

NOV 13 2023

DOCKET NO.: HHB-CV21-6076793-S : SUPERIOR COURT
CYNTHIA A. SKORZEWSKI
MARYANNE AND NEIL HORNISH : CHIEF CLERK JUDICIAL DISTRICT OF NEW BRITAIN
Plaintiffs :
v. : AT NEW BRITAIN
TOWN OF SUFFIELD, ET AL. : NOVEMBER 13, 2023
Defendants

MEMORANDUM OF DECISION

The plaintiffs, Maryanne and Neil Hornish, have brought an administrative appeal, pursuant to General Statutes § 4-183¹, from an order of an animal control officer of the defendant, Town of Suffield, directing the plaintiffs' dog, Dexter, be destroyed as a public safety measure under § 22-358 (c). The department of agriculture, is also a defendant as its employee conducted a two-day trial under the same statutory provision, allowing a designated employee of the department to conduct a review of the municipal animal control officer.

On December 21, 2020, the department of agriculture's Bruce Sherman, the final decision-maker, entered an order affirming disposal of the dog Dexter. Sherman first adopted the municipal hearing officer's preliminary decision of October 20, 2020. The hearing officer's decision may be summarized as follows:

- 5) At issue is the appeal of a Disposal Order issued by the Town on November 14, 2019 to Hornish, concerning the dog named Dexter. Ex. T2. Also at issue in this

¹ The court has subject matter jurisdiction as the plaintiffs are appealing from a final decision of a state agency, and the plaintiffs have standing as the order in question has an adverse affect on them.

Electronic notice sent to ITATMs A. Markim ; 2) Δ atty D. Domeily;
3) Δ atty G. Shane. A. Jordanopoulos, T. Jensen
CJA per 11-13-23

case, is whether the Town had the authority to hold Dexter in isolation during the pendency of this matter.

- 6) The parties stipulated to the following facts in a Joint Hearing Management Report dated May 27, 2020. HO Ex. 38:
1. The impounded dog, Dexter, is owned by Neil & Maryanne Hornish (“Owners”) of 584 Thrall Avenue, Suffield, CT 06078.
 2. Dexter has lived with the Owners since June 2019.
 3. A quarantine order was issued for Dexter by Town of Suffield ACO Ryan Selig on 11/6/2019.
 4. The 11/6/2019 quarantine order was issued following an incident inside the home at 584 Thrall Avenue, Suffield, CT 06078 that occurred on 11/6/2019.
 5. The Owners were not home at the time of the incident.
 6. A disposal order was issued for Dexter by Town of Suffield ACO Ryan Selig on 11/14/2019.
 7. The 11/14/2019 disposal order was issued pursuant to C.G. S. 22-358 (c).
- 7) The Town offered the testimony of Suffield Detective Shawn St. John, (Det. St. John), Officer Justin Fuller, Officer Thomas Kieselback, and Animal Control Officer Ryan Selig (ACO Selig) and Exhibits T1 through T9. The Town was represented by Suffield Town Attorney Derek Donnelly. The dog owners, Hornish, were not represented by counsel at the hearing. The owners offered testimony through Jessica Kaczynski, Dr. Peter Borchelt, Christie Romano, Karen Syner, Marie Joyner, Neil Hornish and Annie Hornish during the hearing

proceedings, and Dog Owner (DO) Exhibits 1-7, 17-20. The Estate did not offer any testimony, but entered into the record Exhibits 11-12.

- 8) Det. St. John testified that he was assigned to investigate the matter to determine if any criminal charges should be brought. Tr. 1 at p. 57. During his investigation he spoke with Neil Hornish, Annie Hornish, Elizabeth Nicholls (“Nicholls”), Agnes Wosko (“Wosko”), Beth Sanchez (“Sanchez”) and Jessica Kaczynski (“Kaczynski”). T1 at pp. 28-30, 40.
- 9) Ms. Nicholls, the aide to the victim, Janet D’Aleo (“D’Aleo”), was present during the attack on November 6, 2019 and witnessed it. After the attack on November 6, 2019, she described the events involving the dog Dexter and D’Aleo to Det. St. John. [Ms. Nicholls described how Dexter charged D’Aleo and mauled her.] Ms. Wosko, the plaintiff’s mother-in-law, was present during the attack on November 6, 2019 and witnessed it. After the attack on November 6, 2019, she described the events involving the dog Dexter and D’Aleo to Det. St. John which he related in his testimony, [Ms. Wosko’s oral statement described the severity of the attack, while a written statement the next day stated that the biting was less severe.]
- 10) Det. St. John further testified that he spoke with Annie Hornish, who arrived while the attack was ongoing. He testified that Ms. Hornish provided a description of the events and a written statement which he did not find credible. [Dexter’s owner, Hornish, appeared only during the attack. D’Aleo had no open

wounds prior to the attack.]

