



## **MINUTES**

### **Animal Control Special Hearing**

**Tuesday, August 1, 2017, at 11:30 a.m.**  
**The Intracoastal Room at Palm Coast City Hall**  
**Community Wing Entrance**  
**160 Lake Avenue, Palm Coast, Florida 32164**

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

The meeting was called to order at 11:48 A.M. by Nicole R. Turcotte, Esquire, followed by the Pledge of Allegiance. Ms. Turcotte outlined the rules and procedures for the meeting. She noted that public comment will not be heard.

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

Appellee - City Staff: Barbara Grossman, Luis Mendez, Eva Rodriguez, Virginia Smith, Judi Flammer.

Attorneys Present: William Reischmann, Jennifer Nix.

Appellant - Flagler Humane Society Staff: Amy Wade-Carotenuto.

Attorney Present: Marcy LaHart.

Witnesses: John Rodrigo, Robert DeFranco, Lauren D. Driscoll, Katie Share.

**C. Case Heard**

**AI# 1**

**CASE NO. 2017061681**

*City of Palm Coast vs. Flagler Humane Society*

*1 Shelter Drive, "Channelle", a Spayed Female American Bulldog*  
*Palm Coast Code Section 8 40 Determination of Dangerous Dog Classification*

**SYNOPSIS:**

Ms. Turcotte, Hearing Officer asked if the Attorney's had a preference as to who would present an opening statement first. Mr. Reischmann did not have a preference, Ms. LaHart said the City could start.

City Attorney Reischmann presented his opening statement. "I'm here with my partner Jennifer Nix. Bill Reischmann for the City, we are the City attorney's representing staff and the City. This is a case, your honor, involving a six year old pit bull terrier dog named "Channelle". We are here today on the current owner's appeal, the current owner is the Flagler Humane Society. After the incident, which we will be talking about today and you'll hear evidence of. The then owner of the animal surrendered the dog to the Flagler Humane Society, that's the owner and they have the right under the statute and the code to, they have a standing to appeal the initial determination which is the record, which you have with the exhibits.

I would point out to you the hearing officer and the victim's affidavit, Mr. Grasso, Joseph Grasso, an older gentleman. His affidavit, very explicit, is containing the initial determination as well as some procedural information that is contained in the affidavits of Officer Rodriguez who is here today. There is a report from the Sheriff, which is exhibit D and of course, we will be presenting some medical records, which simply supplement the testimony and the sworn statement of Mr. Grasso. With that, your honor, we believe this case is really pretty straight forward. The evidence that's relevant is limited. This is a matter of whether or not this is a dangerous dog, which is defined not only in the State Statutes but in our Code of Ordinances and the facts in this case justify the initial determination, which we believe should be supported by your ruling today that this dog is deemed dangerous, because this dog got loose on April 5<sup>th</sup>, ran out of its house onto a public street; so this happened on public property; so all the defenses that could potentially could apply if it was on private property are not relevant. And ran by Mr. Grasso, according to his statement, and then turned around, came back and jumped up on Mr. Grasso, jumped up on his chest and then knocked him down on the street. The evidence is clear, or will be clear as contained in the initial determination that he broke his wrist. That he had to go to the Emergency Room, had to go to the hospital and have surgery, under general anesthesia with pins placed in. So, if you look at the definition in the code and statute it is very clear that the City has met its burden presented a prima facie case. That under 7.67 that this dog inflicted severe injury on a human being. That's step one. And that the City has done what it's needed to do because it did its initial investigation; obtained the affidavits, all of which were contained in the initial determination, or attached to the initial determination. The second part, of really the key facts or what's relevant here is that there was severe injury. The statute and our codes include one of the types of severe injury, which is broken bones. So, it would be the City's position that based upon what you have already, the initial determination, all the sworn statements, in there together with the documents with regards to the medical injuries, which support Mr. Grasso's sworn affidavit as to what happened that this dog is a dangerous dog, as the City found in its initial determination. We're asking that this court simply to uphold that. A couple more points. Number one, and I want to make it clear, that given that the statute and our amended code be consistent with statute, we're not asking that this matter invoke any destruction of the animal. That was never the determination, in fact the initial determination is very clear that there are simply some conditions that the City is requesting, which we believe are relevant and appropriate given the facts in this case. And the only other thing that we would to ask the court to consider the purpose of this hearing today is that, I think that both parties could go into a lot of testimony about the prior history of this dog and the owner and what's happened to the dog since it was quarantined. The people that have been seeing the dog since it's been quarantined. But I would submit to your honor that the statute creates pretty close limitations on what's relevant to that. And there's two things and really there's only two living creatures that can be the ones to know what happened on April 5<sup>th</sup>. One's the dog, and the dog's not here today and I don't know how I'd enlist a testimony, that it would be worthwhile and the other is Mr. Grasso. His statements are contained in his affidavit. And the other is the result, what the consequences of Chanelle's actions were on April 5<sup>th</sup>. Now, as to everything else, the City would submit, we're not intending to present any evidence as to the prior history of this dog. I just don't think that it's relevant. It may be relevant in other cases, dogs running loose and that sort of thing. The statutes places pretty close parenthesis around what's relevant in this case. Thank you.

Attorney Marcy LaHart. "This actually."

(NRT) "I'm sorry, can you identify yourself?"

