

THE CITY OF PALM COAST, FLORIDA  
TRANSCRIPT OF HEARING  
CASE NO: 2018 021254

**CERTIFIED  
TRANSCRIPT**

PROCEEDINGS: ANIMAL CONTROL  
BEFORE: NICOLE TURCOTTE, HEARING OFFICER  
DATE: MONDAY, APRIL 16, 2018  
TIME: 8:08 A.M. - 11:00 A.M.  
PLACE: PALM COAST CITY HALL  
160 LAKE AVENUE  
INTRACOASTAL ROOM  
PALM COAST, FLORIDA 32164  
STENOGRAPHICALLY  
REPORTED BY: SUSAN WEISHAUP

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HEARING OFFICER TURCOTTE: Good morning. I'd like to call the Animal Control Hearing for the City of Palm Coast to order on April 16, 2018 at 8:08 a.m. Welcome to the City of Palm Coast Animal Control Hearings. My name is Nicole Turcotte. I'll be the hearing control officer for these proceedings. This is a public hearing. The hearings are quasi-judicial in nature. The formal rules of evidence do not apply. The fundamental due process shall be observed and govern these proceedings. All testimony shall be under oath and recorded. There is no public comment portion of these proceedings.

At this time I'd like to ask that anyone who is going to present testimony, please stand and raise your right hand and be sworn in and remain standing for the Pledge of Allegiance afterwards.  
(Witnesses sworn, after which the Pledge of Allegiance was recited.)

HEARING OFFICER TURCOTTE: Thank you. Please be seated. I don't have a copy of the agenda, Judi. I'm assuming we're doing Item Number One. Thank you.

1           We have agenda Item Number One, case number  
2   2018 021254. The city will begin by presenting its  
3   case and then the respondent will have an  
4   opportunity to respond.

5           MS. NIX: Good morning, Your Honor. Jennifer  
6   Nix with the City of Palm Coast. Would you like me  
7   to give a brief opening statement and then the  
8   owner's counsel to give one?

9           HEARING OFFICER TURCOTTE: That's fine.

10          MS. NIX: Thank you. Your Honor, we are here  
11   today because the owner of a dog, Cooper, a dog  
12   previously declared dangerous by another city, the  
13   City of Port Orange, in accordance with Chapter 767,  
14   Florida statutes, requested a hearing to contest the  
15   city's determination -- the City of Palm Coast's  
16   determination -- which was made in accordance with  
17   state law and the city code that the dangerous dog  
18   must be euthanized due to a second attack on human  
19   resulting in multiple bites and disfiguring  
20   lacerations requiring constructive surgery and  
21   severe injury.

22          A review of the pertinent statutes and city  
23   code will show that the city is not afforded  
24   discretion in its determination to euthanize a dog  
25   that has previously been declared dangerous, when

1 that dog either attacks or bites a person without  
2 provocation or which attacks and causes severe  
3 injury to any human.

4 A review of Section 767.13 Florida Statutes,  
5 will show that while those two situations may  
6 differentiate in a criminal penalty to the owner of  
7 the dog, the mandated outcome for the dog previously  
8 declared dangerous is the same, it shall be  
9 euthanized.

10 The City's code enforcement and animal control  
11 department is tasked with applying the dangerous dog  
12 state statutes and the provisions of the city code  
13 which are pertinent, of course.

14 Your Honor, I'm going to describe what the  
15 evidence and testimony will establish today. Dottye  
16 Benton is the owner of Cooper, a dog declared by the  
17 City of Port Orange to be a dangerous dog on January  
18 27, 2018. When Port Orange's initial determination  
19 was contested, the dangerous dog board of the City  
20 of Port Orange upheld, after hearing the matter on  
21 February 21, 2018, upheld the classification that  
22 Cooper is a dangerous dog.

23 The staff in that case apparently requested and  
24 recommended that the dog be euthanized, yet the  
25 board did not follow that recommendation. The Port

1 Orange dog board's February 21, 2018 dangerous dog  
2 classification upheld the classification of  
3 dangerous dog. It's the city's understanding that  
4 that classification was not contested and became  
5 final. The appellate window for that classification  
6 of the dog as being dangerous has expired.

7 The evidence and testimony will show that  
8 Cooper was not confined as a dangerous dog should  
9 be; that Cooper attacked and bit Mr. Sandt multiple  
10 times; that Mr. Sandt did not provoke Cooper; that  
11 he had been conducting himself peacefully and  
12 lawfully, and was bitten and attacked by a dangerous  
13 dog. That his back was to the dog when Ms. Dottye  
14 Benton let the dog onto the porch moments after Mr.  
15 Sandt asked if the dog was nice or bites. That the  
16 other dogs had no issue with Mr. Sandt on the  
17 property and wanted Mr. Sandt to keep showing them  
18 kindness and attention; but that was not the case  
19 for the dog previously deemed dangerous.

20 The dog was let on the back porch just three  
21 days after the hearing upholding its dangerous dog  
22 classification, when it caused severe injury to Mr.  
23 Sandt, the bite victim.

24 Evidence and testimony will also show that  
25 Cooper, indeed, caused the severe injury, including

1 physical injury that resulted in multiple bites or  
2 disfiguring lacerations, requiring sutures or  
3 reconstructive surgery. And also that Mr. Sandt was  
4 lawfully on the property, invited by Ms. Benton to  
5 perform a job. He was a carpet cleaning business  
6 and that's why he was there.

7 The scope of today's hearing, the city would  
8 contend, is confined to Ms. Dottye Benton's  
9 challenging Palm Coast's determination that her  
10 dangerous dog attacked and bit, without provocation,  
11 the victim, attacked and caused severe injury to the  
12 victim, and therefore shall be destroyed in an  
13 expeditious and humane manner in accordance with  
14 Section 767.13, as well as -- of the Florida  
15 Statutes, as well as 8-41 of the city code.

16 The City of Palm Coast requests that you make  
17 certain findings, that Cooper was previously  
18 declared a dangerous dog and that such  
19 classification is not at issue today. That Cooper  
20 is the dog that attacked Mr. Sandt; that the attack  
21 was unprovoked; that Cooper inflicted a severe  
22 injury on Mr. Sandt, the same as defined by the  
23 Florida statutes, to include multiple bites and  
24 disfiguring lacerations requiring reconstructive  
25 surgery. And, of course, that you uphold the city's



1 decision to euthanize Cooper, the dangerous dog, in  
2 accordance with state law and the city code.

3 While the owners may present affidavits and/or  
4 testimony as to the demeanor of the dog since the  
5 incident or otherwise, the evidence will show that  
6 the uncontroverted facts remain that Cooper, a  
7 dangerous dog, attacked and inflicted a severe  
8 injury on a human being. And the city respectfully  
9 requests that you therefore uphold the city's  
10 determination that this dangerous dog be euthanized,  
11 in accordance with state law and city code and as  
12 mandated by both.

13 HEARING OFFICER TURCOTTE: Okay, thank you.  
14 Ms. LaHart.

15 MS. LaHART: Not at this time, thank you.

16 HEARING OFFICER TURCOTTE: Okay, the city may  
17 present its case.

18 MS. NIX: My first witness for the city would  
19 be Mr. Terry Sandt, who is testifying now and does  
20 have a deadline as far as leaving. If you can  
21 approach the witness stand, please.

22 HEARING OFFICER TURCOTTE: Good morning.

23 THE WITNESS: Good morning.

24 MS. NIX: Your Honor, I would ask if I could  
25 approach with a Composite Exhibit A and Appendix.

1 HEARING OFFICER TURCOTTE: Yes.

2 MS. NIX: Thank you. This is the information  
3 that was previously provided, but with an appendix  
4 and tabbed.

5 HEARING OFFICER TURCOTTE: Thank you.

6 MS. NIX: Thank you.

7 TERRY SANDT,  
8 being previously duly sworn, testified upon his oath as  
9 follows:

10 DIRECT EXAMINATION

11 BY MS. NIX:

12 Q Good morning, Mr. Sandt.

13 A Good morning.

14 Q Will you please identify yourself by name for  
15 the record?

16 A Terry Sandt, S-A-N-D-T.

17 Q Thank you. And what is your occupation?

18 A I own a carpet/tile cleaning company.

19 Q And do you happen to recognize the owner of the  
20 dog, Ms. Benton?

21 A Yes.

22 Q And could you identify her by pointing to her?

23 A (Witness indicates).

24 Q Thank you. How do you know Ms. Benton?

25 A I was called to do a job at her home.

1 Q And do you remember about when you were there?

2 A You mean the date and time?

3 Q Sure, the date.

4 A Not offhand. But the time, probably around  
5 noon.

6 Q Can you describe basically the circumstances  
7 from when you got to the house to --

8 A The whole thing?

9 Q Sure, please.

10 A Okay, I knocked on the door. She answered. Two  
11 little dogs were there, say hi, pet them, da, da, da,  
12 da. They ran up on the couch and I was petting them.  
13 Then she showed me around and, you know, the job I was  
14 doing. And she was going to go on the porch, and these  
15 dogs would not follow her because they were hanging out  
16 with me because I was loving them.

17 So I went out on the porch and had my back  
18 turned to the outside and I had the dogs on the porch,  
19 and I bent down, and she asked me if I wanted to meet  
20 the other dog. And he was jumping up in the air and  
21 stuff. And I just said, if he's nice and doesn't bite,  
22 and opened the door and he came on. He got right on my  
23 lip, right there, right now, right within two steps.  
24 Then I threw him off and he shook and tore me lip off.  
25 And then he jumped right back on my leg and started

1     biting my leg, and I got him off and he went like this.  
2     And I was, like, I got to get out of here, I don't know  
3     how this is going to end.

4             And I was by the sliding glass door, so I slid  
5     it and I worked my way out and started slamming the door  
6     and he came right to the glass. And I got out through  
7     the backyard, through the back gate. And then I made  
8     her take me to the hospital.

9             Q     When the -- you said that your back was to the  
10    door when the dog was let in to the porch?

11            A     Yeah, the dog -- the dogs were inside and I had  
12    to get them out to the porch. And the bigger dog was  
13    outside. So I had them like this (indicates). And as  
14    soon as the door was opened, it was yeehaw.

15            Q     So you mean that the dog came at you once the  
16    door was opened?

17            A     Right then, right there, right now, he didn't  
18    hesitate. In two seconds, it was a fight.

19            Q     Would you say that -- had you been calm, was  
20    this an unprovoked attack?

21            A     He got me from behind. Yeah. I didn't have  
22    nothing on.

23            Q     And what happened afterwards, after the dog  
24    attacked? Did you say you had gone to the hospital?

25            A     Yeah, she took me to the hospital. She went

1 through the whole thing with me. And she told the  
2 people at the hospital that she had an appointment to  
3 put the dog down Monday, which obviously didn't happen.

4 Q Did you and Ms. Benton discuss anything else in  
5 regards to the dogs, or generally, on the way to the  
6 hospital?

7 A Not a lot, just that I told her I was going to  
8 be deformed, because of what I saw in the mirror.

9 Q Is the bandaging on your face related to the  
10 attack?

11 A Yes, it is. That's exactly where this got tore  
12 out, and I got scars here.

13 Q What kind of injuries did you sustain from this  
14 dog?

15 A I got bite marks on my leg and kind of part of  
16 my face tore off.

17 Q How many times were you bit? Was it once, more  
18 than once?

19 A Three on the leg. And when he bit me in the  
20 face, he pulled me, he shook and came off.

21 Q And just to -- I apologize to show you the  
22 pictures, but Judge -- Your Honor, I'm just going to  
23 show Mr. Sandt some pictures such that he can identify  
24 them. And it's in A-3 of the Composite Exhibit A. The  
25 first picture, do you recognize that dog?

