

EXHIBIT D

City of Des Moines, Iowa
July 23, 2012 Administrative Hearing

In re:)	
)	DECISION AND ORDER
WILLIAM E. SHIMER,)	AND
Appellant)	NOTICE OF RIGHT TO APPEAL
)	
)	
)	

Introduction and Parties

This is an appeal of the City of Des Moines' declarations of a dog as a "Dangerous Animal" as defined by Des Moines Municipal Code ("the Code") Section 18-196, or, in the alternative, as a "Vicious Dog" as defined by Code Section 18-41.

William ("Bill") Shimer, of 3302 Sims Drive, Des Moines, Iowa appeared on his own behalf as the owner of a black Labrador Retriever named "Remington." Mr. Shimer was represented by attorney John Spellman. Chief Humane Officer Sergeant Scott Raudabaugh with the Des Moines Police Department (the "DMPD") appeared on behalf of the City of Des Moines (the "City").

Background Facts

On June 9, 2011 at about 12:00pm, Theresa Harley reported that her 10-year-old son, Zachary Deal, was bitten at 10:30am that morning by the neighbor Bill Shimer's black Labrador Retriever located at 3302 Sims Drive in Des Moines, Iowa (Animal Incident Investigation Report, City Exhibit 25). Animal control officers spoke to the victim and his mother in the emergency room at Iowa Lutheran Hospital (Exhibit 26). They told the officers that Zachary was at his friend's house next door petting the dog and another child kicked or stepped on the dog's tail. The dog then bit Zachary in the face, causing three lacerations requiring stitches: two on the nose and one above his upper lip (Photo, City's Exhibit 31). The dog was held for quarantine for 10 days.

On July 18, 2011 at about 6:30 in the morning, 9-year-old Kaleb Keller arrived at his in-home day care at 3302 Sims Drive and went to pet the same black Lab, named

"Remington." The dog began growling and acting aggressively. Kaleb backed away, but the dog lunged at him and bit him on the right upper arm (Animal Incident Investigation Report, City's Exhibit 23). At the end of the day when Kaleb's dad picked him up, he took him to the Mercy Pediatrics ER. Kaleb had a puncture wound with scrapes and bruising. (See Photo, City's Exhibits 35 and 36). Bill Shimer, the owner of the dog and resident at the in-home day care run by his wife, Naomi, reported to the ARL officer that Kaleb had walked up behind the dog and struck it before it bit him. The dog was held for quarantine for 10 days.

On July 5, 2012, at about noon, Theresa Harvey and Danny Deal, parents of Zachary Deal, reported that Remington again bit their son, this time on the fatty portion of the palm of his right hand (Animal Incident Investigation Report, City's Exhibit 15). ARL officer Tina Updegrove spoke to Zachary and his father Danny Deal at Iowa Lutheran Hospital as the victim was being treated that day. Zachary told the officer that he was playing with the neighbor boys, as he did daily. He was standing inside the neighbor's yard. Remington, the black lab, was in the yard and outside his kennel enclosure with Zachary's friend Riley, the teenage son of the owners of the dog. Zachary stated that Riley told Remington to "get the fence." Then the dog ran over, jumped on the fence and bit Zachary on the right hand (City's Exhibit 16). Zachary's hand sustained a tooth puncture and tear. Stitches closed a portion of the wound and a portion was left open for drainage. Zachary reported that neither Riley's parents nor any other adults were home at the time of the incident. The ARL Officer Updegrove went back to the Shimer residence to investigate the incident. The Shimers were at home, but were uncooperative with the officer (City's Exhibit 17). Ultimately the dog was impounded and held for quarantine.

On July 10, 2012, Sergeant Raudabaugh served on the Shimers at 3302 Sims Drive a letter informing them that their black Labrador Retriever "Remington" was being declared a "Dangerous Animal" as defined by City Code Section 18-196. He also served them a letter declaring "Remington" a "Vicious Dog" as defined by City Code Section 18-41, as an alternative and in accordance with City Code Section 18-202(a) (City Exhibits 1-5). These letters advised the Shimers of the incidents that led to the declarations and that an Administrative Hearing would be held to review the declarations. The letters also explained that, if the Dangerous Animal declaration was upheld, their dog may be ordered destroyed in a humane manner pursuant to City Code Section 18-202(b). Additionally, the letters outlined the consequences if the Dangerous Animal declaration is overturned but the Vicious Dog declaration is upheld.

Discussion

The Des Moines City Code Section 18-196 defines a *Dangerous Animal* as

any animal, including a dog...that has bitten or clawed a person while running at large and the attack was unprovoked, or any animal that has exhibited vicious propensities in present or past conduct, including such that the animal:

(1) Has bitten or clawed a person on two separate occasions within a 12-month period [or] (2) Did bite or claw once causing injuries above the shoulders of a person....

City Code Section 18-41 states that *Vicious Dog* means:

(1) Any dog which has attacked a human being or domestic animal one or more times, without provocation; (2) Any dog with a history, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or domestic animals; (3) Any dog that snaps, bites, or manifests a disposition to snap or bite....

The incidents in the record from June 9 and July 18 of 2011 went completely unaddressed by Mr. Shimer and his attorney. Those incidents alone establish that Remington fits the definition of a *Dangerous Animal* in two different respects: one, that he bit a person on two occasions within a 12-month period (indeed, within a six-week period). Secondly, the first bite was above the shoulders (a child's face). Those incidents also establish that Remington fits the definition of a *Vicious Dog*, in that he clearly has a tendency or history of attacking, namely biting, human beings.