- 11) After speaking with Ms. Hornish, Det. St. John contacted the prior owner of the dog, Jessica Kaczynski, to learn about the history and temperament of the dog, Dexter. Det. St. John provided the following testimony, in part, regarding Kaczynski's description of Dexter:

Q Okay. And did you speak with the prior owner, Jessica Kaczynski?

A Yes, I did.

Q And did Ms. Kaczynski, when you spoke to her, identify any prior owners of the dog, Dexter?

A Yes, she did.

Q Okay. And did Ms. -- what else did Ms. Kaczynski identify for you?

A Ms. Kaczynski said that she obtained the dog from a Beth Sanchez in Norwich because the owner was getting evicted and had no place to keep her and they were going to put the dog to sleep, so she took the dog in to keep it from being put to sleep. She brought the dog to her parents' home. And Ms. Kaczynski said the dog was a good dog. She never saw any violence from the dog but that the dog had separation anxiety and that the dog, if you left the dog home alone, would jump out windows, damage screens, break the screens, and that's why they had to put the dog up to have somebody adopt it because they were afraid that the dog was going to hurt itself jumping out windows and it was

causing property damage. (Tr. 1 at pp. 41-42)

- 12) Det. St. John also testified that he spoke with Beth Sanchez, who had cared for the dog Dexter for approximately two years, and during that time, the dog was involved in three instances of aggression or bite events. Two had been reported to the Norwich police, while the third had not. Through a photo confirmation, Sanchez confirmed to ACO Selig that the dog she had cared for was the dog Dexter. (Tr. 1 pp. 42-45)
- 13) Det. St. John testified that D'Aleo's emergency call button triggered a recording of the event, but the recording quality was degraded and unclear.

A The sound quality was not very good. You had the operator continuously asking "what's your location" and you could hear a female that was identified as the victim screaming "oh God, oh God" and then you can hear Witness Nicholls screaming as well. Ms. Nicholls was screaming "oh God." And the clarity wasn't very good at all.

Q Okay. Did you do anything to attempt to improve the clarity of the call?

A Yes. I brought it to Hartford. They have a crime center that deals with -- a bunch of analysts that deal with audiotapes and video. They were unable to clear it up. I sent it down to the FBI branch in Hartford to see if they can send it to Quantico to get it cleaned up. They stated that it was possible but they would only do it if there was going to be an arrest made in this. And we determined that

there wasn't going to be an arrest made, so they said they would not be able to clean up the tape for us.

(Tr. 1 at p. 46, Ex. DO-17). Acknowledging that the sound quality of the audio was not clear, Det. St. John stated that he possibly heard yelling of: "get him or it off of me," and that is why he put this statement in his report. Tr. 1 at p. 112, 116, and 120.

XXX

- 15) During cross examination by the Intervenor's attorney, Det. St. John was asked about whether or not Nicholls or D'Aleo provoked the attack, and he replied that he determined that there had not been any provocation which triggered the attack, based on his investigation of the matter. (Tr. 1 at pp. 60-63).
- 16) Det. St. John was questioned about any pre-existing wounds that D'Aleo might have had that caused some or all of the blood at the scene. Det. St. John testified that D'Aleo did not have any pre-existing wounds that would have caused the amount of blood at the scene, based on the note he had received from D'Aleo's doctor. (Tr. 1 at pp. 40, 62; Ex. T-7, p. 6) (The note is not attached to the report.)
- 17) Officer Justin Fuller testified on behalf of the Town that he took pictures of the scene after the victim was transported to the hospital, which are contained in Ex. T-3. (Tr. 1 at pp. 149-154)
- 18) Officer Thomas Kieselback testified that he took pictures of the victim's injuries at the hospital the day of the attack. (Tr. 1 at pp. 160-163; Ex. T-4)
- 19) ACO Selig testified about his training and experience as an animal control officer

for the Town of Suffield. He testified that he issued the quarantine order due to the severity of the attack. (Tr. 1 at pp. 166-168, 174-176; Ex. T-1)

20-24) ACO Selig testified that he inquired about the three prior bite incidents involving Dexter in Norwich which factored into his decision-making about issuing a disposal order for Dexter. (Tr. 1 at pp. 178-181) [The two most important factors were the seriousness of the bite and the dog's prior history.]