"My name is Marcy LaHart. I'm with the law firm of Marcy I LaHart, PA in Gainesville, Florida. I am here on behalf of the Flagler Humane Society."

(NRT) "Thank you."

(MLH) "Do you need the address?"

(NRT) "No, that's fine. I believe you've already filed a notice of appearance, correct?"

(MLH) "Yes, I did."

(NRT) "Ok."

(MLH) "Opposing council is correct, that the dog cannot testify. Mr. Grasso needs to be here to testify if they want to meet their burden of proof. They cannot meet their burden of proof through hearsay. You stated that fundamental due process would be recognized in this proceeding. It is, first of all, you can't make a finding fact based on hearsay. Second of all, it is a violation of my clients due process rights if I am not able to cross examine Mr. Grasso. If the City intends to prove their case only thru hearsay, then I would respectfully ask that it be dismissed.

(NRT) Does the City have a response to that?

(WR) Yes, your honor. We recognize that this court has announced in the beginning that the formal rules of evidence do not apply to the fundamental due process. We well submit that this is the type of hearing where it's based upon the record. This is not a De Novo hearing. This is an opportunity as the statutes and code specifically says that at the hearing the owner or his or her representative and any other interested parties may present any evidence relevant to the determination of whether said animal is dangerous. That's what the statute says and that, excuse me, actually the statute doesn't say that, the statute simply says is that the City as the local government can whatever they want to do as far as the process. That's what the City of Palm Coast has adopted. That has always been the rule in the City of Palm Coast. What we're contending, your honor, is that this is an opportunity for the owner to come forward and try to explain how what happened on April 5<sup>th</sup> is inconsistent with the record that has been created by the initial determination. The City has followed the process specifically that is required under this specific statute and this particular code; and has fully complied with doing its initial investigation, which led to the initial determination. That's the prima facie case. This respondent, if you will, this appellate has the opportunity to try to present case to you, evidence to you about something different happening on April 5<sup>th</sup>, or that the gentleman did not break his wrist. But we believe we have met our burden, your honor.

(MLH) Respectfully, the City totally misunderstands the burden of proof in this proceeding. The burden of proof is not on the owner of this dog to prove that it should not be declared dangerous. It's on the City to prove through confident and substantial evidence that it should be. An affidavit's an unauthenticated hearsay documents are not confident and substantial evidence.

(WR) If I may quickly respond, again, to reply. If we were in a normal quasi-judicial matter, where notwithstanding the rules not applying, I wouldn't disagree to that statement at all. But here, the City of Palm Coast, has set forth a process in its code, which it's allowed to do pursuant to the State Statutes. And it says, under this, where we are right here today, all hearings shall be open to the public. At the hearing the owner or his or her representative or any other interested persons may present any evidence relevant to the determination of whether said animal is dangerous. It doesn't say anything about burden of proof. What we've got here is simply an appeal that's brought based upon initial determination. This is their opportunity to say two things. Something else happened on April 5<sup>th</sup> or Mr. Grasso didn't break his arm.

(MLH) Respectfully, it is constructional law 101, that the agency moving for any sort of penalty has the burden of proof. There is absolutely nothing in the code that says hearsay is admissible at all let alone admissible to support the ultimate findings of fact.

(WR) Again, your honor, what you've got. I'll read the statute. It says a dangerous dog means any dog that according to the records of the appropriate authority has in a menacing fashion, or apparent, the grounds for, provided that such actions are attested to in a sworn statement. Hang on a second by one or more persons. So, with the statute, we're following the processes set forth in the statute.

(NRT) Final remarks?

(MLH) What the statute says is that every animal control agency shall adopt procedures that conform to the statute. I thought that the .... first of all that they had the burden of proof and second of all, that you can't have an ultimate factual finding based on hearsay where such incredibly basic ideas that it never occurred to me to bring case law to that effect to a hearing.

(NRT) Well, the rules of evidence do not apply to these proceedings, so....

(MLH) The rules of evidence do not apply, however, the fundamental elements of due process do apply. The fundamental elements of due process include being able to subpoena a witness when you need one and being able to cross examine key witnesses. I can't cross examine Mr. Grasso. The only thing you have is his affidavit. It is trampling all over my client's due process rights for us to go forward with nothing in the record except hearsay and hearsay within hearsay and unauthenticated hearsay documents.

(NRT) Well, respectfully, I think we are going to proceed. I will note your comments and objections. I don't know what the City is going to present, you've only given me opening statements. I do have some documents, but your objection is noted with regard to Mr. Grasso's affidavit.

(MLH) So my motion to dismiss is denied.

(NRT) Correct.

MLH) Alright. Then I will make my opening statement which is first of all, the County, the City, rather has the burden of proof, they can't meet it because they have no witnesses that saw the incident. I do have a witness that saw the incident. He will testify that the dog was at large and was very excited and it jumped up on the gentleman. It did not do so in an aggressive manner. It was an accident. The reason that we have dangerous dog laws is to protect the public from dogs that are truly dangerous. There are three animal behaviorists that will testify that they have attempted to elicit a reaction from this dog. An aggressive reaction and have been unable to do so.

(NRT) Ok, would the City like to proceed?