1 A Yes.

2 Q Is that the dog that attacked you?

3 A Yes.

4 Q Is that the same dog in the second picture?

5 A It appears to be, yeah. It is kind of blurred.

6 Q And --

7 A That would be me.

8 Q He's looking at the third picture. And is this  
9 the injuries that you sustained from the dog attack?

10 A Yes.

11 Q And the next, fourth picture, are those bite  
12 marks on your face?

13 A I -- it happened so fast, I don't know. I  
14 believe so.

15 Q Did you have that condition of your face before  
16 the dog attack?

17 A No.

18 Q And this -- are these your fingers?

19 A That's where he bit me, yeah. On my hand. I  
20 forgot about that one.

21 THE COURT REPORTER: Could you speak up?

22 THE WITNESS: That's my leg. And knee.

23 Q We're looking at this picture. I lost track.

24 HEARING OFFICER TURCOTTE: I'm following, thank  
25 you.

1           THE WITNESS: And my leg. I filled that out,  
2           yes.

3 BY MS. NIX:

4           Q And then just, the next page is the voluntary  
5           witness statement, the affidavit that Mr. Sandt had  
6           previously filled out, which is number four, and he just  
7           stated that he filled that out. I also wanted to, while  
8           I'm standing here, just to have him identify, there's a  
9           Flagler -- well, this is number five. Are these your  
10          medical records?

11          A Yes. That's my signature.

12          Q And are these from the hospital treatments for  
13          your dog bite on February 24, 2018?

14          A Yes.

15          Q And then just to flip forward to number six, is  
16          this the bill that you received from Florida Hospital  
17          Flagler?

18          A Yes. And she paid that.

19          Q He was pointing to the \$165.63 that had been  
20          paid on that bill. And then is this another bill on  
21          number seven we're looking at, Emergency Medicine  
22          Professionals?

23          A Yeah. They told me that it may not be the  
24          final bill. They said there could be another bill  
25          coming.

1           Q     I'm going to ask you some more questions, but  
2 I'll go back and sit back down. Did Ms. Benton say why  
3 she paid the hospital bill or anything?

4           A     No, she just paid it. We didn't talk about it,  
5 no.

6           Q     As far as any additional issues relating to the  
7 dog attack that you had, what kind of issues have you  
8 experienced?

9           A     This side, I've got blurred vision. This  
10 stopped. I had drainage coming out -- I don't know if  
11 this is all connected, but I have problems with this ear  
12 now.

13          Q     And when the doctors spoke with you at the  
14 hospital the day that you had to go to the hospital, did  
15 they speak with you about reconstructive surgery or  
16 anything along those lines?

17               MS. LaHART: Objection to the hearsay  
18 testimony.

19               HEARING OFFICER TURCOTTE: Overruled. You can  
20 answer the question.

21               THE WITNESS: They -- there was four people in  
22 and out, and two looked at it and just -- they go,  
23 that's not a good expression, there's nothing we can  
24 do, you have to see a plastic surgeon. So all's  
25 they could do is clean it and they gave me some



1 pills to take for infection. And one day after it  
2 happened, I went to Lentz, Ashley Lentz, cosmetic  
3 surgery.

4 BY MS. NIX:

5 Q And I know that you had mentioned that your  
6 hospital records that they had given to you, did you  
7 speak with the doctors that made the notes that were  
8 given to you when you left, as far as the medical record  
9 notes?

10 A We spoke to the doctors and then there was a  
11 separate lady who actually did the billing with the 165  
12 and all that, she said that that may not be the final  
13 bill.

14 Q Okay. And I would like to point out, if I may,  
15 two different parts of the hospital record; the  
16 emergency room record, which was authenticated by Mr.  
17 Sandt. On page five of 41 there are notes relating to  
18 the ears, nose, mouth and throat, part of which states,  
19 "the mucosal surface is intact, but there is significant  
20 irregular laceration on the right side of the upper lip  
21 with avulsion of tissue approximately one centimeter by  
22 two centimeters. The wound margins cannot be  
23 approximated without significant deformity. There is  
24 significant edema on the right cheek adjacent to the  
25 wound, with additional bite marks present. The bite

1 marks do not appear to penetrate the skin." The doctor  
2 is not concerned about a retained tooth, which I'm not  
3 sure what that means.

4 But on the next page, page six of his emergency  
5 room record, also has the doctor's notes, Dr. Cashio,  
6 Jr., the second big paragraph with caps lock, the doctor  
7 recommends, it says, "I discussed the patient's case  
8 with Dr. Cashio, the plastic surgeon on call. He  
9 recommended dressing, antibiotics, if appropriate,  
10 follow up in his office on Monday. The patient is to  
11 change the dressing two to three times a day and as  
12 needed. The patient will likely require a full  
13 thickness repair of this injury, which will have to be  
14 performed in the operating room." I just wanted to  
15 bring the court's attention to that part of the medical  
16 records.

17 Okay, so just to kind of wrap up as far as the  
18 injuries that you said you sustained, is it your  
19 testimony that the dog bit you multiple times and it's  
20 -- is it your understanding that you may need  
21 reconstructive surgery?

22 A Yes.

23 MS. NIX: I don't have any further questions  
24 for Mr. Sandt.

25 HEARING OFFICER TURCOTTE: Ms. LaHart.

## CROSS-EXAMINATION

BY MS. LaHART:

Q Thank you. Hello.

A Hello.

Q Can you hear me all okay, Madam Court Reporter?  
Mr. Sandt, you stated in your testimony that you made my  
client take you to the hospital. What does that mean?

A I just said you're taking me to the hospital.  
I was holding a rag to my face with blood protruding out  
of it.

THE COURT REPORTER: I can't hear you.

THE WITNESS: I was holding a rag in my face  
with blood pouring out of it.

BY MS. LaHART:

Q Isn't it true that she offered to take you to  
the hospital?

A Well, it was kind of -- yeah.

Q So you didn't make her, she did that  
voluntarily; correct?

A Yeah.

Q Do you recall giving a written statement on  
March 12th?

A You mean the affidavit?

Q A document entitled Voluntary Witness  
Statement, it was in tab four of your package.

1           A     Yes, that's me.

2           Q     Do you recall the date that you gave that  
3 statement?

4           A     I do not.

5           Q     It said here March 12, 2018, would that be the  
6 date?

7           A     If that's what was written, that's when I did  
8 it, yes.

9           Q     And you had already retained an attorney by  
10 then, correct?

11                   MS. NIX:  Objection, relevancy.

12                   HEARING OFFICER TURCOTTE:  Overruled.  You can  
13 answer the question.

14                   THE WITNESS:  I can?  I don't know the date I  
15 retained an attorney.

16 BY MS. LaHART:

17           Q     Here's a letter from Rue and Ziffra, is that  
18 the law firm representing you?

19           A     Rue.

20           Q     Rue.

21           A     Yes.

22           Q     Dated March 7, 2018.  So you had already  
23 retained counsel by March 7, correct?

24           A     If that's what it says, yes.

25           Q     So you had, in fact, retained counsel before

1     you gave the statement?

2           A     If those are the dates, then that's when I  
3     filled them out, yes.

4           Q     And the reason that you retained an attorney  
5     was because you plan to sue my client civilly, correct?

6           A     I'm deformed.

7           Q     So that would be yes?

8           A     Yes.

9           Q     Do you recall telling the hospital that you  
10    weren't going to sue her because you weren't that type  
11    of person?

12          A     In a nonchalant way. She said she was putting  
13    the dog down on Monday and never did. So that's called  
14    a lie.

15          Q     So you were going to sue her in civil court  
16    because she didn't kill her dog?

17          A     I'm suing, yes.

18          Q     Now, my client's version of what happened is  
19    that the dog, Cooper, was outside and that she only let  
20    him in because you insisted that you wanted to meet him.

21          A     I never insist that anyone lets their dog in.  
22    I can't clean the carpet with the dog inside the house.

23          Q     But there were two dogs in the house already,  
24    correct?

25          A     And they were going out to the porch.

1           Q     Right.  Would you agree with me that if my  
2     client's version of the story is correct, that that  
3     would be bad for your civil lawsuit?

4           MS. NIX:  Objection.

5           THE WITNESS:  Well, her version is wrong.

6           Q     If it were correct, it would be bad for the  
7     suit?

8           A     But it's not.

9           Q     Answer my question, if her version of the facts  
10    were correct, it would be --

11          MS. NIX:  Objection.

12          HEARING OFFICER TURCOTTE:  Let me put some  
13    ground rules.  So the attorney is asking you a  
14    question, you have to let her finish her question  
15    before you answer.  If you hear an objection,  
16    everybody stops talking so I can hear the objection  
17    and make a ruling.

18          I'm going to overrule the question and allow  
19    the question to be answered.  Ms. LaHart, can you  
20    reask your question.

21    BY MS. LaHART:

22          Q     If in fact my client's version of the facts was  
23    correct, that would be bad for your civil lawsuit, would  
24    it not?

25          A     If it was correct, yes.

1 MS. LaHART: Nothing further. Thank you.

2 HEARING OFFICER TURCOTTE: Thank you. Any  
3 follow-up questions Ms. Nix?

4 REDIRECT EXAMINATION

5 BY MS. NIX:

6 Q Sure, thank you. Mr. Sandt, do you -- did the  
7 owner ever, Ms. Benton I mean, did she ever tell you her  
8 occupation?

9 A Yes, she said she worked for an attorney.

10 Q Did she make any other statements in regards to  
11 that?

12 A She let me know that more than once.

13 Q Why do you think she did that?

14 MS. LaHART: Objection, calls for speculation.

15 HEARING OFFICER TURCOTTE: Overruled.

16 THE WITNESS: I do not know. Scare tactic, I  
17 guess.

18 BY MS. NIX:

19 Q When you arrived at the house you had stated  
20 that the two dogs were -- the two smaller dogs were  
21 inside the house?

22 A Yes.

23 Q So maybe --

24 A They met me at the door.

25 Q They met you at the door?

1           A     Yes.

2           Q     Is it my understanding of your testimony that  
3 the owner was trying to get the two dogs to go outside,  
4 when the dogs were just interested in being pet by you?

5           A     Right.

6           Q     Okay. And what do you usually do with animals  
7 when you're cleaning carpets in a regular setting?

8           A     I can't clean it with them there, so I try to  
9 get them on a porch or bathroom, maybe a room that  
10 doesn't have what's needed to be cleaned.

11          Q     So it probably wouldn't make sense to invite  
12 another dog inside?

13          A     No. Not at all.

14               MS. NIX: No further questions, Your Honor.

15               HEARING OFFICER TURCOTTE: Okay.

16               MS. LaHART: Can I follow up?

17               HEARING OFFICER TURCOTTE: Yes, you may.

18                       RE CROSS-EXAMINATION

19 BY MS. LaHART:

20          Q     Were you afraid because my client was a  
21 paralegal?

22          A     No, I didn't even know that until after the  
23 fact.

24          Q     When she told you that, were you frightened?

25          A     No.



1           Q     At the time that you were on the back porch  
2 with the dogs, was any of your equipment in the house?

3           A     No, I don't think so.

4           Q     So you weren't actually ready to start cleaning  
5 the carpets yet, were you?

6           A     If I usually do, I usually take the wand and  
7 the chemical thing, I'm usually there to set that in the  
8 house. I may have done that. I think I did. In the  
9 back bedroom.

10          Q     But you don't recall?

11          A     No.

12               MS. LaHART: Nothing further.

13               HEARING OFFICER TURCOTTE: Thank you, Mr.  
14 Sandt.

15               (Whereupon, the witness was excused.)

16               HEARING OFFICER TURCOTTE: The City's next  
17 witness.

18               MS. NIX: Thank you, Your Honor. The next  
19 witness please is Eva Rodriguez, animal control  
20 officer for the City of Palm Coast.

21               HEARING OFFICER TURCOTTE: Good morning.

22               THE WITNESS: Good morning.

23                       EVA RODRIGUEZ,  
24 Being previously sworn, testified upon her oath as  
25 follows:

## 1 DIRECT EXAMINATION

2 BY MS. NIX:

3 Q Good morning. Thank you for being here. Would  
4 you please give your name and position with the city.5 A Eva Rodriguez, animal control officer for the  
6 City of Palm Coast.7 Q Thank you. And what is your involvement in  
8 this case?9 A We received the first initial bite back in  
10 January 31, 2018 from the City of Port Orange from  
11 Officer Chris Filbert, advising us that there was a bite  
12 in Port Orange and that the animal had been moved to the  
13 City of Palm Coast and contacted us for quarantine of  
14 the animal at 29 Ryder Drive.15 Q And that was in regards to the Port Orange  
16 case, that quarantine?

17 A Correct, Cooper, the dog was involved.

18 Q Thank you. And did you put Cooper in  
19 quarantine at that time?20 A Um, the -- I believe the quarantine was already  
21 up when we were contacted, so I just needed to come by  
22 and make sure that the animal was alive and well at that  
23 time.24 Q And as to the current case, not the Port Orange  
25 where they had classified the dog as dangerous, what

1 interactions have you had with Ms. Benton, the owner?

