 2022, which included 9 photos described as the “current condition of the wooden fence at 18 Parkwood Drive which abuts my property at 14 Parkwood, which I stated would be forthcoming. The photos were taken on June 28, 2022 and July 2, 2022” as well as three photos purporting to be missing pieces of her exhibits, namely three pages missing from the veterinarian report (I-2), one page from a police report (I-6), a sworn statement regarding the incident (I-9), and a screenshot of a text message with a neighbor (I-11). Because the submission of these images and documents would potentially be offered for admission to the record as post-hearing evidence, and to ensure that the parties realized that they had the opportunity to respond or object, on August 3, 2022, the Department issued an Order that provided the Town and the Dog Owners with additional notice and an opportunity to object to the admission of these documents. The Order requested that the Town and Dog Owners provide a reason for any such objection. On August 5, 2022, the Dog Owners responded by email and stated that they objected to the Intervenor’s late filed exhibits, but provided no reason or bases for their objection. The Town did not respond. As such, pursuant to the Rules of Practice before this Department, Sec. 22-7-32, I do ADMIT these photos and documents to the record as Intervenor Exhibits, with the 9 photos being Intervenor Exhibit 13, the pages from the veterinarian report being Intervenor Exhibit I-2a, the police report being Intervenor Exhibit I-6a, and sworn statement being Intervenor Exhibit I-9a and the text message images as Intervenor Exhibit I-11a. All of these exhibits are relevant, and not repetitious. The photos of the Owners’ fence are particularly relevant because they show that the Owners’ wooden stockade fence (where the biting dogs escaped from) is not currently escape-proof and the yard and fence does not have an adequate barrier to ensure the dogs cannot escape from the Owner’s yard. This issue is relevant to assessment of the Restraint Order and its conditions.

Neither party nor the Intervenor requested oral argument.

In its exception to the Proposed Final Decision the Town avers that the Proposed Final Decision errs in its description or characterization of a “concrete floor along the perimeter of the fence to prevent the dogs from digging under it to escape.” Instead, the Town asserts that the record only supports that the owners have installed a 10’ by 10’ concrete pad surrounded by a chain link fence enclosure within their backyard. Moreover, the Town requests that the final decision include a restraint order condition that the dogs be permitted to be unmuzzled only while in that concrete enclosure.

In their exception to the Proposed Final Decision the Dog Owners assert that there are no cracks or spaces in their wooden stockade fence that would allow the dogs to escape, that the dogs would not be permitted to be outside unsupervised, and that they be permitted the opportunity to create a concrete floor to reinforce the perimeter of the wooden stockade fence. With this statement that they be permitted the opportunity to create a concrete floor to reinforce the perimeter of the stockade fence, the Dog Owners do essentially concede that their wooden stockade fence does not have a concrete floor around its perimeter as described in the Proposed Final Decision.

In her Briefs, the Intervenor asks that the Proposed Final Decision be revised so as to remove the dogs from the residence of the Dog Owners or, alternatively, require that the dogs not be permitted outside unmuzzled unless and until the Dog Owners install a chain link fence of at least six feet in height which is topped with an anti-climbing device and which has a cement or concrete floor. Moreover, the Intervenor would further request the Dogs be assessed by a "Certified Animal Behavior Consultant."

I have reviewed the entire record in this matter. Upon due consideration of the entire record, I concur with the hearing officer first that the Restraint Orders were lawfully entered and necessarily issued.

The Owners' three dogs escaped from their yard and fence at 18 Parkwood Drive and went onto the property of the Intervenor at 14 Parkwood Drive. At that time, the Intervenor's dog, Cooper, was on its own property on 14 Parkwood Drive and was tied or attached to his own front porch. 4/14/22 Tr. at pp. 28-29, 30-31, 48, 70, 74-75, 146.

There is eye-witness evidence in the record that all three of the Owners' dogs then attacked and bit Cooper while Cooper was restrained on his own property. 4/14/22 Tr. at pp. 71-74, 82-83, 117-118, 129-130, and 133-134. The Intervenor testified: "I heard biting, gnarling sounds and immediately ran down to the front door and out to see the three dogs on Cooper. Cooper was pinned to the ground. One dog had him like on his head and his neck pinned to the ground. Another dog was biting at his hindquarters, and another dog was, like, biting at his groin." 4/14/22 Tr. at p. 71.

The Intervenor could not get the three dogs off of Cooper: "So I came outside screaming, Get off him. Then I started kicking the dog who had him locked on his head and his neck. And nothing was – the dogs did not respond to the screams, to the kicks. They kept going. Like they didn't flinch." 4/14/22 Tr. at p. 71. The Intervenor's daughter ran to get help from the Owners, who were on their way to the scene. Tr. at p. 71. "The whole time, I was screaming . . . kicking the dog that had him locked onto his head, and there was no relief. They weren't relenting." Tr. at p. 72. *And see* Tr. at pp. 117-118,

Then, a teenage boy from next door "got one of the dogs off Cooper, the one who was biting his hindquarters. That dog was off but he didn't take him off the property, away from the scene. He was still there." 4/14/22 Tr. at p. 72. "Then Jonathan [Almonte] was there close in time. . . . Jonathan was able to grab the other dog who was going after Cooper's groin area but they had no collars. . . I was continuously screaming and kicking the dog who was locked on." Tr. at p. 72. "Jonathan got the one that was going after the groin, just, like, around the chest, and I thought okay, we got some help. But the dog kept jumping through Jonathan's arms. He couldn't hold that dog, and the dog kept on going right after the same spot in Cooper's groin and gnawing and gnarling." Tr. p. 72.