DISCUSSION

The hearing officer cited the relevant statute, § 22-358 (c), and made the following conclusions:

- (1) Dexter was and is properly confined during the pendency of this appeal.
- (2) The disposal order of Dexter is supported by a preponderance of the evidence.

The Witness Nicholls, and the statement of Janet D'Aleo, as well as the Medical Examiner's statement and the certificate of death support the conclusion.

In the final decision itself, the final decision-maker Sherman also made the following conclusions. The final decision of the matter was approved.

1. There was no prejudice in the introduction of the photos of the dog bites.
2. The police officer was credible.
3. The dog was not provoked by the victim.
4. The hearing officer appropriately found the first statements of Ms. Wosko governing.
5. The severe injuries were caused by the bites, not objects such as a step stool.

6. The blood on the dogs muzzle did not indicate that the bites did not occur.
 7. The evidence introduced regarding the victim's injuries was credible.
 8. The nature of the victim's skin and her on-going leg wounds did not contribute to her injuries from the dog.
 9. The proof showed that the dog was not docile.
 10. The plaintiffs' experts were not credible.
 11. The lack of an autopsy was not determinative.
 12. The rules of practice for such hearings were followed.
 13. The fact that some of the bites occurred after the victim had died was not relevant.
 14. The showing of spoliation was not relevant.
 15. Any coordinate civil case was not relevant.
 - 16-17. Determinations of constitutional issues are outside the scope of the role of the hearing officer.
 - 18-19. The "final decision-maker" weighed alternatives to disposal and was not prejudiced.
 20. The correct standard of proof was used: preponderance of the evidence.
 21. The animal control officer was qualified to testify.
 - 22-24. The proof shows that the dog was dangerous and the disposal order is affirmed.
- The plaintiffs have taken an appeal from the December 21, 2020 final decision of the

department's reviewer, Bruce Sherman. A constitutional issue was raised as to § 22-358 (c).² This issue, the separation of powers, had not been previously raised, according to the plaintiffs.³

The plaintiffs argue as follows. The Connecticut Constitution provides that there are three divisions of government, legislative, executive, and judicial and that the law-making function cannot be delegated to the executive except in limited circumstances. This delegation will only be permitted where the delegation has a clear purpose and there are procedural safeguards in the legislation.

The earliest case to articulate this position was *State v. Stoddard*, 126 Conn. 623 (1940).

Stoddard declared at page 628:

“A Legislature, in creating a law complete in itself and designed to accomplish a particular purpose, may expressly authorize an administrative agency to fill up the details by prescribing rules and regulations for the operation and enforcement of the law. In order to render admissible such delegation of legislative power, however, it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration. If the Legislature fails to prescribe with reasonable clarity the limits of the power delegated or if those limits are too broad, its attempt to delegate is a nullity.”

² The State Appellate Court had, previous to this appeal, held the statute constitutional. See *Kiyak v Department of Agriculture*, 210 Conn. App. 311 (2022), *cert. denied*, 342 Conn. 909 (2022); *Miller v Department of Agriculture*, 168 Conn. App. 255 (1916), *cert. denied*, 323 Conn. 936 (2012).

³ The defendants raised the case of *Bottone v. Westport*, 209 Conn. 652 (1989). They contend that *Bottone* obviates the need to discuss the separation of powers-delegation contention of the plaintiffs. The court only discusses the plaintiffs' arguments based on delegation, however, since these arguments are without merit.

