



MINUTES

**Animal Control Special Hearing
Friday, August 18, 2017, at 11:00 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 11:01 A.M. by Nicole R. Turcotte, Esquire, followed by the Pledge of Allegiance. Ms. Turcotte outlined the format, 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: Heather Priestap, Eva Rodriguez, Judi Flammer.
Attorney Present: Jennifer Nix.
Appellant - Michael Daniel Nikzad.
Witnesses: Steven Moreno, Barbara McFarlane.
- C. August 1, 2017 Minutes 10:00am were approved.**
- D. August 1, 2017 Minutes 11:30am approval was deferred due to missing testimony and reference to the closing arguments.**
- E. Case Heard**

AI# 1

CASE NO. 2017070543

*City of Palm Coast vs. Michael Daniel Nikzad
228 London Drive, "Bubbles", a Spayed Female Terrier Mixed Breed Dog.
Palm Coast Code Section 8 40 Determination of Dangerous Dog Classification*

SYNOPSIS:

Ms. Turcotte, Hearing Officer the City will begin by presenting an opening statement and then the respondent can present an opening statement as well. Once the parties have completed that, the City will present its evidence and then you may present your evidence as well. And you'll both be given an opportunity to provide closing statements if that's what you'd like to do. I would ask that anyone who's here and will provide testimony to please stand raise your right hand to be sworn in, and then to remain standing for the Pledge of Allegiance.

Alright, so let's begin. This is case number 2017070543, as I mentioned, City will begin by presenting its opening statement.

(JN) Thank you, your honor. I'm Jennifer Nix, for the City of Palm Coast. We're here today on the current owner Michael Nikzad's request for a hearing regarding the City's initial determination for classifying his dog "Bubbles" as a dangerous dog. The City had found sufficient cause to classify Bubbles as a dangerous dog, based upon the city code definition, which follows state law, of course. Bubbles is owned by Michael Nikzad, who lives at 228 London Drive. Barbara McFarlane was the neighboring resident who was the victim, bitten by Bubbles and she lives at 219 London Drive. Both Mr. Nikzad and Ms. McFarlane had submitted conflicting evidence about the June 29th attack involving Bubbles, the 19th, excuse me, which occurred at or about 231 or 233 London Drive in a public street. The Flagler County Sheriff's office report that you will see in the evidence that we presented today had noted that while they gave conflicting statements, the physical evidence supported Ms. McFarlane's account of the incident and also the Animal Control Officer, Heather Priestap, had noted on the animal bite incident report which will be submitted into evidence that the blood on the road is inconsistent with the owners story. The multiple affidavits, photos, medical record and evidence which will be submitted into the record, well, has already by the City, and the testimony that will be provided today by the victim will show that the City's initial determination, classifying the dog as a dangerous dog, should be upheld. Because Bubbles does meet the City's code of definition of a dangerous dog. Basically the evidence will show that while off her leash, Bubbles first snapped at the victim, while the victim was walking away as an unprovoked situation. As the victim was bit, the owner still didn't leash the dog and then they had an exchange. He was walking back to his home, and Ms. Barbara McFarlane had walked toward that direction just for purposes of getting the address of his house because she wanted to contact the police because the dog was off the leash and it snapped at her hand. And at a point after that the dog again came at her, jumping at her, causing her to fall backwards. Hitting her tailbone, her head on the concrete, she was bleeding and then the dog continued to attack her, biting her hands and feet. She had her arms in front of her face to protect herself. Neighbors called 911, attempted to assist with catching the dog and provided her with aid until the ambulance arrived. The City has to prove that Bubbles meets the definition of a dangerous dog. And a dangerous dog means, and this is included in exhibit T, which I will provide. "Any dog that according to Animal Control Authority records, other Animal Control or Law Enforcement Authorities, has aggressively bitten, attacked or injured or has inflicted a severe injury on a human being on public property. And again the evidence will show that this happened, a severe injury resulted and in as much as the definition of that of course includes multiple bites which did occur to the victim. The dangerous dog definition also means any dog that has, when unprovoked, chased or approached a person upon a street in a menacing fashion or apparent attitude of attack. Provided that such actions are attested to in a sworn statement. There was a sworn statement already by Ms. McFarlane and she will be providing testimony today as well. The affidavit shows, and testimony will show that Bubbles was unprovoked and did chase or approach her in a menacing fashion or attitude of attack. And then even attacked her further on the ground in the middle of the street while she was peacefully and lawfully conducting herself just taking a walk down a public road. Bubbles was quarantined June 19th thru the 29th at Flagler Humane Society and as of now we believe that the dog is still with the owner. The City's initial determination provided for, proposed appropriate penalties that's in the record and those were entered in accordance with the city code, which was adopted in April 2017, largely to follow the state statutes. Some of the proposed penalties include: registration of Bubbles as a dangerous dog, a permanent ID, a proper enclosure, proof of insurance and that it be muzzled when outside of the owner residence or locked pen, of course for everyone's safety. This determination was made after the City's investigation, it did not order that the animal be euthanized, the City wants to reiterate that, of

course. And also note that there is no exception as to the City's Classification of a dangerous dog, there are some exceptions provided in the state statutes. The facts here do not fall into any of those. The affidavit and investigations support the City's classification of a dangerous dog and we would state that it should be upheld. While the owners may present affidavits or testimony as to the demeanor of the dog and what not, the facts, we feel, do support the City's initial determination. And therefore, we would respectfully request that you uphold the classification as a dangerous dog and the proposed penalties as provided for in the initial determination based upon the affidavits and the evidence that will be presented today.

(NRT) Alright, thank you.

(JN) Thank you.

(NRT) Sir, can you please identify yourself at the podium? One or both of you? Ok. Can you please state your name?

(MDN) Michael Daniel Nikzad.

(NRT) Ok, and I'm sorry, you are?

(SM) I'm Steven Moreno. M-O-R-E-N-O.

(NRT) M-O-R-E-N-O?

(SM) Yes ma'am.

(NRT) Ok. And Mr. Nikzad, is that N-I-K-Z-A-D?

(MDN) Correct.

(NRT) Ok. Ok, you have an opportunity to present opening statement, if you like. Or you may have your representative do that.

(MDN) I have had Bubbles has been in my, I've owned Bubbles approximately a year now. I adopted her when she was six months old. And, for one year she's been a great dog and I love her very much. She's never had one incident like this before, ever. This is the first incident that this has ever happened. You know, I, I don't know why my, my, my statement of why, what happened was deemed by the officer the way he deemed it, but, I don't agree with that. Ms. McFarlane was never touched by me, and there's, I didn't, she, she fell down by herself and nobody ever touched her when she fell down. So, I have a conflicting statement there. You know my dog was provoked the first time by her. She walked in front of my house, and she was speaking to us, well, speaking to me. And she was, she was somewhat abrasive with her tone and that's when Bubbles approached her. So, Bubbles began barking at her and I think that she was nervous and she cut, she panicked. And then she, she smacked Bubbles in the face with her weight. And, and then that's when I reacted, I, I, I stepped between of both of them and made I sure that, you know, Bubbles was not able to reach her, you know because of, you know I didn't want either of them to be injured or hurt or whatever. And I walked with her by the house, I walked with her a house down where, to the next house to make sure she was still safe. And, and

she was. And I, I, I asked her, do you want me to see the bite, I wanted, she had claimed that Bubbles had bit her and I wanted to see what the bite looked like and she, she was still panicking and so she really wouldn't let me see it. So I couldn't see the bite marks on her. And I seen as, I felt that she was safe, I walked back to control Bubbles. I wanted to put Bubbles on the leash and put, bring her in the house. And Ms. McFarlane followed me, she followed me from the house down, back to my, in front of my house. That's where this incident happened. In front of my house. And as soon as she walked back she began throwing the weights at Bubbles. She says it in her statement, she began throwing her weights one by one at Bubbles. And that's when I had to step between them so my, she couldn't hurt my dog. I put my hand in front of her hand like this, I was like this, I had my hand like this, and I had my other hand like this and I was standing in front of her. And she, her hand was like this with the weight. She had the, she was about to through it, her hand was like this, had the weight in the hand, and then she, as soon as I stepped in front of her she went like this, and I'll re-enact it. She put both of her hands up like this, and then she went like this. She fell down just like that. And that's when all my neighbors walked out of their houses. I had a gun pointed at me, um, and my neighbor Nic, I was very nervous, and, and then that's when I didn't know what to do really so. My other neighbor Nicole told me to lets, let's go control Bubbles. And she helped me control Bubbles and we put Bubbles in the house. So after that the police came, animal control came. And that's, that's the truth.