The Intervenor arrived at the attack on Cooper in seconds and she confirmed that when she arrived, there were three dogs physically attacking Cooper. Tr. at p. 73.

The Owners did not see the start of the attack to verify that the third dog (Blue) was or was not initially also involved in the attack and biting, however, the Intervenor *did* see that all three of the dogs were involved in the initial attack and biting, and that one of the dogs was first removed by a teenage boy before Owner Almonte sought to remove the two remaining biting dogs off of Cooper. *And see* 4/14/22 Tr. at pp. 82: “Yes, I saw Blue biting Cooper’s hindquarters, and yes, I saw it;” and pp. 93-94; and 117 (testimony of Intervenor’s minor daughter “A” also confirming that all three dogs were attacking Cooper).

Witness Patricia Kupchunos confirmed the Intervenor and her daughter’s version of the incident. She testified that: “The neighbor’s dogs were not letting go. They were punching the dogs in the head. They were pulling one off. The other two were still on Cooper. . . . There were three dogs in the mix. I know two were definitely still on Cooper. I’m not sure if the third dog was *still* biting Cooper. It was really hard to tell. But I do know soon after there they did pull one of the dogs off. They did not immediately go home with it. One of the boys was standing there holding it and there was two definitely still on Cooper for a while.” 4/14/22 Tr. a p. 129.

The record reveals that while Unique and Remy played a larger role in the attack and biting, I find that there is a preponderance of evidence in the record that all three dogs took part in the attack and bit Cooper on August 17, 2021.

The bites to Cooper caused severe injury as can be determined by the extent of necessary veterinary care that required ten days hospitalization, and by the photos of Cooper taken after the attack and bites. 4/14/22 Tr. at pp. 74, 94-95; Intervenor Exhibits 1, 2 and 7. Evidence in the record reveals that without immediate intervention, the situation could have been even worse. *See* testimony 4/14/22 Tr. at pp.133-134: Owner Almonte admitted that he was the only one that could get (Unique and Remy) off of Cooper and even he had difficulty doing that. He testified that Unique was biting Cooper in the chest and that he grabbed Unique, but Unique slipped off and Unique went back again to bite Cooper. This testimony is in accord with the Intervenor’s description of Owner Almonte’s attempts to stop the attack. Owner Almonte actually had to pry Remy’s mouth open to stop Remy from continuing to bite Cooper. The Intervenor herself was not able to stop the dogs from biting Cooper, despite her screaming, punching, and kicking the dogs to stop. It is not unreasonable to conclude that if Owner Almonte had not arrived, Cooper’s injuries could have been even more severe or that Cooper could have been killed. Cooper was tied to his own porch on his own property when the Owners’ dogs escaped, ran over to Cooper, and attacked him. There is no evidence in the record from any eye-witness that Cooper initiated or provoked this attack.

The dogs at issue here have been loose on numerous occasions prior to the bite to issue. 4/14/22 Tr. at pp. 45, 86, 92, 119, 122-123, 128, 158-159, and Intervenor Ex. 11. Approximately a week and a half prior to the attack on Cooper, Unique escaped and attempted to get into Intervenor’s home. 4/14/22 Tr. at pp. 69-70, 116, and 122. At the time of the attack, the three dogs at issue were not properly vaccinated for rabies as required by state law, or properly registered with the Town. 4/14/22 Tr. at p. 35; 49-50, and 155.

Owner Almonte has stated that his is amenable to the Order, as long as he can walk his dogs without a muzzle. 4/14/22 Tr. at p. 21. According to Owner Almonte, the dogs defecate inside their residence because he states that the dogs have to wear a muzzle outside, and also that the dogs are not used to the muzzles and are uncomfortable with the muzzles. 4/14/22 Tr. at pp. 142,

and 151-152. I note that as long as the dogs wear a muzzle in their yard or when walked, the Restraint Orders do not restrict the dogs from being outside or from defecating outside.

Here, despite a certain lack of experience and training in dog bites, the municipal ACO was duly appointed and had the authority to issue these Orders. The municipal ACO investigated the attack and bites, *i.e.*, the ACO spoke to the Intervenor in person and was told by the Intervenor what took place, the ACO spoke to the Owners in person, the ACO reviewed the police report(s) and supplemental reports at the time the Order was issued (which reports are exhibits to this record as Town Ex. 4-6: ACO Fiano “is still investigating and a copy of this report was forwarded to her.”), and the ACO here also received guidance from another municipal ACO on what should be included in these orders and why. 5/5/22 Tr. at pp. 11, 13-14, 21, 32, and 35. Although the municipal ACO testified that she relied on Windsor Town Ordinances that assess the restraint conditions of a dog that is deemed a vicious or dangerous dog, such analysis is essentially the same assessment of whether a Conn. Gen. Stat. § 22-358 Order should be issued on these same facts. Here, the question is whether or not the dogs at issue that escaped from their own property, went onto the porch of a neighbor, and without provocation, attacked and repeatedly bit the neighbor’s dog causing severe injury, should be subject to conditions of restraint to protect public safety and the safety of other dogs.

