

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

* * * * *

BRANDY SUCKLEY, REANNAN)	
SUCKLEY, JYL ALBERTSON,)	
MATHEW BAUMSTARK,)	
DANIKA OWAN, LYNETTE)	
COLE-PEREA, MANUEL)	Case No.
PEREA, and EMILY HOLLY,)	21-cv-00012-CRH
)	
Plaintiffs,)	
)	
vs.)	
)	
THE CITY OF WILLISTON,)	
NORTH DAKOTA,)	
)	
Defendant.)	
)	

* * * * *

DEPOSITION OF DAVID TUAN

taken by Mr. V. Gene Summerlin, Attorney At Law,
pursuant to notice and pursuant to the Federal
Rules of Civil Procedure, before Lori L. Hauge, a
Notary Public in and for the County of Williams and
State of North Dakota, at the Second Floor
Conference Room of Williston City Hall, 22 East
Broadway, Williston, North Dakota, on Tuesday,
May 17, 2022, commencing at 10:08 a.m.

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*Appearances as noted herein.

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A P P E A R A N C E S

MR. V. GENE SUMMERLIN, Attorney At Law,
and MS. AMANDA L. WALL, Attorney At Law, of Husch
Blackwell LLP, 13330 California Street, Suite 200,
Omaha, Nebraska, appeared as counsel for and on
behalf of the Plaintiffs.

MR. BRIAN D. SCHMIDT, Attorney At Law, of
Smith Porsborg Schweigert Armstrong Moldenhauer &
Smith, 122 East Broadway Avenue, P.O. Box 460,
Bismarck, North Dakota, appeared as counsel for and
on behalf of the Defendant.

ALSO APPEARING: MR. DAVID TUAN, Deponent.

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T A B L E O F C O N T E N T S

DAVID TUAN

Examination by Mr. Summerlin Page 4

EXHIBIT

<u>No.</u>	<u>Description</u>	<u>Marked</u>	<u>Identified</u>
1	Williston Police Department Annual Report 2021	19	20

Certificate of Deponent Page 54

Certificate of Court Reporter Page 55

1 (The proceedings commenced at 10:08 a.m.)

2 Whereupon,

3 DAVID TUAN,

4 called as a witness by the plaintiffs, after having
5 been first duly sworn, was examined and testified
6 as follows:

7 EXAMINATION

8 BY MR. SUMMERLIN:

9 Q. David, we met just a moment ago. My name
10 is Gene Summerlin.

11 You understand you're being deposed today
12 in a federal lawsuit that's been brought against
13 the City of Williston; correct?

14 A. Yes.

15 Q. Okay. Just generally, tell me, what does
16 a city administrator in Williston do?

17 A. City administrator in Williston is
18 responsible for overseeing the day-to-day
19 operations of the City.

20 Q. So with respect to the police department
21 and animal control, are those two separate
22 entities, in -- in your mind?

23 A. Animal control is a division of the police
24 department.

25 Q. Okay. What role, if any, do you have with

1 animal control or the police?

2 A. My role pertains generally to the
3 organization of the department as it pertains to
4 finance and, to a limited degree, looking at
5 planning and leadership within that department. So
6 day to day, that means working mostly with the
7 chief.

8 Q. Okay. Do you have any involvement in
9 training that's provided to either police officers
10 or animal control officers?

11 A. To the degree that training is specified
12 for things like employee policy, yes, but not
13 technical training, no.

14 Q. Okay. Do you play any role in the hiring
15 or firing of police officers or animal control
16 officers?

17 A. No.

18 Q. Okay. I'm thinking, in reviewing records,
19 there was -- have there been changes in the
20 organization of the police department and/or animal
21 control within the last five years?

22 A. There have been, yes.

23 Q. Let's talk about that for a bit.

24 A. Sure.

25 Q. What kinds of changes were made?

1 A. The structure within the department has
2 evolved somewhat. Where there used to be separate
3 divisions within the police department for animal
4 control and what we call code enforcement --

5 Q. Okay.

6 A. -- are now combined into one department
7 that we call community -- community service.

8 Q. And when you talk about code enforcement
9 there, you're referring to the Williston city code?

10 A. Yes.

11 Q. Okay. I assume, but I may not be correct,
12 that Williston police officers enforce the city
13 code as well as state laws?