(NRT) And so, let me just ask you. Are you an attorney for Mr. Nikzad?

(SM) No.

(NRT) Ok.

(SM) No, no. I, I'm just a, a family friend and at the same time I've been (inaudible) engineering and cases of workman's comp and all that. But I'm just a family friend that is trying to help him.

(NRT) OK. So, I'm not going to give you legal advice but just so you understand how these proceedings will go. You presented an opening statement that also, sort of was in the form of testimony. So you can, like I said before, the City's going to, now that everyone's done with their opening statement. The City will present their evidence and they can do that by testimony, documents, photos, whatever they want to do. You will then have an opportunity to do that. So, you can either restate everything you just said or you can adopt your opening statement as part of your testimony. And the City will be able to question you, based on, you know, what testimony you want to offer. You can question, question, excuse me, the City's witnesses. So, I just want you to understand the process for how this is gonna to work. Ok? Does that make sense?

(MDN) That makes sense.

(NRT) Ok, alright, well if you are done with your opening statement then I'll allow the City to begin presenting their evidence. Did you have anything else to add?

(MDN) Yes, I just wanted to let you know that (inaudible) has proceeded to fence in the yard and all around the house and also, we got the insurance, K-9 insurance for the dog. But we wouldn't like Bubbles to be classified as dangerous. You know, I've known Bubbles for a long

time and she's just really playful, she's a puppy and she was reacting to you know, being hit. And...

(NRT) Ok, and again, you can present that testimony to, when, after the City presents their evidence.

(MDN) Ok.

(NRT) Ok? Thank you. Does the City have their first witness, or other evidence they'd like to present?

(JN) Thank you your honor. May I approach?

(NRT) Yes.

(JN) Thank you, I have an indexed version of what was passed out already. That was served on Mr. Nikzad, just the initial determination. And thing that I have for purposes of being kind of organized and everyone can see it. So, I'm going to give you the exact same thing as I give the hearing officer. Ok?

(NRT) And just for clarity of the record. Are the color photos part of this?

(JN) Yes.

(NRT) Ok, thank you.

(JN) Ok, and just for, for the record. The only thing that is any different or what may seem different was just the letter which was sent to the victim. Which only had another line or two. And I believe you've already, your honor, presented with that. It is included as number seven, with the e-mail from staff as well. So none of this should be new except for that, possibly to anyone.

(NRT) Ok, thank you. Mr. Nikzad, do you have any objection to me entering these documents into evidence?

(MDN) No.

(NRT) Ok, so these will be admitted as the City's exhibit A, composite exhibit A.

(JN) Thank you, your honor. Ok, and if I could call the City's first witness, Heather Priestap.

(NRT) Thank you. Good morning.

(HP) Good morning. Heather Priestap, City of Palm Coast, animal control officer.

(JN) You beat me to it. Thank you. Ms. Priestap, did you investigate this matter?

(HP) I did, yes.

(JN) Ok. And can you just kind of tell the court what you know about the incident? And we'll go from there.

(HP) We received a call from Flagler County dispatch on June 19th 2017. About a dog bite that had just occurred. When we arrived on the scene we met with Deputy Taylor. He briefed us on what was going on and what he had gotten from the witnesses so far. We spoke with and obtained a statement from Nicholas Carrube from 231 London Drive. Mr. Carrube showed us where on the road he helped to pick up Ms. McFarlane. Which correlated with the, where the blood was found on the road. Photos were taken of, taken of the blood spots in front of 231 and 233 London Drive. Miss Mc, Mrs. McFarlane had already been taken by the ambulance to the ER. So we were unable to talk to her at that time. Mr. Nikzad was over at his house and had multiple family members showing up at the house. He was yelling and screaming and looked like he was re-enact, re-enacting what happened, even with the screaming like the victim at one point. We continued speaking with Nicholas, and waited for him to fill out his statement. We then went over to spoke with Mr. McNad, sorry about that, Nikzad and he stated that Bubbles come over, came out of her harness and was chasing her, chasing her trying, he was chasing her trying to get her back on the leash. He stated that when Mrs. McFarlane saw Bubbles she came towards them yelling. That, I'm sorry, I lost my place. That she followed Bubbles back to 228 London Drive and she was in front of their house when she threw the weights hitting Bubbles. And that is when Bubbles went after Miss McFarlane, Mrs. McFarlane. Mrs. McFarlane was screaming and backed up away from the dog and fell. We made the decision to take bubbles and have her do her quarantine at the Flagler Humane Society based on the facts we had received about the incident that occurred. When we entered Mr. McNad, Nick, Nicdads, I don't know why, I'm sorry about that, I can't get the name right. When we entered his house Bubbles was obviously barking at us. And then the officer was talking with his hands and Bubbles came at his hands. So he, I suggested that he stop moving his hands around so much. And they did grab Bubbles collar and keep her back. I met with Barbara McFarlane on 6/21/17. I took photos of her bites and she gave me photos that were previously taken of her injuries. Her statement...

(NRT) Wait. I'm sorry, I can't write that fast.

(HP) Sorry.

(NRT) That's Ok. What?

(HP) It's actually all, almost all in here.

(NRT) I remember, I remember reading that. But what was the date you said you met with Ms. McFarlane again?

(HP) 6/21.

(NRT) Ok, go ahead, I'm sorry.

(HP) That's ok. She stated to me that she was out for her morning walk holding two 2-pound weights when she saw a man later identified as Mr. Nikzad, walking Bubbles, off the leash and in the street. Michael was holding the leash wrapped around his hand and did not seem to be

attempting to put the dog on a leash. Mrs. McFarlane told Mr. Nikzad that he needed to put the dog on a leash. Michael's response to her was yeah, yeah. Mrs. McFarlane kept walking away from them and Bubbles snapped at her finger, biting her finger. When she turned and stated to Michael that the dog had just bit her finger. Michael's response was "where? Show me where?" The dog kept coming at Mrs. McFarlane and Mr. Nikzad did not do anything to stop the dog from going after Mrs. McFarlane. She stated, "Control your dog" but he did not attempt to leash the dog and take it away. Mr. Nikzad walked away and did not leash the dog. Mrs. McFarlane walked towards them to see his address. Mr. Nikzad turned and said why are you following me? She stated, "Because I want to know you're address so I can call the cops." That is when the dog came at her again attacking her on the street between 231 and 233 London Drive. Which is about 200 feet and across the street from Mr. Nikzad's house. There are photographs and sworn statements attesting to the location of where the attack occurred. Mrs. McFarlane then threw her 2-pound weights trying to defend herself but missing the dog. She backed up to avoid charge, the charging dog and fell backwards, she was bit on her ankle and her hand from protecting her face. So she had two bites on her hand and a bite on her ankle. And no one was helping her. The residents at 231 London came out to leave and heard her screaming. They helped her up off the ground and called 911. The neighbor at 217 London Drive also heard her screams and came to help; once Mrs. Stasky helped get Mrs. McFarlane off the ground, she turned to help contain Bubbles. Mrs. McFarlane was attacked on a public street, two houses down and across the street, from 228 London Drive where Mr. Nikzad and Bubbles live.

(NRT) Alright, is that 228 or 288?

(HP) He's at 2, oh 228. Typo, thank you. I don't think there is a 288.

(JN) Thanks, I believe in um, one of the pictures, just to note, as far as 228 or 288, exhibit O, the last picture of that, has written an address pointing to the house, 288 London Drive and just to correct the record there, is that supposed to be 228?

(HP) 228, it is supposed to be 228.

(JN) Ok, thank you. Ok and you had noted on the animal bite incident report that you had completed that the blood on the road was inconsistent with the owner's story?

(HP) Yes ma'am.

(JN) Ok and, and you had testified also that it was about 200 feet from his home to where the blood mark was in the road.

(HP) Yes it was 200 feet and across the street.

(JN) Ok, and um.

(HP) And when we had shown up, the officer, um the, the Sheriff Deputy, showed us where the, where the blood was. Where the chair was when he arrived, where she was sitting. Which was consistent with where the blood marks were on the road which was the 200 feet which is what the photos kind of show.

(JN) Ok, so would you, are you testifying that you basically received conflicting statements from Mr. Nikzad as opposed to what physical evidence seems to show in the road?

(HP) Yes, I am.

(JN) Ok. And, have there been any other incidences of Bubbles running at large or being a nuisance that you know of from the neighbors or anything reported to the City otherwise?