It is clear that the Conn. Gen. Stat. § 22-358 Order that was issued by the Town ACO was warranted here. The bites and attack on Cooper were dangerous, the attack and bites were sustained and aggressive, and there is a preponderance of evidence in the record that a Restraint Order was necessarily issued to restrain Unique, Remy, and Blue in order to protect public safety, including the safety of Intervenor and the safety of her dog Cooper.

I find the evidence in the record supports some revision to the Ruling of the Proposed Final Decision. As such, while I adopt the Proposed Final Decision, which is attached hereto, I do so subject to the following amendments and modifications to its recommendations:

With regard to the Findings of Fact #16, it is amended to state:

16. Since the attack, the Owners have installed a concrete floor to the outside chain link kennel located within their backyard and have endeavored to make repairs to their wooden stockade fence. Exhibit Intervenor (“Ex. I”) – 6; 04/14/2022 Tr. at 138.


With regard to the Ruling Re: Restraint Orders, it is amended to state:

After an investigation of the attack and bites to Cooper, the Town has established that the dogs Unique, Remy, and Blue require restraint order conditions necessary to ensure the safety of the public and of other dogs. As such, the Restraint Order issued by the Town is **modified** to include the following conditions which applies to each dog:

1. When outside of the Dog Owners’ residence the dogs must be on a leash not longer than six feet in length and having a minimum tensile strength of 300 pounds, securely muzzled at all times, and under the continuous control of an adult owner or adult keeper, except as provided below.
2. The dogs may be in the 10’ by 10’ kennel enclosure situated on a concrete pad which is in the yard of the Dog Owners’ residence without a leash and muzzle.

3. If the dogs are kept in a residence with a yard, including its current residence, the dogs may only be without a muzzle if there is a secure fence of a height of at least six feet with a locked gate and a footer or floor which prevents the dogs from escape beneath, which escape-proof fence must be approved in advance by the animal control officer of the town of the residence. The fence depicted in the Intervenor's exhibits depict a fence that is **not** escape-proof and therefore would currently require the dogs be muzzled.
4. The dogs must wear a collar at all times unless caged or inside the residence.
5. Mr. Almonte and Ms. Hernandez must successfully complete two sets of dog obedience classes approved by the Connecticut Humane Society, which consist of both a 6-week "basic" dog obedience class and a 6 week "intermediate dog and handler" class for all three dogs.
6. The liability insurance, registration and tag requirements shall remain in place.

The Restraint Order conditions here will ensure that the dogs at issue cannot escape from their residence and that the dogs will not be able to further bite or injury any other dog or a person. Therefore, I decline to further modify the Restraint Order in accordance with any other request of the Intervenor.



Cody N. Guarnieri,
Final Decision Maker

Proposed Final Decision, attached and incorporated as part of this Final Decision.

**STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE**

CASE NO. 21-31172

**IN THE MATTER OF: APPEAL OF RESTRAINT ORDERS
ISSUED BY TOWN OF WINDSOR
FOR THE DOGS UNIQUE, REMY, AND BLUE
OWNED BY JONATHAN ALMONTE AND KIARA
HERNANDEZ**

PROPOSED FINAL DECISION

I, Edward C. Taiman, Jr., the designated Hearing Officer in the Appeal of three Restraint Orders issued by the Town of Windsor Animal Control Officer (the “Town”), in the matter of dogs named Unique, Remy, and Blue, owned by Jonathan Almonte and Kiara Hernandez (“Owners” or “Mr. Almonte/Ms. Hernandez”), hereby issue the Proposed Final Decision in this matter. I have thoroughly reviewed the entire record, all the admitted exhibits including 911 calls and police body cam video, and all other related submissions of the parties.

The Proposed Final Decision concerns itself with 2 issues, namely (1) whether temporary/provisional Animal Control Officer (“ACO”) Amy Fiano had legal authority to issue the Restraint Orders, and (2) whether the Restraint Orders should be upheld, modified or revoked. For the reasons set forth below, I find the ACO Fiano was legally authorized to enter the Restraint Orders and I further recommend the Restraint Orders be modified as follows.

FINDINGS OF FACT:

I. As to ACO Fiano’s Authority to Enter the Restraint Orders:

1. On September 8, 2021, Commissioner Brian P. Hurlburt appointed me as Hearing Officer in this matter to issue to him a Proposed Final Decision. Connecticut General Statute § 4 – 179. Exhibit Hearing Officer (“Ex. HO”) 4.
2. On September 5, 2021, Kiara Hernandez and Jonathan Almonte, the owners of dogs named Unique, Remy and Blue, appealed three restraint orders (“Restraint Orders”) entered by Town of Windsor temporary/provisional Animal Control Officer (“ACO”) Amy Fiano. Ex. HO 1. On September 7, 2021, Teresa Balkus-Bouthet, also appealed the Restraint Orders requesting intervenor status. Ex. HO 2. On September 13, 2021, I

requested that Ms. Balkus-Bouthet file a brief to establish that she has been aggrieved by the Restraint Orders which would give her intervenor status. Ex. HO 5. She filed her brief on September 27, 2021 (Ex. HO 6) and on October 18, 2021, I granted her intervenor status. Ex. HO 9.

3. At the May 5, 2022 hearing, ACO Amy Fiano testified. 05/05/2022 Transcript at 7. There were some questions as to her qualifications. Attorney Cassandra Dulepski, counsel to Intervenor Teresa Balkus-Bouthet (“Intervenor” or “Ms. Balkus-Bouthet”) conducted her direct examination.

