



## **MINUTES**

### **Animal Control Hearing**

**Tuesday, November 15, 2016, at 1:00 p.m.**  
**Palm Coast City Hall**  
**The Seminole Woods Conference Room**  
**160 Lake Avenue, Palm Coast, Florida 32164**

**A. Call to Order and Pledge of Allegiance.**

The meeting was called to order at 1:02 P.M. by Nicole R. Turcotte, Esquire, followed by the Pledge of Allegiance.

**B. Swearing-in of Staff.**

City Staff: Judith Flammer, Eva Boivin.

Respondents: Charles E Kelemen, Jeanette E Kelemen, Sandra Preiter.

Sign Language Interpreter: Cheryl Santana.

Complainants: Dolores Purtell, Matthew Purtell.

**C. October 4, 2016 Minutes Approved.**

**D. Case Heard**

**AI# 1**

**CASE NO. 2016091348**

**Acct # 680967**

**EB**

*City of Palm Coast vs. Charles E and Jeanette E Kelemen*

**3 Eagle Pass**

*Palm Coast Code Section 8-40 Determination of Dangerous Dog Classification*

### **SYNOPSIS:**

Nicole Turcotte, Hearing Officer, addressed the Hearing Attendees explaining that she has reviewed the file & is familiar with the City Code. Her role as a Hearing Officer is to follow the City Code. It is her obligation to comply with whatever the code tells her to do. Today she will be making two findings:

1. To determine whether the dog is dangerous and the City Code provides a specific definition for whether a dog is dangerous.
2. Whether the dog caused a severe injury, and again the City Code provides a specific definition for what that is. Her role is simply to follow what that is.

Ms. Turcotte asked what the City will be recommending.

Eva Boivin, Animal Control Officer for the City of Palm Coast, stated that the City is recommending that “Buddy” be declared dangerous within the City of Palm Coast and that he be registered as such by November 28<sup>th</sup>.

Bill Reischmann, City Attorney, spoke on behalf of the City. He stated that there was a preliminary classification of this animal as dangerous based on circumstances that confronted the City. That classification determination was appealed by the animal’s owner in a timely manner pursuant to Code and State Statute, which is why we are here. We (the City) believe that the evidence is blatantly clear and undisputed that the facts that are necessary to establish the dog “Buddy” as a dangerous dog under the City Code and Florida Statutes as well.

Ms. Turcotte:

I wanted it to be clear on both sides is that the City Code has three things that I can do today.

1. Is to find that the animal is not dangerous, meaning that it doesn’t meet the definition under the code for a dangerous animal.
2. Is to find that the dog is dangerous but did not cause a severe injury.
3. Is to find that the dog is dangerous and did cause a severe injury.

Ms. Turcotte:

Again I wanted it to be clear to both sides that if I agree with the City’s determination, initial finding that the dog is dangerous and caused severe injury, the only thing that I can order today is that the dog be put down. I cannot order that the dog just be registered and submitted to conditions. If I find those two things that’s the only thing that I can do.

If I find that the dog is dangerous but did not commit a severe injury, then I have the discretion to impose conditions.

I want that to be clear to both sides before we proceed and make sure everybody wants to proceed understanding that.

Mr. Reischmann:

The City wishes to proceed. The City believes that under the circumstances that there was an aggressive bite. The attack was an attack and that between the photograph evidence and the testimony of the victim that it is undisputed that it was a severe injury on a human being.

Ms. Turcotte:

OK, so then the City will be essentially be recommending that I turn order to have the dog destroyed in a humane and efficient manner.

Mr. Reischmann:

If that is your determination, given the facts and circumstances of this case that may be what is necessary.

Ms. Turcotte:

We haven’t introduced ourselves, but, Mr. & Mrs. Kelemen, would you like to proceed?

Jeanette E. Kelemen:

Yes.

Ms. Turcotte:

The City is going to go first, I just wanted to be sure you wanted to go forward with this hearing before we continue.