(HP) We did not have anything reported. But several neighbors did tell us that the dog runs loose consistently.

(JN) Ok, and I, actually I do not have any more questions because you've answered them all. Thank you.

(NRT) Mr. Nikzad, do you have any questions for Ms. Priestap?

(MDN) I just, you know. The, the whole incident happened right next to my house.

(NRT) Well, this isn't the place for you to testify, but if you have questions for Ms. Priestap, you can ask her questions.

(MDN) On your, on your statement you said you did not investigate it yourself, and you just took the officers word for it where the blood marks were.

(HP) No sir.

(MDN) That's what you said on your statement.

(HP) I personally took photos of where the blood marks were on the road. In accordance, in it shows, the picture showed how far away the blood splats, blood spots are. And the fact that they're between um, sorry, I'm looking for my photo.

(JN) The initial determination is six and then I tried to list the exhibits if it helps you find them. But I think the photographs of the road were...

(HP) Between 231 and 233 London Drive and that's what that my photos show where the blood spots were. Verses where your house is, which is about 200, a little over 200 feet away from your driveway and across the street.

(MDN) Well, I just, that's impossible the whole incident happened literally next to my house. So that, that's completely impossible.

(NRT) Do you have any other questions for Ms. Priestap?

(MDN) No, I do not.

(NRT) Ok. You can hold onto that if you want. Does the City want to redirect?

(JN) No, thank you.

(NRT) Ok, thank you Ms. Priestap. The City can call its next witness.

(JN) Um, thank you, um actually I would like to call um Mr. Nikzad. If I could ask you some questions sir?

(MDN) Sure.

(JN) Ok, thank you. Um, and may I have permission to treat Mr. Nikzad as a hostile witness?

(NRT) Yes.

(JN) Ok, um. Ok Mr. Nikzad, um as far as what happened on June 19th, um isn't it true that your dog was off the leash during your walk?

(MDN) Ah, at the end.

(JN) What do you mean by at the end?

(MDN) I let her off the leash into my back yard.

(JN) Ok,

(MDN) And that's what, that's the statement I gave.

(JN) Ok, and um, didn't you also give a statement that she had, um escaped out of her harness and that you were running around trying to

(MDN) No, I did not.

(NRT) Ok Mr. Nikzad, a couple of things, I'm sorry, Mr. ah, Ms. Nix I'm sorry.

(JN) That's ok.

(NRT) Mrs. Nix needs to finish her question before you answer so that we can all hear and so it's recorded properly. The other thing too, if you could face me when you're talking because I'm having a hard time hearing, I'm sorry.

(MDN) Sorry, I was trying to listen.

(NRT) I know, I'm sure Ms. Nix won't think you're being rude. I appreciate it. Ok, I'm sorry for interrupting. Do you want to ask the question again?

(JN) Sure. Thank you, um. Ok so what, what did you mean by the end of the walk were you?

(MDN) I let her run around my back yard at the end of the walk and then she ran to the front yard. And then that's when Ms. McFarlane was walking up, she was walking up the street. And

ah, basically it happened on the, my left side of my house which was, that's when the first incident happened. To the front next to the electric pole, and then ah, when I walked with her, I walked with her one house downward, and then that's when as soon as I walked her down, I turned back to go get Bubbles. When I walked with her safely down the first time that's when she followed me back. And that's when she started throwing the weights at her, in front of my house. That's why I said to her, the report of the blood spots are impossible. Because the hap, the incident happened in front of my house. She was throwing the weights at Bubbles and that's when I stepped in front of her and then she walked backwards and literally fell on her own onto her back.

(JN) Ok, so.

(MDN) No one pushed her down and no one touched her. At all.

(JN) As far as um, when you're mentioning that she had walked and from what you're showing it looks like you're saying that she walked back maybe two steps and then fell. Is that a fair statement? When you're showing...

(MDN) She, she walk, she went, she had the weight in her hand, ok? With her front, this leg forward, she was in the act of throwing the weight. I stepped in front of her, I put my hand in front of her hand. I was literally, like she was like a couple of feet in front of me. I just, I had my hands like this, protecting my dog. And then she threw her other hand up, like this. She threw her other hand up, like this. Walked two steps backwards and literally fell on the ground by herself. And no one touched her.

(JN) And

(MDN) And that, and the dog was behind me. The dog was nowhere near her. So that's another conflicting statement. I don't know why she said the dog touched her because she literally fell down by herself and no one touched her.

(JN) Um, so you're saying that that was in front of your house.

(MDN) Literally in front of the electric pole.

(JN) She walked back two steps.

(MDN) No not as two steps, alright, here's what, if I could draw you, if I could draw something, I could. Alright, let's say that.

(NRT) The City, the City's included photographs in their evidence they gave you. I don't know if that would be helpful for you to use. I mean, feel free. If you want to draw a diagram, you're certainly welcome to that, I just made a suggestion.

(MDN) If I draw a diagram everyone can see what

(NRT) That's fine. Do you have a piece of paper?

(Inaudible)

(MDN) Well, I, I can, I can tell, I can just tell you, I can tell you.

(NRT) I mean, your, this is your opportunity to present your evidence.

(MDN) Ok.

(NRT) If you want to draw a diagram, you are free to do that.

(MDN) Well, she was in the act of throwing it, she was in the, the, in the corner between my house and the house to the right of me. We were at the corner right in front of the, the, in front of my mail box, it happened in front of my mail box. This is where it happened. Ok? It didn't happen 200 feet away, it happened literally right there. And ah, so as soon as I put up my hands in front of her she threw both of her hands up, walked two steps backward and then fell to her back. And then all my neighbors, eve, like literally all my neighbors rushed out of their houses and I had a gun pointed towards me. Actually, it was, the gun was pointed towards me and, and Bubbles both. And I, I got very scared. You knows, you know. Seeing Bubble, a gun pointed to, toward me was, was kind of traumatic, so. I was kind of shocked and then, ah. That's when all my neighbors, they gathered around us amidst the problem. And, ah, I was just, I was in shock. And then that's when Nicole, the, the other neighbor.

(NRT) Ok, wait, let me just interrupt you real quick. I don't remember what the question was, but I feel like it wasn't a, one that invited a narrative. So, for, again, this purpose is, it's the City's opportunity to present their evidence. So, she's can ask you questions and you should answer the questions.

(MDN) Ok, I don't remember what the question either. I'm sorry.

(NRT) Ok, that's fine. Um, and we, you know, fortunately this is a quasi-judicial proceeding so we don't have to be super formal. But I do want to make sure that the record is clear. So, Ms. Nix, if you don't mind.

(JN) Yeah, gonna given it back. Um,

(NRT) Alright, thank you.

(JN) And, I know that um, I mean, I kind of started with when was the dog unleashed or you know.

(NRT) Ok.

(JN) Or was the dog off the leash on the walk? Um, Mr. Nikzad, um, isn't it true that the victim told you that you should have your dog on a leash?

(MDN) I believe so, she did.

(JN) Ok.

(MDN) As she was walking out, she began speaking to me. As she walked up the road. And, ah she began talking to me and I was shocked because, none of my neighbors have ever talked to me like that before. Off, you know, right off the road. And I don't know if, I mean, I don't know this woman. I mean, this is the first time I ever met her. So she began talking to me. She, she, I think she told me that your dog has to be on a leash and what not. And ah, she, she was saying it in a, a pre, a somewhat abrasive, aggressive manner. So then that's why Bubbles approached her and began barking at her.

(JN) Did, um, is this after she had told you that the dog snapped at her, or before?

(MDN) No, she was talking, she, she was talking to me. She was walking up the street. She was on a walk. And then, she passed the, she passed the, my neighbor's house when she began speaking to me. And that's when Bubbles and I noticed her. Because she was speaking towards us. You know, and, and that's when I think she, you, you told, when she let me know that bubbles had to be on a leash. And then, ah, when Bubbles went toward her, she panicked. The lady panicked, you know she was scared of Bubbles. And ah, she smacked Bubbles in the face with her, with her weight.

(JN) Did you attempt to control your dog?