Testimony and evidence was offered only in reference to the most recent incident from July 5, 2012. The Shimer's attorney Mr. Spellman questioned two of the Shimer children under oath about the incident, but neither of them actually witnessed the bite in their backyard. Riley, the 10-year-old son that was playing with the victim and had witnessed the bite, was conspicuously absent from the hearing.

The first to give testimony was Steven Martinez. He testified that he saw that Zachary Deal was at the house. He testified that Remington was in his kennel at the time Zachary Deal was bitten. When asked if he was testifying that Remington did not bite Zachary Deal, he replied, "No, I don't know because I was outside smoking a

cigarette on the deck. But there was a black and white dog that came up the road. See that's why everybody got confused on it." He also said that even if Remington was on his chain in his kennel his chain couldn't even reach the fence. It is unclear why the dog would be on his chain while locked inside his kennel.

The other of the children present, Garret, testified that he had secured Remington in his kennel earlier that morning. He testified also that his parents were home at the time of the incident, which is in contradiction with the report of the incident by the ARL officer, who spoke with the victim and the victim's parents directly after the incident. They reported that the parents were not at home. When asked why Remington was in his kennel, Garret testified that day care was in progress inside the house. One would hope at least some adult would be present if day care was in progress, but the ARL officer reported that no adults were present at the time of the bite. Riley had told Zach that his dad (Bill Shimer) and mom were at the hospital getting a BB removed from Mr. Shimer at the time of the bite. When Zach went home and told his mom about the bite, his brother went over to the 3302 Sims Drive residence and found no adult at home. Garret also testified that he saw a black and white dog run down the street from a window inside the house.

The Shimers offered a notarized letter from a neighbor saying that the dog was in his kennel all day and that "an unfamiliar black and white dog [was] running freely in the immediate area" (Appellant's Exhibit D). The Shimers also offered a letter purportedly written and signed by Theresa Harvey, bite victim Zachary Deal's mother, which was not notarized (Appellant's Exhibit C). The letter stated that on July 5, 2012 her son was feeding a black and white stray dog on Sims Drive when he was bitten, and that Remington was "kenneled up inside a fence, and on a chain at the time." Ms. Harvey was not present at the hearing to testify. It was also reported in the Animal Incident Investigation Report that Tina Updegrave spoke to Danny Deal, the victim's father, on the phone during the ordeal to recover the dog after the bite, and he stated that "he had just spoken to Harvey who had told him that Shimer's wife...had called Harvey screaming and yelling at her about the dog Rimmington [sic]." If Ms. Harvey wrote the letter that is Exhibit C, it may have been influenced by Mrs. Shimer's wrath aimed at her. Additionally, the Shimers had a neighbor, Craig Hall, testify that he had seen a medium sized black and white mutt running at large in the neighborhood and in his own yard.

Tina Updegrave, the ARL officer that responded that day, appeared and gave testimony corroborating her report of the incident at the hearing. She had interacted with several occupants of the 3302 Sims Drive residence the day of the incident (as the Shimers and company attempted to thwart the ARL officer's duties) and there was no

report of anyone mentioning a black and white dog that was supposedly in the vicinity. This theory is apparently being raised at the hearing in an attempt to cast doubt upon the facts as related by the victim and his parents in the report to the ARL Officer. In that report, Zachary and his dad stated that Zach had been bitten by the same dog before, Remington. The theory Appellants attempt to raise that a black and white dog other than Remington bit Zachary on July 5, 2012 is not supported by the evidence. No one saw a black and white stray dog bite Zachary. No one mentioned such a dog on the day of the incident. The preponderance of the evidence establishes that Remington bit a human on three occasions, the first two within 12 months of each other, and the second two within 12 months of each other. He also once bit and caused injury above the shoulders of a person. He thus has met the definition of a Dangerous Animal in three different ways.

Bill Shimer limited his testimony to the precautions he had taken after the initial two biting incidents. He described the kennel and fence that was erected in the back yard. Two photos were offered into evidence depicting a plastic dog kennel surrounded by a six foot enclosure (Appellant's Exhibits A and B). Beyond the enclosure, a four foot fence appears to run around the perimeter of the back yard. Mr. Shimer stated that the dog is placed in the kennel a half hour before the day care kids arrive. He is let out only after the children leave and is then placed on a chain. The chain does not reach the fence. He also mentioned that the dog had been neutered, which changed his demeanor "dramatically." He also stated that the dog wore a shock collar.

ARL officer Tina Updegrave offered testimony as to her experience with Remington in light of her 20+ years handling dogs. She stated that, based on her observations, Remington displays clear aggressive tendencies. She indicated that Remington's behavior warranted increased caution on the part of herself and the staff of the shelter. She also stated that Remington was not wearing a shock collar when he was taken to the city shelter.

Decision and Order

The preponderance of all the evidence in the record supports the City's declaration of the Shimer's black Labrador Retriever "Remington" as a "Dangerous Animal" as that term is defined in Code Section 18-196. It also supports the declaration of "Remington" as a "Vicious Dog", as defined in Code Section 18-41.

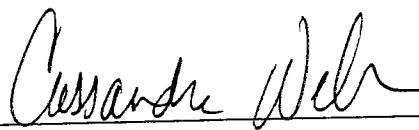
The declaration that the Shimer's dog "Remington" is a "Dangerous Animal" is UPHELD. The Chief Humane Officer is ordered to destroy the dog in a humane manner

as provided under section 18-202(b) of the City Code. The Shimers are also ordered to pay all impoundment and quarantine costs as provided under Section 18-202(g).