Jennifer Nix responded: Yes, thank you your honor. I brought with us both for yourself and opposing council the record, which was originally sent out and then some other tabs just for convenience. Of records, if I might I approach.

(NRT) Yes, you have one for opposing council? Thank you.

(MLH) With the record being created in this manner, I would like to point out that these records are unauthenticated.

(NRT) Does the City have a response to that?

(WR) Yes, your honor. Again, it's quite clear that it is not required. Formal rules of evidence do not apply to this matter.

(MLH) Will both attorneys be making objections? Responding to objections?

(WR) I'm sorry, what was that question?

(MLH) Typically only one attorney makes objections, responds to objections. Are you gonna....

(WR) Your honor, would you like me to respond?

(NRT) You can respond.

(WR) This is quasi-judicial matter, your honor. We are not a court of law. I imagine that Ms. LaHart is used to a certain process but this is, as you communicated that this is an informal process. There is certainly nothing in the code that prevents us from making the City's case in the manner that is appropriate.

(NRT) I would agree, but what is your intent with regard to how to proceed? Are you both going to be presenting information?

(WR) Mrs. Nix is going to present the City's case.

(NRT) Ok. All right, let's proceed.

(JN) Thank you, your honor. As I noted the exhibits that I handed out, just for purposes of clarification, that first composite exhibit A had already been received and then B through G are just kind of tabbed for ease of reference. There is of course, I did include an e-mail with an accompanying medical record that was provided by Mr. Grasso's attorney yesterday through our office and one additional exhibit.

(NRT) I'm sorry, you said there's additional? What's additional from what has been provided to me?

(JN) F, the e-mail just from the attorney's office, providing the medical record attachment. There's a two page orthopedic surgery report for Mr. Grasso from Flagler Hospital.

(NRT) Ok.

(MLH) I object to that on the basis that it was not provided to me in advance of this hearing.

(JN) If I could respond, your honor. If we want to even take a brief moment to stop and read it. I got it myself yesterday and it's a two page document.

(NRT) Council, you can have a chance to review this if you'd like.

(MLH) Whether it's a two page document or a ten page document, the fact is Ms. Nix knew that I was the attorney in reference to this matter and could have forwarded it to me in advance of this hearing.

(NRT) Ok, your evidentiary objections are noted, again, rules of evidence don't apply. So, I'm noting them. But I'm giving you an opportunity to look at it now. As am I for the first time as well.

(MLH) For the record ...(inaudible)

(NRT) Your objections are noted. Is the City ready to proceed?

(JN) Yes, your honor. I'll just note for the record that this hearing was timely scheduled in accordance to the appellate process, outlined in the City code and chapter 7.67. The original hearing, as you may recall, was rescheduled at opposing councils request on behalf of the Flagler Humane Society. And I would ask the City's exhibits that I just distributed a few minutes ago be moved into the record. Basically, your honor, the...

(NRT) Before you continue, I'm going to assume that you have an objection to me moving these into the record. Is that correct?

(MLH) Why would you assume I would object?

(NRT) For the same reasons that you have been objecting thus far the authenticity of these records. She was asking me to enter this into the record. I'm giving you an opportunity to object as you have been.

(MLH) Yes. I will object, first of all that the documents are hearsay .... (inaudible) and that .... (inaudible) providing the evidence.

(NRT) Again, I'm going to note your objections and as we go through, it's kind of hard for me at this point to rule, this is a very large stack of documents. So, just with that in mind. Ok, now you can proceed. Sorry for interrupting.

(JN) Thank you. As noted during the opening statements, your honor, the facts of this matter, as far as the witnesses of which certainly the City was aware of before today. There's an affidavit from Mr. Grasso, who's the gentleman, who was knocked down and had his wrist broken and a finger dislocated and then subsequently had to have surgery and we would submit that that is a severe injury both under the definition provided in the City code and the statute. On April 5<sup>th</sup> 2017 in a public street of Zaun Trail, Channelle, according to the records of the City, aggressively attacked, endangered and inflicted a severe injury on Mr. Joseph Grasso, a human being, on public property. And when unprovoked, had chased or approached him upon the streets. Again public grounds in a menacing fashion or apparent attitude of attack, as provided in his sworn statement. Causing the broken left wrist and requiring surgery and pins. And I will note, as far as the menacing fashion or apparent attitude of attack, excuse me, that Mr. Joseph Grasso had stated in his affidavit, that if the owner hadn't called the dog that it would have bitten him very bad. So, I think that it can be taken from his affidavit that it was a scary situation it was not a friendly dog hopping up on him. I noted what the injuries are. After explanations of the dangerous dog procedures, apparently the former owner had said that the dog would be put down.

(MLH) Objection, as to relevance?

(NRT) I'm sorry, what did you just say?

(JN) I was just explaining that the current owner was going to have the dog put down and then if I would have been able to continue, he decided to surrender it instead to the Flagler Humane Society.

(NRT) Objection's overruled.

(JN) After conducting the City's full investigation which it is required to do both by City code and Florida statutes, the dog was classified as dangerous.

(MLH) Is the attorney testifying?

(NRT) I believe she is presenting her legal argument? Is that correct?

(JN) Yes, I'm getting to definitions.

(MLH) So you're not putting any evidence on except for this stack of documents, is that correct?

(NRT) I'm sorry, could you repeat yourself?