See also *Hogan v. Department of Children and Families*, 290 Conn. 545, 571-73 (2009):

“The following principles are well settled. ‘The [c]onstitution of this state provides for the separation of the governmental functions into three basic departments, legislative, executive and judicial, and it is inherent in this separation, since the law-making function is vested exclusively in the legislative department, that the [l]egislature cannot delegate the law-making power to any other department or agency. . . . A [l]egislature, in creating a law complete in itself and designed to accomplish a particular purpose, may expressly authorize an administrative agency to fill up the details by prescribing rules and regulations for the operation and enforcement of the law. In order to render admissible such delegation of legislative power, however, it is necessary that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative officer or body must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoin a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration. . . . If the [l]egislature fails to prescribe with reasonable clarity the limits of the power delegated or if those limits are too broad, its attempt to delegate is a nullity.’ (Citations omitted.) *State v. Stoddard*, 126 Conn. 623, 627-28, 13 A.2d 586 (1940).

‘In delegating authority to an administrative board [however] the legislature cannot know or foresee all the possibilities that might arise.’ (Internal quotation marks omitted.) *Wilson Point Property Owners Assn. v. Connecticut Light & Power Co.*, 145 Conn. 243, 267, 140 A.2d 874 (1958). ‘The test for constitutionally sufficient standards to govern the exercise of delegated powers requires only that the standards be as definit[e] as is reasonably practicable under the circumstances.’ (Internal quotation marks omitted.) *State v. Campbell*, 224 Conn. 168, 180, 617 A.2d 889 (1992), cert. denied, 508 U.S. 919, 113 S. Ct. 2365, 124 L. Ed. 2d 271 (1993).”

The case upheld the DCF’s statute that required the DCF to place child abusers on a registry list.

The cases show that the *Stoddard* principal is not rigid. See *University of Connecticut Chapter AAUP v. Governor*, 200 Conn. 386, 395 (1986):

“We have held, however, that the separation of powers doctrine cannot always be rigidly applied. *State v. Darden*, supra, 679; *Adams v. Rubinow*, 157 Conn. 150, 155, 251 A.2d 49 (1968). In *State v. Clemente*, supra, 510, we held that there are activities in which more than one branch of government may participate. ‘Executive, legislative, and judicial powers, of necessity overlap each other, and cover many acts which are in their nature common to more than one department. These great functions of government are committed to the different magistracies in all their fullness, and involve many incidental powers necessary to their execution, even though such incidental powers in their intrinsic character belong more naturally to a different department.’ *Id.*, citing *In re Application of Clark*, 65 Conn. 17, 38 A. 522 (1894).”

The case allowed the governor to veto certain legislative appropriations.

Casey v. Lamont, 338 Conn. 479, 503 (2021), a recent case, also notes the flexibility of the separation of powers rule.

“Unlike the separation of powers doctrine that has developed under the federal constitution, ‘the historical evolution of Connecticut’s governmental system [has] established a ‘tradition of harmony’ among the separate branches of government. . . .’ *State v. McCleese*, 333 Conn. 378, 419, 215 A.3d 1154 (2019). ‘Recognizing that executive, legislative and judicial powers frequently overlap, we have consistently held that the doctrine of the separation of powers cannot be applied rigidly.’ *Bartholomew v. Schweizer*, 217 Conn. 671, 676, 587 A.2d 1014 (1991). As we have recognized, ‘the great functions of government are not divided in any such way that all acts of the nature of the function of one department can never be exercised by another department; such a division is impracticable, and if carried out would result in the paralysis of government. Executive, legislative and judicial powers . . . of necessity overlap each other, and cover many acts which are in their nature common to more than one department.’ (Internal quotation marks omitted.) *Seymour v. Elections Enforcement Commission*, 255 Conn.78, 107, 762 A.2d 880 (2000), cert. denied, 533 U.S. 951, 121 S. Ct. 2594, 150 L. Ed. 2d 752 (2001). For example, the General Assembly does not have exclusive responsibility for legislating. Rather, the legislature and the governor work together to pass legislation. See, e.g., Conn. Const., art. IV, § 15 (‘Each bill which shall have passed both houses of the general assembly shall be presented to the governor. . . . If the governor shall approve a bill, he shall sign and transmit it to the secretary of the state, but if he shall disapprove, he shall transmit it to the secretary with his objections, and the secretary shall thereupon return the bill with the governor’s objections to the house in which it originated.’).”

The case permitted the state to interfere with sale of liquor at a restaurant during the Covid crisis.

To summarize, a delegation is allowed under *Stoddard* if the legislation has a clear purpose and provides adequate safeguards. The plaintiffs contend that the holding of *Stoddard* is not met in § 22-358 (c).