Right of Appeal

This decision and order may be appealed to the City Council by filing a written request with the City Clerk's Office within three (3) business days after receipt of this order, stating the reason for the requested appeal. Failure to file a written notice of appeal in a timely manner shall constitute a waiver of the right to appeal this Order, as provided under Section 18-202(c) of the Code.

This written ruling is submitted on this 1st day of August, 2012 in Des Moines, Polk County, Iowa. The City Clerk shall serve copies of this Decision and Order upon each of the parties.



Cassandra Webster
Administrative Hearing Officer

EXHIBIT E

CITY OF DES MOINES, IOWA
July 23, 2012 Administrative Hearing

EXE

(1)

FILED

IN RE:

:

2012 AUG -3 PM 3:29

WILLIAM E. SHIMER,

:

NOTICE OF APPEAL OF
DECISION AND ORDER

Appellant.

:

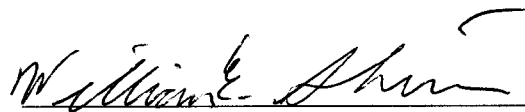
ENTERED AUGUST 1, 2012
& REQUEST FOR STAY

CITY CLERK
DES MOINES, IA

COMES NOW the Appellant and appeals the Decision of
Administrative Hearing Officer Cassandra Webster dated August 1, 2012,
for the following reasons:

1. The findings are not supported by substantial evidence in the
record.
2. Appellant requests that the order to destroy Appellant's dog
"Remington" be stayed during the pendency of this appeal.

WHEREFORE, Appellant prays that the Decision of the
Administrative Hearing Officer be rescinded, that the order to destroy
"Remington" be stayed during the pendency of this appeal, that
"Dangerous Animal" and "Vicious Dog" declarations against "Remington"
be rescinded and that "Remington" be released to Appellant.



WILLIAM E. SHIMER
3302 Simms Drive
Des Moines, IA 50317
(515) 577-3252
Appellant

ORIGINAL FILED.

Copy to:

Des Moines City Attorney
City Hall, 400 Robert D. Ray Drive
Des Moines, IA 50309

EX. E
(2)



August 7, 2012

William Shimer
3302 Simms Drive
Des Moines, IA 50317

RE: Appeal of Dangerous Animal Declaration

This is to acknowledge your appeal of the Hearing Officer's decision regarding the declaration of Remington as a "Dangerous Animal."

Your hearing before the City Council has been scheduled for **Monday, August 27, 2012**. The meeting starts at 4:30 p.m. **Failure to appear at the scheduled hearing will be deemed as a waiver of your rights to a hearing.** Parking is available on the streets surrounding City Hall. A copy of the Administrative Hearing transcript will be sent under separate cover.

If you have any questions regarding this matter, please contact me at 283-4209.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is fluid and cursive.

Diane Rauh
City Clerk

DR:kh
Enc.

cc:
Assistant City Attorney
Sgt Raudabaugh

EXHIBIT F

EX. F



August 17, 2012

William Shimer
3302 Simms Drive
Des Moines, IA 50317

RE: Hearing Transcript

Enclosed, please find a copy of the hearing transcript regarding your dog.

If you have any questions regarding this matter, please contact me at 283-4209.

Sincerely,

A handwritten signature in black ink that reads "Diane Rauh". The signature is written in a cursive, flowing style.

Diane Rauh
City Clerk

DR:kh
Enc.

cc: Assistant City Attorney
Sgt Raudabaugh
John Spellman

ADMINISTRATIVE HEARING TRANSCRIPT
JULY 23, 2012
CITY VS. SHIMER
VICIOUS DOG

HEARING OFFICER CASSANDRA WEBSTER: OK. We'll go ahead and get started. Good morning. It's approximately 10:00 A.M., Monday July 23, 2012, and my name is Cassandra Webster and I'm the administrative hearing officer. We're conducting this hearing this morning because of the city's declarations of a dangerous animal and of a vicious dog owned by Bill Shimer. Would the city representative please come to the microphone? Clearly state your name and the title of your position with the city.

SERGEANT SCOTT RAUDABAUGH: Scott Raudabaugh, I'm a sergeant with the Des Moines Police Department and assigned as the -- assigned to the animal control unit and assigned as the chief humane officer by ordinance.

HEARING OFFICER CASSANDRA WEBSTER: Raise your right hand, please. Do you solemnly swear or affirm the testimony you're about to give is truth, the whole truth and nothing but the truth?

SERGEANT SCOTT RAUDABAUGH: Yes.

HEARING OFFICER CASSANDRA WEBSTER: Thank you.

SERGEANT SCOTT RAUDABAUGH: I'd like to start off by submitting some documents for the record, if I could.

HEARING OFFICER CASSANDRA WEBSTER: Yes, sure.

SERGEANT SCOTT RAUDABAUGH: As you're aware, I gave a copy to Mr. Spellman. He's an attorney representing Mr. Shimer, is my understanding. Gave him a copy as well. I'll give you a copy. I'd like to just kind of start out by going through the documents and just explaining what they are. Document 1 is the dangerous animal declaration, and then Document 2 is the service of that document. Document 3 is a vicious dog declaration, and then behind that kind of explains the vicious dog requirements and then Document 5 is the service of that declaration as well. And the reason for two declarations are that under the dangerous animal declaration, there's an option of -- if the dog is found not to be dangerous, it can be found vicious. But it talks about filing that in conjunction with the dangerous animal declaration so that's why that was done. Document 6, Mr. Spellman was unable to make last week's hearing and we had no problem with rescheduling and so it's rescheduled to today. That's a letter from the city clerk's office. Document 7 is a copy of some -- 7, 8, 9 and 11, 12, 13, 14 are copies of city ordinance pertinent on today's hearing. I'd like to just touch on a couple here. 18-41 definitions and drop down to vicious dog and what that means. Any dog which has attacked a human being or domestic animal one or more times without provocation. Any dog with a history, tendency or disposition to attack, to cause injury or otherwise endanger the safety of human beings or domestic animals. That's certainly applicable in