2 Q When is the last time you were employed?

3 A October of '21.

4 Q What was your position?

5 A Temporary ACO for the Town of Windsor.

6 Q When did you start that position?

7 A I believe the end of March, same year.

8 Q How did you come to be the temporary ACO?

9 Can you tell us about that?

10 A The town asked me to fill in.

11 Q Someone else left?

12 A Yes.

13 Q Had you ever been an ACO prior to that?

14 A No.

15 Q What position were you in or where were you
16 working prior to becoming the temporary ACO?

17 A Police officer for the Town of Windsor.

18 Q Were there certain qualifications or
19 reasons that they asked you to fill in, if you know?

20 A I used to fill in for our old ACO. I'm

21 assuming that's the reason.

22 Q Was that also in the Town of Windsor?

23 A Yes. But by filling in, I didn't perform
24 all of his duties. I just cared for the animals while
25 he was out.

1 Q Which animals are you referring to?

2 A Whatever might be impounded.

3 Q Had you ever done any investigations or
4 issued any restraint orders prior to March of 2021 or
5 whenever you started as the temporary ACO?

6 A I never issued any other orders, no.

7 Q Were these the only orders you ever issued
8 in your entire time as an ACO?

9 A I believe so, but I'm not a hundred
10 percent.

11 Q Had you ever conducted any other
12 investigations into claims of animal attacks or animal
13 cruelty?

14 A I can't say.

15 Q Okay. Did you do any training to become
16 the ACO?

17 A Not really.

18 Q Had you been certified by the Commissioner
19 of Agriculture?

20 A No. The class came up while I was
21 temporary, but I knew I wasn't going to continue so I

22 didn't take the class.

23 Q Okay. Did you -- you didn't take any kind
24 of examination then? I just want to clarify.

25 A No.

05/05/2022 Transcript at pgs. 8 – 10.

4. At the close of the 05/05/2022 hearing I instructed the parties to file briefs on the issue of whether ACO Fiano was legally qualified to enter the Restraint Orders. 05/05/2022 Transcript at 36.
5. On June 1, 2022, the Intervenor filed her Post-Hearing Brief. It is her position that ACO Fiano was not qualified or legally authorized to enter the Restraint Orders. Intervenor Post-Hearing Brief at 1.

It is clear that the ACO was not properly credentialed or trained. She completed none of the eighty required hours of training to become ACO. She was never certified by the Commissioner of Agriculture and never took any classes on the subject. She never took any examination.

Id. at 2.

This was followed by the Appellee Town's Post-Hearing Brief filed on June 8, 2022. The Appellee Town, represented by Attorney Mary C. Deneen, addressed this issue as follows:

After the Town[']s... [ACO] ... retired, the Town... Began its search for a new full-time ACO.... While searching for its new full-time ACO, the Town's Chief of Police, Donald Melanson, appointed Amy Fiano, in the interim to serve as a temporary ACO and [w]hile serving in that capacity, ACO Fiano was listed as a 'Provisional Animal Control Officer' with the State of Connecticut. Her appointment as Provisional ACO was effective beginning on April 23, 2021 and expired the following year on April 21, 2022.

* * *

The State of Connecticut granted the appointment and listed Amy Fiano as a Provisional Animal Control Officer on April 23, 2021. Her appointment was valid

for one year, expiring on April 21, 2022. As such, it was not necessary for ACO Fiano to complete the training requirements outlined in C.G.S. § 22-328(c) as she was only filling in part time, and she had received approval from the State of Connecticut to serve as a Provisional Animal Control Officer for a term of one year.

Appellee's Post-Hearing Brief at 1, 2.

II. As to the Restraint Orders

6. On August 26, 2021, ACO Fiano entered the three Restraint Orders now at issue. They apply equally to the dogs Unique, Remy and Blue and state in relevant part as follows:

The dog's (sic) have been deemed by statute as [v]icious.... Every animal established to be vicious or dangerous shall be confined by its owner or authorized agent of its owner within a building or a secure enclosure as set forth in section 12 – 66, and whenever outside the building or secure enclosure, shall be securely muzzled and restrained by a responsible adult with a chain having a minimum tensile strength of 300 pounds and not more than 6 feet in length or caged. Every person harboring an animal established to be vicious or dangerous is charged with an affirmative duty to confine[] the animal in such a way that the public does not have access to such animal. Liability insurance must be procured in an aggregate amount of not less than \$100,000.... A sign shall be displayed on the premises warning that there is a vicious or dangerous animal on the premise. Said sign shall be visible and capable of being read from the street. Said sign shall include both an approved vicious animal logo and lettering so as to warn both children and adults. Dogs must be registered with the town of Windsor and registration tag must be affixed to dogs collar. Dogs are to have collars effects at all times when outside of the residence.

Exhibit Town (“Ex. T”) – 1, 2 & 3.

7. On a March 7, 2022, a Notice of Hearing was sent by email to the Town, its attorney, Kiara Hernandez and Jonathan Almonte and to Ms. Balkus-Bouthet, for a hearing that was scheduled for April 14, 2022. Ex. HO 17.