2 A My first interaction with Ms. Benton was on  
3 February 1st, where I met with Ms. Benton to check on  
4 Cooper's quarantine release at that time for the City of  
5 Port Orange, where she brought me on to the back porch  
6 where Cooper was in the fenced-in backyard, where I saw  
7 the dog was alive and well at that time and released  
8 from quarantine. The dog did bark at me the whole time  
9 while I was on the back porch and I did make a comment  
10 to Ms. Benton stating that the animal, to my feeling,  
11 was territorial.

12 Q Okay, thank you. And did you have any  
13 additional interactions with the dog until the current  
14 bite case accident?

15 A I did not. The only interaction was the  
16 quarantine release on February 1st and then the second  
17 bite.

18 Q And can you tell the court what your  
19 interactions have been as to the second bite, both with  
20 Ms. Benton, the victim, and the dog, if you've seen it  
21 since?

22 A The second interaction was on February 26th,  
23 where I had left a message for Ms. Benton to contact me  
24 regarding quarantining Cooper on the second bite and  
25 advised her that he would have to spend his quarantine

1 at the Flagler Humane Society.

2 On the 27th, I did meet with Ms. Benton at the  
3 Flagler Humane Society, where Cooper was brought in. I  
4 was told that he was sedated before she drove to the  
5 Flagler Humane Society to bring him in for his  
6 quarantine. We were going back and forth, Ms. Benton  
7 did want Cooper euthanized at her vet. We did advise  
8 that the animal would have to go through quarantine  
9 process first, the ten days, unless her vet wanted to  
10 test for rabies, meaning that the brain would be tested.  
11 And her vet did not want to go through with that  
12 process.

13 They did advise that the animal should remain  
14 at the Flagler Humane Society and be euthanized there.  
15 They didn't want to stress the animal out any more.

16 I did -- after the quarantine process, I did  
17 notice that Cooper was being walked by one of the kennel  
18 attendants, Jason, who's here today. He was walked  
19 through the humane society and out front, not wearing a  
20 muzzle.

21 Q And this was after a point in which it had been  
22 deemed dangerous by the City of Port Orange?

23 A Correct.

24 Q Have you seen Cooper in his cage or anything  
25 else while he was there at VHS?

1           A     Yes, we did see him in the cage during the  
2 quarantine process at his quarantine release date.

3           Q     What were your observations as to the dog,  
4 generally?

5           A     Observation was the dog was barking, jumping  
6 and growling.

7           Q     Growling at who?

8           A     At me and my other -- the other officer that  
9 was with me while we were doing the quarantine release.

10          Q     When you spoke with Ms. Benton, did she discuss  
11 with you what had happened the day of the bite?

12          A     Yes. On the 27th, Ms. Benton told me that the  
13 victim came in to clean her carpets, East Coast Carpet  
14 Busters, that Mr. Sandt had came in, met with her two  
15 small dogs that were loose in her living room. I was  
16 then told when he saw Cooper, he asked Ms. Benton to let  
17 the dog inside, and that he was an animal lover and he  
18 loved dogs. Ms. Benton let Cooper inside, and I was  
19 told that Mr. Sandt had bent down towards the dog to pet  
20 him and was face-to-face with the dog and that's when  
21 the dog bit the lower lip.

22                Ms. Benton then expressed that she wanted the  
23 dog, Cooper, put to sleep at her vet, Freiberg's Healing  
24 Paws, and at that time it would have been -- I discussed  
25 that with my manager to see if we could move the animal

1 around, where we would have agreed that I would have  
2 personally brought the animal to the vet clinic and  
3 stayed during the process.

4 Q And, okay, so that's what Ms. Benton had to say  
5 to you. Have you spoken with the victim, Terry Sandt,  
6 at that point?

7 A On March 1st I finally spoke to the victim, who  
8 told me, when I asked how he was doing, he told me  
9 disfigured. I asked him to explain to me what had  
10 happened. Mr. Sandt had told me that this was his first  
11 time at the residence. He entered the home. He was  
12 greeted by two small dogs, they were friendly. He was  
13 petting them.

14 Mr. Sandt then showed -- was then shown the  
15 carpet that needed to be cleaned. Then Ms. Benton went  
16 on to the back porch and was calling the small dogs, but  
17 they were not interested in going with her, they were  
18 more interested in Mr. Sandt. So he walked the dogs to  
19 the back porch so they would follow him. He saw Cooper  
20 and another dog on the back fence in the yard. Ms.  
21 Benton -- I was told Ms. Benton asked him if he wanted  
22 to meet the dog. Mr. Sandt had asked if he was  
23 friendly. He told me that his back was to the door.  
24 When the dog was let in, he automatically bit Mr. Sandt  
25 on his face and shook. Then he heard -- or shook his

1 head around, ripping his lower lip. Mr. Sandt tried to  
2 get the dog off, and that's when his right leg was bit.  
3 Then Mr. Sandt was taken to Flagler Florida Hospital for  
4 emergency treatment by Ms. Benton. She transported him  
5 there.

6 Q And that was March 1, 2018 that you said you  
7 spoke with Mr. Sandt?

8 A Correct.

9 MS. NIX: I don't have any further questions.

10 HEARING OFFICER TURCOTTE: Thank you, Ms.

11 LaHart.

12 CROSS-EXAMINATION

13 BY MS. LaHART:

14 Q Thank you. Good morning, Officer Rodriguez,  
15 how are you?

16 A Good morning. How are you?

17 Q Would you agree with me that Ms. Benton and Mr.  
18 Sandt tell different versions of what transpired the day  
19 that Mr. Sandt was bitten?

20 A Correct, we have two different stories.

21 Q Would it make a difference one way or another  
22 to the death penalty if Mr. Sandt's version of the story  
23 was correct?

24 MS. NIX: Objection, calls for a legal opinion.

25 HEARING OFFICER TURCOTTE: Sustained.

1 BY MS. LaHART:

2 Q Ms. Rodriguez, are you responsible for  
3 implementing Chapter 767 Animal Control Ordinance for  
4 Palm Coast?

5 A Yes.

6 Q Are you familiar with those -- with Chapter  
7 767?

8 A Yes, I am.

9 Q What is it?

10 A The dangerous dog statute.

11 Q Are you familiar with Palm Coast Animal Control  
12 Ordinance?

13 A Yes, I am.

14 Q Where is that?

15 A Section Eight ordinance.

16 Q Is it part of your responsibility to determine  
17 whether or not a dog complies with a definition of  
18 dangerous dog contained within those statutes and  
19 ordinance?

20 A Yes.

21 MS. LaHART: Your Honor, I'd like to renew my  
22 question.

23 HEARING OFFICER TURCOTTE: You may.

24 BY MS. LaHART:

25 Q Assuming that it happened as Mr. Sandt said,



1     that he didn't encourage Ms. Benton to invite the dog  
2     in, that she asked if he wanted to meet the dog, would  
3     that make any difference whatsoever in your  
4     determination that the dog needs to be destroyed?

5           A     That would become under a -- that would be a  
6     discussion that I would have with my supervisor and  
7     manager to make the final decision on that.

8           Q     Who made the decision that Cooper needs to be  
9     destroyed?

10          A     It was a group effort between myself and my  
11     manager.

12          Q     Your manager being Ms. Grossman?

13          A     Barb Grossman.

14                 HEARING OFFICER TURCOTTE:  Ms. Rodriguez, could  
15     you say that again, the court reporter didn't hear  
16     you.

17                 THE WITNESS:  That would have been a group  
18     discussion with myself and my manager.

19                 HEARING OFFICER TURCOTTE:  And the name of your  
20     manager?

21                 THE WITNESS:  Barb Grossman.

22                 HEARING OFFICER TURCOTTE:  Grossman.

23     BY MS. LaHART:

24           Q     You mentioned that you saw Cooper being walked  
25     through the lobby without a muzzle.  Were there people

1 in the lobby?

2 A Yes, there were.

3 Q Did he lunge or growl at any of them?

4 A No, I did not see that.

5 Q At the time that the City of Port Orange  
6 declared Cooper dangerous, where was the dog living?

7 A 29 Ryder Drive.

8 Q In what city?

9 A The City of Palm Coast.

10 Q Can you explain to me how the City of Palm  
11 Coast had the authority to declare a dog -- I'm sorry,  
12 the City of Port Orange had the authority to declare a  
13 dog in Palm Coast dangerous?

14 MS. NIX: Objection. She's asking legal  
15 questions that as far as that witness, she's not  
16 qualified to answer that.

17 MS. LaHART: She is the one that implements and  
18 interprets the dangerous dog provisions for the City  
19 of Palm Coast.

20 HEARING OFFICER TURCOTTE: You can answer the  
21 question, if you know.

22 THE WITNESS: Can you repeat that question,  
23 please?

24 BY MS. LaHART:

25 Q My question is, how did the City of Palm Coast

1 have authority to designate a dog dangerous, when the  
2 dog wasn't living in the city anymore?

3 A The City of Port Orange is where the bite  
4 occurred. So when an animal is declared dangerous in  
5 that city, they have to notify the city that the animal  
6 is in, by law.

7 Q My question is, how can the City of Palm Coast  
8 -- or, I'm sorry, the City of Port Orange declare a dog  
9 dangerous, when that dog was no longer living there?

10 A I don't know how to answer that.

11 Q Doesn't the state dangerous dog law require  
12 that a dog that is subject of a dangerous dog  
13 investigation not be moved?

14 A That is correct.

15 Q Isn't the reason for that, that if the dog is  
16 moved, the animal control authority no longer has  
17 jurisdiction over that animal?

18 A I'm not sure about that. From my  
19 understanding, the animal was not supposed to be moved.

20 Q Why not?

21 A Because there was a bite, so the animal was  
22 under quarantine, which is automatic when an animal  
23 breaks skin, that the animal is placed on a ten-day home  
24 quarantine, so the animal should have been quarantined  
25 in Port Orange, but the owner at that time did not

1 follow orders and moved the animal to the City of Palm  
2 Coast.

3 Q How do you know that the owner was ordered not  
4 to move the animal?

5 A Because those are state laws.

6 Q Do you know if the owner was informed of the  
7 state law?

8 A I do not know.

9 Q Were you angry when you found out that Ms.  
10 Benton had decided not to destroy her dog and to fight  
11 for her dog?

12 A I was not angry.

13 Q I'm going to hand you a letter -- actually,  
14 it's a -- it looks like, I don't really know what it is.  
15 I'm going to hand it to you and ask you if you can  
16 describe it for the record. Let me show your counsel  
17 what we're looking at. I only have two copies. I got  
18 it from you.

19 MS. NIX: You got it from a public records,  
20 presumably, but I didn't bring a copy of this.  
21 Would you like to make me a copy? Can we do that,  
22 take a break before our client is questioned?

23 HEARING OFFICER TURCOTTE: Yes.

24 MS. NIX: Thank you.

25 (Short break was had.)

1 MS. LaHART: Ms. Nix, may I proceed?

2 MS. NIX: Give me ten seconds.

3 MS. LaHART: Take 20.

4 MS. NIX: Okay.

5 BY MS. LaHART:

6 Q Could you identify that document?

7 A Yes, this is a letter drafted by the city to  
8 Ms. Dottye Benton, letting her know that we agree to  
9 help her transport the animal to Dr. Freiberg's Healing  
10 Paws, as we discussed, for euthanasia at her vet that  
11 she's had for over so many years, or that the animal  
12 would be humanely euthanized at the Humane Society, and  
13 it was for her to sign and her daughter to sign.

14 Q Do you know if this was ever provided to her?

15 A It would have been sent by mail.

16 MS. LaHART: Request I have this submitted into  
17 evidence as Respondent's Exhibit One, please.

18 HEARING OFFICER TURCOTTE: Can I see it? Does  
19 the city have any objection?

20 MS. NIX: No.

21 HEARING OFFICER TURCOTTE: Then it will be  
22 admitted, but I'd like to see a copy, if there is  
23 one somewhere. Thank you. Okay, because there is  
24 no objection, this will be admitted as Owner's  
25 Exhibit One. Do you need this letter back, Ms.