this situation and it doesn't talk about provocation as well. Number 3, any dog that snaps, bites or manifests a disposition to snap or bite. Certainly applicable in this situation and doesn't require provocation. The others do not apply. I'm not going to waste anybody's time by going through those. And that's the definition of vicious dog. And then I've included 18-55 which is at large, I just include that as a matter of formality. And then 18-59 talks about seizure, impoundment, disposition of vicious dogs. If you should find the dog not dangerous but find it vicious, then 18-59 would talk about the application and procedure of vicious dog. In that 18-59, it makes reference to evaluation for adoptability in city ordinance 18-66. What that refers to is a dog vicious by breed which is not applicable in this situation. It's more for like a pitbull. 18-196, it has definitions. It's just slightly confusing. It has dangerous animal definition and then illegal animal definition in that same section. The illegal talks about things like crocodiles and so forth. This is certainly not applicable but the first portion of the dangerous animal, what that means is applicable. And I'll read through that. Dangerous animal means any animal including a dog except for an illegal animal per se as listed in the definition of illegal animal that has bitten or clawed a person while running at large and the attack was unprovoked or any animal that has exhibited vicious propensities in present and past conduct including such that the animal has bitten or clawed a person on two separate occasions within a 12-month period which we have here, did bite or claw once causing injuries above the shoulders of a person which we do have as well. The other do not apply so once again, I'm not going to waste everybody's time. Section 18-202 talks about if you uphold the dangerous animal declaration, the application and procedures as well. Documents -- referring to the numbers at the upper right-hand corner, there's a number there. I guess I should have mentioned that earlier. Documents 15, 16, 17, 18, 19, and 20 and 21 refer to a bite that occurred on July 5, 2012, and it's documented under Des Moines Police Department Case Number 12-20629. Documents 22, 23, 24 document a bite that occurred on July 18, 2011. That's documented under Des Moines Case Number 11-22926. And documents 25, 26, 27, 28 and 29 are in reference to a dog bite that occurred on June 9, 2011, and that's documented under Des Moines Police Case Number 2011-18080. In two -- excuse me, two of these incidences, photographs were taken of the victims and the dog bites to them. And one of the cases, 11-18080, the Des Moines Police Department identification technicians were requested and responded and took photographs of the child that was bitten in the face. I would like to submit those for the record, if I could.

HEARING OFFICER CASSANDRA WEBSTER: OK.

SERGEANT SCOTT RAUDABAUGH: I've given a copy to Mr. Spellman to look at during the proceedings.

HEARING OFFICER CASSANDRA WEBSTER: I'm going to mark these 30 through however many there are for the city's exhibits.

SERGEANT SCOTT RAUDABAUGH: I apologize for not marking them. I wasn't quite sure.

HEARING OFFICER CASSANDRA WEBSTER: That's all right.

SERGEANT SCOTT RAUDABAUGH: What we wanted to do with that. I also got photographs that were taken by an animal control officer Scott Wilson in another one of the bite incidences and that's under case 11-22926. I'd like to submit those for the record.

HEARING OFFICER CASSANDRA WEBSTER: OK.

SERGEANT SCOTT RAUDABAUGH: And I've also given a copy of that to Mr. Spellman. And then what I would like to do is just kind of provide a summary of what occurred and references to the various documents that I've submitted for the record?

HEARING OFFICER CASSANDRA WEBSTER: OK.

SERGEANT SCOTT RAUDABAUGH: On July 5, 2012, Mr. Shimer, Bill Shimer's black colored male Labrador retriever dog named Remington ran to the fence of his property when his son told the dog to "get the fence," the dog jumped up and bit the hand of an 11-year-old boy standing outside of the fence. That bite resulted in a puncture and a tear to the child's hand. The boy knew of the dog, knew the family, plays at the house, knows the dog owner's son, and identified the dog Remington as the dog that bit him in the hand. The child, like I say, suffered a puncture wound and a tear to his hand and received medical treatment at a hospital. On July 18, 2011, Mr. Shimer's dog once again named Remington bit a 9-year-old boy when the boy arrived for daycare at Mr. Shimer's residence. The victim said he backed away from the dog after it acted in an aggressive manner but lunged forward and bit him in the arm which resulted in a puncture, scrapes and bruising. At that time, Mr. Shimer claimed the dog provoked the dog by walking up behind the dog and striking it. On June 9, 2011, Mr. Shimer's dog named Remington once again bit a 10-year-old boy in the face which resulted in lacerations. The victim admittedly said he was petting the dog when another boy stepped on the dog's tail or kicked the dog. Some of these situations certainly could be considered provoked and that's the benefit of the doubt I gave to the Shimers last year. I remember distinctly when they came in to get the dog after the second bite, I told, I believe it's Mrs. Shimer. I said you're going to need steps to deal with this dog. And -- or I would. And I was hoping that would solve this problem, we wouldn't be in a situation like we are now. Her response at the time, I remember it very distinctly was that the animal rescue league had released the dog from quarantine and it was none of my business. I hoped we wouldn't -- like I said, I hoped we wouldn't be in a situation like this. I hoped I wouldn't have to intervene for the safety of kids, neighbors, dogs, whomever, but unfortunately, here we are. It's a bad deal, but I believe that the various three bites qualify for the dog to be considered dangerous. I don't enjoy taking the actions that I had to take, but like I said, I believe it's necessary for the safety of anybody visiting the house, neighbors, whomever. So that's all I have at this point.