8. The hearing commenced April 14, 2022, and was concluded on May 5, 2022, after the Town, Mr. Almonte/Ms. Hernandez and Ms. Balkus-Bouthet, either individually or through their legal counsel, each called all of their respective witnesses, put in all of their exhibits, and stated that they did not have any other evidence to be submitted into the record.
9. The hearings were conducted in accordance with the Uniform Administrative Procedures Act, and the Department's Rules of Practice pertaining to contested cases, which regulations were provided to the parties. Ex. HO 17.
10. At issue is the appeal of three separate Restraint Orders issued by the Town's ACO Amy Fiano on August 26, 2021, to co-owner Jonathan Almonte concerning dogs named Unique, Remy and Blue. Exs. T 2, 1, & 3, respectively.
11. The dogs are owned by Jonathan Almonte & Kiera Hernandez, of 18 Parkwood Dr., Windsor, CT 06095. The Owners represented themselves throughout the hearings.
12. The Intervenor, Teresa Balkus-Bouthet, resides with her daughter, Althea, at 14 Parkwood Dr., Windsor, CT 06095.
13. On August 17, 2021, Ms. Balkus-Bouthet and various other neighbors were alerted to an attack on Intervenor's dog, Cooper, by either two or three of the dogs at issue owned by Almonte/Hernandez. 04/14/2022 Transcript at pgs. 128 – 130. The dog Cooper was seriously injured. *Id.* at 94 – 95. It took several people to get the attacking dogs off Cooper. *Id.* at 57. Ryan Peturne, a patrol officer with the Town, responded to a 911 call concerning the same. 04/14/2022 Transcript at 25 – 26. The attack occurred on the Intervenor's property where Cooper and its owner, Teresa Balkus-Bouthet, and her daughter Althea reside. *Id.* at 29. At the time of the attack, Cooper was tethered to the front steps of the Intervenor's residence at 14 Parkwood Dr. *Id.* at 30. Although no one witnessed the initial attack, *id.* at 30 – 31, there is some question as to which of the dogs participated in the attack. Intervenor testified that all three dogs attacked Cooper.

3 I heard biting, gnarling sounds and
4 immediately ran down to the front door and out to see
5 the three dogs on Cooper.
6 Cooper was pinned to the ground. One dog had

7 him like on his head and his neck pinned to the ground.
8 Another dog was biting at his hindquarters, and
9 another dog was, like, biting at his groin.

04/14/2022 Transcript at 71.

Patricia Kupchunos, who works across the street, testified to the same issue.

By Attorney Dulepski:

13 Q Can you tell us at the time you got to the
14 scene of the attack how many dogs were attacking or
15 biting Cooper?

16 A There were three dogs in the mix. I know two
17 were definitely still on Cooper. I'm not sure if the
18 third dog was still biting Cooper. It was really hard
19 to tell.

20 But I do know soon after I got there they did
21 pull one of the dogs off. They did not immediately go
22 home with it. One of the boys was standing there
23 holding it and there was two definitely still on Cooper
24 for awhile.

04/14/2022 Transcript at 129.

Ryan Peturne, a patrol officer with the Town who responded to the 911 calls, also testified to this issue.

By Attorney Dulepski:

22 A Yes, Mr. Almonte was given an infraction for
23 two counts of Allowing a Dog to Roam. That would be
24 22-364a.

25 Q Why was it not three counts of Allowing a Dog

1 to Roam? Were three dogs not present at the attack?

2 A Based on information I was given at the
3 scene, and again, I was not able to get
4 Ms. Balkus-Bouthet's full statement because she had to
5 take Cooper to the vet, only two counts were made
6 because we were informed only two dogs were
7 participants in the biting.

8 I believe the dog Blue that was reported was
9 in the area in the front yard of 14 Parkwood Drive but
10 based on Mr. Almonte, Ms. Hernandez, and one of our
11 witnesses, only two dogs, to our knowledge,
12 participated in the actual violence that occurred.

13 Q The infraction for Allowing a Dog to Roam,
14 does that have to do with violence or just allowing the
15 dog to roam?

16 A No, ma'am; it's just allowing the dog to
17 roam.

18 Q Was there a reason they were not cited for a
19 third dog being allowed to roam?

20 A Just using discretion based on the counts
21 that we had. We had two dogs which acted violently so
22 we decided to only make infractions for those two dogs.

3 Q How many people did it take to get those dogs
4 off Cooper as far as you understand it?

5 A I'm unsure the exact amount. I believe it
6 was Ms. Balkus-Bouthet, Mr. Almonte, Ms. Hernandez, and

7 I believe one of the children from 18 Parkwood Drive.

8 Q Were any bite incidents reported to the State
9 after this incident?

10 A Yes.

11 Q How many?

12 A I believe an animal bite form was completed
13 which listed the two dogs, which based on initial
14 investigation, it was determined that only two dogs
15 were involved in the actual violence which occurred.
16 So those two dogs were listed on a single bite form.

17 Q Who was it that reported that only two dogs
18 were biting to you?

19 A This was based on a neighborhood canvass in
20 which a witness from 15 Parkwood Drive -- I just have a
21 first name of Patricia. I believe she was the woman
22 on-scene wearing the blue shirt when I first arrived
23 on-scene. She stated she only saw two dogs that were
24 involved in the attack and then one dog was off to the
25 side barking.

1 This also contributes to what Mr. Almonte and
2 Ms. Hernandez stated when they arrived on-scene, that
3 only Remy and Unique were participating in the actual
4 biting.

04/14/2022 Transcript at 49, 57.

14. Officer Peturne's testimony establishes that the three dogs escaped the Almonte/Hernandez residence through a hole in their backyard fence. Id. at 29. Although

there are no official reports of the same, it has been reported by numerous sources that Unique, Remy and Blue have previously escaped and roamed the neighborhood. Id. at 45, 48, 68, 86, 05/05/2022 Transcript at 12.