(MLH) My question is, that the only evidence you're presenting at this hearing is this stack of documents.

(JN) I haven't had a chance to call a witness yet.

(MLH) I'm wondering what it is that you are doing now?

(NRT) Ok, we're gonna, Ms. Nix, what is your, are you calling witnesses?

(JN) Yes, and maybe I'm used to doing the opening statement and launching into how the we typically conduct the hearings.

(NRT) Right, and as I explained in the beginning, I don't normally handle these hearings so formally. Again with respect to due process and all of that evidence does not apply.

(MLH) We already gave opening statements.

(NRT) That is correct. So if you would like to present your evidence.

(JN) Great, thank you your honor. Ok, I'd like to call animal control officer Eva Rodriguez, to testify please.

(NRT) Eva, do you want to come to the podium?

(ER) Yes ma'am.

(JN) Could you please state your name and position with the City?

(ER) Eva Rodriguez, for the City of Palm Coast Animal Control.

(JN) Ok, thank you. And are you the animal control officer who largely investigated this matter?

(ER) Yes, I am.

(JN) Thank you. And, can you tell us anything that you know about the April 5, 2017 incident involving Channelle and Mr. Grasso?



(ER) That on April 5, 2017, I received a call from the Flagler County Sheriff's Department in reference to a dog attack. I responded to the property at 82 Zaun where the victim resided. From there, I spoke with Joseph Grasso, who stated that he was on his morning walk, as he normally does. And as he was walking by the house of 68 Zaun, he told me he had saw a gentleman out in the driveway at the truck. And it looked like he was loading up kids. To take to the bus stop, as he did every day. He continued walking by the house and he noticed a dog coming, running by him. It took him off guard, is what I was told. And the dog then turned around and charged, knocking Mr. Grasso down to the ground. When I did meet with Mr. Grasso at his address at 82 Zaun Trail, he did have his hand bandaged. So I was unable to take a photograph of the injury at that time.

(MLH) Move to strike as rank hearsay.

(NRT) The motion is denied. Do you have any other questions for this witness?

(JN) No, not right now. Thank you.

(NRT) I'm sorry, I don't want to miss pronounce it, is it LaHart, your last name?

(MLH) Yes.

(NRT) Ok, Ms. LaHart, do you have questions for this witness?

(MLH) I do. Ms. Rodriguez, how are you employed?

(ER) How am I employed?

(MLH) That is the question, yes.

(ER) By City of Palm Coast Animal, or by the City of Palm Coast.

(MLH) Do you have any training in animal behavior?

(ER) Behavior, no.

(MLH) Did you witness the incident when Channelle knocked over Mr. Grasso?

(ER) No. I was dispatched out there by the Sheriff's Department, after the fact.

(MLH) Are you the one that made the initial determination that the dog should be declared dangerous?

(ER) I did.

(MLH) Did you make that determination or did you make that recommendation to someone else?

(ER) I conducted the investigation on the case, I submitted my sworn affidavit and the initial determination was done on June 20<sup>th</sup> 2017.

(MLH) That determination was made by ...

(ER) The City of Palm Coast.

(MLH) Barbara Grossman, correct?

(ER) My manager.

(MLH) Did my clients have any opportunity to present evidence to Ms. Grossman?

(ER) I believe they did.

(MLH) How did they have that opportunity?

(ER) By any type of communication.

(MLH) Were they invited to produce evidence to Ms. Grossman?

(ER) I do not know the communication between Ms. Grossman and the Humane Society.

(MLH) Is there anything in your ordinance that would have allowed or directed my client to produce evidence to Ms. Grossman as the initial fact finder?

(WR) Objection, calls for legal conclusion by this witness.

(NRT) Overruled. You can answer the question, if you can.

(ER) I'm not sure.

(MLH) When did the incident involving Chanelle occur?

(ER) April 5, 2017.

(MLH) And when was your ordinance amended? When did your amended ordinance become effective? I have a copy of it if that will help you.

(ER) I have a copy here in this pile. April 4<sup>th</sup>.

(MLH) April 18<sup>th</sup>?

(ER) April 18<sup>th</sup>, sorry.

(MLH) So the new ordinance was not in effect at the time of the incident, correct?

(ER) Correct, it was in the works.

(MLH) Have you been to see Chanelle since she's was taken to the Flagler Humane Society?

(ER) I have seen her a few times at the shelter, yes.

(MLH) What were your observations?

(WR) Your honor, objection. How could this be relevant to the narrow issues set forth by the statute?

(NRT) Your objection is overruled because, I have the discretion to impose a penalty assuming that I find this dog to be dangerous and so the demeanor of the dog is relevant to me in terms of what would be an appropriate penalty.

(WR) Agreed, your honor. Thank you. But I would renew the objection only to the standpoint of the initial determination of whether this is a dangerous or a dog, whether it is a dangerous dog or not. Totally agree that it goes to the issues of the penalty.

(NRT) Ok, your objection is noted. Thank you.

(ER) The few times that I saw Chanelle, the few times were in the back kennel where I did not make any contact. It was just making sure she was still there and under, I guess isolation area. When she was in quarantine and most recently I saw her, she was in Amy's office. I did not have any interaction with her, but I did see her.

(MLH) You were invited to interact with her, correct?