HEARING OFFICER CASSANDRA WEBSTER: OK, thank you. We have a city witness? Would you like to come up?

SERGEANT SCOTT RAUDABAUGH: No, I had the animal control officer in case there were some follow-up questions.

HEARING OFFICER CASSANDRA WEBSTER: Very good. Thank you. All right, Mr. Spellman is it? Would you like to proceed? Come on up. Would you state your name, please.

JOHN SPELLMAN: John Spellman.

HEARING OFFICER CASSANDRA WEBSTER: OK, you're not going to be testifying, obviously.

JOHN SPELLMAN: No. I guess -- I guess I would start by calling Steven Martinez as a witness, if that's all right with you.

HEARING OFFICER CASSANDRA WEBSTER: OK. Could you state your name please.

STEVEN MARTINEZ: Steven Martinez.

HEARING OFFICER CASSANDRA WEBSTER: And raise your right hand. Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth?

STEVEN MARTINEZ: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK, you can proceed.

JOHN SPELLMAN: Steven, where do you reside?

STEVEN MARTINEZ: 3302 Sims Drive.

JOHN SPELLMAN: Is that where Bill and Naomi Shimer reside?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: Is that where a black Labrador by the name of Remington lives?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: And I'm going to show you what I marked as Exhibit A. Can you tell what that is?

STEVEN MARTINEZ: That's Remington's kennel, it's got a green wire fence around it.

JOHN SPELLMAN: Were you home on July 5, 2012?

STEVEN MARTINEZ: Yes, I was.

JOHN SPELLMAN: And were you outside on that date?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: Did you know a boy by the name of Zachary Diehl?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: Was he at your house?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: Did you see him there?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: Where was Remington while he was there?

STEVEN MARTINEZ: He was in his kennel.

JOHN SPELLMAN: And there's -- on this Exhibit A, there's a fence or it looks like there's a gate, is the gate shut when Zachary was there?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: Was Remington ever out of his cage on that day?

STEVEN MARTINEZ: Not until I took him.

JOHN SPELLMAN: What time would that have been?

STEVEN MARTINEZ: Right as the incident started, I guess. When the ARL showed up. I wouldn't be able to tell you the exact time.

JOHN SPELLMAN: Zachary Diehl had already been bitten by the dog, correct?

STEVEN MARTINEZ: Yeah.

JOHN SPELLMAN: Prior to him being bitten and after him being bitten until you took him out of his kennel, was he always in his kennel?

STEVEN MARTINEZ: Yes.

JOHN SPELLMAN: I don't have anything else.

HEARING OFFICER CASSANDRA WEBSTER: OK. I'm sorry, are you the son of the Shimers?

STEVEN MARTINEZ: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK. And are you testifying today that Remington was in his kennel at the time of the bite that the incident here, the July 5th incident?

STEVEN MARTINEZ: Yes.

HEARING OFFICER CASSANDRA WEBSTER: That he did not indeed bite the child?

STEVEN MARTINEZ: I don't know because I was outside smoking a cigarette on the deck but there was a black and white dog that came up the road. See, that's why everybody got confused on it.

HEARING OFFICER CASSANDRA WEBSTER: So you think it was a different dog? Not your dog?

STEVEN MARTINEZ: Yeah.

HEARING OFFICER CASSANDRA WEBSTER: That bit.

STEVEN MARTINEZ: Because our dog, even when he was on his chain when he was in his kennel, his chain doesn't even reach the fence so it's where anybody could say that Remington got to the fence is false.

HEARING OFFICER CASSANDRA WEBSTER: And the -- in the report, there's mention of you saying get the fence to the -

STEVEN MARTINEZ: Not me.

HEARING OFFICER CASSANDRA WEBSTER: Not you?

STEVEN MARTINEZ: Not me. But from where Remington sits, the only fence he can reach is behind him and nobody is allowed in our neighbor's yard which is an older lady and nobody normally goes back there. The fence that I know they're referring to is the one on the west side of our yard and Remington's chain cannot reach it if he was on his chain.

HEARING OFFICER CASSANDRA WEBSTER: OK.

STEVEN MARTINEZ: Am I good?

HEARING OFFICER CASSANDRA WEBSTER: I don't have any more questions for you. Do you want to call another witness?

JOHN SPELLMAN: I do. I call Garrett Shimer.

HEARING OFFICER CASSANDRA WEBSTER: State your name, please.

GARRETT SHIMER: Garrett Shimer.

HEARING OFFICER CASSANDRA WEBSTER: Raise your right hand. Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth?

GARRETT SHIMER: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JOHN SPELLMAN: What's your address, Garrett?

GARRETT SHIMER: 3302 Sims Drive

JOHN SPELLMAN: And you live with Bill and Naomi Shimer?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: And you're familiar with a dog named Remington?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: Were you home on July 5th of this year?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: Where was Remington when you were home on the afternoon of July 5th?

GARRETT SHIMER: In his kennel. Earlier, I put him in his kennel.

JOHN SPELLMAN: You put him in his kennel?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: When you put him in his kennel, did you secure it in such a manner that he wouldn't be able to get out?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: Did you see any other dogs in the neighborhood that day?

GARRETT SHIMER: Not in the morning, I didn't see any other dogs.

JOHN SPELLMAN: What about in the afternoon, did you see any other dogs?

GARRETT SHIMER: There was a dog running down the street.