15. Throughout these hearings, the Owners expressed their remorse over this incident and have taken full responsibility. Id. at 138 – 39, 141. This stands in contrast to Mr. Almonte’s testimony where he stated that Cooper “probably...started [the] fight.”

2 From my understanding, I think Cooper
3 must have been taunting them, barking. They
4 much have broken out of the fence is what I
5 think happened. I think they started running
6 around in circles playing with Cooper and I
7 think Cooper probably -- I think he probably,
8 like, growled at them and started to fight
9 and that's what ended up leading to the
10 fight.

04/14/2022 Transcript at 136.

16. Since the attack, the Owners have fortified their backyard by pouring a concrete floor along the perimeter of the fence to prevent the dogs from digging under it to escape. Exhibit Intervenor (“Ex. I”) – 6, 04/14/2022 Transcript at 138.

17. The three dogs were initially quarantined in their home, but after it was determined that certain of their rabies vaccinations had expired, they were removed by ACO Amy Fiano. 04/14/2022 Transcript at 50, 154. They have since received their rabies shots and returned to Mr. Almonte/Ms. Hernandez where they reside under the guidelines of the three Restraint Orders. See generally, id. at 36. There have been no subsequent official reports of the Owners’ failure to comply with the Restraint Orders. Id. at 60. According to Mr. Almonte’s testimony, the dogs have been locked up inside their home in their cages and the Owners are either unable to put a muzzle on them and/or the dogs take the muzzles off when outside. Id. at 141 – 42, 152, 156.

18. At the May 5, 2022 hearing, ACO Fiano testified. 05/05/2022 Transcript at 7. The attack on Cooper was the first such animal attack she had ever investigated, and she learned of this incident after the fact. Id. at 10. When issuing the Restraint Orders, she relied upon the Town's ordinances and not state law.

By Attorney Dulepski:

2 Q How did you make your determination of
3 these restraint orders? Can you tell us what factors
4 went into that?

5 A Town ordinance.

6 Q That's the only thing you used?

7 A Uh-hum.

8 Q Did you look at the town ordinance which
9 describes a nuisance?

10 A Uh-hum.

11 Q You didn't think that fit?

12 A It's a part of the reason they got the
13 order.

05/05/2022 Transcript at 15.

19. ACO Fiano did not investigate the initial complaint when it first came in. 05/05/2022 Transcript at 10. She had no recollection of when she first went to the site of the attack. Id. at 10 – 11. She first received a phone call from the Intervenor, and later spoke to the Owners thereafter. Id. at 11. She had no specific recollection about her meeting with the Owners. Id. She met with the dogs Unique, Remy and Blue while they were at the pound and cared and fed them for several weeks and observed no aggressive temperament. Id. at 12. She never spoke to any witnesses to the attack and was unaware there were any until the hearing. Id. at 13. She never met the Intervenor's dog, Cooper, either at the veterinary hospital or afterwards, and never saw any photographs of Cooper after the attack or reviewed Cooper's medical records. Id. at 13 – 14. ACO Fiano entered the Restraint Orders after reviewing Town ordinances. Id. at 15. It is her view that they only apply to

the dogs while they are in the Town of Windsor. Id. at 16. She concluded the dogs were aggressive and dangerous by applying the Town ordinances to the facts at hand which she gathered from reviewing the police reports and supplemental reports. Id. at 17 – 18, 25, 32. (“I just applied the ordinance and it fit.”)

20. Although ACO Fiano characterized the dogs as “aggressive and dangerous,” they were never aggressive towards her, and in her personal opinion “they were not aggressive and dangerous. They’re just large animals, so you need to be confident with a big animal.” Id. at 26 – 27. Having retired, she has little other knowledge about this matter other than to say that while she was employed by the Town, Mr. Almonte/Ms. Hernandez fully complied with the three Restraint Orders and there were no other incidents involving the dogs that she was aware of. Id. at 22 – 23.

21. Jonathan Almonte, owner of the dogs, testified to the temperament of his dogs.

4 All my dogs are friendly. I take
5 them to dog parks all the time. They play
6 with dogs. I was actually surprised that
7 this happened because my dogs got great
8 temperament. They're not human aggressive or
9 dog aggressive. I've got four kids at home.

04/14/2022 Transcript at 135.

22. Ms. Balkus-Bouthet also testified to the temperament of the Owners’ dogs. Prior to the attack at issue, she had the occasion to observe the dog Unique.

By Attorney Deneen:

16 Q Prior to the incident on August 17, 2021, to
17 your knowledge, have Mr. Almonte's dogs ever provoked
18 another animal or human?

19 A Yes, they have, or at least one of them. One
20 of them on August 5th, about a week and a half before
21 the big attack, one dog, Unique, had come and pushed in

22 our screen door and was barking and growling and
23 attempting to get at Cooper and myself who were just
24 inside the door.

25 Mr. Almonte was right behind him saying, you
1 know, Shut the door, shut the door, shut the door, and
2 he was able to grab the dog. That's the one instance
3 where the dog was coming after us through our screen
4 door.

04/14/2022 Transcript at 69 – 70.

Ms. Balkus-Bouthet also had the occasion to observe all 3 dogs during the attack itself.

By Attorney Deneen:

17 Q Can you describe what happened that day?

18 A Sure. Well, my daughter and I, we had just
19 put Cooper outside on his lead. I always attach him to
20 -- like I have a choke collar on him and his regular
21 collar with his tags. So I attached the lead to the
22 choke collar and then I give it a pull so he has a
23 recognition that he's tethered.