(ER) I was invited into Amy's office and I did not interact with the dog, but she was there.

(MLH) Did she try to bite you?

(ER) No, she did not.

(MLH) Would you agree with me that if the incident involving Chanelle and Mr. Grasso was an accident? That she simply jumped up on him? In an attempt to greet him? That she should not be declared a dangerous dog?

(WR) Again, asking this witness, this lay witness to make a legal determination of what 7.67 of the code, that's for you to decide, your honor. Not for this witness.

(NRT) I understand that but I think that she is asking for her opinion, so I'll allow the question.

(ER) As I was not on scene, I cannot answer that question.

(MLH) The question was, the dog simply was it aggressive ... (inaudible) manner.

(ER) If it was a playful manner? No.

(MLH) No further questions.

(NRT) Does the City have any follow up for Ms. Rodriguez?

(JN) No, thank you.

(NRT) Ok. Another witness?

(JN) No, that's it your honor. Thank you.

(NRT) No problem. And both parties will be given an opportunity to present a closing statement to summarize whatever they would like to do to summarize. Miss LaHart, you may proceed.

(MLH) Alright, I'd like to call Amy Wade- Carotenuto.

(NRT) Good Morning.

(AWC) Good Morning.

(NRT) If it's still morning, nope good afternoon.

(MLH) Would you state your name for the record please?

(AWC) Amy Wade- Carotenuto.

(MLH) Ms. Carotenuto how are you employed?

(AWC) I am the Executive Director of Flagler Humane Society and Animal Services.

(MLH) How long have you worked in animal control?

(AWC) Since 1984.

(MLH) How did you become familiar with the dog named Chanelle?

(AWC) Chanelle was surrendered to Flagler Humane Society April 19<sup>th</sup>, by her owners.

(MLH) Were you there when she was surrendered?

(AWC) I was, I actually went into the room where the owners were signing her over. They explained that they had to sign her over. They were quite upset.

(MLH) What did the Humane Society do with Chanelle?

(AWC) With any new animal we put them through a series of behavior assessments to check them out. We had several different staff members performing behavior assessments on her as well as just the general day to day observing regular kennel behaviors and just regular behaviors.

(MLH) Do you have any video of some of the evaluations that Chanelle has been through?

(WR) Your honor, for the record, please. I'd like to renew the objection and have a continuing objection. Limit as to any of the testimony about what happened other than as to the incident of April 5<sup>th</sup> with what the victims injuries are, the City would request that there be a standing objection as to its relevance with the determination of the statute of whether this is a dangerous dog. For that limited purpose we request a continued objection, so that I don't have to pester you anymore.

(NRT) Your objection's noted and I would agree with you that it's not relevant to the determination of whether the dog is dangerous, but again it is relevant to the issue of a potential final, if any.

(WR) Which we agree is... (Inaudible). Thank you.

(NRH) If any.

(WR) Thank you.

(NRH) Thank you.

(MLH) And for the record, I object to the two timing from the City. How do I get this video ... played?

(NRT) Do we have a staff member who can....?

(Inaudible)

(MLH) Can we take a five minute break?

(NRT) Yes.

(WR) Your honor, I've just been advised by the City Clerk that, certainly we have no objection, to the video, based upon what we've talked about just now. But the normal process for the City is that to make sure we don't get an infected virus or something like that, and I can let, if you've have the testimony of the City Clerk. Normally it's vetted beforehand to make sure by IT to make sure there's nothing in it that can mess up our system. We're more than happy to go through that process if you'd like.

(NRT) How long does that process take?

(Virginia Smith) I have to bring it upstairs to IT to verify that there's nothing in it.

(NRT) Do you have any idea how long that takes?

(VS) If someone's up there, it shouldn't be that long.

(NRT) Ok. Let's see where we get with that.

(Inaudible)

(NRT) Let me ask the City, I believe they have hearing aids so you can hear, they have head phones so you can hear. Eva, we've had a request from someone who's having difficulty hearing. Is there headphones or other aids, I know we've had something in the past. Ok, never mind, she's just going to move up here.

(Inaudible) Virginia just took it up to make sure there's no virus. O.k. thank you for clarifying. Yeah, I thought you were a witness, I apologize. City clerk; she has it. Virginia took it upstairs; she's having it scanned for no virus. Oh, ok. (Inaudible)

(NRT) Is everyone.... is everybody ready?

(Judi Flammer) The City's ready.

(NRT) Ok, yes, we're back on the record.

(VS) We have one, two and one that's not numbered. Which one would you like to be played?

(AWC) the first one.

(1<sup>st</sup> video playing)

(MLH) Ms. Carotenuto if the initial determination that Channelle was a dangerous dog was upheld. What could happen to her?

(AWC) (Inaudible) She belongs to the Humane Society right now.

(WR) Your honor, calls for complete speculation. Calls for complete speculation, what's going to happen to this dog? I mean, we certainly can agree on what the conditions are pursuant to the statutes and in the code that the City has set forth some conditions that certainly they could disagree are too strenuous and your honor can agree. But as to what might happen? I mean, there's a million different things that might happen to this animal. So we would strongly object, your honor, to asking this court to take into consideration or to believe that if this dog is determined dangerous that it's going to be killed. That's their argument.

(NRT) Miss. LaHart, your response?