The first point, according to the plaintiffs is that the statute does not spell out a purpose for its enactment. The statute here, § 22-358 (c), must be read in context, however. It is clear from reading Chapter 435, General Statutes, that § 22-358 (c) is a statute attempting to protect the public from dangerous dogs.⁴

Moreover, the case law considers § 22-358 (c) to have a clear purpose in protecting the public. *Kiyak v. Department of Agriculture*, 210 Conn. App. 311, 320 (2022).

The second point raised by the plaintiffs is that § 22-358 (a) has insufficient protections or “guardrails.” Its only guardrail, the animal control officer’s decision-making, is said to be vague and limitless; but this position was rejected in *Kiyak* supra at 323.

The court concludes that § 22-358 (c) does not violate separation of powers and is a proper legislative delegation. The statute is therefore constitutional.

The plaintiffs also raise several non-constitutional arguments. In deciding these issues, the court relies on Judge Huddleston’s opinion in *Speer v. Department of Agriculture*, judicial

⁴ The court rejects the plaintiffs’ attempt to introduce testimony from a legislative proceeding regarding the clarity of § 22-358. This evidence is not in the record, § 4-183 (I).

district of New Britain, Docket No. CV15-6030870 (2019).

“The plaintiff appeals pursuant to General Statutes § 4-183. ‘[J]udicial review of the commissioner’s action is governed by the Uniform Administrative Procedure Act . . . General Statutes §§ 4-166 through 4-189 . . . and the scope of that review is very restricted . . . [R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency’s findings of basic fact and whether the conclusions drawn from those facts are reasonable.’ (Citation omitted; internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). ‘Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred.’ (Internal quotation marks omitted.) *Schallenkamp v. DelPonte*, 229 Conn. 31, 40, 639 A.2d 1018 (1994). ‘The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency . . . and to provide a more restrictive standard of review than standards embodying review of weight of the evidence or clearly erroneous action.’ (Internal quotation marks omitted.) *Cadlerock Properties Joint Venture, L.P. v. Commissioner of Environmental Protection*, 253 Conn. 661, 676, 757 A.2d 1 (2000) cert. denied, 531 U.S. 1148, 121 S. Ct. 1089, 148 L. Ed. 2d 963 (2001). ‘In determining whether an administrative finding is supported by substantial evidence, the reviewing court must defer to the agency’s assessment of the credibility of witnesses . . . The reviewing court must take into account contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.’ (Internal quotation marks omitted.) *Frank v. Dept. of Children and Families*, 312 Conn. 393, 411-12, 94 A.3d 588 (2014).

‘Our Supreme Court has repeatedly stated that ‘administrative tribunals are not strictly bound by the rules of evidence and . . . may consider exhibits [that] would normally be incompetent in a judicial proceeding, [as] long as the evidence is reliable and probative.’ *Lawrence v. Kozlowski*, 171 Conn. 705, 710, 372 A.2d 110 (1976), cert. denied, 431 U.S. 969, 97 S. Ct. 2930, 53 L. Ed. 2d 1066 (1977). ‘It is axiomatic, moreover, that it is within the province of the administrative hearing officer to determine whether evidence is reliable . . . and, on appeal, the plaintiff bears the burden of proving that the commissioner, on the facts before him, acted contrary to law and in abuse of his discretion . . . Neither this court nor the [Appellate Court] may retry the case or substitute its own judgment for that of the [hearing officer with respect to] the weight of the evidence or questions of fact . . . Our ultimate duty is to determine, in view of all of the evidence, whether the

agency, in issuing its order, acted unreasonably, arbitrarily, illegally, or in abuse of its discretion.’ (Citations omitted; internal quotation marks omitted.) *Do v. Commissioner of Motor Vehicles*, 330 Conn. 651, 667-68, 200 A.3d 681 (2019).