1 LaHart? Does the witness need this for reference  
2 for future questioning?

3 MS. LaHART: No, thank you.

4 MS. NIX: No objection.

5 HEARING OFFICER TURCOTTE: I'm sorry?

6 MS. NIX: No objection. The city will clarify  
7 it.

8 HEARING OFFICER TURCOTTE: You may proceed.

9 BY MS. LaHART:

10 Q Ms. Rodriguez, do you have a copy of the City  
11 of Port Orange's declaration?

12 A Of Cooper being dangerous? Yes, we did.

13 Q Do you have a copy of that in front of you?

14 A No, I do not.

15 MS. LaHART: Madam Hearing Officer, I believe  
16 that's Tab Nine in the documents that the city  
17 provided to you.

18 HEARING OFFICER TURCOTTE: Thank you.

19 BY MS. LaHART:

20 Q May I approach the witness? Is that a copy of  
21 what you are relying upon for the assertion that Cooper  
22 was declared dangerous by the City of Port Orange?

23 A That is what we received from the City of Port  
24 Orange declaring the animal dangerous, correct.

25 Q Does that contain a finding that the bite was

1 unprovoked?

2 A It does not state.

3 Q Isn't that a minimum finding before a dog can  
4 be declared dangerous?

5 MS. NIX: Objection, calls for legal opinion.

6 MS. LaHART: Again, this is the city personnel  
7 that implements the dangerous dog law.

8 HEARING OFFICER TURCOTTE: I'll overrule it.

9 MS. NIX: These are arguments that should have  
10 been raised at the Port Orange proceedings.

11 HEARING OFFICER TURCOTTE: I'm not sure this is  
12 relevant, but I'll overrule the specific objection  
13 you made.

14 BY MS. LaHART:

15 Q The question, Ms. Rodriguez, is, isn't it true  
16 that a finding that the dog bite was unprovoked is a  
17 minimum finding necessary in order to declare a dog  
18 dangerous?

19 A That does play a role in determining if an  
20 animal is dangerous, whether it is provoked or  
21 unprovoked.

22 Q Does it play a role or is it outcome  
23 determinative?

24 A It plays a role.

25 Q Okay, so even if somebody -- if a dog bites

1 somebody and the bite is provoked, the dog can still be  
2 declared dangerous; that's your understanding?

3 A Every case is different.

4 MS. NIX: Object, relevancy.

5 HEARING OFFICER TURCOTTE: I'm sorry, I was  
6 actually going to ask you to repeat the question.

7 MS. LaHART: Can we have the court reporter  
8 read it back?

9 (Pending question read back).

10 THE WITNESS: Well, yes, if the bite was  
11 provoked, that will play a role in our  
12 determination. If the bite is unprovoked, it will  
13 play a role in our determination.

14 BY MS. LaHART:

15 Q Ms. Rodriguez, I'm going to ask you to look at  
16 what is at tab two in the Composite Exhibit A provided  
17 to the hearing officer. Do you recognize that document?

18 A Yes.

19 Q What is it?

20 A It's advising Ms. Dottye Benton that due to  
21 being declared dangerous previously in the City of Port  
22 Orange, that the city is asking that the animal be  
23 euthanized after the quarantine, due to the second bite  
24 causing multiple bites and disfiguring lacerations to  
25 the victim.



1           Q     Does that letter advise my client that she has  
2 the right to request a hearing?

3           A     "Should you choose to waive your right to an  
4 appeal, the animal may be destroyed sooner than ten days  
5 from this written notification, minimizing these  
6 expenses."

7           Q     Does it advise her that she has the right to a  
8 hearing?

9           A     Well, it does say "if you choose to waive your  
10 rights to an appeal."

11          Q     Does it state you have a right to a hearing?

12          A     It doesn't state that in here, but I'm sure if  
13 she would have went into 767.13 Florida state statutes,  
14 it is in the statute that the owners do have a right to  
15 appeal.

16          Q     Does it advise her as to how she would go about  
17 requesting a hearing?

18          A     No, there are no instructions.

19          Q     Would you look at what has been -- what's  
20 behind tab one, the notice of hearing. Does this  
21 provide any guidance as to the procedures that will  
22 govern a dangerous dog hearing?

23          A     What do you mean?

24          Q     What I mean is, does this explain the  
25 procedures that will be followed in contesting the City

1 of Palm Coast's decision to destroy Cooper?

2 A This is a notice of hearing at the owner's  
3 request to contest. There's no instructions.

4 Q You testified previously that you're familiar  
5 with the Palm Coast Animal Control Ordinance?

6 A Correct.

7 Q Does Palm Coast Animal Control Ordinance state  
8 who has the burden of proof in this proceeding?

9 A Yes.

10 Q If I hand you the ordinance, can you show me  
11 where that is?

12 MS. NIX: Your Honor, the city would stipulate  
13 that the city has the burden of proof in this  
14 hearing.

15 MS. LaHART: Will you also stipulate that the  
16 ordinance doesn't say that?

17 THE WITNESS: Our ordinance mirrors Florida  
18 state statutes.

19 BY MS. LaHART:

20 Q The answer to my question is yes, the ordinance  
21 does not contain any indication of who has the burden of  
22 proof, correct?

23 A Okay.

24 Q Nor does it advise what the standard of proof  
25 is, is that correct?

1           A     Proof as to, what are you relating to?

2           Q     Proof as to whether or not Cooper is going to  
3 be killed.

4           A     Our proof is the bite. The victim is here  
5 today, that is our proof.

6           Q     Okay, thank you. You understand that -- well,  
7 this is a forfeiture proceeding, that if the city's  
8 determination that the dog is destroyed is upheld, will  
9 be upheld, then my client's property is being taken from  
10 her? It's different than a dangerous dog designation,  
11 correct?

12                MS. NIX: Objection. She's asking questions  
13 that call for a legal opinion that a nonlawyer is  
14 not going to necessarily understand. She's not  
15 going to know the difference between a forfeiture  
16 hearing, which this is not.

17                HEARING OFFICER TURCOTTE: I will sustain the  
18 objection.

19 BY MS. LaHART:

20           Q     Is the same level of proof required if the city  
21 is seeking to destroy a dog, as opposed to merely  
22 declare it dangerous, and, therefore, subject to more  
23 stringent manner of keeping requirements?

24           A     Correct.

25           Q     What's the difference?

1           A     Okay, if -- we follow Florida state statutes,  
2     keeping an animal that's been declared dangerous, there  
3     are requirements for muzzling, confinement,  
4     microchipping, vaccination, registering the animal,  
5     posting the property. Being that the animal was  
6     confined at the humane society, it was under the proper  
7     confinements, where the animal was safe and the  
8     community was safe.

9           Q     Okay, I don't think you understood my question,  
10    so I'm going to try again.

11          A     Okay.

12          Q     If you were to come here in a proceeding and  
13    ask the special magistrate, the hearing officer, to  
14    uphold a determination that a dog is going to be  
15    declared dangerous, is there a different burden of  
16    proof, or standard of proof, that applies than if you  
17    were asking to have the dog destroyed?

18          A     Declaring an animal dangerous, the burden of  
19    proof I would have would be my witnesses, my victims,  
20    any other priors. Everything would be in the same  
21    format.

22          Q     Thank you, Ms. Hernandez.

23                MS. NIX: It's Rodriguez.

24    BY MS. LaHART:

25          Q     Sorry. I apologize. Ms. Rodriguez, would you

1 agree with me that the city gives you, as an animal  
2 control officer, discretion when a dog bites someone as  
3 to whether or not to impound the dog?

4 A Correct.

5 Q How would you decide whether or not you are  
6 going to impound a dog that has bitten someone?

7 A It all depends on if the animal is a constant  
8 -- if we have issues with the animal running loose all  
9 the time. If the animal has never had a rabies shot.  
10 If we have had a prior incident with the animal; and if  
11 the animal has been declared dangerous, it is  
12 automatically impounded.

13 Q In response to my question you said if the  
14 animal is consistently running loose, has a rabies  
15 shot --

16 A Has not had a rabies shot.

17 Q Has not had a rabies shot. Licensed, did you  
18 mention that?

19 A I did not mention licensing.

20 Q It's been declared dangerous or not. Are those  
21 criteria contained in your ordinance anywhere?

22 A I don't believe so. Again, it's at our  
23 discretion. I believe, if you break it down, running at  
24 large, the animal can be impounded after multiple times  
25 for creating a nuisance and running at large. An animal

1 can be impounded if it is not vaccinated for rabies. I  
2 believe that is in our ordinance.

3 Q My question is not generally when you can  
4 impound an animal, it's when an animal has bitten  
5 someone and you are going to do a dangerous dog  
6 investigation, do you have discretion to allow the  
7 animal to be quarantined in its own home or in an animal  
8 shelter, correct?

9 A Correct.

10 Q And you also have discretion to allow the  
11 animal to be at home pending appeal or remain at the  
12 animal shelter, correct?

13 A Correct.

14 Q And there are no criteria in your ordinance  
15 that govern those determinations, correct?

16 A I'm not sure. I don't have it in front of me.

17 Q Well, I could hand you the ordinance and you  
18 can look if you'd like.

19 A All right. That will take a minute.

20 HEARING OFFICER TURCOTTE: What was the  
21 question?

22 MS. LaHART: Whether there are any criteria  
23 governing when an animal is impounded and when it is  
24 not, when the animal is being investigated for a  
25 dangerous dog investigation.

1 HEARING OFFICER TURCOTTE: I thought she  
2 answered that question.

3 MS. LaHART: She just said she didn't know.

4 HEARING OFFICER TURCOTTE: That's an answer.

5 MS. LaHART: Okay, fair enough. Madam Hearing  
6 Officer, I don't think that Composite Exhibit A was  
7 put into evidence. Can we move that into evidence?

8 HEARING OFFICER TURCOTTE: Yes, I'll admit  
9 this. I'm assuming you have no objection, since  
10 you're asking me to do it, this will be, Composite  
11 Exhibit A, presented by the city, will be entered as  
12 City's Exhibit One.

13 MS. NIX: Thank you. Pardon me, Your Honor,  
14 that was intended.

15 BY MS. LaHART:

16 Q Ms. Rodriguez, you mentioned that you went to  
17 my client's house to make sure that Cooper was alive and  
18 well following his quarantine, correct?

19 A Correct.

20 Q And you notice -- noted that he is territorial  
21 and protective of his owner?

22 A Correct.

23 Q Are there ways that a dog that is territorial  
24 can be managed and keep the dog from posing a threat to  
25 public health and safety?

1           A     Yes.

2           Q     Are you aware that my client offered to resolve  
3 this matter by having the dog transferred out of the  
4 city to a rottweiler rescue group that was willing to  
5 provide the dog sanctuary for the rest of his life?

6           A     I did hear about that, yes.

7           Q     Were you responsible for rejecting that offer?

8           A     I do remember stating -- speaking with my  
9 manager about the offer, and it was rejected, correct.

10          Q     And why is that?

11          A     Due to state statutes, it does not state  
12 anywhere that the animal be removed and placed into a  
13 sanctuary rescue.

14          Q     So your testimony is that you have no  
15 discretion whatsoever and that the dog must be killed?

16          A     I'm just following Florida state statutes  
17 guidelines.

18          Q     Okay, could you please answer my question. Is  
19 it your understanding that those statutes give you no  
20 discretion and the dog must be killed?

21          A     Again, I'm just going by Florida state  
22 statutes.

23          Q     Okay, I'm going to read you from the Florida  
24 state statutes. "If a dog is classified as dangerous  
25 due to an incident that causes severe injury to a human



1 being based upon the nature and circumstances of the  
2 injury and the likelihood of a future threat to public  
3 safety, health and welfare, the dog may be destroyed in  
4 an expeditious and humane manner."

5 MS. NIX: Objection. I don't know which  
6 statute she's reading from. And I'd like  
7 clarification please.

8 HEARING OFFICER TURCOTTE: What statute are you  
9 reading from?

10 MS. LaHART: I'm reading from 767.12.

11 MS. NIX: Objection as to relevancy. This is a  
12 dog that has already been declared dangerous and has  
13 bitten a second victim, subsequent to said  
14 declaration, which was not appealed.

15 HEARING OFFICER TURCOTTE: Sustained.

16 BY MS. LaHART:

17 Q Is it your testimony today that there is no  
18 method of restraining this animal so that he does not  
19 pose a threat to public safety, health and welfare?