(MLH) It is a condition of their insurance that if the dog is declared dangerous it cannot be adopted out it (inaudible) be destroyed.

(NRT) I'll allow it.

(MLH) What would happen if Chanelle is declared dangerous?

(AWC) If she is declared dangerous, she would have to be euthanized.

(MLH) What other evidence do you have?

(AWC) We tested Chanelle with a couple of volunteers at the shelter. Under a controlled environment, with Chanelle around kids.

(2<sup>nd</sup> video playing)

(3<sup>rd</sup> video playing)

(MLH) Do you have a plan in place, I understand that what we saw in the video that Chanelle has a bad habit of jumping on people? Do you have a plan in place to (inaudible) Chanelle, assuming she is not declared a dangerous dog (ACW) Yes, there is an organization just north of us called Fit Sisters. They have a prison pups program in which inmates take shelter dogs for a period of eight weeks or so and do training. Because we do understand that she jumps up to greet people. She jumps up on the front of you and things like that. So, here's definitely some behavior issues that could be modified and they've invited Chanelle to be part of that program.

(MLH) So if Chanelle is not declared a dangerous dog she will leave the county and go to training.

(ACW) Correct.

(MLH) (Inaudible)

(ACW) We did a records request of Palm Coast and we saw that they were no witnesses to this other than the person that fell. And if this big goofy dog is coming at you, you can see where he would be alarmed. But there was nobody that said Chanelle came at him in a menacing fashion. So, I honestly believe that Chanelle just jumped up on him like she jumps up on me, just to greet him. And so, to us it's such an obvious case that this is not a dangerous dog. I don't want to euthanize an animal for being dangerous when she's not.

(MLH) Ok, thank you.

(NRT) Did you have questions?

(WR) Just a couple of questions. You just testified that Mr. Grasso fell down. You weren't there. He didn't just fall, by this you're contending is not dangerous. He was knocked down.

(MLH) There's no foundation for that, she didn't see it, she had no way of knowing what happened; the affidavit's in the record.

(WR) She characterized it....

(MLH) She has no way of knowing.

(WR) She characterized it as falling down.

(NRT) Objection over ruled, the witness can answer the question if she can.

(WR) He was knocked down, wasn't he?

(ACW) I don't know, I don't know.

(WR) So you don't know if he fell down then.

(AWC) Correct.

(WR) Ok. Secondly, you're saying that if this dog is declared dangerous, it has to be euthanized. The only reason that that is the case is because of your insurance policy requires it.

(AWC) No, the only reason that is the case is because, if the average owner is going to get, just like Channelle's former owners, because she is being declared dangerous, they knew that their landlord is not going to allow a dangerous dog.

(WR) Move to strike, your honor.

(AWC) Your insurance company is not going to....

(WR) Totally requires speculation on what some future owner might....

(AWC) No, I'm saying that....

(WR) She testified that under direct examination that the reason the dog needed to be euthanized is because your insurance policy requires it.

(NRT) I will allow the testimony. You asked her the question.

(AWC) The reason the dog would be euthanized, yes our insurance isn't going to cover us if we adopt out dangerous dogs. And we know that a dangerous dog at an animal shelter, an animal that is labeled dangerous, people aren't going to adopt it knowing it's got a big dangerous label on it.



(WR) So there's an exception then under your insurance policy for the Pit Sisters?

(AWC) That's not an, that's not an adoption.

(WR) So there's other options other than euthanizing this dog then?

(AWC) Not if she's declared dangerous.

(WR) So, if she's declared dangerous, the Pit Sisters can't take her.

(AWC) Correct.

(WR) But you just testified that your plan was to give her to the Pit Sisters.

(AWC) If she's not declared dangerous. If she's declared dangerous we all know that adopters will not, cannot adopt a dangerous dog. Insurance companies won't allow it, landlords won't allow it. So an animal that is labeled dangerous in a shelter environment is euthanized.

(WR) So isn't there a possibility that there could be someone that owns ten acres, if we're going to speculate, someone that owns ten acres out in the middle of nowhere that wants this dog, could adopt this dog?

(AWC) They still would have to have property owners insurance.

(WR) How do you know that?

(AWC) Because we all have to have property insurance.

(MLH) Isn't it a requirement of the county code?

(WR) That's all I have your honor.

(MLH) City code, rather.

(NRT) Anything else for this witness?

(MLH) No.

(NRT) Ok. You can call your next witness.

(NRT) I'm sorry. Who are you calling?

(MLH) Please state your name for the record please?

John Paul Rodrigo.

(MLH) Mr. Rodrigo, how do you fit into this puzzle?

(JPR) I was the one who called Channelle back into the house.

(NRT) I'm sorry, I cannot hear you.

(JPR) Yes, ma'am. I was the one who called Channelle back into the house.

(MLH) Did you witness the incident where Channelle jumped on to Mr. Grasso?

(JPR) Yeah, it was early in the morning. Kids were going out to the bus stop. I go out early to start the truck. Kids followed behind. First child out did not close the door. Channelle ran out excitedly running in circles. He was coming up the road and she saw him and she kind of just... she gives hugs. That's how we do it at home, but when she jumped up on him he fell back and I called her and she just went right inside.

(MLH) Before she jumped on him did she bark at him?

(JPR) No, ma'am.

(MLH) Did she growl at him?