(MDN) I stepped between her and Bubbles. As soon as I saw Bubbles, you know, and her, as soon as I saw her and Bubbles, you know, interacting. I stepped between them, you know. I made sure that they, I was in between them and I walked with Ms. McFarlane at least a house or two down. I don't remember. I walked with her a house or two down to make sure that she was nowhere near Bubbles. This was the first incident. But it, and that's when I walked, I, when I felt Ms. McFarlane was safe, and I didn't see any bite marks on Ms. McFarlane. And I didn't see any bite marks and I felt she was safe, I turned around and put my attention toward Bubbles. And that's when I went to go for Bubbles and, and put her on a leash and take her in the house. But Ms. McFarlane turned around, she walked to the front of my house, in front of my mailbox. In front of my mailbox started throwing the weights at Bubbles. Literally at Bubbles, that's when I stepped in front of her again, I stepped in front of her put my hands up. When she was like this, she had the weight in her hand like this, I put my hand in front of hers. That's when she threw both her hands back, walked two steps back. And then fell on the ground like that. She literally fell by herself. Nobody touched her.

(JN) Ok, um. Did you ever put your dog on the leash?

(MDN) I had her on the leash the entire walk until the end when I reached my yard. And I was in the back, in my back yard, and I let her off my leash.

(JN) I mean after Ms. McFarlane had started talking to you. Did you re-leash your dog?

(MDN) I was in the process of leashing her. But she was speaking to me, and then Ms. McFarlane, you know, was panicking. You know, she was, she was panicking. And I was trying to, you know, I was, I was trying to control my dog, and you know, you know, get her, get Ms. McFarlane attention too. And try to keep Ms. McFarlane safe.

(JN) Why do you say safe?

(MDN) Because she, because both the, because this, because Bubbles was panicking and, and so was Ms. McFarlane. They were both panicking. You know, at the same time. Bubbles barking, she's, she's throwing a tantrum. And I'm trying to deal with both of them.

(JN) Ok, and isn't it true that other neighbors had to help you corral your dog after the fact, kind of to get it on its?

(MDN) As soon as, as soon as Ms., Ms., Ms. McFarlane fell on the ground. That's when all the neighbors appeared. All the, I had the gun pointed towards me, I was shocked. And, ah, and I didn't know what to do. So, so my neighbor Nicole suggested that we just go turn our attention toward Bubbles. And she helped me control Bubbles. We put bub, we put Bubbles back in the house and that's when I came to evaluate the situation. As soon as Nicole helped me put Bubbles back in the house.

(JN) Are you, um, is it your testimony that the victim came into your yard or no?

(MDN) No, she was on the street. The entire time, she was in the street.

(JN) So, how would you, you've seen the pictures on the record, correct?

(MDN) Correct.

(JN) Ok, and have you seen where it's pointed out in the pictures um, your home verses where the blood stain was found on the road?

(MDN) I can't tell by those pictures, you know. I don't, I can't even recognize those pictures, honestly. You know, I, I, I don't, I don't, I don't, I can't, I can't, I can't talk to those pictures. I just know, I know, what happened and I'm telling the truth. So that's all I know.

(JN) Ok, um, your honor, may I approach the witness just to ask about a picture?

(NRT) Sure.

(JN) Thank you. I'm not familiar with your neighborhood so much either, so if you can help me. This is where the blood stain was found. And where is your house in relation to this.

(NRT) Can I know what picture you're looking at?

(JN) Oh, I'm sorry.

(NRT) That's ok.

(JN) Let me show (inaudible) point it out. And I will.

(NRT) Ok, thank you. Ok, page two of exhibit L,

(JN) Yes.

(NRT) Ok, thank you.

(MDN) I'll be honest with you, even with these pictures I still don't even know where I'm at. You know, I can't even tell, really.

(JN) I'm going to, um, go back to the first picture and kind of go through one by one so we can all kind of get where things are.

(MDN) Ok, so that's 233.

(JN) On the first page we're looking at.

(MDN) Ok, so my, my house is literally diagonally across from there let's say. So mine's 228 so I'm on this side, so I'm on, so I'm literally diagonally across. That's not even 200 feet, that's just like, you know, my, my, my mailbox is literally maybe 10 or 20 feet away from there.

(JN) Ok, and now I'm going to look at, one, two, three, four. Forth picture and this is a different angle of the blood stain that was being pointed out on the road.

(MDN) Umhum.

(JN) And this is your house down here?

(MDN) Right.

(JN) Where it's 228 is, well, 288 but the off, the officer corrected it. That's 228. So that looks to be, you know,

(MDN) No, I can't.

(JN) At least two driveways down if that's your home, correct?

(MDN) I don't, I don't believe those are blood spots there. That's, that, that cannot be where the incident happened. Unless the blood happened, you know, appear there. The incident happened, you see there's my, my mailbox isn't all the way till down there. This is my house. You see? The incident.

(NRT) Ok, I don't.

(JN) I was just going to

(NRT) Do you all want to come up here so I can see?

(JN) Yeah, I'll do that, ok.

(NRT) And also, I didn't get the answer to the question as to is this your house.

(JN) Is this your house?

(MDN) My house is back here.

(NRT) Ok, so where the star is showing 228 London Drive, that is your house.

(MDN) Right, right. And then the incident happened over here, this is where the incident happened. Not here. This is, this, this, I live, I walk, I walked her all the way down here. And then when I walked her, as soon as I felt she was down here I started walking back up. And she was up here and she was throwing the, she was throwing the weights at Bubbles up here. From the hill.

(NRT) Ok, ok,

(MDN) And that's when I stepped in front of her. And that's when she put her hands back took two steps back and fell down.

(NRT) Ok,

(Inaudible)

(NRT) You can go back to the podium. You can put that over here, thank you.

(JN) Ok, so, you've testified as to where your house is in this picture.

(MDN) That's right.

(JN) So we can see it, and um, in the picture is noted by one of the animal control officers as to where they had found the blood stain. So, with you testifying that she was in front of your house.

(MDN) Literally diagonally in front of my house, right in front of my mailbox.

(JN) That doesn't seem like a bit far to you, to have stumbled back.

MDN) (inaudible) I will, I have no clue how this.

(JN) If that's where the blood is?

(MDN) Because I'm telling you, that on the record, she, she noted, I read it. She said she took her, that she took the police officer's word from the word of the, of his investigation. And then that's why she, that's why Ms. Priestap said that. Was because the police officer said it. So, the, I don't know where the police officer's investigation went all the way to, two houses further down. When the whole incident happened literally in front of my, literally in front of my mailbox. The second incident, the first incident happened actually right in front of my house. It was literally, the first, where sh, where initial's it happened right in front of my house. I walked with her down a couple of houses and I turned around. I walked back and then she follows me

and ah, that's where she began throwing the, the weights at Bubbles. And then I stepped in front of her. She, she took two steps back and fell down.

(JN) Thanks, um, it was noted earlier I think by your friend Mr. Moreno, that um, that you'd gotten insurance?

(MDN) Ah, I, I, ah, as soon as that I got the ah, I got the ah, hearing and all this stuff, my family just went ahead and they went and paid for insurance. They went ahead and paid for insurance. We put like measures, like we put like gates. We're going to put another fence around the entire house. You know we have all these measures that we already intend to do cause we don't want, ah, we don't want this to ever happen again anyway, you know? We feel very bad that this hap, this happened. It happened, so we just want to make sure that this, that this, this never happens again.

(JN) Ok. Um, I have no further questions.

(NRT) Ok.

(JN) For Mr. Nikzad, thank you.

(NRT) Thank you, and as I'd mentioned you will have another opportunity to testify on your own behalf.

(MDN) Ok.

(NRT) Um, does the City have any additional witnesses?

(JN) Um, yes. Just two more your honor.

(NRT) Ok.

(JN) I'd like to call animal control officer Eva Rodriguez, please.

(NRT) Ok. Good morning.

(ER) Good morning.

(JN) Thank you. Um, if you could please state your name and position with the City.

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

(JN) Thank you. And um, Ms. Rodriguez, can you tell the court what you know about the incident? On June 19th.

(ER) On June 19th, we were dispatched out to um, London Drive. In the area of 231, um, 233 is where we ended up pulling up. Ah, we were called out by the Flagler County Sheriff's department in reference to a dog bite and that the dog was still loose at that time. Um, when we responded to the area, the victim was already gone in the ambulance and we met with a Flagler

County Sheriff's officer, ah, Deputy Taylor. Um, he was parked in front of 231, where the, between 231 and 233 where the victim was, um, before she was taken away. Um, when we got there, um, we met with one of the witnesses at 231. Um, who described the incident to us as well, ah, where he heard um, his wife came in to the house because she, they heard some screaming. He ran out to assist, ah, he was actually one of the main people who helped the victim. Wrapped her head up, um to stop the bleeding, they called 911. Um, then we started gathering information. We found that ah, the, the report was that the dog was loose and had bitten the victim. Um, there was blood on the road, from where the victim had fell. Um, we documented the photographs, um, I'm in those photographs pointing out the, the spots. Um, we know that the, the owner retreated back to the house with the dog. The dog was contained when we arrived on scene. Um, and that there were multiple bites on the victim at the, at the time that we responded.