Mrs. Kelemen:  
Yes, I want to speak.

Ms. Turcotte:  
The City will present their evidence first and then you will have an opportunity to proceed.

Eva Boivin, Animal Control Officer for the City of Palm Coast gave her statement as follows:  
I received a report of a dog bite on September 27, 2016. I responded to the victim's address which is 3 Eagle Pass. I met with Dolores Purtell and her son Michael Purtell, who are here today. Ms. Purtell told me that while she was riding her bike that morning, around 8:00, she was riding by 3 Eagle Pass, Ms. Purtell lives at Eagle Harbor. When she came around the corner she noticed that her neighbors were outside with their small dogs and a medium dog on a harness. They were in their yard. She noticed that the dog had slipped the harness. She got off her bike immediately, stood there thinking the dog was just going to sniff her and walk away, but he did not, and he latched onto her leg. The dog was called back right away by the owner and she retreated home and went to the emergency room for treatment.

When I arrived at 3 Eagle Pass and met with the owners, who told me the same story. They were out with the dogs, the one dog "Buddy" had slipped his harness, went down to the street and bit Ms. Purtell on the leg. They called "Buddy" back, he came back to the house, to the owner and they immediately put him back inside.

Rabies information was obtained at that time, which the dog was current, and he was placed on a ten day home quarantine.

Photos were taken of the dog and photos were sent to me by Mike Purtell of his mother's injury. I received affidavits from both parties on 9/28 and that's when we started discussing possible dangerous dog.

The K-9 was released from quarantine on October 11<sup>th</sup>, the dog was alive and well.

The Dangerous Dog paper work was then sent out October 21<sup>st</sup> and also signed for by the owners of Buddy and then we received the affidavit requesting that we have the hearing.

Mr. Reischmann:  
For the record I would like to make sure that the City's files received into evidence including and not limited to the photos of the wound.

Ms. Turcotte:  
Yes, that will be admitted, thank you. Do you have anything else, Eva?

Ms. Boivin:  
That's it.

Mr. Reischmann:  
The City would like to have the victim, if she would, tell us what happened.

Ms. Turcotte:  
Madam, can you state your name and address for the record, please?

Dolores Purtell:  
Dolores Purtell, 5 Eagle Harbor Trail, Palm Coast, 32164

Ms. Turcotte:

What would you like to say today?

Ms. Purtell gave her testimony: I normally, my routine daily, between 7 and 9, I go around the neighborhood block. I walk or ride my bike. This I've done daily since I moved there 5 years. I've never been afraid. In September, I noticed her, I don't know your daughter's name (directed to Sandra Preiter). I was going to my corner and I noticed that she had two little puppies and I was going to slow down, just to say "Hello". I normally have seen this dog with this gentleman, on a leash. When he sees me coming down his street, I kind of watch because I realize the dog is on a leash and sometimes he'll walk the dog back to the garage when I pass by. I never thought the dog was vicious, because I've never seen the dog up close because he's always held him back. But I'm aware that somehow between 7 & 9 the dog is probably going to the bathroom or something. So anyway, I slowed down the bike to say "Hello" and out of the corner of my eye I saw this dog coming. I wasn't kind of afraid because I wasn't aware and the dog came up to my leg and I thought he was going to sniff, you know how dogs sniff a little bit? Well, he didn't, he grabbed my leg and he bit, some of the calf. I just was startled. I looked at my leg and said "What did you do?" because I saw the blood coming into my sneaker and the skin was flopping. So I walked my bike back to the house and my son was there & I said "Get me a towel". But the blood was really coming. So anyway, we got in the house & he said "Mom, you got to go to the Emergency Room. So, we went to the Emergency Room and they stitched, whatever they did, then told me to come back.