(JPR) No, ma'am.

(MLH) Did she...based on your observations exhibit any aggressive behavior whatsoever towards Mr. Grasso?

(JPR) No, ma'am. I was just worried, cause he ended up on the floor. So I just told her to get inside. Usually, at home when you're on the floor, she'll jump on top of you and lick you.

(MLH) Nothing further.

(WR) The City has nothing.

(MLH) One follow-up question; you don't know where Channelle is going, correct?

(JPR) No, ma'am.

(NRT) Call your next witness. Thank you, Mr. Rodrigo.

(MLH) I call Robert DeFranco

(Inaudible)

(MLH) Mr. DeFranco, please state your name for the record.

(RD) Robert DeFranco.

(MLH) What is your relationship with the Flagler Humane Society?

(RD) I am an independent consultant; I am a board certified behavior analyst and a board certified companion animal behavior analyst, I am executive director of the....

(NRT) I'm sorry, I can't write that fast. Do you mind repeating that a little bit slower?

(RD) Ok.

(NRT) Independent consultant....

(RD) Yes, ma'am.

(NRT) For the Flagler Humane Society? Board certified in behavior? Animal behavior?

(RD) Both animal and human. Behavior analyst and board certified companion animal behaviorist. That's through the Behavior Analysis Certification Board and the Association of Companion Behavior Counselors.

(NRT) Ok, I can't write that fast. What was the board again?

(RD) I'm sorry?

(NRT) What board are you on?

(RD) Board certified .... Behavior Analysis Certification Board; it's an international certification for behavior analysts. I work with humans with behavior problems, as well as animals.

(NRT) Ok, thank you.

(MLH) What is your experience in working with problem animals?

(RD) Well, my undergraduate, graduate and doctoral work was in psychology; I am the former executive director of the Animal Behavior Center of New York in New York City for 13 years and the American Foundation for animal rescue. I've probably evaluated hundreds of dogs, including a few with litigation over the years. I was formerly a dog trainer for many years before I became a behavior analyst and I've also done temporal... (Inaudible) tests on the animals for many times.

(MLH) (Inaudible) would you mind (inaudible)

(NRT) No, it's fine. I'm just reiterating I'm having trouble hearing, so if you all could speak up.

(RD) Ok.

(NRT) Yes, thank you.

(MLH) Mr. DeFranco, you mentioned that you have; that you gave your own assessments for hundreds of dogs. Did you do a behavior assessment on Chanelle?

(RD) Yes.

(MLH) What did that consist of?

(RD) There is a test called the SAFER test and it was written by Dr. Emily Weiss. She's a ... I don't know what her title is these days, but she's a vice president with the ASPCA in New York City and she has her doctoral degree, of course; and, so SAFER stands for Safety Assessment and Evaluation... Evaluating Rehoming and it's a test that's used nationally, probably internationally. You can find it in literature on the internet and it's probably one of the most reliable temperament tests that used.

(MLH) What does it consist of?

(RD) Ok, Assessment Battery and there are 7 modules; they consist of the look assessment, sensitivity test, a tag test, a squeeze test, food behavior test, toy behavior test and dog to dog behavior test and I can define those more if you want. I put the animal through 5 or 7 of those. The ones I didn't do were the dog to dog, because that wasn't relevant and I don't believe I did the food or the animal with the toy, because it wasn't relevant. I just did greetings and such.

(MLH) Tell me about the tests that you did do and what were the results??

(RD) I got a call from Amy at the shelter and uh asking me if I could evaluate the animal. I came out there during the day time. I evaluated, I did some of the testing indoors and I did some of the testing outdoors. I did some of the testing on leash and I did some of the testing off leash and whenever an animal on leash and there's pulling there's often made what is called a, it's a resistance response. So, an animal, who may be agitated or such is more so when on leash. So, I made sure I did it off leash as well, since I believe what happened was an off leash incident. Um, so....

(MLH) What was the first test that you did?

(RD) The first test was a look assessment; determine if the dog accepts mild head restraint and eye contact from the assessor. So, I basically did a lot of stares, looked down at the dog; now the dog didn't know me, you know, so I was a stranger and I stared at it which is sort of, can be interpreted by the animal as a threat, alright and I basically walked around and did some quick movements and things, didn't get any, any responding that I would consider to be aggressive and such, didn't even make much eye contact with me.

(MLH) Did she look away when you looked at her?

(RD) Yeah, for the most part, not every time, I think there were a few eye contacts, but it was nothing where there was a stare, or that kind of thing.

(MLH) (Inaudible) should consider (inaudible).

(RD) You could interpret it that way.

(MLH) What was the next test?

(RD) The next one is called the sensitivity test; a firm, kneading motion is made over the skin of the dog, where you're sort of petting and squeezing a little bit. Causing, perhaps a little bit discomfort to see what the response is. The dog's side from the shoulder to the hip, back three times with the assessors hand. I basically ran my hand over the dog, grabbed, a little touch, I even ran my hand... there's an area between the hind leg and the stomach called the flank. If you grab a dog there, it often will bite. I've been doing this for many years, so I take a little bit more risk than the average person. I did a little squeeze there and we got no, no res... freezing bonds (inaudible). Tag test, the assessor tries to engage the dog using an excited voice and play movement, then touches the dog lightly with a figure and tries to initiate play. I did this both indoors and outdoors, I think Amy would say, you know, I was pretty aggressive. You know, I was screaming and yelling and moving around and trying to agitate the dog and I didn't get any type of aggressive response; he basically just walked in circles and sniffed the ground and, you know. Ok, we have the squeeze test; squeezed and tur... basically squeezing the animal then runs a hand down the dogs leg, gently squeeze the toes and the fingers. I was manipulating its paws; there are some dogs that if you touch their paws and such, they don't like that; they'll respond. This dog was very calm.