14 A. I would imagine, yes. I'm actually not
15 sure what state laws would be applicable or what
16 wouldn't be, but yes.

17 Q. Okay. Well, I guess, maybe you can just
18 help me understand, when you talk about code
19 enforcement --

20 A. Yeah.

21 Q. -- what is that?

22 A. Sure. Yeah. Code enforcement pertains,
23 as you mentioned, primarily to the city code. So
24 things like parking; things like, you know, any
25 rubbish or property infractions and things of that

1 nature that aren't necessarily a -- you know, a
2 duty that a -- a patrol officer would -- would have
3 the time to -- to address.

4 Q. Okay. So code enforcement is kind of --
5 well, let me -- let me go back. Sorry. I tend to
6 go all over the place. I'll just --

7 A. Mm-hmm.

8 Q. -- apologize in advance.

9 So for police officers, what type of
10 enforcement are they engaged in that's different
11 than code enforcement?

12 A. To clarify, they can certainly execute
13 and -- and enforce any of those things. In a city
14 such as Williston, things like parking tend to be
15 time-consuming to the point where it's advantageous
16 to have a dedicated individual to do that. Hence
17 the creation of code enforcement.

18 Q. And we talked a -- a second ago just a
19 little bit about Williston ordinances and state
20 law. Are non-code enforcement police officers
21 primarily involved in enforcing what?

22 A. I would generalize by saying enforcing the
23 laws of the land, which could include city laws or
24 state laws.

25 Q. Okay. But they're -- and I'm -- again,

1 I'm not -- I'm just trying to make sure I
2 understand. So we've got code enforcement. That's
3 kind of, you know, parking, property?

4 A. Sure.

5 Q. Animal control falls under that?

6 A. Yes.

7 Q. Okay. And then there are other laws that
8 may be criminal in nature that the police
9 department enforces?

10 A. Yes.

11 Q. Okay. When the structure of -- well, let
12 me go back to prior to the change in structure to
13 kind of a community service, what was the structure
14 of animal control?

15 A. Similar to what it is now, only animal
16 control was classified, in the way that the City
17 distributes its budgeted funds, as a separate
18 division in the police department. So combining
19 the two allows us to administer budget funds to one
20 area. These aren't big departments. There's only
21 a handful of people in them. So it's
22 administratively streamlined and no longer
23 segregated on paper, I guess I would call it.

24 I think the -- the chief would probably
25 talk to you a little bit about what it means to

1 engage the public, the philosophy of having these
2 things in a modern police department that I'm not
3 as familiar with, with that end of it, but I can
4 tell you just structurally, they are combined
5 versus, before, they were distinctly separate in
6 the way that we would classify them in our
7 accounting.

8 Q. Okay. Is it -- is it fair to say that
9 your primary duties relate to budgeting and
10 accounting and finance for the City?

11 A. A lot of it, yes.

12 Q. Okay. Other than budgeting, finance,
13 accounting, what else do you do?

14 A. My job day to day would be to work with
15 the city commission as well and interpret their
16 vision for the community and communicate that to
17 the department heads.

18 Q. And the city commission in Williston, is
19 that similar to, like, a city council?

20 A. Yes.

21 Q. So they're the -- they're the legislative
22 entity that adopts laws?

23 A. Correct.

24 Q. Okay. So with respect to that role of
25 the -- of the commission, what activities are you

1 engaged in?

2 A. Well, the City has commission meetings
3 twice a month. So I help to organize those
4 meetings and prepare items for the commission to
5 review. I also take any and all input from those
6 commissioners as -- you know, as it pertains to
7 things like department operations, and I'll give
8 that -- that feedback to the various department
9 heads in a way that they can execute whatever it is
10 that the commissioners are -- are wanting of them.

11 So oftentimes, the commissioners are the
12 point of contact with the public, so that's kind of
13 how the -- the flow of information and the flow of
14 dialogue goes, from the commissioners to me, and
15 then I then rally the department heads and send
16 things in the right way to get some -- get things
17 done.