20 MS. NIX: Objection, calls for speculation.

21 HEARING OFFICER TURCOTTE: You can answer the  
22 question. Overruled.

23 THE WITNESS: Could you repeat that, please.

24 BY MS. LaHART:

25 Q Is it your testimony that there are no manner

1 of keeping restrictions that can prevent this dog from  
2 being a threat to public health, safety and welfare?

3 A Yup.

4 Q What's the basis of that?

5 A Why do I feel that? That we have seen two  
6 serious bites from this animal, and it would be in the  
7 best interest to have the animal euthanized for safety  
8 of the public.

9 Q Well, you testified in response to a question I  
10 asked earlier that a dog that is territorial and  
11 protective can be managed safely. Why can't Cooper be  
12 managed safely?

13 A I feel that the animal cannot be managed safely  
14 due to the lack of responsibility that the owner has  
15 shown.

16 Q Okay, the owner is willing to transfer the dog  
17 to somebody else permanently. Did you make any efforts  
18 to determine what that person's qualifications are or  
19 how the dog would be maintained by him?

20 A I do not.

21 Q One last question. Do you know when the  
22 documents that the city is relying on were provided to  
23 the other side in this proceeding?

24 A What's the question?

25 Q Do you know when the documents that are in

1 Composite Exhibit A were provided to Ms. Benton and her  
2 counsel?

3 A I do not know when the documents were provided  
4 to you.

5 MS. LaHART: Nothing further, thank you.

6 HEARING OFFICER TURCOTTE: Redirect, Ms. Nix.

7 REDIRECT EXAMINATION

8 BY MS. NIX:

9 Q Thank you. Ms. Rodriguez, the statute, Section  
10 767.13, attack or bite by a dangerous dog; penalties:  
11 confiscation, destruction; are you familiar with that  
12 statute?

13 A Yes, ma'am.

14 Q And was that the statute that you were  
15 referring to regarding the city --

16 MS. LaHART: Objection.

17 BY MS. NIX:

18 Q -- not having discretion as to the counselor's  
19 questions about that very topic?

20 MS. LaHART: Objection, leading.

21 HEARING OFFICER TURCOTTE: Overruled.

22 THE WITNESS: Yes, that's the statute we're  
23 referring to.

24 BY MS. NIX:

25 Q For ease of reference, I'm going to read it to

1 you. Subsection Two --

2 MS. LaHART: Can I just get her a copy of the  
3 statute?

4 HEARING OFFICER TURCOTTE: You can. She's  
5 still entitled to read it into the record if she  
6 wants.

7 BY MS. NIX:

8 Q 767.13, Subsection Two, states, "if a dog that  
9 has previously been declared dangerous attacks and  
10 causes severe injury to or death of any human, the owner  
11 is guilty of a felony of the third degree, punishable as  
12 provided in sections 775.082, 775.083 or 775.084. In  
13 addition, the dog shall be immediately confiscated by an  
14 animal control authority, placed in quarantine, if  
15 necessary, for the proper length of time or held for ten  
16 business days after the owner is given written  
17 notification under 767.12 and thereafter destroyed in an  
18 expeditious and humane manner."

19 Is it your understanding that that's the  
20 subsection that gives no discretion as to the  
21 destruction the dog?

22 MS. LaHART: Objection, leading.

23 HEARING OFFICER TURCOTTE: Overruled.

24 THE WITNESS: Yes, correct.

25 BY MS. NIX:

1           Q     Just to clarify a couple things. When the City  
2 of Port Orange -- when the dog attack happened there  
3 under which it was initially declared a dangerous dog, I  
4 just want to clarify some things so that the waters  
5 aren't really muddled about that. The City of Port  
6 Orange action, did the bite occur in the City of Port  
7 Orange and that's why the City of Port Orange would have  
8 gone after them?

9           A     Correct.

10          Q     And while you testified that the statutes  
11 provide that you're not supposed to relocate the dog,  
12 would you think that relocating the dog would suddenly  
13 remove jurisdiction from the City of Port Orange?

14          A     No.

15          Q     Do you know of anywhere in the Chapter 767 that  
16 it would say that jurisdiction would be removed for an  
17 owner that chose to move their dog pending an  
18 investigation?

19          A     No.

20          Q     And was it your testimony that they essentially  
21 weren't following the statute as to relocation?

22               MS. LaHART: Objection, leading.

23               HEARING OFFICER TURCOTTE: Overruled.

24               THE WITNESS: Yes.

25 BY MS. NIX:

1           Q     And just to pinpoint, where you're talking  
2 about the relocation, I'm going to read 767.12  
3 Subsection B, the third sentence, just to see if that's  
4 what you were referring to. "A dog that is the subject  
5 of a dangerous dog investigation may not be relocated or  
6 its ownership transferred pending the outcome of the  
7 investigation and any hearings or appeals related to the  
8 dangerous dog classification or any penalty imposed  
9 under this section." Is that what you were referring  
10 to?

11           MS. LaHART: Madam Hearing Officer, right now  
12 Ms. Nix is testifying. The witness is not  
13 testifying. I object to this entire line of  
14 questions. She can certainly make her legal  
15 argument at closing without having her -- coaching  
16 her witness to say, yes, that's what I relied upon.

17           HEARING OFFICER TURCOTTE: You opened up this  
18 line of questioning. She's asking whether the  
19 witness is familiar with the statute. It's a yes or  
20 no question.

21           MS. LaHART: Well, if that's the only question,  
22 is she familiar with the statute, she said yes, then  
23 it's been asked and answered.

24           HEARING OFFICER TURCOTTE: Ms. Nix, can you  
25 reask your question to the extent it wasn't already

1           answered.

2       BY MS. NIX:

3           Q     Are you familiar with the statute in regards to  
4       relocation of the animal pending investigation?

5           A     Yes.

6           Q     There you go. As to the exhibit that was  
7       admitted with the letter, which is, I'm referring to, I  
8       believe it's Exhibit One of the owners, the March 5th  
9       letter, which -- can I just show her?

10          A     Yes.

11          Q     This is the exhibit that opposing counsel  
12       admitted. Is this letter on city letterhead?

13          A     No.

14          Q     Is this letter signed?

15          A     No.

16          Q     Do -- does the city typically put letters to  
17       people on letterhead and sign them if they're sent?

18          A     Yes, they do.

19          Q     Was this ever sent to Ms. Benton, to your  
20       knowledge?

21          A     Not that I'm aware of.

22          Q     Did you -- with the letter, which is -- which  
23       was sent to the owner, I'm looking at A-2, I'm going to  
24       approach, if that's okay. Here's the March 6th letter  
25       that was sent to Ms. Benton and it's A-2.

1           A     Yes.

2           Q     Are you familiar with this letter?

3           A     Yes.

4           Q     Is that letter on City of Palm Coast  
5 letterhead?

6           A     Yes, it is.

7           Q     Is that letter signed?

8           A     Yes, it was.

9           Q     When the first letter was being drafted, the  
10 contents of the letter, the second page discusses --  
11 mentions the word euthanized, talks about euthanizing  
12 Cooper. Was it your understanding, when this letter was  
13 drafted in this form, that the dog was going to be  
14 euthanized?

15          A     Yes. Because we had made an agreement that I  
16 would transport the animal to her personal vet for  
17 euthanization, and I believe she was going -- I was  
18 supposed to have her sign that at our meeting, but then  
19 things changed.

20          Q     And when you say things changed, what do you  
21 mean by that?

22          A     She appealed for the process that we're going  
23 through today.

24          Q     Does that mean that the dog wasn't necessarily  
25 going to be euthanized?



1           A       That was my understanding.

2           Q       So would that be why there was a letter dated  
3 March 6th, which is one day after the March 5th draft,  
4 that was not sent, as you testified, would that be why  
5 this March 6th letter with different content was  
6 provided to the owner?

7           A       Yes.

8           Q       Thank you. Do you still have the statutes in  
9 front of you?

10          A       Yes, I do.

11          Q       You've noted that you're familiar with Chapter  
12 767, 767.13. As far as Subsection Two of 767.13, does  
13 it address the word "unprovoked?"

14          A       It does not.

15          Q       Would you think that it's relevant whether or  
16 not a dangerous dog that causes a severe injury to  
17 somebody else, whether it's provoked or not?

18          A       Not by Florida state statute.

19          Q       Is it your understanding that appeal procedures  
20 include hearings?

21          A       Yes.

22          Q       And you said that the March 6th letter does say  
23 appeal procedure?

24               MS. LaHART: That's not what it says.

25               MS. NIX: Pardon?

1 MS. LaHART: That's not what it says.

2 BY MS. NIX:

3 Q I'm going to read the last paragraph of the  
4 letter for Ms. Rodriguez. "Also, in accordance with  
5 state law and city code, you are responsible for payment  
6 of all boarding costs and other fees as may be required  
7 to humanely and safely keep the animal during any appeal  
8 procedure. Should you choose to waive your right to an  
9 appeal, the animal may be destroyed sooner than ten days  
10 from this written notification, minimizing these  
11 expenses."

12 MS. LaHART: Where are you reading from?

13 MS. NIX: The last paragraph, the March 6, 2018  
14 letter from the City of Palm Coast provided by  
15 Barbara Grossman and provided to your client.

16 HEARING OFFICER TURCOTTE: A-2.

17 BY MS. NIX:

18 Q Thank you.

19 A Yes, it does state that.

20 Q Is it your understanding that the notice of  
21 hearing was provided to the dog owner, Ms. Benton, via  
22 her representative attorney?

23 A Yes.

24 Q An animal law attorney?

25 A Yes.

1 Q Who requested this hearing?

2 A Yes, I believe so.

3 Q Probably familiar with Chapter 767?

4 MS. LaHART: Calls for speculation, relevance.

5 BY MS. NIX:

6 Q And hearing procedures?

7 HEARING OFFICER TURCOTTE: Sustained.

8 BY MS. NIX:

9 Q I know that you testified that you're familiar  
10 with 767 Florida statutes, and that you are one of the  
11 staff at the City of Palm Coast who are responsible for  
12 implementing that. Did you go to law school?

13 A No, I did not.

14 Q Are you an attorney?

15 A No, I am not.

16 Q Do you have the ability to rely on attorneys  
17 when necessary in order to implement your job duties?

18 A Yes.

19 Q Would you say in regards to your testimony that  
20 -- in regards to impounding dogs that have bitten  
21 someone, you said something along the lines of sometimes  
22 there are issues with running at large or rabies,  
23 whether or not they're up to date on their shots and  
24 whatnot, would you say that each set of circumstances is  
25 different and factually specific when you are

1 determining whether or not to impound a dog?

2 MS. LaHART: Objection to the continual leading  
3 nature of the questions.

4 HEARING OFFICER TURCOTTE: Overruled.

5 THE WITNESS: Yes.

6 BY MS. NIX:

7 Q So it's -- when you have to look at sets of  
8 circumstances, do you apply things in a blanket manner  
9 or look at things on its own set of circumstances?

10 A Look at the overall picture, so the  
11 circumstances.

12 Q And it was your testimony, correct me if I'm  
13 wrong, that you didn't feel like this particular animal,  
14 Cooper, was being managed appropriately, as far as being  
15 a dangerous dog?

16 A Correct.

17 MS. NIX: No further questions, Your Honor.

18 HEARING OFFICER TURCOTTE: Any redirect, Ms.  
19 LaHart?

20 MS. LaHART: Yes.

21 HEARING OFFICER TURCOTTE: Or recross, excuse  
22 me.

23 RECROSS-EXAMINATION

24 BY MS. LaHART:

25 Q Ms. Hernandez, the notice of hearing that was

1 provided to my client, is it different than the typical  
2 notice of hearing provided to any dog owner?

3 HEARING OFFICER TURCOTTE: Just for the record,  
4 the witness is Ms. Rodriguez.

5 BY MS. LaHART:

6 Q Ms. Rodriguez, did you understand the question?

7 A Can you repeat that, please?

8 Q Is the notice of hearing that was provided to  
9 my client different from a notice of hearing provided to  
10 any other dog owner?

11 A No.

12 Q Do all dog owners have the luxury of being  
13 represented by animal law attorneys? It's a yes or no  
14 question, Ms. Rodriguez.