JOHN SPELLMAN: What color was that dog?

GARRETT SHIMER: White and black.

JOHN SPELLMAN: Were you there when Zachary Diehl was at your house?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: And was he playing inside your yard or outside your yard?

GARRETT SHIMER: I don't know. I was inside when he was at my house.

JOHN SPELLMAN: OK. But you did see a black and white dog in the neighborhood?

GARRETT SHIMER: Yes, because I looked out the window as it was running down the street.

JOHN SPELLMAN: And this Exhibit A that I showed you, is that the kennel and cage that you put Remington in on that day?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: OK. Is that same thing depicted in Exhibit B?

GARRETT SHIMER: Yes.

JOHN SPELLMAN: I don't have anything further. Thank you.

HEARING OFFICER CASSANDRA WEBSTER: Are you the son, then, of Bill Shimer? Yes?

GARRETT SHIMER: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK. And you were -- your friend Zachary Diehl was at your house?

GARRETT SHIMER: Yes.

HEARING OFFICER CASSANDRA WEBSTER: How old is he?

GARRETT SHIMER: 11.

HEARING OFFICER CASSANDRA WEBSTER: And where was he at the time?

GARRETT SHIMER: He was in the backyard with my little brother.

HEARING OFFICER CASSANDRA WEBSTER: How old is your little brother?

GARRETT SHIMER: 10.

HEARING OFFICER CASSANDRA WEBSTER: And they were out there playing?

GARRETT SHIMER: Yeah, then --

HEARING OFFICER CASSANDRA WEBSTER: And your dog was inside, inside the kennel.

GARRETT SHIMER: Yeah, the dog was inside the kennel and wire tied shut with the green kennel on the outside of the actual kennel.

HEARING OFFICER CASSANDRA WEBSTER: Why was the dog inside the kennel?

GARRETT SHIMER: Just because it's where he goes during the daycare hours.

HEARING OFFICER CASSANDRA WEBSTER: During the daycare hours. So there was daycare going on?

GARRETT SHIMER: Yeah.

HEARING OFFICER CASSANDRA WEBSTER: At that time. OK, was Zachary Diehl there for daycare or just there to play?

GARRETT SHIMER: He was there to hang out with my little brother.

HEARING OFFICER CASSANDRA WEBSTER: OK. And the other children that were there for daycare were inside?

GARRETT SHIMER: Yes.

HEARING OFFICER CASSANDRA WEBSTER: How many were there?

GARRETT SHIMER: I don't remember. I think -

HEARING OFFICER CASSANDRA WEBSTER: Two or five?

GARRETT SHIMER: Like two.

HEARING OFFICER CASSANDRA WEBSTER: Just a couple?

GARRETT SHIMER: Yeah.

HEARING OFFICER CASSANDRA WEBSTER: OK. Did anybody say "get the fence"?

GARRETT SHIMER: Not that I'm aware of.

HEARING OFFICER CASSANDRA WEBSTER: Not that you're aware of? Were your parents home at that time?

GARRETT SHIMER: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK. Thank you.

JOHN SPELLMAN: At this time, I'd like to offer Exhibits A, B which are the pictures that we've been referring to as well as Exhibit C and Exhibit D. Exhibit C is a letter from Theresa Harvey. It's not notarized. The mother of Zachary Diehl, the boy that was bit on July 5th, she cannot -- could not be here today because they are on family vacation that they take every year at this same time. Exhibit D is a letter notarized by the Shimers' next door neighbors about him being in his yard that afternoon, and swearing to the fact that Remington was locked up in his kennel. I'd have one more witness.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JOHN SPELLMAN: Craig Hall.

HEARING OFFICER CASSANDRA WEBSTER: State your name, please.

CRAIG HALL: Craig Hall.

HEARING OFFICER CASSANDRA WEBSTER: Raise your right hand. Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole truth and nothing but the truth?

CRAIG HALL: Yes.

HEARING OFFICER CASSANDRA WEBSTER: OK, go ahead.

JOHN SPELLMAN: Where do you reside, Mr. Hall?

CRAIG HALL: 3309 Sims Drive, across the street from the Shimers.

JOHN SPELLMAN: Were you home on July 5th of this year?

CRAIG HALL: Yes.

JOHN SPELLMAN: Did you make any observations regarding any other stray animals in the area?

CRAIG HALL: Yeah. This black and white dog, he frequents my yard a couple of times every year it seems like I've been seeing him for a couple three years. Anyway, around midafternoon, I shushed him out of my yard.

JOHN SPELLMAN: How big is this black and white dog?

CRAIG HALL: Just medium sized. Not big, big. Or large. Just medium.

JOHN SPELLMAN: But distinctively black and white?

CRAIG HALL: Yeah.

JOHN SPELLMAN: Do you know what type of dog it is?

CRAIG HALL: A mutt.

JOHN SPELLMAN: With respect to the Shimers' lab Remington have you seen that dog before?

CRAIG HALL: The black and white one?

JOHN SPELLMAN: The black lab.

CRAIG HALL: Yes. Remington, yes.

JOHN SPELLMAN: Any white in that dog?

CRAIG HALL: Just the teeth.

JOHN SPELLMAN: On July 5th of this year, there was a black and white dog in the neighborhood that you had to shoo out of your yard.

CRAIG HALL: Yes, out of my yard.

JOHN SPELLMAN: And you've seen this dog in the neighborhood in the past?

CRAIG HALL: Yes, I have.

JOHN SPELLMAN: Is the neighborhood familiar with this dog around?

CRAIG HALL: I believe some of us are, yes. We don't know who they are or where he comes from.