I went back the second time and they said it's not healing. They gave me an antibiotic. For three weeks I was on antibiotics. Then we had the hurricane, and they told me that I shouldn't sit in a chair. I should lay down and raise my feet, so, that's what I did up until the hurricane. So that came and we went to my daughter in Georgia. So there I wasn't doing what I was supposed to do. I mean I did at her house lay down. But anyway, then we came back, I went to the Emergency Room and they said that they can't handle this, you've got to have a professional person look at this wound. So, the Emergency Room contacted Dr. Levine and they got me an appointment in the next couple of days. I've been going to him ever since, and the wound is healing. I can tell that it's smaller, it's not as big as when the dog bit me. But I'm still going to him.

Ms. Turcotte:

Let me ask you a question. What does Dr. Levine do? What kind of doctor.

Ms. Purtell:

He's a wound specialist.

Ms. Turcotte:

Are you consulting him for cosmetic reasons or is he rehabilitating your injury?

Matthew Purtell:

Rehabilitating the injury, it's not cosmetic.

Ms. Turcotte:

OK, the other question I had for you was, when the dog approached you, you said you got off your bike and you were standing there. You said you thought he was going to sniff you. Was he showing teeth or growling, or what was the dog's demeanor when he approached you?

Ms. Purtell:

He just came from the corner & I didn't do anything, I don't know. I don't pay attention to his demeanor, I didn't expect him to bite me. I thought he would just be friendly of some sort, I mean they do kind of sniff a little bit. I thought that would be whatever and the man would probably come and, I just knew that he wasn't on the leash. That I've seen him since these people are visiting or whatever. The dog has been held back.

Ms. Turcotte:

OK, so the answer to my question then is that you didn't observe the demeanor of the dog when he was approaching you? It's OK if you don't, I'm just learning here.

Ms. Purtell:

I don't, I mean he didn't growl or anything. He didn't make any noise that I was aware of, that I would have been maybe a little afraid.

Ms. Turcotte:

Did he stop and sniff you before he bit you.

Ms. Purtell:

No, no, no he didn't sniff. That's what I thought he was going to do, but no he just grabbed, no he didn't sniff at all. He came and, then my first thought was that he was going to just sniff to see if I was, I don't know, a good person or if I was scared of the dog or something, I don't really know. No, he didn't sniff, it didn't growl, he just grabbed.

Ms. Turcotte:

Did he stop at any point in time or did he just come running and bit you right away?

Ms. Purtell:

He didn't stop until he called him otherwise I don't know how long, I don't know because he didn't let go. He didn't just bite & run. The man had to come for him. Or chase him. My concern, I have started to go around the neighborhood again. But, when I pass by their house, I'm very nervous. And it's sad because I know Ray, and over the years we've talked, they have a dog. My concern, honestly, I know they've taken precautions. But as people, sometimes you forget to lock a door & I'm afraid somehow that animal will get out of that house that they're not aware of. Across the street are two little children and next door there's a little boy.

Ms. Turcotte:

I understand. Sir, are you providing testimony today?

Matthew Purtell:

Myself?

Ms. Turcotte:

Yes.

Matthew Purtell:

Just exactly what she just said right there.

Ms. Turcotte:  
Can you just tell me your name and address for the record?

Matthew Purtell:  
Matthew Purtell, 5 Eagle Harbor Trail, Palm Coast.

Ms. Turcotte:  
Did you personally witness this incident?

Mr. Purtell:  
I did not witness, no, not the bite. But I was there to take her to the emergency room

Ms. Turcotte:  
Another question I had for you Mrs. Purtell. Did you have stitches?

Mrs. Purtell:  
Yes, and then they removed them because it wasn't healing properly, so Dr. Levine had started all over. He debrided it, and whatever he does.

Mr. Purtell:  
There were three or four, I can't remember, I think it was four but they were very loose stitches. That was at the first Emergency Room visit. Then we had to go to two follow ups at the Emergency Room, they wanted us back. At the third visit, the head of the ER, the ER doctor, was like, no, no. She didn't touch it. She decided no, you need to go to a wound care specialist.

Mr. Reischmann:  
May I inquire?

Ms. Turcotte:  
Yes

Mr. Reischmann:  
Can I approach him?