15 MS. NIX: Objection, calls for speculation.

16 MS. LaHART: It does not call for speculation.

17 HEARING OFFICER TURCOTTE: If you can answer the  
18 question.

19 THE WITNESS: No.

20 BY MS. LaHART:

21 Q And it's your testimony, as I understood it,  
22 that if a dog has been declared dangerous and somebody  
23 provokes the dog into biting, you're still going to kill  
24 the dog; is that your testimony?

25 A No.

1 Q Well, didn't you say that it was not relevant  
2 whether or not the dog was provoked?

3 A Not in this case.

4 Q I'm not talking about this case. I believe  
5 your testimony was that it's not relevant with a dog  
6 that has already been declared dangerous, bites,  
7 severely injures a person, it's not relevant whether or  
8 not the dog was provoked; is that your testimony or not?

9 A Correct.

10 MS. LaHART: Nothing further, thank you.

11 MS. NIX: I'd like to ask a few follow-ups, if  
12 I may, Your Honor.

13 HEARING OFFICER TURCOTTE: Briefly.

14 FURTHER REDIRECT EXAMINATION

15 BY MS. NIX:

16 Q Was it your testimony in regards to whether or  
17 not the dog was provoked limited to looking at  
18 767.13.2 when asked?

19 A Correct.

20 Q Thank you. Are you familiar with every notice  
21 of hearing sent out for every dangerous dog hearing?

22 A No, I'm not.

23 Q Do you draft the notices?

24 A No, I do not.

25 Q Do you send them out?

1           A     No, I do not.

2                   MS. NIX: Thank you. No further questions.

3                   HEARING OFFICER TURCOTTE: Anything else, Ms.  
4           LaHart?

5                               FURTHER RECROSS-EXAMINATION

6   BY MS. LaHART:

7           Q     Yes. Ms. Hernandez --

8                   HEARING OFFICER TURCOTTE: Rodriguez.

9   BY MS. LaHART:

10          Q     I'm sorry. Do you provide a different notice  
11 of hearing to people who are represented by counsel, as  
12 opposed to people who don't have attorneys?

13          A     I do not draft the paperwork.

14          Q     Do you know if a different notice of hearing is  
15 provided to people who have lawyers versus people who do  
16 not?

17                   MS. NIX: Objection, the witness already  
18 testified that she does not draft notices or send  
19 them.

20                   HEARING OFFICER TURCOTTE: She can answer the  
21 question.

22                   THE WITNESS: I do not.

23                   MS. LaHART: Thank you.

24                   HEARING OFFICER TURCOTTE: Anything else?

25                   MS. LaHART: No.

1 HEARING OFFICER TURCOTTE: Thank you, Ms.  
2 Rodriguez.

3 (Whereupon the witness was excused.)

4 HEARING OFFICER TURCOTTE: The City's next  
5 witness.

6 MS. NIX: Can I have one brief moment, Your  
7 Honor?

8 HEARING OFFICER TURCOTTE: Sure.

9 (Thereupon, a short break was taken).

10 MS. NIX: No further questions.

11 MS. LaHART: Can we take a ten minute break  
12 before I start my case?

13 HEARING OFFICER TURCOTTE: Yes.

14 (Thereupon, a short break was taken).

15 HEARING OFFICER TURCOTTE: We're back on. Go  
16 ahead.

17 MS. NIX: I was just going to make one brief  
18 request and ask that if Mr. Sandt was to be called  
19 for any purpose, I was going to see if we could go  
20 ahead and do that, because he's been here for almost  
21 two hours, as we all have, and has several  
22 appointments for his business.

23 MS. LaHART: I have no further questions for  
24 him.

25 MS. NIX: I just wanted to check before we



1 released him.

2 HEARING OFFICER TURCOTTE: Okay, Ms. LaHart,  
3 you may present your case.

4 MS. LaHART: I call Dottye Benton.

5 HEARING OFFICER TURCOTTE: Good morning.

6 THE WITNESS: Good morning.

7 HEARING OFFICER TURCOTTE: Before you get  
8 started, may I ask you to spell your first name.  
9 I've seen it spelled several ways in the paperwork.

10 THE WITNESS: Yes, it's D-O-T-T-Y-E.

11 HEARING OFFICER TURCOTTE: It is with a y.  
12 Okay. Thank you for the interruption. You may  
13 proceed.

14 DOTTYE BENTON,  
15 being previously duly sworn, testified upon her oath as  
16 follows:

17 DIRECT EXAMINATION

18 BY MS. LaHART:

19 Q Ms. Benton, would you please tell the hearing  
20 officer what happened the day that Mr. Sandt was bitten  
21 by Cooper.

22 A Yes, ma'am. I had asked someone in my office,  
23 I was looking for a carpet cleaner, if they could  
24 recommend somebody. So she said she had a friend that  
25 knew somebody, so she recommended Terry Sandt. I called

1 Mr. Sandt several times to make an appointment with him,  
2 but he did not return my calls for almost a week and  
3 said he was having problems with his phone, cell phone.

4 So when we did connect and we made it -- I told  
5 him to give me a call to let me know when he could come.  
6 I wanted him to come the 26th, January 26th. He called  
7 me on the night of the 25th and told me that he would be  
8 to my house, come to my house. He was given -- telling  
9 me this procedure that he does, that I've never heard of  
10 it. He said he would put a chemical on my carpet that  
11 would take two hours to dry and that no -- neither I nor  
12 my dogs could step on the carpet because it would burn  
13 your feet. So I told him that's a real problem because  
14 I have a dog that has been declared dangerous and I  
15 would not know what I could do with him for two hours.  
16 And he said, well, we'll discuss it when we get there --  
17 when I get there.

18 So he came the next day. My two shih tzu mixes  
19 were standing on the back of my couch, which they  
20 normally do. He came in and he started scratching their  
21 butts. Then he asked me, "where's your dangerous dog?"  
22 I said, "he's in the backyard." He said, "well, I'd  
23 like to see him." So he walks in front of me to my  
24 sliding glass door. He opens the sliding glass door and  
25 steps on my porch. So Cooper is sitting out in the yard

1 with my other shih tzu mix, Millie, and she's just --  
2 he's just sitting at the fence. So then Mr. Sandt said,  
3 oh's, look, he's not dangerous, he's wagging his tail at  
4 me, he won't bite me because he's friendly." He said,  
5 "go ahead and let him in." And I said, "no, I'm not."  
6 So he stepped around me.

7 Now, my screened-in door was broken during the  
8 hurricane, the tension bar, I guess you call it, was  
9 broken. So he walked to the door, and I was standing  
10 there as well, and he started to open the door and the  
11 door popped open and Cooper came in. Now, he bent -- he  
12 bent down at that time to pet Cooper. He's never met  
13 Cooper, but he bent down to pet him, and Cooper came up  
14 and got him. And it was not the bottom lip, it was the  
15 top lip.

16 So he said he kicked Cooper. He did not kick  
17 him. I tried to grab Cooper, but Mr. Sandt was already  
18 trying to get in back through the sliding glass door. I  
19 grabbed a red dishtowel for him for his face, and I  
20 guess that's -- when he came out to get it from me,  
21 that's when Cooper got him on the leg. So I wrestled  
22 Cooper back out and put him in the yard and shut the  
23 door. I was not going to remove my two small dogs from  
24 the house, because they're so small, they're not going  
25 to be in the same room with him anyway. So I said,

1 "come on, I'll take you to the emergency room." He  
2 said, "I don't have insurance." I said, "well, you need  
3 to go to the emergency room."

4 So I went around and got my car, put him in the  
5 car, we went to the emergency room. When we go into the  
6 emergency room, and he's bleeding profusely, the  
7 emergency room tech, I guess, asked him what had  
8 happened. And he said it's a dog bite. And the guy  
9 asked, he said, "whose dog." And I said, "my dog." And  
10 he said, "well, has he bit somebody before?" And I  
11 said, "yes, he bit a woman in Palm Coast" -- I mean Port  
12 Orange. He said, "well, how did this happen?" Mr.  
13 Sandt said, "well, I thought he was friendly because he  
14 was wagging his tail, so I bent down to pet him."

15 So they get all his information, then they take  
16 us in a room. I'm sitting down in the emergency room,  
17 and he says, "come on, I want you to come with me." So  
18 I went back in the room, they were going to put him in a  
19 trauma room. He was laying on the bed. I was sitting in  
20 a chair calling my boss and -- to let him know what had  
21 happened. And he told me -- and that's the first time  
22 Mr. Sandt knew I worked for attorneys. So Mr. Sandt, he  
23 said "how bad is it?" I said, "I can't tell." He said,  
24 "well, I can tell from your face."

25 So then he come -- gets off the bed and he

1 comes and he stands in front of me and he does this  
2 number, "I just want you to know, I'm a man of God and I  
3 will not sue you."

4 So he got back on the bed, he was waiting for  
5 the doctor to come in, and the doctor looked at him and  
6 he said, "I can't sew this because you got like a  
7 quarter of an inch missing." And he said, "well, what's  
8 going to happen now?" He said, "you're going to have to  
9 see a plastic surgeon." So he recommended one. But Mr.  
10 Sandt said, "well, that's here in Palm Coast and I'm  
11 from Port Orange." So I called my boss and asked for a  
12 recommendation of a plastic surgeon, and he gave me one  
13 to give Mr. Sandt.

14 So I was going to leave the room, but he wanted  
15 me to stay in the room with him the whole time. So the  
16 woman came in from admitting, and I was asking her, I  
17 said, "he has no insurance, is there some way that, you  
18 know, the admitting office can help him." And she said  
19 yes. So when they got through with him, dressing his  
20 face, rinsing it out with saline, putting the bandages  
21 on, then we -- can I have my cup of water?

22 HEARING OFFICER TURCOTTE: Yes.

23 THE WITNESS: So --

24 MS. NIX: I'll just object, sorry, as to  
25 hearsay.

1 MS. LaHART: About her wanting water?

2 MS. NIX: No. As to the statements from the  
3 admitting tech, and even Mr. Sandt, as hearsay, with  
4 them not being here or having been sworn or provided  
5 anything --

6 HEARING OFFICER TURCOTTE: Overruled. You may  
7 continue, ma'am.

8 THE WITNESS: Thank you. So when they got  
9 through dressing it, and I thought from the guy that  
10 was dressing his wound that he was going to give him  
11 extra bandages, but he didn't. So we went down to  
12 where -- we went into a little cubby, so the  
13 admitting girl, clerk, could finish talking to him.  
14 And the reason I paid the bill is because she said,  
15 "if you pay the bill today, we give you an 80  
16 percent discount." And he said, "is that just  
17 today?" She said, "no, whatever comes in here will  
18 be 80 percent off." So I said, "okay, I'll write  
19 the check for that."

20 When we left the emergency room, I drove to  
21 Walgreens and I went inside, he sat in my car, I  
22 went inside. I paid for his bandages and his  
23 antibiotic. Then in my heart, I was trying to help  
24 him, because the way they fixed his bandage at the  
25 hospital, it was, you know, just coming off because

1 of the way it was. So we got to my house and I  
2 said, "is there anything I can do for you," you  
3 know, "do you want me to go get you something to  
4 eat?" And he said no. And I said, "well, do you  
5 want to call me when you get home?" He said, "no,  
6 I'm going inside and clean your carpet."

7 So he did, he drug all of that equipment in  
8 through my garage. He went in the house and cleaned  
9 my carpet. I went outside on my porch and in the  
10 yard with my dogs, including Cooper. Cooper made no  
11 overture to him, he didn't try to get in the house  
12 with him. He just sat right there with me. When  
13 Mr. Sandt got through with my carpet, then he left.

14 Well, excuse me, no, let me back up. He got a  
15 call while we were sitting at Walgreens from this  
16 apartment complex that said several of the  
17 apartments had flooded and they wanted him to come  
18 and get the water up. So when he left my house,  
19 after cleaning my carpet, he was going to that  
20 apartment complex to get the water up. So then I  
21 called -- I told him to call me when he got home  
22 that night, and he did call me, but he started  
23 having visitors that was telling him, well, you need  
24 to do this -- I'm assuming this is going to be  
25 hearsay -- but you need to go after her renter's

1 insurance, you need to go after her landlord's  
2 insurance, you need to get something out of this.