‘Section 4-183 (j) requires affirmance of an agency’s decision unless the court finds that substantial rights of the person appealing have been prejudiced by the claimed error. ‘The complaining party has the burden of demonstrating that its substantial rights were prejudiced by the error.’ (Internal quotation marks omitted.) *Miller v. Dept. of Agriculture*, 168 Conn. App. 255, 266, 145 A.3d 393, cert. denied, 323 Conn. 936, 151 A.3d 386 (2016). ‘It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion . . .’ (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

‘Even for conclusions of law, [t]he court’s ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion.’ (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, 310 Conn. 276, 281, 77 A.3d 121 (2013). ‘[C]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes.’ (Internal quotation marks omitted.) *Id.*

‘On the other hand, it is the function of the courts to expound and apply governing principles of law.’ *State Medical Society v. Board of Examiners in Podiatry*, 208 Conn. 709, 717, 546 A.2d 830 (1988). While our Supreme Court has held that a time-tested agency interpretation of a statute will be afforded deference, it has also held that such deference is appropriate ‘only when the agency has consistently followed its construction over a long period of time, the statutory language is ambiguous, and the agency’s interpretation is reasonable.’ *Id.*, 719. The reasonableness of an agency’s interpretation is determined by applying ‘our established rules of statutory construction.’ (Internal quotation marks omitted.) *McCullough v. Swan Engraving, Inc.*, 320 Conn. 299, 305, 130 A.3d 231 (2016). If a statute is not ambiguous, or if the agency’s interpretation of the statute is not consistent, time-tested, and reasonable, the court’s review of the agency’s interpretation of the statute is de novo. . . .

‘When construing a statute, [the court’s] fundamental objective is to ascertain and

give effect to the apparent intent of the legislature . . . In other words, [the court] seek[s] to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply.’ (Internal quotation marks omitted.) *Price v. Independent Party of CT-State Central*, 323 Conn. 529, 539, 147 A.3d 1032 (2016). Pursuant to General Statutes § 1-2z, the ‘meaning of a statute, shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If . . . the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.’ (Internal quotation marks omitted.) *State v. Josephs*, 328 Conn. 21, 26, 176 A.3d 542 (2018). ‘It is a basic tenet of statutory construction that the intent of the legislature is to be found not in an isolated phrase or sentence but, rather, from the statutory scheme as a whole . . . Furthermore, in reviewing the statutory language, we will assume that the legislature intended to accomplish a reasonable and rational result.’ (Citations omitted; internal quotation marks omitted.) *State v. Brown*, 235 Conn. 502, 516, 668 A.2d 1288 (1995).”

This standard of review confirms that substantial evidence existed for the animal control officer and the department of agriculture reviewer to find that the dog was a danger and subject to the order at issue. The fact that the dog had a history of biting, bit the victim and caused her death is sufficient.

The plaintiffs have raised several reasons for the court to conclude that the town and the department erred. First, while admitting that hearsay proof is permissible in an administrative appeal hearing, they stated that the evidence must be reliable. They contend that Officer St. John’s testimony was unreliable. The example given to the court was that St. John gave different testimony regarding the incident in a deposition taken by the victim’s estate after the plaintiffs’ hearing.

The final review of the animal control officer, however, had not been issued at the time when the deposition text became available. There was no reason why the plaintiffs could not

have submitted the deposition to the town's hearing officer for his review.

The plaintiffs argue that the doctor's report came to the attention of the plaintiffs immediately before the hearing. Further, the doctor himself did not testify. On the other hand, our Supreme Court has held that a hearing officer may make use of evidence as it exists in the record and may choose as he wants to make use of the evidence of record. See *Goldstar Medical Services, Inc. v. Department of Social Services*, 288 Conn. 790, 830 (2008). There was sufficient time after the municipal hearing for the plaintiffs to reply.

The plaintiffs contend that the animal control officer did not discuss any provocation of the dog. But the text of the ruling, as seen above, shows that the provocation was discussed.

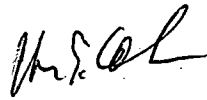
The plaintiffs contend that the victim's estate was allowed to participate in the hearing and dominated the hearing. The record shows, however, that the estate participated modestly at the hearing.

The plaintiffs also question the animal control officer's use of the oral statement of the mother-in-law. She later wrote a written statement, but the hearing officer used the first oral statement. This was his prerogative in reviewing the evidence.

The court observed that the plaintiffs chose to appear at the hearing as self-represented. Some of the alleged mistakes that they point to were caused by their voluntary decision to appear as self-represented. Our Appellate Court has recently declared that while the trial court should be solicitous of self-represented parties, the trial court must also refrain from interfering with the rights of other parties, such as the municipality here. *Gutierrez v. Moser*, 206 Conn. App. 816, 835 (2021).

The court, having discussed the arguments raised by the plaintiffs, dismisses the administrative appeal.

So ordered.



Henry S. Cohn, JTR