(JN) Thank you, and um, and that address, I just want to be clear, where, where the blood spots were found in front of, was in front of 230...

(ER) Between 231 and 233, in that area, in the street.

(JN) Ok, thank you. And about how far away, um, was that area from Mr. Nikzad's house?

(ER) Its a few lots down, um, probably a good two or three lots away from his house, um, a 200 feet away from his driveway and across the street.

(JN) Ok, and have you, um, ever seen ah, Bubbles act in an aggressive manner otherwise as...

(ER) Um, when we responded to the owner's house, the dog was still wound up and kind of in a frenzy. Um, so we stood real still and yes, we did note that the dog was a little more alert when the deputy was talking with his hands and told him, hey, to put your hands down to your side.

(JN) Ok. And um, ok, so as far as the physical evidence in relation to the accounts um, being accounted by Mr. Nikzad, what you saw was farther away than where he is stating?

(ER) Correct.

(JN) At the curb?

(ER) That the evidence shows and at that time the, where blood stains were it was um, it was not in front of his house.

(JN) Ok, that's actually all the questions I have at this time.

(NRT) Mr. Nikzad, do you have any questions for this witness?

(MDN) No, I do not.

(NRT) Ok. Thank you very much.

(ER) Thank you.

(JN) Oh, actually, can I ask one other question? Then I have one more witness. Did you find any other, what you would think are blood stains or evidence other than the area you all photographed?

(ER) Um, the one witness at 231, um, he had the blood soaked bandana in his trash can that was for the victim to stop the bleeding.

(JN) Ok.

(ER) At his residence at 231.

(JN) Ok, and had you seen ah, for instance, a blood stain in front of Mr. Nikzad's mailbox?

(ER) We did not.

(JN) No?

(ER) No.

(JN) Ok, thank you.

(NRT) Ok, Mr. Nikzad, do you have any questions?

(MDN) No, no.

(NRT) Ok, thank you.

(ER) Thank you.

(JN) Thank you. And for the City's last witness, we would like to call Mrs. Barbara McFarlane.

(NRT) If you could just step to the podium, please. Thank you. Good morning.

(BMF) Good morning your honor.

(JN) If you could just state your name and address for the record.

(BMF) My name is Barbara McFarlane, 219 London Drive, Palm Coast, Florida, 32137.

(JN) Thank you. And could you please tell the court Ms. McFarlane, um, where you were and what you were doing in the morning of June 19th.

(BMF) Um, I usually get up and walk every morning. I try to at least walk every morning, and that morning, ah, I was walking by and I saw someone with a dog. And the dog was running up and down on people's property. Running from house to house, pooping and peeing on people's property. And I walked by and this person was standing there. And I said to him, I said, you know you should have that dog on a leash. Yeah, yeah. So I kept walking. So I walked, and I walked to about 233 and the dog came and snapped at my right hand. My back was turned and it

came and snapped at my right hand. And I said to him, I said, you know you, your dog just bit me. Where, show me where, where? I said your dog just, and the dog kept coming at me. So I said, you better control your dog. Control your dog, so I had two weights in my hand, and the dog kept coming at me so I threw one weight at the dog but it went, it missed the dog. And he said, don't hurt my dog. I said then control your dog. And the dog kept coming and I threw the other weight at him. So, it, if walked away, with the dog, and I wanted to see where he lived. Because I want, I was going to call the cops and them to know about him not having the dog on a leash. So he's at 228, and I was at 230. And he said to me, why are you following me? I said because I want to see where you live so I can call the cops on you. And the dog came at me, and I backed up and fell, on my coccyx. And fell and hit the back of my head. And I'm screaming because the dog is biting me and I'm covering my face so the dog won't bite me in my face. It bit me on my fi, on my ring finger, it bit me on my, I, I'm a diabetic. I am a diabetic and I am so afraid of these bites. Because this one is still not healing properly.

(NRT) I can't see you because there's a podium in the way. Ok.

(BMF) See here?

(NRT) Ok.

(BMF) And in my back, on my legs also? And I'm screaming, for pep, someone to help me. And he's standing there watching the dog bite me and didn't do a thing about it. He just stood there. Then finally, my neighbor, next to me, Nicole. At 217, she saw what was happening and she ran. And she got the dog off a me. And then you, you walked with her and the dog. She tried to control the dog and he wasn't doing anything about it. The neighbors came out and make, call, called 911 and came out and helped me. Picked me up off the floor. Him and Nicole and put me a chair to sit. Till the ambulance came and took me away.

(JN) Ok.

(BMF) So everything happened, where he say happened, it did not happen there. It happened between 231 and 233. I wasn't even near his house.

(JN) Ok, as far as um, where you were walking, ah, Ms. McFarlane, and when you testified you that you had your back turned and were walking away and you thought the dog had snapped at you. Um, had, had you thought that you had done anything whatsoever to

(BMF) No.

(JN) to cause the dog to.

(BMF) Because I, I, I walked by with him, with the leash in his hand and the dog is running up and down on people's property. And I just kept going. I walked away and next thing I know, the dog came and snapped at, at my right hand.

(JN) So you were just peacefully taking your walk down

(BMF) Just.

(JN) And that's when it occurred.

(BMF) That's it.

(JN) Ok.

(BMF) Then I said to him, I said, the dog kept coming, barking at me, coming at me. So I said, control your dog, you need to control your dog. Said because your dog just bit me. Said where, where, show me where. So I said, you need to control your dog. And I had the weights and I threw the weights at the dog, both weights at the dog. Because the dog kept coming at me.

(JN) I understand. And um, when the dog had, so the dog had first snapped at your hand, you testified when you were walking away.

(BMF) Yeah.

(JN) And then you all had words. And then this dog comes at you a second time. And that's when you stumbled backward.

(BMF) No, he, he walked away with the dog. So I wanted to see where he lived.

(JN) Ok.

(BMF) So I walked behind him and I stopped at the house next to his, I was, I wasn't even on his property. The house next to his. Said why are you following me? I said because I want to see where you live so I can call the cops and let them know that you don't have the dog on a leash. That's when the dog came at me. I, I started to back up and fell.

(JN) And, um I know that you had pointed out some of the bites that are healing on your leg now. And um, were there multiple bites.

(BMF) There were multiple bi, bites. Yes, they, there were. I got bit on my ring finger and that one puncture wound on my leg here and on the back of my leg also.

(JN) And we, and we do have um, color pictures in the record. Um, of the photographs that were taken of her wounds before. As well as the um, medical report.

(BMF) Yeah.

(JN) That you received from the day at the hospital. Um, was the dog aggressively attacking you?

(BMF) Yes she was because I was on the floor and I'm covering my face and I'm screaming, screaming and screaming. And he's, he stood there, he stood there and didn't do, tried to hold the dog or anything. Till my neighbor saw what was going on and she ran from 217 all the way down to 231, 33 where I fell.

(JN) Ok, and um, when this, when you're testifying that this is unprovoked. You know the dog had approached you um, in the, in the street when your back is turned this happened once. Would you say that the dog either um, approached or chased you again in order to bite you?

(BMF) Yea, yeah, he came at me.

(JN) Ok, and um, did feel that this was, the dog was acting as though it was menacing or trying to attack?

(BMF) Yes.

(JN) Ok, and you had submitted a statement um, as to the facts that we have in the record as well.

(BMF) Yes.

(JN) Um, ok, and just to clarify that this is your testimony that you were not in front of his home as he had testified.

(BMF) No. It wasn't anywhere near.

(JN) Ok. And um, when you fell down, was there blood in the street from your head?

(BMF) From, from my head, from well because I fell and hit the back of my head and it was bleeding.

(JN) Ok, and where you had fallen down and the neighbor had helped you up and sat you in a chair and what not. Ah, was the blood stain that was on the road, would you say that would be the only place that the blood stains would be?

(BMF) Yeah, that's the only place.

(JN) Not anywhere else?

(BMF) Yeah, that's the only place.

(JN) Ok. And as far as um, the City's of course already submitted the photographs of you and your medical records, so is there um, a circum, circumstances that occurred that morning or anything else that you would add or is that.

(BMF) No.

(JN) Pretty much the bulk of it?

(BMF) No, that's it.

(JN) Ok.

(BMF) That's it.