JOHN SPELLMAN: I don't have anything further. She may have a question.

HEARING OFFICER CASSANDRA WEBSTER: Where do you live in relation to the Shimers?

CRAIG HALL: Just south of them across the street.

HEARING OFFICER CASSANDRA WEBSTER: OK. I don't have anything else for you. Thank you.

CRAIG HALL: Thank you.

JOHN SPELLMAN: I don't have anything else as far as testimony. No other testimony or witnesses.

HEARING OFFICER CASSANDRA WEBSTER: Nobody else wants to testify, Mr. Shimer. No? OK.

JOHN SPELLMAN: Yeah, he wasn't home.

HEARING OFFICER CASSANDRA WEBSTER: Thanks.

JOHN SPELLMAN: Thank you.

HEARING OFFICER CASSANDRA WEBSTER: Sergeant Raudabaugh, would you like to come back up?

SERGEANT SCOTT RAUDABAUGH: Just a couple of things. I just got to point out here, there's little conflict of parents were home, weren't home, the kids that aren't real clear on some details, the notarized statement about dog in the kennel in the afternoon, that person isn't here to clarify details. The statement, we don't -- it's not notarized. No disrespect to Mr. Spellman but we don't know if it truly came from the victim's mother and it's my understanding that there's potential influence on them. I did call and leave a message that -- of this hearing, I called last week hoping they would be here but, as you know this meeting doesn't have subpoena powers to compel them to be here. I just want to point out those details. We did attempt to get the victim into the shelter to verify it was the dog that we had in impound. Not because we thought we had the wrong dog, just as a formality to absolutely verify, we've done it before and we'll do it in the future. But everything is quite clear that it's the dog.

HEARING OFFICER CASSANDRA WEBSTER: What makes you so certain that that's the dog? Just --

SERGEANT SCOTT RAUDABAUGH: The victim has been bit by the same dog before. The victim described the dog and described the dog's name and who it belongs to and the child, the owner's child who my understanding

is not here to potentially shed light on the incident occurred while he was out with the child or with the dog and the other child. All of those factors together, I believe, are quite compelling that Remington is the dog that bit the child.

HEARING OFFICER CASSANDRA WEBSTER: And in this report of the animal incident investigation report which is Exhibit 16, who -- who's the author of this account?

SERGEANT SCOTT RAUDABAUGH: It is animal control officer Tina Updegrove.

HEARING OFFICER CASSANDRA WEBSTER: She is here. She was present, she went to the scene and she --

SERGEANT SCOTT RAUDABAUGH: Yes, ma'am, I'm sorry.

HEARING OFFICER CASSANDRA WEBSTER: That's OK, I'm just asking.

SERGEANT SCOTT RAUDABAUGH: She spoke with Zachary Diehl the day of the incident on July 5th and I'd like to have her just shed a little light on her conversation with Mr. Diehl or that young man that I believe is the most accurate fact of the incidents at that time.

HEARING OFFICER CASSANDRA WEBSTER: That would be good. Thank you. Hi, can you state your name, please?

TINA UPDEGROVE: Tina Updegrove.

HEARING OFFICER CASSANDRA WEBSTER: Raise your right hand. Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth?

TINA UPDEGROVE: Yes, I do.

HEARING OFFICER CASSANDRA WEBSTER: Can you shed some light on -- just kind of tell me in your own words what happened.

TINA UPDEGROVE: I was called to Lutheran Hospital in reference to an animal bite. When I got there, I met with a Zachary Diehl and his dad. They had pretty much finished up at the hospital. He had an injury to the fatty tissue of his palm that had stitches in it and it was covered. When I asked what happened, he said he was over at his friend's house. He was playing with Riley. He was on the outside of the fence, and Remington, a black lab was in his backyard. Riley told the dog to get the fence. I kind of questioned him about that because I thought that was odd. I wanted to make sure he wasn't confused with did he say for the dog to get him? Which people have done. No, he said get the fence. And I said then what happened? He says Remington ran over, jumped up on the fence and bit his hand. He says when he bit him, he pulled back causing the tear on the fatty portion of the palm.

HEARING OFFICER CASSANDRA WEBSTER: Do you think it was through the fence is your understanding that -- how did he bite his hand if he was inside the --

EX. F

TINA UPDEGROVE: He said he jumped up, jumped up on the fence. This is a normal 4 foot high fence. The dog was not --

HEARING OFFICER CASSANDRA WEBSTER: He was not --

TINA UPDEGROVE: The dog was not in the kennel.

HEARING OFFICER CASSANDRA WEBSTER: 4 foot fence?

TINA UPDEGROVE: Yes, 4 foot high wire fence. Normal chain link fence.

HEARING OFFICER CASSANDRA WEBSTER: OK.

TINA UPDEGROVE: And he says -- and I said how do you know the dog? He says well, he's bit me before. And dad interjected and he says last year about the same time the dog bit him in the face. And I said, OK. So I took all the information about what time that this happened, which he said was about noon. And he made it very clear that the parents were not home. He said that his brother had gone back over to the house after the bite to try to make contact with an adult and nobody was there. So when I left, I was able to pull up in our system previous incidences at -- on the Sims address. Where I found two previous bites. When I went over to the house, I did not see Remington at the beginning. Where this kennel is, there's like a shed next to it and it is quite a large backyard. I made contact with Mr. Shimer who at first was very cooperative and wanted to quarantine the dog at his house. But because of the previous bites, that is not my call. I have to impound the dog. And kind of everything broke loose from there. And there was some -- we wound up having to call the police over there and the dog took off with one of the owners. And eventually did come back and then we were able to impound the dog. We have -- I have tried to get a hold of Zach's mom, no calls were ever returned. I did speak to Zach's dad who was advised that the dog was under impound and he was very relieved. He did make a mention that Theresa had called him saying that Mrs. Shimer had called and screamed and cussed at her about turning her dog in. And that's about all I know as far as the bite that happened and what had happened that evening.