18 Q. Okay. How long have you been the city
19 administrator in Williston?

20 A. Since 2016.

21 Q. Okay. In, I think it was, 2019, there
22 were some changes to the pit bull ordinance?

23 A. Yes.

24 Q. Were you involved in that?

25 A. Yes.

1 Q. Okay. Generally, tell me about what was
2 going on then.

3 A. So the animal ordinance was amended to
4 include service animals, and at the time, I believe
5 the concession that was made into the ordinance was
6 to include an exemption for any registered service
7 animals according to the Americans with
8 Disabilities Act.

9 Q. Okay. I take -- I -- I -- I assume that
10 was probably noncontroversial?

11 A. Controversial in what way? Like, as far
12 as the votes go?

13 Q. Yeah, I -- well, I don't know. There's
14 probably a better way to ask that. Was there
15 significant opposition to that amendment?

16 A. From the public or, like, on the --

17 Q. Yeah, I would say either public or -- or
18 the commission itself.

19 A. I don't remember opposition, but I also
20 don't really remember how that vote went, if it was
21 unanimous or not. So I can't -- I can't recall
22 any --

23 Q. Okay.

24 A. -- opposition to it.

25 Q. As the city commissioner -- or city

1 administrator--I'm sorry--do you have citizen
2 interaction if -- if people are -- have questions
3 about ordinances or want to adopt ordinances or
4 change ordinances?

5 A. Yes.

6 Q. Okay. Is that a regular part of your job,
7 or does it just happen every once in a while?

8 A. Every once in a while.

9 Q. Okay. You had some people that came and
10 met with you regarding the -- the pit bull
11 ordinance; correct?

12 A. Yes.

13 Q. Okay. What do you recall about that?

14 A. I remember being approached by Brandy
15 Suckley, and she, at first, wanted to address the
16 commission and present to them information. So my
17 interaction with her was centered around how to
18 navigate the process of getting in contact with the
19 commissioners. Our commissioners are -- I -- I
20 call them volunteers, even though they're
21 compensated, but they're not full-time
22 commissioners as they are in larger cities, so
23 they're not here. So I helped her get in contact
24 with the city commissioners.

25 And following my interaction with Brandy,

1 I had interaction with Jyl as well, largely
2 electronic, email. We -- we had dialogue on
3 getting information to the city commission about
4 the pit bull topic.

5 Q. Okay. Other than that kind of
6 situation --

7 And that was 2019ish?

8 A. I believe so, yeah.

9 Q. Okay. Other than that, have you had
10 contact with others regarding the -- the pit bull
11 ordinance?

12 A. No.

13 Q. Okay. Did anything happen as a result of
14 your contact with Brandy?

15 A. Yeah. She disseminated some information
16 to me that I, in turn, according to her requests,
17 passed on to the city commission. There were some
18 website links and -- and report data that she
19 wanted the commissioners to review.

20 And following that, she also requested to
21 give a presentation to the board, which I arranged
22 at a commission meeting, and she came to the board
23 in person and presented her information to the city
24 commission at a regular scheduled meeting.

25 Q. Okay. Was any action taken by the

1 commission?

2 A. No.

3 Q. Okay. So they just -- they heard her
4 presentation --

5 A. Correct.

6 Q. -- and --

7 Was there a request for any action to be
8 taken?

9 A. Not a clear one that I can recall. I -- I
10 recall the presentation of information as, you
11 know, "Here is a compelling thing for you to
12 consider," and a specific request to -- I cannot
13 remember a specific request, but this is already a
14 couple years ago, so --

15 Q. Yeah. Okay.

16 Have you had conversations with any city
17 commissioners about the pit bull ordinance?

18 A. Yes.

19 Q. Okay. Tell me about those.

20 A. Largely related to this lawsuit. We've
21 had many discussions just about, you know, what is
22 the -- what is the procedure that we're going to go
23 through here, and -- and what is the public
24 sentiment that they believe is, you know, important
25 to -- to maintain the ordinance and things of that

1 nature.

2 Q. Okay. Is it fair to say that in your job
3 as a city administrator, you're not necessarily
4 advocating for or against community-wide
5 legislation?