Ms. Turcotte:  
Yes.

Mr. Reischmann:  
Ms. Purtell, I just want to show you this to identify. Is this a picture of the wound that you suffered on your leg?

Ms. Purtell:  
Oh, yes, I guess so. They took pictures.

Mr. Reischmann:  
OK, this next picture is this afterword when it had healed a little bit?

Ms. Purtell:  
About the same.

Mr. Reischmann:

Thank you. I'm sure it's been admitted.

Ms. Turcotte:

I just want to make sure what you're looking at.

Ms. Boivin:

One is the front of the shin and one is the backside of the shin.

Mr. Reischmann:

So there were multiple lacerations & multiple bites. You were in the street weren't you when, you weren't on private property you were actually in the street.

Ms. Purtell:

I was in the road. I don't go on anybody's property.

Mr. Reischmann:

And have you been told or do you know whether there is going to be a permanent scar on your leg? Is there going to be scarring? Permanent scarring?

Mr. Purtell:

The doctor hasn't said it, but it's evident, if you look at it now.

Ms. Turcotte:

Did the dog bite you more than once, I'm just looking at this photograph, if there are punctures on the front and the back. Did he wrap his whole jaw around your leg or did he bite you twice?

Ms. Purtell:

From what I remember he kind of grabbed and was trying to do more from the back. His whole mouth was the back part.

Ms. Turcotte:

So it was just one bite? Before he let go?

Ms. Purtell:

I don't know what you mean by one bite. He did the front, the bone and the back part was in some of his mouth.

Ms. Turcotte:

What I'm trying to understand is, if this is your leg & he came up and bit you, did he latch on and then eventually get taken off? Or did he bite you multiple times before he was taken away? Released and then rebite?

Ms. Purtell:

I don't remember, it happened so quick.

Ms. Turcotte:

That's ok, if you don't know that's perfectly fine. You're under oath so you don't want to testify if you don't know. Did you have something to say sir?

Mr. Purtell:

May I say what she told me? She did say that the dog latched on and shook it's head.

Ms. Turcotte:

And shook it's head. OK. Mr. & Mrs. Kelemen, you've asked for this hearing today. Whoever wants to go first, if you could state your name and address for the record. You are free to question the City and you are free to present your own evidence. I'm here to listen to whatever you have to say.

Jeanette Kelemen:

My name is Jeanette Kelemen, I live at 3 Eagle Pass, Palm Coast. I'm living with my parents because I'm from Texas. We did not like living in Texas so my parents are letting us live here with our three dogs until we find our own place. I have two Boston Terriers and the third dog is a puppy. One of my dogs, her name is Bebe, she was pregnant at the time.

Ms. Turcotte:

This was your Boston terrier you said? You had a pregnant Boston terrier?

Jeanette Kelemen:

Yes. We thought she had a problem with her intestines, but she was pregnant. She gave birth to three puppies, one girl and two boys. "Buddy" is one of the boys.

Ms. Turcotte:

I want to hear what you have to say but I want to focus on what happened in this incident. So, I would like to focus on the incident that happened with Mrs. Purtell.

Ms. Kelemen:

When I get up first thing in the morning we take the dogs out then we come back in the house. And before 8:30 we always have to get out of the house looking for a job. Then we have time to take the dogs out again, I have two dogs and my husband has "Buddy". We were walking around down the curb and I told my husband there's somebody coming, a lady coming. "Buddy" was going to the bathroom and he was startled, my husband was trying to hold him but "Buddy" got sneaked out of the harness. He ran over and bit her, my husband yelled, "Buddy, stop it". He ran over by the garage. This is the first time I ever saw "Buddy" bite, he never, ever bit anyone. This is the first time I've ever seen it. He's never done that before. And after that she came here and saw Buddy in the crate during the day.

Ms. Turcotte:

When you say "she" do you mean Eva?