HEARING OFFICER CASSANDRA WEBSTER: OK. All right. Thank you.

TINA UPDEGROVE: You're welcome.

HEARING OFFICER CASSANDRA WEBSTER: Mr. Spellman, would you come to the microphone, please? I don't usually have attorneys here so -- did you have any testimony to offer regarding the other two incidents?

JOHN SPELLMAN: No.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JOHN SPELLMAN: I do have a bit of testimony from Mr. Shimer if we may.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JOHN SPELLMAN: Bill?

HEARING OFFICER CASSANDRA WEBSTER: Would you state your name for the record, please?

BILL SHIMER: William G. Shimer.

HEARING OFFICER CASSANDRA WEBSTER: And raise your right hand. Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth?

BILL SHIMER: I do.

HEARING OFFICER CASSANDRA WEBSTER: OK, go ahead.

JOHN SPELLMAN: Bill, Remington bit a couple of different children last year back in 2011, right?

BILL SHIMER: Yes, sir.

JOHN SPELLMAN: What does your wife Naomi do for work?

BILL SHIMER: She's a daycare provider.

JOHN SPELLMAN: And where does she do that?

BILL SHIMER: At home.

JOHN SPELLMAN: After the bites last year, did you take any precautions to try to ensure that this wouldn't happen again?

BILL SHIMER: Yes.

JOHN SPELLMAN: What did you do?

BILL SHIMER: We went out and bought a dog kennel, put a 4 foot fence, approximately 4 foot around it so no kids could get to him and no kid -- he can't get to no kid. He's locked in it every day. The gate, when it's shut, is actually wire tied with wire ties and you have to physically cut to get to him to ensure no one can get to him or he can't get out. The -- we also had him neutered to calm him down. He has a shock collar on him except for when he's sleeping in the kennel, it's inside. So the dog has changed dramatically since we've had him fixed. And I mean, that's what we -- that's how we -- after the last -- the second bites, all the things we did.

JOHN SPELLMAN: Where is Remington kept during daycare hours?

BILL SHIMER: Outside in the kennel which she has photos of. He's taken out there before any daycare kids show up. Approximately half-hour, 45 minutes and then after the last daycare kid is gone, and no one else is there, we put him out on his chain. And that's where they're referring to if he was on his chain, he couldn't even reach the fence.

HEARING OFFICER CASSANDRA WEBSTER: OK.

JOHN SPELLMAN: That's all I have.

HEARING OFFICER CASSANDRA WEBSTER: OK, thank you.

JOHN SPELLMAN: Thank you. That's all we have.

HEARING OFFICER CASSANDRA WEBSTER: All right, thank you. Sergeant Raudabaugh, do you have something to add?

SERGEANT SCOTT RAUDABAUGH: Yes, ma'am. Just -- I just with that conversation feel compelled to have Tina Updegrove up for one last tidbit. I promise I won't turn this back and forth here. Animal control officer Tina Updegrove to get her up here and briefly speak about her experience with dogs and then something she noticed about Remington, the dog. Mr. Shimer talks about the dog's behavior from last year has changed dramatically. I think it's worth mentioning, if I could, please.

HEARING OFFICER CASSANDRA WEBSTER: OK, sure. State your name one more time.

TINA UPDEGROVE: Tina Updegrove.

HEARING OFFICER CASSANDRA WEBSTER: I want to remind you you're still under oath.

TINA UPDEGROVE: Yes.

HEARING OFFICER CASSANDRA WEBSTER: Go ahead.

TINA UPDEGROVE: I've been dealing with dogs for 20 years specifically in the animal control field and in shelter environments. With Remington, the day that he was impounded, I did have their son load the dog up into my truck. Once at the shelter, I was able to get him out on a leash. He put -- he seemed perfectly fine. When I did impound the dog, there was no shock collar on this dog. He -- there was a collar but no shock collar. Once at the shelter, my job is to make them comfortable, make sure they have food and water and then go about my business. Once I got Remington in his kennel, I walked up and I interact with the dog as much as I can with the time that I have. If you look this dog in the face, this dog gets up on his toes. He postures, and he low growls. He will show his teeth. And when I went to feed him, he did this. I started talking to him, now, come on, and I bent down next to him kind of put my shoulder up to the kennel and he came over and he sniffed and he wagged his tail. When I looked at the dog, he got that low growl and he ducked his head which is an aggressive stance. If I did not challenge the dog, meaning if I did not look at the dog in the face, he was fine. This happened two times. Finally, I just said, OK, Remington, here you go. And he backed off and I was able to put his food in his kennel. All those mannerisms definitely

put an alert towards us as animal control officers and also we alert the staff because they do interact a lot with the animals once they're in there. So he definitely did have aggressive tendencies when he was in the shelter and still does.

HEARING OFFICER CASSANDRA WEBSTER: OK. Thank you.

TINA UPDEGROVE: You're welcome.

HEARING OFFICER CASSANDRA WEBSTER: Anything further over there? No? OK. Well, thank you very much for your time and testimony today. I don't know anything about these cases until I hear them so I will deliberate on the testimony and evidence I've received, the exhibits and I will develop a written ruling which I will submit to the city clerk's office and then they'll make sure that you all get a copy. Thank you very much. This case is adjourned.