6 A. Yes.

7 Q. Okay. So your role is more to just
8 present information as it comes to you?

9 A. Correct.

10 Q. Is your role also to gather information if
11 it's requested by a city commissioner?

12 A. Absolutely.

13 Q. Okay. So with respect to the pit bull
14 ordinance, were you requested to gather any
15 information?

16 A. No.

17 Q. Okay. And I think I saw -- did -- did you
18 get some -- well, let me -- let me go back.

19 So we've talked about conversations that
20 you had with Brandy and maybe others --

21 A. Mm-hmm.

22 Q. -- you know, in opposition to the pit bull
23 ordinance. Did you have conversations or
24 communications with people in support of the pit
25 bull ordinance?

1 A. Not personally, no.

2 Q. Okay. Did anyone provide you with
3 information that you passed on to the
4 commission--other than Brandy--either in support
5 of or in opposition to the -- the ordinance?

6 A. I received an email at one point from an
7 organization. I believe it was dogbites.org. I
8 don't believe I was the only one that received
9 that. I think we all received that, but I don't
10 remember if I forwarded that on --

11 Q. Okay.

12 A. -- but it's possible that I did forward
13 that to the commission just as an FYI.

14 But other than that, I don't -- I don't
15 believe I had any other information that came from
16 any supporters of the ordinance that I forwarded to
17 the commission.

18 Q. Okay. And when you said it's possible
19 that you all received that --

20 A. Yeah.

21 Q. -- were you referring to the commissioners
22 as well?

23 A. Correct. Yes.

24 Q. Okay.

25 A. Yes. The board.

1 Q. Okay.

2 A. Yeah.

3 Q. But to the best of your recollection, no
4 one from the commission asked you to get more
5 information about dogbite.org or -- or any of the
6 information that they provided?

7 A. Correct.

8 Q. Did anyone from the city commission talk
9 to you about the information from dogbites --
10 dogsbite.org?

11 A. Dogsbite, yeah.

12 Not that I can recall.

13 Q. Okay.

14 A. I mean, we've had so many conversations
15 just in general about this, but I -- I don't recall
16 having any dialogue about that in -- in particular.

17 Q. Okay. No one asked you, for example, to
18 go figure out who this organization is --

19 A. No.

20 Q. -- is, what their qualifications are,
21 anything like that?

22 A. No.

23 Q. Okay. I think you answered this kind of
24 generally earlier, but I -- I want to ask just a
25 couple specific questions about training. With

1 respect to police officers and their training as
2 law enforcement, you don't have any role in that
3 training?

4 A. Correct.

5 Q. Okay. And with respect to animal control
6 officers or, now, community service officers, you
7 don't have any role in their training on how to
8 actually perform their job functions?

9 A. Can you say that again?

10 Q. I can try.

11 A. I'm not giving you a hard time. I'm
12 just --

13 Q. No. No. No. I -- yeah. I -- and I -- I
14 appreciate that you're -- you know, you want to
15 make sure that you understand the question.

16 I think when we talked about this earlier,
17 you said that you're really -- the role that you
18 would have in training city employees would be with
19 respect to kind of citywide policies related to
20 employment, things like that.

21 A. Correct.

22 Q. So with respect to the actual job
23 functions of an animal control officer or a
24 community ser --

25 Did I get that right?

1 A. Yep.

2 Q. -- community services --

3 A. Yeah.

4 Q. -- officer, you don't play any role in job
5 function training?

6 A. That is correct.

7 Q. Okay. You might tell them how to apply
8 for sick leave or personal days, things like that?

9 A. Correct.

10 Q. Okay.

11 (There was a discussion off the record
12 between Mr. Summerlin and Ms. Wall.)

13 BY MR. SUMMERLIN:

14 Q. Does the City prepare an annual report?

15 A. The City's departments prepare annual
16 reports.

17 Q. Okay. Are they all put together in one
18 report, or are there separate -- stay separate?

19 A. Separate.

20 Q. Okay.

21 (There was a discussion off the record
22 between Mr. Summerlin and Ms. Wall. Deposition
23 Exhibit Number 1 was marked for identification by
24 the court reporter.)

25

1 BY MR. SUMMERLIN:

2 Q. Okay. I'll hand you what's been marked as
3 Exhibit 1 (doing so). And the title page of that
4 is "Annual Report 2021"?