Audio was disrupted and recording was lost. The following is from the notes of Hearing Officer:

Following the testimony by Robert DeFranco (and preceding my order), there was testimony by Lauren Driscoll. Ms. Driscoll testified that she has been a dog trainer since 2009. She observed Channelle, who did not display aggression. She testified that she specifically wore a hat and glasses, which can trigger many animals into aggression, but Channelle was not aggressive. She took Channelle on walks and near other dogs, and there was no aggression by Channelle. She also tested Channelle with noise, aggressive play with toys, and grabbing her food. Again, no aggression by Channelle.

Next, Katie Share testified. She has been an employee at Flagler Humane Society for 17 years, and she is currently an animal care manager. She performed an assessment of Channelle, but observed no aggression with cats. Channelle was non-reactive around her young child, as shown in the videos submitted into evidence. The City Attorney cross-examined Ms. Share to ask whether the dog jumped up and Ms. Share confirmed that she did.

Mr. Reischmann and Ms. LaHart both presented closing arguments, summing up the evidence and their respective positions. Mr. Reischmann argued that aggression was not relevant to the language of the City Code which defines a dangerous dog. Ms.

LaHart emphasized the public purpose of the dangerous dog statutes and argued that there was no evidence that Chanelle acted aggressively during the incident at issue.

Audio & Recording resumed:

(NRT) Ok. So, you may or may not know, my authority and role here today is to make a determination as to whether or not to uphold the initial determination by the City regarding the classification, the penalty, or both, as to whether or not the dog is a dangerous dog and that's in accordance with Section 8-40 of the City code and Section 767.12 of the Florida Statutes. As it relates to notice and ownership, I am going to find that City staff met all notice requirements for these proceedings and that Flagler Humane Society is currently the owner of the animal, Chanelle, a spayed dog. As we've discussed throughout these hearings, there is a definition of dangerous dog that's both contained in the City code under Section 8-28 and in 767.11 of Florida Statutes. I think we've discussed one of the sort of elements, I suppose, of becoming whether or not a dog is dangerous and that standard reads if it has aggressively bitten, attacked or endangered, or has inflicted severe injury on a human being on public or private property. The other subsection or relevant element that we didn't discuss so much today that could be relevant is that the dog has, when unprovoked chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion, or apparent attitudes of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority. It seems apparent to me that there's a fundamental disagreement as to the interpretation of whether aggression is a necessary element. The City is arguing that they just simply have to show that a dog has created.... Inflicted; excuse me, inflicted a severe injury on a human being on public or private property. Of course, Flagler Humane Society contends that aggression is required and I hate to make the legislature out to be the bad guy, but what do you do. I interpret aggression to be a required element of the statute, because otherwise I can think of numerous scenarios in which an animal would be declared dangerous. It would just make an unjust nonsensical result to interpret it without aggression. So, then the real issue then becomes do I have aggression, or menacing fashion, or apparent attitude of attack required under these subsections of the Statute. I want to make it clear for the record and everyone here regarding what evidence I'm relying on from my findings. We obviously heard a lot about the demeanor of the dog and testing of the dog and I appreciate that testimony. What's relevant to me, as it relates specifically to my determination, is going to be the affidavit submitted to me by Mr. Grasso, the testimony of Mr. Rodrigo today and there was also the police report submitted, as part of the City's documentation. I find that with regard to a police report, there's no indication of aggression. Although it indicates there was an injury and there appears to be sufficient evidence to establish that, there is only mention of jumping and knocking him over. The same goes with regard to Mr. Rodrigo's testimony. Finally, with regard to the affidavit of Mr. Grasso, although I note he the word he used was attack, there are no specifics or other information to support the idea that this was done aggressively; or there's insufficient evidence to show me this was done aggressively. So, under the portion of the statute that defines a dangerous dog as one who has aggressively bitten, attacked, endangered, or inflicted severe injury; or under the section of the statute and the code, which provides that the dog, when unprovoked chased, or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion, or apparent attitude of attack, I do not believe I have been presented with sufficient evidence to uphold this violation. So, therefore, I am going to dismiss it.

(WR) Thank you, your honor.

(NRT) That is my final decision with regard to this matter. There will be a final Order. I will write my final Order and it will be sent to the parties in the mail. Thank you for coming. Thank you for (inaudible).

**UNFINISHED BUSINESS:**

**E. None to report.**

**OLD BUSINESS:**

**F. None to report**

**NEW BUSINESS:**

**G. None to report.**

**ANNOUNCEMENT OF NEXT MEETING:**

**H. Next Animal Control License Hearing – October 3, 2017 @ 10:00 A.M.**

**ADJOURNMENT**

**There being no further business, the meeting was adjourned at 1:27 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.*