(JN) Um, well thank you. Those are the only questions that I have now for this witness your honor.

(NRT) Mr. Nikzad, do you have any questions for Ms. McFarlane?

(MDN) Um, no, not right now.

(NRT) Ok, thank you very much.

(JN) Thank you.

(BMF) Thank you.

(SM) Oh, hold on, hold on.

(NRT) Oh, ok.

(SM) I just wanted to ah.

(NRT) Can you please stay, could you stay at the podium please?

(SM) No I just, I've been taking notes all this time. And I have a couple of questions refereeing to ah, Heather I don't remember her last name, I'm sorry.

(NRT) Priestap.

(SM) Priestap.

(JN) She's.

(NRT) She's already completed so you can ask Ms. McFarlane. Your questions.

(SM) Ok, ah, um.

(NRT) But you can call Ms. Priestap from your witness list.

(SM) What's that?

(NRT) You can call her as your witness when Ms. Nix is done presenting her evidence.

(SM) Ok, Ms. McFarlane, I know we haven't met ever. Um, I'm just a friend of the family and I'm trying to help Michael because this is (inaudible) Um, but ah, the dog, um, you felt in danger from the dog why did you go back to the house?

(BMF) No, no, no, no. Wait a minute, the dog snapped at me the first time and kept coming at me and I threw the two weights at him right then and there. I wanted to see where lives so I could call the cops and let them know he was walking the dog without a leash.

(SM) No, I know.

(BMF) Ok?

(SM) I, I, understand. You know, um, if you had a dog that was defending himself. That's what.

(BMF) Defending himself from what?

(SM) Because you threw the weights at him.

(BMF) Why did he come at me?

(NRT) Ok,

(BMF) Why did he snap at me?

(NRT) Let me just explain how this works. So, Ms. McFarlane only this gentleman may ask you questions. And you just answer them. Unless the City has some objection.

(SM) Yeah, that, that was my only question, you know. Um, if she felt threatened, why did she go back to where the dog was.

(BMF) Because I said I wanted to see where he lived so I could call the cops to let them know he was walking the dog without a leash.

(SM) Yeah, well, um I would have gone to safety first, but you're not me.

(BMF) Um hm.

(JN) Objection, speculation.

(NRT) Ok, overruled, but do you have any other questions?

(SM) Ah, well, I just have a question for Miss Heather. But I ah, um, I missed my turn because I was making notes and we. Because I was just ah, this is my first time and I spoke, I met Heather the other day when I was trying to help Michael.

(NRT) Ok, I understand. Alright, thank you. Redirect, Ms. Nix?

(JN) Um, no, I'm good, no.

(JF) You can hold onto that sir.

(JN) Ok, thank you. Um, so you're testifying that, you know, you were only going to see the address as to where Mr. Nikzad lives?

(BMF) Correct.

(JN) And when you were um, had thrown the weights at the dog, were you trying to defend yourself?

(BMF) I, yes I was defending myself against the dog. Because the dog kept com, coming at me and he's standing there. So I tell, told him to please control your dog. Control your dog. So he, he, he did, I said cont, I had, I said I'm gonna throw this weight at. He said don't hurt my dog. Then control your dog. And he didn't do anything so the dog kept coming so I threw the weight at the dog. And the weight missed the dog.

(JN) And as far as um, you know you were compelled to throw the weight at the dog, did you feel like you were doing this in um, self-defense because it was aggressively going at you?

(BMF) Yes, yes. It was self-defense because the dog kept coming at me.

(JN) Ok, thank you. No further questions.

(NRT) Ok.

(JN) So that's the last of it for the City, your honor.

(NRT) Mr. Nikzad, you can call witnesses, you can prepare, testify on your own behalf, you can provide whatever evidence you like.

(MDN) can we go together?

(NRT) I'm sorry?

(MDN) Can we go together?

(NRT) Sure.

(MDN) Ok,

(NRT) I'm sorry?

(SM) I should have said this, thank you (inaudible). Well based on ah, um, I wanted just to ah, based on the ah, everything that I've see, ah heard, everything is like conflicting at the same time. Um, and ah, you know, I, I'm still questioning myself, you know. If somebody's in danger, why go back to, you know ah, to where the threat happened. And ah, and then also I noticed that there's conflicting statements also ah, when they ah, interviewed Michael. And then they interviewed ah, Ms. McFarlane like two days after. You know, Michael was really nervous and his first, um, what a, the first statement he ah, you know presented. Ah, because it was all

happening at the same time and he was trying to get, what I, what I feel what he told me was that he's trying to control both the people at the same, I mean the dog and all that.

(JN) Your honor.

(NRT) I just, I may be addressing what you were just going to say.

(JN) Ok, thank you.

(NRT) Um, just, again, and I understand you all are not attorneys, but, so. From a procedural standpoint, this is where you present evidence, not just make your legal argument, or whatever argument you're going to say.

(SM) Oh so,

(NRT) You have an opportunity to do that in a few minutes.

(SM) So

(NRT) To the extent that if you want to present testimony. In other words, Mr. Nikzad can testify a narrative or you can ask him questions to answer. That's fine. Or if there's other evidence, or excuse me, witnesses you want to ask questions to, or documents you want to present. That's fine, just your, you know closing argument we're not quite there yet.

(SM) Oh, ok, I'm sorry. I didn't understand.

(NRT) That's ok, I understand. That's why I'm explaining it to you.

(SM) Ok.

(NRT) Um, so in that regard, is there any questions you'd like to ask Mr. Nikzad? Or Mr. Nikzad is there anything else you'd like to testify to that you haven't already testified to this morning?

(MDN) Um, honestly it's just very conflicting you know her version versus my version.

(NRT) Well, again, and that's, you're making an argument. I'm asking you for testimony about.

(MDN) Ok, I can, I can repeat what I told you before.

(NRT) Well, and you can do that or we can adopt the testimony you've already said so you don't have to repeat yourself.

(SM) Yeah, just adopt your testimony.

(NRT) Um.

(MDN) Ok, just to reiterate. You know, when she, I was, I was standing on my front, I was standing with Bubbles on my lawn when she, when she walked by. So I wasn't walking and Bubbles wasn't on any other lawns. So there's one conflicting ah, statement. The other conflicting statement is that she said that she walked and ah, and Bubbles attacked her from behind when that's a conflicting statement ah, she, she never mentioned punching Bubbles in the face the first time to provoke the incident. Ah, that's a conflicting statement. Um, she says that Bubbles jumped on, or was attacking her. That's why she fell down, that's a conflicting statement. I mean, her, her version is totally conflict, conflicting from my version so since there are no witnesses and only me and her were there.

(NRT) Ok, your make, you're making like a legal argument right now. So this, right now is only opportunity to present evidence. So if you want to tell me about what happened something you haven't already testified to. Or if you want to question a witness or present other evidence, that's fine. Then the City will go with their closing argument and then after that is when you can make all these arguments you're making now. Is there any other evidence you want to present?

(MDN) No. I, the, the on, the only testimony that I have is that I've already given you.

(NRT) What you already said. Ok, fair enough. Alright thank you. Does the City have any closing argument?

(JN) Um, yes your honor, thank you. Um, your honor the evidence and testimony that has shown that Bubbles does meet the definition of a dangerous dog. You've seen evidence moved into the record and her testimony um, that shows that Bubbles aggressively um, bit, attacked or endangered um, or inflicted a severe injury on a human being, Ms. McFarlane on public property. Um, there was testimony that the dog was acting aggressively. There's testimony and medical records and photographs um, as to the injuries um, showing that she had multiple bites which does meet both the City code and statutory definition of severe injury and she was on public property um, being in the road, on London Drive. Um, the testimony as well as the written affidavit that Ms. McFarlane had submitted had provided that Bubbles first aggressively snapped at and bit her hand while she was turned, walking away from the dog. Um, the City would contend that this would show that it was an unprovoked situation. Um, when somebody is walking away from an animal and it bites them from behind, it certainly doesn't seem that it could be anything but an unprovoked um, bite and there were the multiple bites on her hands and legs um, in addition to the injuries she sustained of hitting her head on the concrete road. But, um, as far as her having hit her head on the road, that's of course, where the testimony and record shows that the blood stain in the road would have come from. Um, you've heard testimony from both the victim and animal control officers as to where the victim was found, and that this was approximately 200 feet from where the owner's house is located. On the photographs um, show that, you know, you can tell from the photographs even let, let alone from the testimony that it is a few houses away. Um, while there is disagreement between the parties, of course, as to where the incident actually occurred, the City would contend that the physical evidence does show that Ms. McFarlane had fallen um, in front of approximately the addresses of 231 and 233 London Drive. Ah, while there is, while there are different points of view as to what the circumstances were that morning um, the physical evidence does support Ms. McFarlane's account of the incidences. We would say um, it seems rather clear that that blood stain even in the picture is rather far from the home. Um, when Mr. Nikzad was giving his testimony about her having stumbled back just a few steps and then fallen that's certainly a much