Ms. Kelemen:

Yes, Eva came, Buddy staying in the crate, in the morning he stays in the crate. We do not let him running around. Sometimes if my mother feels like it Buddy can come into the living room and stay in there. If he doesn't behave he goes back in the crate. When I'm out here and my parents aren't here the dogs stay in the crate all the time. When I go to bed they stay in the crate all the time. I bought a different harness and I bought a muzzle. I do not take the dog out by the road, I stay right behind my mother's house. I take him for a walk where nobody's around and I decided to have a dog trainer because he's anxious when people are around. He's not around my family but he is, when people come in, I take him and put him in my bedroom and close the door until he calms down.



Ms. Turcotte:

Is there anything else you would like to add specific to the incident to when Buddy bit Mrs. Purtell?

Ms. Kelemen:

I came over to her house after buddy bit her and her son came to the door and I told him Buddy was up to date with all his shots.

Ms. Turcotte:

I understand that, what I'm asking is, did you personally see the incident with Mrs. Purtell?

Ms. Kelemen:

Yes, I saw it, she was riding her bike, but he came over and bit her.

Ms. Turcotte:

OK, so you acknowledge that he bit her. Was he aggressive, did he appear to be aggressive in your opinion when he bit her? In other words was he showing his teeth, was he growling

Ms. Kelemen:

I didn't see his teeth, I didn't hear him growling. He just got out of the harness, I thought he might running looking to her, maybe chase her, something.

Ms. Turcotte:

OK, Mr. Kelemen, would you like to say something today?

Charles Kelemen (through translator Cheryl Santana):

Yes. Charles Kelemen, 3 Eagle Pass. I know that the lady typically rides her bike routinely every day and I figured that she would come out. I didn't know which direction, left or right, but it was at the wrong time because Buddy was ready to do #2. I was trying to hold him so that he wasn't close to the lady riding her bike because there were two sides. But somehow, Buddy was too strong, and somehow he got out of his harness. I guess it wasn't properly put on. But somehow I started screaming, I was screaming to get his attention. The lady, she stopped riding her bike and in the back of my mind I'm thinking "don't stop, keep riding, keep riding your bike, don't stop". But what I saw was Buddy, I thought he was going to sniff her, but he ended up biting her. It really was very upsetting to me, I was angry, I was upset and I called the dog back and I threw the leash on the floor because I was so upset.

Ms. Kelemen:

I have a dog trainer, I gave her a copy, she attached it.

Ms. Turcotte:

Yes, I have a letter from, I'll put this on the record, a letter from Toni Medina, is that your dog trainer?

Ms. Kelemen:

Yes, she's the one that gave me a new harness, it's a special one for dog training.

Ms. Turcotte:

I do understand. I do have her letter, and what appears to be a brochure and a newspaper ad for Toni Medina. Is there anything else that you, madam, what is your name?

Sandra Preiter:

Sandra Preiter, I'm Jeanette's mother. 3 Eagle Pass. They are staying with us until they get jobs and another house. This is a temporary situation.

Ms. Turcotte:

And did you personally witness this event.

Sandra Preiter:

I wasn't even in the State when it happened. But I would like to state that this dog trainer is specific for aggressive dogs, for dogs that are aggressive. And that I have never seen Buddy be aggressive, never. He's very gentle, usually, with us. I think most of this is because he was startled. I really do, but I wasn't there so I can't testify to be honest with you.

Ms. Turcotte:

Does anybody have anything else they would like to say, the City, witnesses, victim?