3 MS. NIX: Objection, hearsay.

4 HEARING OFFICER TURCOTTE: Overruled on  
5 hearsay, but not relevant.

6 THE WITNESS: So that was all we had with Mr.  
7 Sandt. Now, I would call him periodically at night  
8 when I got off work, just to check to see how he was  
9 doing. And he would tell me about some more friends  
10 that come over and told him what he should do.

11 MS. NIX: Objection, relevancy.

12 HEARING OFFICER TURCOTTE: Sustained.

13 THE WITNESS: Okay, but that was it with me and  
14 Mr. Sandt.

15 HEARING OFFICER TURCOTTE: Okay.

16 BY MS. LaHART:

17 Q Ms. Benton, in order to save Cooper's life, are  
18 you willing to give him up?

19 A Yes, I am.

20 Q Have you found somebody that is willing to  
21 adopt him?

22 A Yes, I have.

23 MS. LaHART: Nothing further.

24 HEARING OFFICER TURCOTTE: Ms. Nix, any cross?

25 CROSS-EXAMINATION



1 BY MS. NIX:

2 Q Just briefly. Ms. Benton, you said that -- you  
3 testified that you knew that Cooper was a dangerous dog,  
4 correct?

5 A I knew that because I was at the Port Orange  
6 hearing.

7 Q And so even though you know that Cooper is a  
8 dangerous dog, and that classification was upheld, even  
9 though someone is at your house and you testify is  
10 insistent upon going out back, you would have just  
11 allowed them to go out back to a dangerous dog, that  
12 less than a month before, bit another person?

13 A No, that's incorrect. That is incorrect. I  
14 did not allow him to go. The only way I could stop him  
15 from going is if I physically got in front of him and  
16 stopped him. And he's quite a bit bigger man than I am  
17 a woman. But he was determined that he was going to go  
18 out there because Cooper was friendly, he was wagging  
19 his tail. He said, "look, he's friendly. He's not  
20 going to bite me, he's wagging his tail."

21 Q So your testimony is that he's too big to stop  
22 him and he is just dying to meet your dangerous dog?

23 A I'm not saying he was dying to meet my  
24 dangerous dog. He knew the dog was dangerous when he  
25 opened my sliding glass door and he stepped on the

1 porch. He knew the dog was dangerous. He was already  
2 in front of me before I could get to the door, he was  
3 already on my porch.

4 Q And your testimony is that he didn't know until  
5 some point in the hospital that you worked for a law  
6 firm?

7 A That is correct.

8 Q Do you recall his testimony that he stated  
9 that --

10 A I understood it, I heard everything he said.

11 HEARING OFFICER TURCOTTE: Just for purposes,  
12 again, a reminder, and I know this is natural in  
13 conversation, but we have a court reporter here, so  
14 let her finish her question completely and not  
15 answer.

16 THE WITNESS: Okay, I thought I was doing  
17 pretty good but --

18 HEARING OFFICER TURCOTTE: It's okay.  
19 Actually, I don't know that you finished the  
20 question, so can you reask that so I can understand  
21 the testimony. I believe you were asking her  
22 whether she was aware of Mr. Sandt's testimony, but  
23 then I didn't hear the rest of it.

24 BY MS. NIX:

25 Q Thank you. I was just going to finish with,

1 were you aware of Mr. Sandt's testimony that you had  
2 stated that you were a paralegal, or worked for a law  
3 firm, on the way to the hospital?

4 A I am aware of that and that is incorrect. The  
5 own -- he knew when I was an attorney -- I mean, I  
6 worked for attorneys when I called my boss, sitting  
7 right there next to the bed that he was in.

8 Q You had mentioned that -- you had mentioned  
9 that the hospital, whichever woman had said that it was  
10 an 80 percent discount if the bill was paid that day.  
11 Is that an entire bill to be paid, or partial?

12 MS. LaHART: Objection as to relevance.

13 HEARING OFFICER TURCOTTE: Sustained.

14 BY MS. NIX:

15 Q I am just asking in regards to the fact that  
16 she had mentioned that and that the bill from the day  
17 of, there was \$125 or so out of a much larger amount, I  
18 was just curious if she was saying that she paid the  
19 whole bill or if she's saying that she paid part of it.

20 MS. LaHART: The objection was sustained.

21 BY MS. NIX:

22 Q Is Cooper a law enforcement dog?

23 A Not to my knowledge.

24 Q Or a hunting dog?

25 A Not to my knowledge.

1           Q     And your testimony was that he wanted to see  
2 the dog and bent down. Well, then is your testimony  
3 that he provoked the dog by supposedly bending down to  
4 see the dog? I mean, that's your testimony. I know his  
5 is different.

6           A     Could you repeat that, please.

7           Q     Would you say that Mr. Sandt provoked your dog?

8           A     I would say that Mr. Sandt did, when he bent --  
9 when he opened the door for the dog to come in and he  
10 bent down into his face. He got in Cooper's face.  
11 Cooper did not get in his face.

12                   MS. NIX: No further questions.

13                               REDIRECT EXAMINATION

14 BY MS. LaHART:

15           Q     Brief follow up. Ms. Benton, is there any  
16 carpet on your porch?

17           A     No, ma'am.

18           Q     At any time did you give Mr. Sandt permission  
19 to go onto your porch?

20           A     No. In fact, I was surprised that he went on  
21 my -- that he just slid open the door and went on my  
22 porch.

23                   MS. LaHART: Okay, nothing further. You can  
24 sit down, Ms. Benton.

25                               (Whereupon, the witness was excused.)

1 HEARING OFFICER TURCOTTE: Thank you. Next  
2 witness. Good morning. Were you sworn in?

3 THE WITNESS: No.

4 JASON MORELAND,  
5 being first duly sworn, testified upon his oath as  
6 follows:

7 HEARING OFFICER TURCOTTE: Okay. Thank you.

8 DIRECT EXAMINATION

9 BY MS. LaHART:

10 Q Would you state your name for the record,  
11 please.

12 A Jason Moreland.

13 HEARING OFFICER TURCOTTE: I'm sorry, can you  
14 spell that?

15 THE WITNESS: M-O-R-E-L-A-N-D.

16 HEARING OFFICER TURCOTTE: First name?

17 THE WITNESS: Jason.

18 HEARING OFFICER TURCOTTE: J-A-S-O-N?

19 THE WITNESS: Yes.

20 BY MS. LaHART:

21 Q Mr. Moreland, how are you employed? How are  
22 you employed? What do you do for a living?

23 A I work in the county at Flagler Humane Society.

24 Q Have you been taking care of Cooper since he's  
25 been there for quarantine?

1           A     Yes, over the last two months.

2           Q     What would you -- can you tell me about your  
3 observations of how Cooper behaves?

4           A     I have seen no aggression out of Cooper. I've  
5 had him around at least 30 different people.

6           HEARING OFFICER TURCOTTE: I'm sorry, you've  
7 seen no what?

8           THE WITNESS: No aggression out of Cooper at  
9 all.

10          MS. NIX: I object as to relevancy.

11          MS. LaHART: Ms. Nix opened the door by having  
12 Ms. Rodriguez testify that the dog was barking and  
13 growling when he was in the cage when she observed  
14 him.

15          HEARING OFFICER TURCOTTE: Overruled. Go  
16 ahead. You can finish. You saw no aggression, I'm  
17 sorry, I didn't hear the rest of that.

18          THE WITNESS: I've had him around at least 30  
19 people, all the kennel staff, all the cat staff,  
20 everybody in the lobby. They love him to death. He  
21 met two complete strangers yesterday and was loving  
22 all over them.

23          THE COURT REPORTER: I can't hear him.

24          HEARING OFFICER TURCOTTE: I'm having a hard  
25 time understanding you.

1 THE WITNESS: I've had him playing in play  
2 groups with several dogs at one time.

3 MS. LaHART: Nothing further. Thank you.

4 HEARING OFFICER TURCOTTE: Any cross?

5 CROSS-EXAMINATION

6 BY MS. NIX:

7 Q Only to ask that, do you know that Cooper is a  
8 dangerous dog?

9 A Yes.

10 Q And regard -- and you still have him go out to  
11 play with other dogs that are at the humane society?

12 A After he was off his quarantine, I've had him  
13 around other dogs.

14 MS. NIX: Okay, thank you.

15 MS. LaHART: Nothing further.

16 HEARING OFFICER TURCOTTE: Thank you, Mr.  
17 Moreland.

18 (Whereupon the witness was excused.)

19 HEARING OFFICER TURCOTTE: Next witness. Good  
20 morning.

21 THE WITNESS: Good morning.

22 MS. LaHART: Would you state your name for the  
23 record, please.

24 THE COURT REPORTER: What?

25 HEARING OFFICER TURCOTTE: I'm sorry, can you

1 start over again.

2 THE WITNESS: It's Joseph Pimentel,  
3 P-I-M-E-N-T-E-L.

4 HEARING OFFICER TURCOTTE: Thank you. Were you  
5 sworn in?

6 THE WITNESS: No, I wasn't, ma'am.

7 JOSEPH PIMENTEL,  
8 having been sworn, testified upon his oath as follows:

9 HEARING OFFICER TURCOTTE: Is anybody else  
10 testifying that hasn't been sworn in?

11 MS. LaHART: I have no more witnesses.

12 HEARING OFFICER TURCOTTE: Okay, thank you.

13 DIRECT EXAMINATION

14 BY MS. LaHART:

15 Q Good morning, Mr. Pimentel, thank you for being  
16 here. Can you tell the hearing officer where you came  
17 from this morning?

18 A Ellington, Florida, over by Sarasota.

19 HEARING OFFICER TURCOTTE: What was the  
20 question?

21 MS. LaHART: Where he came from this morning.

22 HEARING OFFICER TURCOTTE: Okay, thank you.

23 BY MS. LaHART:

24 Q What do you do there?

25 A I own a rottweiler rescue, 100 percent no-kill



1 sanctuary.

2 Q What is your background in dealing with dogs?

3 A I have 40 years experience, 20 with german  
4 shepherds. My dad was a breeder/trainer and we always  
5 had german shepherds. In 1997, '98, I switched to  
6 rottweilers, and I've been doing the same since. Except  
7 for breeding, there's too many rescues out there.

8 Q Are you willing to take Cooper?

9 A Yes, ma'am.

10 Q How do we know that if you take Cooper there's  
11 not going to be another incident like there was with Mr.  
12 Sandt?

13 A The only one that deals with the aggressive  
14 dogs that come into my compound is me. We kind of bond.  
15 I have seven other aggressives right now. They have  
16 10x10 inside kennels that are covered, 10x10 outside  
17 kennels that are covered, and locks on the cages.  
18 The only one that has the key to those locks is me. The  
19 only one that feeds them is me. The only one that shows  
20 them attention is me.

21 MS. LaHART: Nothing further.

22 HEARING OFFICER TURCOTTE: Ms. Nix.

23 MS. NIX: I don't have any questions. Thanks.

24 HEARING OFFICER TURCOTTE: Okay, thank you, Mr.  
25 Pimentel. Is there anything else before closings?

1 MS. LaHART: No. Can we take five minutes?

2 HEARING OFFICER TURCOTTE: Yes, please.

3 (Thereupon, a short break was taken.)

4 HEARING OFFICER TURCOTTE: Okay. We're back on  
5 at 10:21 and we're going to go ahead and do  
6 closings, unless anybody has anything else before we  
7 get to that. Okay, Ms. Nix.

8 MS. NIX: Thank you, Your Honor. Your Honor,  
9 it's been uncontested fact that Cooper was declared  
10 to be a dangerous dog. That classification was  
11 upheld and that's the classification that Cooper  
12 has. There was testimony today regarding Mr.  
13 Sandt's injuries, which we, of course, contend is a  
14 severe injury. There are medical records that were  
15 submitted into evidence, photos, his own testimony,  
16 that the definition of severe injury is met, in that  
17 it's any physical injury that results in multiple  
18 bites or disfiguring lacerations requiring sutures  
19 or reconstructive surgery.

20 As far as whether or not the attack was  
21 provoked, I don't -- I want to kind of clarify so as  
22 not to muddy the waters of whether or not it was  
23 provoked. 767.13 (1), of course, states that if a  
24 dog that has previously been declared dangerous  
25 attacks or bites a person or a domestic animal

1 without provocation, and then it has language about  
2 it being immediately confiscated and thereafter  
3 destroyed.

4 While the City's position, and Mr. Sandt's  
5 testimony supports, that it was not provoked, this  
6 isn't the only section under which Your Honor needs  
7 to, of course, look at in making your decision  
8 today.