shorter than the 200 foot distance. And we would also contend that there has been um, a good amount of conflict in the testimony or evidence um, just that Mr. Nikzad has presented as far as um. You know, on, on one hand he states that the dog was off the leash and he had just let her off the leash. On the other, he's saying um, in some of the documentary evidence he had written down in an affidavit that she had gotten out of her harness and he was running around trying to catch her. Um, there's also, let's see. Basically, your honor, if Ms. McFarlane's stating that she wasn't in front of his home and the blood stain was 200 feet down the way. Yet Mr. McFarlane, I'm mean, Mr. Nikzad, excuse me, is stating that she had just backed up a few feet and then fallen. Um, it, it just, it just doesn't add up. Um, the physical evidence is supporting what Ms. McFarlane has claimed. And, you know, she didn't back up 200 feet and then fall. You know, they were not in front of his home. And we would say that um, the conflicting statements between his testimony and affidavit um, are something to consider in terms of credibility. Um, ok, in addition to ah, my having touched on the ah, first sub section of the dangerous dog definition. Also we would state that um, Bubbles is a dangerous dog. Um, because when she was unprovoked she had chased or approached Ms. McFarlane upon the streets in a menacing fashion or apparent attitude of attack. Ah, which was attested to in a sworn statement as well as supplemented by her testimony today. And for that reason, and having been attacked on the ground in the middle of a public street after the dog had come back, you know, for a second time after the initial bite um, we would say that certainly Bubbles um, meets the definition of a dangerous dog. Um, I, the City would contend that it does show aggression when a dog has bitten somebody that's walking away from it and then even a second time goes to attack someone while they're on the ground. And this is a, you know, moments later a second attack. Um, that's pretty aggressive. Um, the victim had testified that she was conducting herself peacefully, you know, she was lawfully walking down the road when she was bitten. And certainly there is a severe injury, in as much as that definition means any physical injury that results in broken bones, multiple bites, which she had, um. Or some other things which she doesn't such as reconstructive surgery. Um, the City would respectfully request that you uphold the classification of a dangerous dog based upon all of the evidence um, which was already in the record as well as the testimony presented today um, by all the animal control officers and Ms. McFarlane. And we would hope that you would uphold the classification for those reasons. Thank you.

(NRT) Ok, now's your opportunity to present a closing argument. That's sort of what you started doing earlier. So if you want a come on up and make whatever closing argument you'd like to make. Before I make my ruling.

(MDN) Ok, ah, (inaudible) Um, well, I noticed that, I read that um, that the, the dog um, that the dog to be det, classified a, as a dangerous dog, um you have to, have to be unprovoked. What I'm saying that my dog was provoked three times. The first time ah, was a conflicting statement that she's walking, she's walking down from the, from the northern side walking toward the southern side and that she was walking and ah, she was literally in front of my house. And she began speaking a, speaking to me, I would, I would say abrasively because, you know, I'm not used to, I, I, I've talk to my neighbors before and you know, no neighbors ever spoke to me like this lady spoke to me. You know she was very abrasive from the start. Ah, you know, and like you said, she's like, you know that this, this dog has to be on a leash you know. Her tone of voice was, was, was kind of abrasive and ah. That's when, that's what first got my dog to notice her. When she began speaking to me, and ah, that's, that was the first provocation. The second provocation is when Bubbles approached her she doesn't, she doesn't mention that she dud, she

did, she did punch Bubbles in the face with her weight. And that's a conflicting statement. She does, she says that she walked by, she walked by me and Bubbles and I was walking and then that's when Bubbles turned around and just went and unprovokedly attacked her. And if she unprovoked, why did she have bite marks on her hands and not bite marks on her back, on her back if she provoked her from behind? Or if she jumped from behind and bit, bit her from behind. That does not make sense. So, that, that was the second provocation. Third provocation the lady, I, I make sure the lady is safe and, you know, I don't see any bite marks. The lady comes, follows me back to the front of my house. I'm not lying about this, I don't know where these blood marks came from, I did not study these bite marks. I don't know where the, this blood spots come from. You know, this, these blood spots I don't, you even know if they are blood spots, you know? I don't know what these are. So, the lady was in front of my mailbox, she was throwing the, she was throwing the ah, weights at my dog. Ok? Again I stepped in front of her. I put both my hands up like this to block her from throwing the weights at my dog. This is very specific. Very conflicting are, argument. She's saying that this did not happen. Then she, she went from having the weight in her hand, in the process of throwing the weight at my dog. She was in the process, she had the weight up like this.

(SM) The second weight.

(MDN) Ok? And then she put both of her hands up like this as soon as I stepped in front of her. Walked back two steps. And fell down on purpose, I don't know why she fell down. I don't know if she slipped, I don't know what happened. This is what happened. She's saying that I, I pushed her? In one stat, I noticed that in one of the statements I pushed her down? In another statement the dog pushed her down. You know. And all of these statements are very conflicting. Ok? Now, either my version is telling the truth or her version is telling the truth. Ok? There are no witnesses, the witnesses did not arrive until after she was down on the ground. Ok? I was doing my best to make sure she was safe. For her to say that I was, I was, you know, not making sure she was safe is a complete lie. So it's either my version or it's her version. Ok? So with no, with no testimony's or no witnesses, all you have, all you have is this animal control person here and she's, and she, in her statement she says that she took the officers word for it that the blood spots were right in front of the house, that was completely, three or four houses down from my house. When the whole incident happened in front of my house. You know, I'm being called a liar. I don't appreciate that. You know, these people are calling me, are calling me a liar. So it's either my version of the story or it's her version of the story. And that's all I have to say.

(NRT) Ok, anything else? Ok, thank you. Ok. I'm just gonna to take a couple of minutes to review a little bit of the testimony and then I'll enter, make my ruling.

(JN) Thank you, your honor.

(NRT) Ok, I'm ready to make my ruling. Alright, just for the record, the um. My role here today is to make a determination as to whether or not to uphold the City's initial determination of the animal control authority regarding the classification of Bubbles as a dangerous dog. Regarding the proposed penalty or both in accordance with section 8-40 of the City code and 700, 767.12 of Florida Statutes. I'm going to find that City staff have met all notice requirements for these proceedings and that the owner Michael Nik, excuse me, Nikzad owned and still owns the animal Bubbles at 228 London Drive. As the City attorney mentioned, there are essentially two provisions of the statute that defines dangerous dog that they are arguing