24 Then my daughter and I went inside and were
25 having a conversation right in the living room, which
1 overlooks the steps where he was right outside that
2 front area. Just minutes into our conversation, I
3 heard -- I heard biting, gnarling sounds and
4 immediately ran down to the front door and out to see
5 the three dogs on Cooper.

6 Cooper was pinned to the ground. One dog had

7 him like on his head and his neck pinned to the ground.
8 Another dog was biting at his hindquarters, and
9 another dog was, like, biting at his groin. Do you
10 want me to keep going?

11 Q Sure.

12 A Okay. So I came outside screaming, Get off
13 him. Then I started kicking the dog who had him locked
14 on the head and his neck. And nothing was -- the dogs
15 did not respond to the screams, to the kicks. They
16 kept going. Like, they didn't flinch.

17 So Althea, my daughter, was out right behind
18 me. I don't know exactly what she was doing. I think
19 she asked me should I call 911, and I said run and get
20 the neighbors, because I figured the dogs would respond
21 to the owners coming.

22 So she ran to get them, and on her way, like,
23 over to their yard, they must have heard the screams
24 because they were on their way out the door -- or on
25 their way into our yard.

1 This whole time, I was screaming at the top
2 of my lungs, Get off him, get off him, and kicking the
3 dog that had him locked on -- or was locked on to the
4 head, and there was no relief. They weren't relenting.

5 So I saw who I believe is one of the sons,
6 probably a teenage son from next door. He was the
7 first one that I can remember seeing. He got one of

8 the dogs off Cooper, the one who was getting at
9 Cooper's hindquarters. That dog was off but he didn't
10 take him off the property, away from the scene. He was
11 just still there.

12 Then Jonathan was there close in time. I
13 think they came pretty much the two of them as a group.
14 Jonathan was able to grab the other dog who was going
15 after Cooper's groin area but they had no collars.
16 None of the dogs had collars so he couldn't restrain
17 them. I was continually screaming the whole time,
18 screaming and kicking the dog who was locked on.

19 Jonathan got the one that was going after the
20 groin just, like, around the chest, and I thought okay,
21 we got some help. But the dog kept jumping through
22 Jonathan's arms. He couldn't hold that dog, and the
23 dog kept on going right after the same spot in Cooper's
24 groin and gnawing and gnarling.

25 It was -- it was -- it was -- it was terrible
1 and it kept on going. That seemed like the longest,
2 longest part. So, like, I don't really know how long
3 it was but it was many minutes.

4 But once the kicking -- when I was kicking
5 and screaming and that didn't stop, and then Jonathan
6 was there and then he wasn't able to restrain the other
7 dog, I started stomping on the dog's head. That didn't
8 do anything either.

9 So with the sustained screaming and kicking,
10 like, as hard as I could, I don't know what happened in
11 between that got the dogs off of him. I must have
12 blacked out for that period because the next thing I
13 knew was that Cooper was up and running to the steps.

04/14/2022 Transcript at 71-73.

Jason Maloney, who works across the street, observed the dogs and testified to their temperament.

By Attorney Dulepski:

12 Q How would you describe their temperament?

13 A Aggressive. I mean, they used to -- I used
14 to go for walks with the WILA clients down the street
15 and back and stuff and the dogs used to be on their
16 balcony barking at us.

17 It was intimidating. It was scary because
18 you didn't know. I mean, they could get off that
19 balcony. It wasn't that far of a drop. So we were a
20 little nervous about it and we stopped taking them for
21 walks.

04/14/2022 Transcript at 123.

Jonathan Almonte, co-owner of the dogs, testified to their temperament as well.

4 All my dogs are friendly. I take
5 them to dog parks all the time. They play
6 with dogs. I was actually surprised that
7 this happened because my dogs got great
8 temperament. They're not human aggressive or

9 dog aggressive. I've got four kids at home.

04/14/2022 Transcript at 135.

LEGAL DISCUSSION:

Connecticut General Statute § 22–358(h) 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.”

I. ACO Fiano’s Authority to Enter the Restraint Orders

At the outset, I will take judicial notice of ACO Fiano’s appointment by the State of Connecticut as Provisional ACO. The Restraint Orders were therefore lawfully entered.

II. The Restraint Orders

The legal standard applicable in this matter is found in state law, namely C.G.S. § 22 – 358(h).¹ Although ACO Fiano relied on Town ordinances when issuing the Restraint Orders, the

¹ (h) A person who sustains damage by a dog to such person’s poultry, ratite, domestic rabbit, companion animal or livestock as defined in section 22-278 shall make complaint concerning circumstances of the attack by such dog on any such animal or livestock to the Chief Animal Control Officer, any animal control officer or the municipal animal control officer or regional animal control officer of the town in which such dog is owned or kept. An officer to whom such complaint is made shall immediately investigate such complaint. If such officer finds that the complainant’s animal has been bitten or attacked by a dog when the attacked animal was not on the premises of the owner or keeper of the attacking dog and provided the complainant’s animal was under the control of the complainant or on the complainant’s property, 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. An owner or keeper of such dog who fails to comply with such order shall be guilty of a class D misdemeanor. If the owner or keeper of such dog fails to comply with an order made pursuant to this subsection, the Chief Animal Control Officer or any animal control officer, municipal animal control officer or regional animal control officer may seize the dog to ensure such compliance, and the owner or keeper of such dog shall be responsible for any expenses resulting from such seizure. A person aggrieved by an order of the Chief Animal Control Officer or any animal control officer, municipal animal control officer or regional animal control officer made pursuant to this subsection may request a hearing before the commissioner not later than fourteen days after the issuance of such order. After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper. A dog owned by a police agency of the state or any of its political subdivisions is exempt from the provisions of this section when such dog is under the direct supervision, care and control of an assigned police officer, has been vaccinated annually and is subject to routine veterinary care.

ordinances are not relevant to this discussion and ruling, although the factual analysis underlying the ordinances and the statute may overlap.