Mr. Reischmann:

Yes, just to sum up. It's an unfortunate incident and the City certainly understands. We all love animals and almost everyone in the room who owns an animal wishes this wouldn't happen. But there is a reason in the State Law why certain animals are defined and determined to be classified to be dangerous. The reality is that if the dog is predisposed, if the animal does have these tendencies it is classified. Accidents happen, dogs get loose, some dogs get loose and they don't bite. State Statute is very clear, under certain circumstances, this is not a free bite, you don't get a free bite. The Statute is very clear, a dangerous dog is one that has aggressively bitten, not just attack but bitten, and has inflicted severe injury on a human being. This was on public property. Severe injury is defined, and I think the evidence is there and there is no dispute as to what happened, and there's no dispute as to what the injury is. Physical injury resulting in multiple bites, multiple punctures, the photos are very clear, disfiguring lacerations that require surgery and sutures, reconstructive surgery. The testimony of the victim, Mrs. Purtell, made it very clear that all of those have occurred. To me it's very clear that unfortunately the incident in this case clearly shows, the evidence shows, that this is a dog that meets all the definitions of State Statutes and Local Code as dangerous, and has to be classified as such, given that the injury in this case was severe. It's unfortunate but this is a situation where this is a strong animal. Mr. Kelemen said that Buddy was too strong for him, when he got off the leash. All it takes is one time for that to occur again and then there are kids across the street, and they are riding their bikes and we're all going to regret if that happens when we had this opportunity.

Ms. Turcotte:

Thank you. OK, so as I explained at the beginning of this hearing, it is my job to follow the City Code. As I mentioned there are two main definitions that I have to determine here today.

The first one is whether Buddy is a dangerous animal. The City Attorney went over this just a second ago, but I will do it again for the record and it will also be included in the written order that I am going to sign and that will be mailed to you. The City Code provides that "a dangerous dog is any dog that has aggressively bitten, attacked or endangered or has inflicted severe injury on a human being on public or private property, including the owners property."

The other thing that I am tasked with determining is whether Buddy caused a severe injury, and as the City Attorney just read to you, that includes any physical injury that results in broken bones, internal trauma, multiple bites, multiple punctures or disfiguring lacerations requiring surgery, sutures or cosmetic or reconstructive surgery.

I agree with the City Attorney in this case that this is not an easy situation, nobody likes to deal with these things, when I assume we are all animal lovers in this room. Unfortunately, it is my

job, like I said, to follow the code. Based on the evidence and testimony I have received, I do find that Buddy meets the definition for both a dangerous dog and also that he caused a severe injury.

That being said, as I said at the beginning of this hearing, the City Code, specifically Section 8-44 sub-section C, provides that if an animal is found by the Hearing Officer, which is me, to have aggressively attacked and caused severe injury or death to any human or domesticated animal, the animal shall be found to be dangerous and shall be held for 10 business days after the owner is given written notification and thereafter destroyed in an expeditious and humane manner unless an appeal of my final order is filed by you, the owner, 10 days after my order. You must file that in the Circuit Court in Flagler County.

So, to recap. I am finding that the animal is dangerous. I'm going to order that the City Code also requires me to provide a date. I am required to provide a date before which the destruction of the animal shall not take place. I believe by the time the City provides the required notification and the 10 days go by, that December 9<sup>th</sup> will give you sufficient time in order to file a notice of appeal with the Circuit Court if you so choose to do that. So, December 9<sup>th</sup> will be the date not before which destruction of the animal may take place. Do you have any questions for me? No questions? OK. Thank you for coming today and providing your testimony. Again, I'm sorry for this unfortunate situation.

**UNFINISHED BUSINESS:**

**E. None.**

**OLD BUSINESS:**

**F. None.**

**NEW BUSINESS:**

**G. None.**

**ANNOUNCEMENT OF NEXT MEETING:**

**H. Next Animal Control License Hearing – 12/6/2016 @ 1:00 P.M.**

**ADJOURNMENT**

**There being no further business, the meeting was adjourned at 1:38 P.M.**

*In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact Wendy Cullen, at 386-986-3718 at least 48 hours prior to the meeting or visit Palm Coast City Hall, 160 Lake Avenue, Palm Coast, FL 32164. If any person decides to appeal a decision made by the Animal Control Hearing with respect to any matter considered at such meeting or hearing, he/she will need a record of the proceedings including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made. The City of Palm Coast is not responsible for any mechanical failure of recording equipment.*

*All pagers and cell phones are to remain OFF while the Animal Control Hearing is in session.*