Bubbles falls under. The first one is that any dog according to the records of animal control, excuse me, any dog according to animal control authority records, other animal control or law enforcement authorities has aggressively bitten, attacked, and or endangered or has inflicted severe injury on a human being on public or private property. I just want to make a comment regarding some of the things that both parties said. Um, the, the photographs to me are not relevant as to where the incident occurred other than regarding the credibility of Mr. Nikzad's testimony. However I find that Ms. McFarlane also had inconsistent testimony, in this case. Um, so, that being said, I'm actually not going to address sub section A of the statute. What I am going to address sub section C of the statute which says that any dog, according to animal control authority records, other animal control or law enforcement authorities has when unprovoked, chased or approach, approached a person upon the streets, sidewalks or any public grounds in a menacing fashion or apparent attitude 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. Unprovoked is defined by section 8-28 of the City code and section 7-67.11 sub 2 of the Florida statutes. As a victim who has been conducting himself or herself peacefully and lawfully, has been bitten or chased in a menacing fashion or attacked by a dog. Or under the code it says by a man. I'm not here to, to determine whether Mr. Nikzad did the right thing. Or whether Ms. McFarlane could have avoided the incident by not going back to Mr. Nikzad's home. I find conflicting testimony with regard to the occurrence of events and this is why I'm not going to make a ruling under sub section A. Because I don't know if the dog caused a severe injury or if by the initial bite, um, and, and that's kind of where I'm going with my ruling here. I do believe there's no conflicting evidence on the issue of the initial incident where Bubbles approached Ms. McFarlane in the street and nipped her in the hand. Um, I do find that at that point Ms. McFarlane was both under the definition of unprovoked, again, a victim that has been conducting himself or herself peacefully and lawfully. Um, I recognize Mr. Nikzad, Nikzad's argument that Ms. McFarlane may have made a comment to you, but that's simply not what unprovoked means. Um, just because she may have said something, and I'm not here to determine that either, whether she said something mean or rude to you, it's just not relevant under the, under the law. Um, I do not find that she was provoking the dog. I also have no evidence that dispute that the dog was not acting in a menacing fashion, I believe both parties testified that the dog was barking at the time of the incident and acting aggressively. So that being said, I'm going to uphold the dangerous dog determination. Again for clarity of the record based on section 7-67.11 sub 1 sub C and the mirrored provisions in section 8-28 of the City code. My next order of business is to decide whether to uphold or not uphold the penalty proposed by the City. I'm going to uphold the penalty in large part with a few amendments. Um, and this is the part where I talk for a long, so. The City in its initial determination has requested various um, conditions be imposed regarding the licensure of the animal, etcetera. So, this is the, this is my ruling on this issue. The owner shall be responsible for compliance with any and all regulations associated with the ownership or control of the dangerous dog including, but not limited to section 8-43 code of Ordinances City of Palm Coast and chapter 7-67 Florida Statutes. The City is asking me to order that within fourteen days after issuance of my order um, that you must complete a list of things. Um, some of those things I'm going to agree with. The others I'm going to amend and I'm also going to give you longer than 14 days. Although I understand that you've already taken efforts to comply with some of these things. So within 14 days after issuance of the final order of this initial determination by the animal control authority. Um, essentially within 14 days after my ruling, or the conclusion of any appeal that affirms this, such order. Bubbles owner shall obtain a certificate of registration for Bubbles. The certificate shall be renewed annually and those annual renewals may be issued only to persons who are at least 18 years of age and who

present to the animal control authorities sufficient evidence of the following. A current certificate of rabies vaccination, current animal license tag and proof of sterilization from a certified veterinarian licensed in any state, permanent identification such as a tattoo on the inside thigh or electronic implant, implantation. The next item although I do not, I'm not going to order that this be completed within 14 days, because I don't think that it's practical for this to happen in 14 days. I'm going to order that attempts be made to begin the process to comply with this and that evidence of those attempts be presented to the City within 14 days. And that is to um, have a proper enclosure to confine Bubbles in accordance to section 8-43 D code of Ordinances City of Palm Coast and paragraph 18 C um, as outlined in the initial determination by the City. As well as the posting of the premises with a clearly visible warning sign at all points of entry of the premises which informs both children and adults of the presence of a dangerous dog on the property. Also within 14 days, I'm going to order that the owner provide proof that he is the fee simple owner of the property upon which the proper enclosure is located or alternatively proof of permission from the fee simple owner of the property um, to enact, to erect the enclosure that I'm ordering. I'm also ordering that within 14 days which sounds like you've already done this, but, the owner obtain insurance in the amount of 100,000 dollars for Bubble, in order to provide liability insurance for dam, damages to persons and property that may be caused by Bubbles. The insurance shall be provided by an insurance company authorized to do business in the state of Florida. And the owner shall provide animal control authority evidence of a certificate of insurance and a copy of the endorsement. Annual registration shall be denied to the owner should the owner fail to maintain this insurance. If at any time the liability insurance is cancelled or lapses the animal control authority shall have the authority to impound Bubbles. If the owner does not reinsure Bubbles within 14 days of the impoundment, ownership of Bubbles shall revert to the City and Bubbles may be euthanized in expeditious and humane manner. I'm also ordering from today forward that the owner shall confine Bubbles in one of the following ways. She shall be securely confined inside the owner's residence or in a securely enclosed locked pen or structure constructed on the owner's property according to the following specifications. The floor shall consist of a concrete pad no less than four feet wide by eight feet long. The sides shall consist of chain link six feet in height. The top shall be enclosed and provide adequate shade and protection from the elements. The structure shall have secure sides, top and flooring to prevent Bubbles from escaping over, under or through the structure. The gate shall be lockable and remain locked when Bubbles is penned. Shall be suitable to prevent the entry or partial entry of children and be designed to prevent Bubbles from escaping. A perimeter fence shall be installed around Bubbles pen by the owner to prevent direct contact with, and I have a type-o here, with the dog. The owner shall immediately notify the animal control officers if Bubbles becomes loose or unconfined, if she attacks a human being or another animal, or if she dies. He shall also notify the animal control officer if he moves to another address with Bubbles, if the owner moves to different jurisdiction then the owner shall notify the enforcement officer of the new jurisdiction that Bubbles has been classified as dangerous. The owner shall also notify the animal control officer if he intends to give or sell, give away or sell Bubbles. Prior to Bubbles being sold or giving away the owner shall provide the name, address and telephone number of the proposed new owner to the animal control officer. The owner shall also confine Bubbles in a locked pen while inside the owner's residence when the owner is not present on the property. If the dog is kept inside the owner's residence all windows and doors shall be locked, excuse me, closed and maintained to insure Bubbles remains inside the residence. The next sub section is one I am going to amend a little bit, the City would like me to order that the owner shall not permit Bubbles to be outside the residence, a locked pen unless muzzled and restrained by a substantial chain or leash under the control of a competent person. The muzzle must be made in

a manner that will not cause injury to the dog or interfere with its vision or respiration but will prevent it from biting any person or animal. The owner may exercise Bubbles in a securely fenced or enclosed area that does not have a top without a muzzle or leash if Bubbles remains within his or her sight and only adult members of the immediate household or persons eighteen years or older are allowed in the enclosure when Bubbles is present. I'm going to impose most of those, but I'm making one amendment. Um, I do not agree that only adult members of the immediate household or persons eighteen years or older are allowed in the enclosure. To the extent there are children in your household that Bubbles is their dog. I think that they would be um, should be permitted to play with their dog in the enclosure um, within Bubbles, while Bubbles is present and under the owners supervision. I'm going to further order that when being transported the owner shall ensure that Bubbles is muzzled and safely and securely restrained within the vehicle. The owners responsible for all boarding costs and other fees that may be required to humanly and safely keep Bubbles during any appeal procedure. Um, speaking of which, this determination may be appealed by the owner um, in accordance of the appellant laws, I can't give you legal advice but I would encourage you to consult council there are deadlines that you must comply with, so do not delay. The appeal process is outlined in um, chapter 7-67 Florida statutes and the City code as well. You are also notified that pursuant to section 8-40 B code of ordinances of the City of Palm Coast, if a dog is classified as dangerous due to an incident that causes severe injury to a human being based upon the nature and circumstances of the injury and the likelihood of future threat to the public safety, health and welfare the dog may be destroyed in an expeditious and humane manner. Um, I am not going to, based on the nature and circumstances of the incident, I am not going to order that that be the case. A couple of other things that I am going to add to that. I'm going to include this in my written order so that everyone is well informed of their rights and obligations. Ah, pursuant to section 8-29 A of the City code, the City Manager and animal control officers have the authority to capture, seize or pick up a dangerous dog not in compliance with the written notice of their classification. An animal control officer may immediately impound a dangerous dog if the owner fails to comply with any of the requirements of my order or any of the requirements of section 8-43. And after written notice to the owner in accordance of section 8-40 A.7. The dog may be euthanized at the owner's expense in an expeditious and humane manner unless the owner requests a hearing pursuant to section 8-40 A 8. Again the owner shall be responsible for payment of all boarding costs and other fees in that situation. Um, that may require him to humanly and safely keep the dog during any appeal procedure. If the owner files a written appeal the dog must be held and may not destroyed while an appeal is pending. This information is contained in section 8-40 E of the City code. Also, in that same section of the code. A violation of any condition of the order shall constitute a violation of the code and be punishable as such. I've already mentioned your rights with regard to appealing my order. I will also bring the owner's attention to sections 8-41 and 8-42 of the City code. Regarding any incidents that may occur after the fact that Bubbles has now been declared a dangerous dog. Ok, that's my final order. There will be a written order typed up and sent to you in the mail. Um, and if you have, do you have any final questions?

(MDN) No.

(NRT) Ok, thank you all for coming.

(JN) Thank you, your honor.

(NRT) Um, a final matter is to just wrap up, these proceedings formally. There being no, no new or other business. These hearings will be adjourned at 12:33 P.M. Thank you.

UNFINISHED BUSINESS:

F. None to report.

OLD BUSINESS:

G. None to report

NEW BUSINESS:

H. None to report.

ANNOUNCEMENT OF NEXT MEETING:

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

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:33 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.