There is no question that there was an attack on Cooper involving Owners' dogs. Patrol Officer Peturne was in a better position to make a determination on which dogs were involved, than ACO Fiano, as she did not conduct any additional investigation on this point. As a trained investigator, Patrol Officer Peturne interviewed the witnesses and came to the conclusion that only Unique and Remy were involved in the attack on Cooper. Patricia Kupchunos' testimony was unclear. When asked how many dogs she observed that were attacking or biting Cooper, her response was "There were three dogs in the mix." It is impossible from this testimony to determine whether she meant she observed three dogs attacking Cooper, or a total of three dogs on the ground together. However, Intervenor is very clear that all three of Owners' dogs attacked her dog. The weight of the evidence supports the conclusion that all three dogs participated in the attack.

As a defense, the Owners have alleged that Cooper somehow provoked the attack. Any dog sitting on the stoop of its owner's house will take steps to protect itself and its owner from an unwelcomed intrusion by people or other animals. The dogs Unique, Remy and Blue were not on the Owners' property and escaped through a hole in the fence. The Owners' testimony that since no one saw the initial attack, we will never know who initiated it, is without merit. I do not credit the Owners' speculative testimony that a tethered dog would provoke three roaming dogs, since there is no evidence to support this claim. It is also entirely reasonable to tether a dog to one's front stoop. Furthermore, the tethering of a dog restrains its movement making it highly unlikely that it would attack three roaming dogs. A more reasonable conclusion which this hearing officer adopts is that Cooper's action did not provoke the attack on it.

When evaluating the Restraint Orders, I am also mindful of ACO Fiano's personal observation of the temperament of the dogs. She labeled them "aggressive and dangerous" but from her personal observations, the dogs were neither aggressive nor dangerous. 05/05/2022 Transcript at 25 – 27. Her testimony was that the dogs showed no signs of aggression around her or other dogs while in her care. *Id.* There is also no evidence of any other attacks on humans or animals by Unique, Remy or Blue, either before or after this incident.

ACO Fiano's reliance upon the Town ordinances and not state law provides this hearing officer with little guidance as to how she met the standard of Connecticut Gen. Stat. § 22-358(h) which states in relevant part that "... 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." She did not have the opportunity to investigate this matter immediately after the incident, and did very little investigation of her own. 05052022 Transcript at 10. She interviewed the Owners but had no recollection of what was discussed. *Id.* at 11. She met with the Intervenor who told her about the attack but based the Restraint Orders solely on the police reports and the Town ordinances. *Id.* at 11, 15. She did not review the veterinary records or photographs of Cooper and its injuries. *Id.* at 13, 14. She never met Cooper. *Id.* at 14. She had no knowledge of whether the dogs were spayed or neutered, and whether that would have affected the dogs' temperament. *Id.* at 15. She had no recollection of whether the severity of the attack affected the type of restraint order she entered. See generally, *id.* at 14, 17-18. She did not justify why a muzzle in a secured area is necessary.

The Restraint Orders contain a muzzle requirement for the dogs while on their property in a secured location (the fenced-in backyard). I do not find that the Restraint Orders are supported by sufficient evidence to meet the preponderance of the evidence standard with regard to this condition, based on the evidence on the record and discussed above. However, it is also clear from the record that additional steps to correct and modify the behavior of the dogs is supported by a preponderance of the evidence on the record as discussed above. Therefore, I find that the Restraint Orders should be modified based on the preponderance of the evidence and accordingly, the Restraint Orders are modified as follows.

RULING RE: RESTRAINT ORDERS:

The Restraint Orders for the dogs are modified by this ruling as follows.

a. When On Owners' Property:

Mr. Almonte and Ms. Hernandez have complied with the existing Restraint Orders by taking reasonable steps to secure the dogs from another escape. The dogs can be in their backyard without a muzzle because with the concrete pad surrounding the perimeter of the repaired fence the dogs have no means of escape thereby ensuring the safety of the Intervenor, her daughter, Cooper, and the general public.

b. When Off Owners' Property:

To ensure the safety and security of the public and other animals, when off the Owners' property, the dogs must be muzzled and restrained by a responsible adult with leashes having a minimum tensile strength of 300 pounds, and not more than 6 feet in length. Mr. Almonte and Ms. Hernandez must successfully complete two sets of dog obedience classes approved by the Connecticut Humane Society, which consist of both a 6-week "basic" dog obedience class and a 6 week "intermediate dog and handler" class for all three dogs. Muzzles are required any time they are off the Owners' property, except while being transported in the Owners' vehicle.

The dogs must wear collars at all times, both on and off the Owners' property, unless caged. The liability insurance, registration and tag requirements shall remain in place.

Dated June 24, 2022

Edward C. Taiman, Jr.
Edward C. Taiman, Jr.,
Hearing officer