9 The scope of today's hearing is confined to, of  
10 course, Ms. Dottye Benton challenging Palm Coast's  
11 determination, but it's that her dangerous dog  
12 attacked and caused the severe injury to a victim.  
13 It can be looked at also as attacked and bit without  
14 provocation of the victim, but the city contends  
15 that this is a severe injury; the dog is a dangerous  
16 dog; it attacked Mr. Sandt and caused the severe  
17 injury. Those are the questions, did it bite the  
18 victim and did it cause a severe injury. And the  
19 answers to that is yes and yes.

20 The evidence and testimony have shown that  
21 Cooper was previously declared to be a dangerous  
22 dog, with that classification upheld and not  
23 appealed. The classification is not to be argued,  
24 that ship has sailed. Cooper is a dangerous dog and  
25 the statute and the city code should be applied

1 accordingly. And that is what the city did in  
2 making its determination.

3 Cooper attacked and bit and caused multiple  
4 bites and a severe injury to a human being, as the  
5 severe injury is defined in the state law and the  
6 city code.

7 Mr. Sandt testified that this dog attacked him  
8 from behind; that this was an unprovoked attack.  
9 This dangerous dog attacked and disfigured the man's  
10 face and it also bit his legs, hands and face  
11 multiple times. You've seen the gruesome photos of  
12 his unfortunate severe injuries. This fact pattern  
13 fits perfectly into the dangerous dog statute,  
14 mandating a dangerous dog such as this be  
15 euthanized.

16 The legislative findings as to Chapter 767  
17 state that "the legislature finds that dangerous  
18 dogs are an increasingly serious and widespread  
19 threat to the safety and welfare of the people of  
20 this state because of unprovoked attacks which cause  
21 injury to persons and domestic animals; that such  
22 attacks are in part attributable to the failure of  
23 owners to confine and properly train and control  
24 their dogs; that existing laws inadequately address  
25 this growing problem and that it is appropriate and

1 necessary to impose uniform requirements for the  
2 owners of dangerous dogs." The intent of the  
3 legislature in drafting the laws, the laws of the  
4 city applies and the laws that the city applied in  
5 this instance.

6 Further, just to address a few things, while  
7 the city contends that the burden is preponderance  
8 of the evidence here, the city would contend that  
9 the facts clearly meet a clear and convincing  
10 evidence standard, if necessary. The law is clear  
11 and plain when you read 767.13, Subsection Two.

12 As far as Mr. Sandt's testimony and what he has  
13 testified to or stated to the Animal Control  
14 officers, he first spoke with the Animal Control  
15 officers on March 1st, before he hired any attorney  
16 for whatever personal injury thing he may or may not  
17 be going for. He testified that he only wanted to  
18 meet the dog if it was friendly. His testimony and  
19 his statements haven't changed, whether he was  
20 talking to the Animal Control officer, writing his  
21 affidavit on March 12th, giving his testimony this  
22 morning.

23 And the city would say the evidence and  
24 testimony has shown that the city's determination  
25 strictly followed the application of state law and

1 the city code to this fact pattern, and that the  
2 mandated outcome is that this dog shall be  
3 euthanized.

4 When you read the statute, the word "shall" is  
5 used as to euthanasia. There are not options  
6 addressed by the statute. If they wanted the dog to  
7 go to a place where it could be rehabilitated, that  
8 should have been done before it attacked someone  
9 else.

10 And the city would ask -- respectfully request  
11 that, based upon the evidence of record and  
12 testimony heard, that you apply the state law and  
13 city code and uphold the decision to euthanize this  
14 previously declared dangerous dog. Thank you.

15 HEARING OFFICER TURCOTTE: Ms. LaHart.

16 MS. LaHART: Thank you. The evidence that  
17 you've heard is that Cooper is a territorial,  
18 protective dog. You have not heard any evidence  
19 that he is aggressive or vicious. You heard from  
20 the young man who has been caring for him at the  
21 animal shelter the last two months that he is sweet  
22 and gets along with everybody, including other dogs,  
23 including strangers.

24 Mr. Sandt, after being told that Cooper was  
25 dangerous, took it upon himself to enter a portion

1 of the home that he had not been invited to and to  
2 bend over a dog that he had been warned about and he  
3 got bitten in the face and, unfortunately, it was a  
4 very serious bite. He stated that he was a man of  
5 God and he wasn't going to sue my client, but  
6 apparently changed his mind when he thought that  
7 that might be a windfall for him.

8 There are contradictory -- there is  
9 contradictory testimony. It is your exclusive job  
10 to determine who is lying and who is telling the  
11 truth. I think that Ms. Benton is a very sincere  
12 person. She took him to the hospital. She paid the  
13 bill. She said that she is willing to let Cooper go  
14 to save his life. There has been no testimony given  
15 that Cooper cannot be maintained in a way that  
16 protects the general public.

17 As I have indicated before, there was serious  
18 due process problems with the city's ordinance, at  
19 least at this hearing. The city brought the victim,  
20 instead of simply reading the affidavit, that's an  
21 improvement, but there are still no procedural rules  
22 that govern how this proceeding takes place.  
23 There's nothing regarding who has the burden of  
24 proof or what the standard of proof is. There's  
25 nothing allowing people who they use to subpoena

1 witnesses to be here to do that.

2 Ms. Nix stated that it is uncontested that  
3 Cooper was declared a dangerous dog. That is, in  
4 fact, contested. Cooper was declared a dangerous  
5 dog by an entity that no longer had any jurisdiction  
6 to do so. Jurisdiction over a dog, which in every  
7 tort case I have, my opposing counsel loves to  
8 remind me, is property. Jurisdiction over the  
9 property requires that the property be in the  
10 jurisdiction. It is in rem jurisdiction. That's  
11 why the state law says that you cannot move a  
12 dangerous dog when it's being investigated.

13 Furthermore, the City of Palm Coast likes to  
14 use the euphemism that Cooper is going to be --  
15 should be euthanized. Cooper is a healthy dog.  
16 Euthanasia means mercy killing. There is nothing  
17 merciful about killing him.

18 The statute does allow you, as the magistrate,  
19 to make a decision based upon the nature and  
20 circumstances of the injury, the likelihood of  
21 future threats to public safety and welfare.

22 MS. NIX: Objection, that is the 767.12.

23 HEARING OFFICER TURCOTTE: Overruled, I'll let  
24 her finish.

25 MS. LaHART: The city maintains that discretion



1 does not apply in the case of a dangerous dog and  
2 you shouldn't consider whether he was provoked,  
3 because he was already designated dangerous, all be  
4 it by an entity that had no jurisdiction to do that.  
5 It would be a due process violation not to consider  
6 the circumstances surrounding the bite.

7 If this decision is upheld, there will  
8 certainly be an appeal. And if Ms. Benton prevails,  
9 it is possible that Cooper would be stripped of any  
10 sort of dangerous dog designation. It is in the  
11 best interest of the public, as well as Cooper, for  
12 the dog to be allowed to live out its life in a  
13 manner in which he will be kept safe, with someone  
14 who is qualified, experienced dog handler and is  
15 able to keep him from having another incident like  
16 with Mr. Sandt.

17 It is not necessary that the dog be killed.  
18 And to do so is in violation of my client's  
19 constitutional rights, I believe. Thank you.

20 HEARING OFFICER TURCOTTE: Thank you. Okay,  
21 we'll take a break so I can get together my order.  
22 And ten, 15 minutes, maybe.

23 (Thereupon, a short break was taken).

24 HEARING OFFICER TURCOTTE: We're back on.  
25 Okay, as to this matter, I want to first address the

1 notice issues. I did not find that a failure to  
2 list every single hearing procedure on the notice of  
3 hearing, or on the letter, is a violation of due  
4 process. The information is available on the  
5 Florida statutes and the city code. Also, I would  
6 note that Ms. Benton clearly had notice. She  
7 requested this hearing, she's present here today  
8 with her legal counsel.

9 The standard for the hearing today is under  
10 767.13, Subsection Two, of a dog that has previously  
11 been declared dangerous and attacks or causes severe  
12 injury to or death to any human, the owner is guilty  
13 of a felony of a third degree, et cetera. In  
14 addition, the dog shall be immediately confiscated  
15 by an Animal Control authority, placed in  
16 quarantine, if necessary, for the proper length of  
17 time or held for ten business days after the owner  
18 is given written notification under 767.12 and  
19 thereafter destroyed in an expeditious and humane  
20 manner.

21 The first element of that is whether the dog  
22 has previously been declared dangerous. The  
23 evidence and testimony show the dog was previously  
24 declared dangerous by the City of Port Orange. That  
25 determination was not appealed, it is final, and I'm

1 not here to determine the merits of that, but just  
2 simply whether it has been declared dangerous, which  
3 it has.

4 The next element is whether the dog attacked. I  
5 do find that Mr. Sandt's testimony has been  
6 consistent since day one. The first statement he  
7 provided on March 1st -- excuse me, he wrote in his  
8 statement, that the dog, you know, bit and shook him  
9 and he tried to get the dog off. The dog kept  
10 attacking him. He sustained an injury to his hand  
11 and his leg. Medical records and the photos that  
12 have been admitted into evidence also support that.  
13 Ms. Benton does not dispute that the bite occurred.

14 The last element is that the dog caused severe  
15 injury to any human. Severe injury is defined in  
16 Section 767.11 and Section 8-28 of the city code is  
17 the same definition, it requires -- excuse me, it  
18 means "any physical injury that results in broken  
19 bones, multiple bites or disfiguring lacerations  
20 requiring sutures or reconstructive surgery." I  
21 find that the evidence clearly shows he had multiple  
22 bites and disfiguring lacerations requiring sutures  
23 or reconstructive surgery.

24 I will note for the record that Ms. Benton's  
25 testimony has been inconsistent. Her statement to

1 the animal control officer was that had she opened  
2 the door because Mr. Sandt allegedly asked to pet  
3 the dog. And I will also say that, even if he did  
4 ask to pet the dog, there is no evidence of  
5 provocation, which, again, isn't relevant to the  
6 proceeding under Subsection Two of the statute, and  
7 not Subsection One, but I'm making that one of my  
8 factual findings. Today Ms. Benton's testimony was  
9 that Mr. Sandt opened the door. Again, regardless  
10 of who opened the door, the attack occurred, there  
11 was a severe injury.

12 I think all of the elements of the statute have  
13 been met. I do not have discretion on what to do  
14 under the circumstances. The statute clearly  
15 provides the dog shall be -- after the appropriate  
16 notice, of course, the dog shall be destroyed in an  
17 expeditious and humane manner, so I will be  
18 upholding the City's determination.

19 Pursuant to Section 8-40B, the dog may not be  
20 destroyed in less than 30 calendar days from receipt  
21 of my order, so that will be part of my order. I  
22 will order the dog to continue to remain confined  
23 through the appeals process. Of course, I'm sure  
24 you're familiar with that, you certainly have a  
25 right to appeal my decision.

1           And that is final order with regard to agenda  
2   item case number 2018 021254. If there is nothing  
3   further, there's no unfinished business, old  
4   business or new business to report, the next Animal  
5   Control hearing will be June 5, 2018 at ten a.m.  
6   Thank you.

7           MS. LaHART: Will you be entering a written  
8   order?

9           HEARING OFFICER TURCOTTE: Yes, a written order  
10   will be coming in the mail. And for the record, the  
11   hearing is adjourned at 10:59.

12           (Whereupon, the hearing was concluded.)  
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## 1 CERTIFICATE OF REPORTER

2  
3  
4 STATE OF FLORIDA )  
5 COUNTY OF FLAGLER )  
6

7 I, SUSAN WEISHAAPT, Notary Public, State of  
8 Florida, I was authorized to and did stenographically  
9 report the foregoing proceedings; and that the  
10 transcript, pages 4 through 93, is a true and accurate  
11 record of my stenographic notes.  
12

13 I FURTHER CERTIFY that I am not a relative, or employee,  
14 or attorney, or counsel of any of the parties, nor am I  
15 a relative or employee of any of the parties' attorney  
16 or counsel connected with the action, nor am I  
17 financially interested in the action.

18 Dated this 29th day of May, 2018.  
19  
20

21 

22 SUSAN WEISHAAPT  
23  
24  
25

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