5 A. Yes.

6 Q. Okay. And is -- is this an annual report
7 just of the police department?

8 A. It is (nodding affirmatively).

9 Q. Okay. So would other City agencies have
10 similar annual reports?

11 A. Most of them do. The larger departments
12 do, yeah.

13 Q. Okay. Do you play a role in putting these
14 together?

15 A. I do not.

16 Q. Well, you maybe just saved us some time.

17 A. Okay.

18 Q. What -- let's talk about the -- the 2021
19 police department annual report. Who -- do you
20 know who puts this together?

21 A. Like, as an individual or -- just
22 generally, it's the police department.

23 Q. Okay. I -- I'm guessing it's probably
24 kind of a group effort?

25 A. Oh, the -- the physical assembly of it?

1 Yeah. Yes.

2 Q. Well, I mean the -- and the drafting and
3 deciding what goes into it and all that kind of
4 stuff.

5 A. It's a group effort, but I would say
6 the -- the chief of police largely has the
7 authorship of this report.

8 Q. Okay. And if you look at--oh, sure.
9 There's not page -- oh. No, there are page
10 numbers--page 1, which is actually, like -- I don't
11 know --

12 A. Page 4 or something?

13 Q. Yeah.

14 -- ten pages.

15 A. Got it (complying with Counsel's request).

16 Q. There you go.

17 A. Got it.

18 Q. There's an organizational chart there;
19 right?

20 A. Yes.

21 Q. Okay. And so the police department or the
22 chief of police would put together this
23 organizational chart?

24 A. Yes.

25 Q. You don't have anything to do with it?

1 A. No.

2 Q. Okay.

3 A. Not -- well, not in the sense that it's in
4 this -- this report, no.

5 Q. Okay. Do you -- do you have a role in how
6 the police department is organized?

7 A. I do.

8 Q. All right. So let's talk about that. And
9 that's maybe -- is that a little bit of what we
10 were talking about before, like, with the --

11 A. Perhaps.

12 Q. -- change to --

13 A. Yeah. Sure. Yeah.

14 Q. -- community service officers?

15 A. (The deponent nodded affirmatively.)

16 Q. And just so I kind of have a full picture
17 of your job, so do you also -- are you also
18 involved as kind of a personnel person for the
19 City?

20 A. Well, we have human resources that is
21 tasked with the hiring and positioning of
22 personnel. So from a philosophical point of view,
23 I guess my involvement there is guidance. So yes
24 and no.

25 Q. Okay. I'm trying to think, like, just so

1 that I have kind of a picture of this. If the City
2 were a private business--which, obviously, it's
3 not--is your role kind of similar to that of a
4 chief operations officer?

5 A. It would be more closely compared to a
6 chief executive officer.

7 Q. Okay. So more like a CEO?

8 A. Yes.

9 Q. All right. Currently, who is the
10 individual that would be leading the animal control
11 officers?

12 A. At the very top, the chief of police.

13 Q. Okay. And then my understanding of -- is
14 there -- is there a person that's designated --
15 well, let me --

16 MR. SUMMERLIN: Sorry.

17 BY MR. SUMMERLIN:

18 Q. Do you still call animal control officers
19 animal control officers, or should I be referring
20 to them as community services off -- officers?

21 A. I'll understand what you're -- what you're
22 implying no matter which one you use, so --

23 Q. Okay. Are there community service
24 officers -- there are community service officers
25 that are not animal control officers?

1 A. Correct. Yes.

2 Q. Like parking enforcement?

3 A. Yes. Yep.

4 Q. So animal control officers would be a
5 subset of community service officers?

6 A. Yes.

7 Q. That's fair?

8 A. Yes.

9 Q. Okay. Because I -- I don't want to get
10 into, like -- I don't really care about the
11 parking.

12 A. Yeah.

13 Q. I mean --

14 A. Yep.

15 Q. -- I care about them as people, but for
16 the purposes of this deposition --

17 A. It's not relevant. Got it.

18 Q. Yeah.

19 A. Yes.

20 Q. I don't want to appear harsh or get
21 parking tickets while I'm in town. "You're the
22 one" -- no. That would never happen.

23 So with respect to animal control officers
24 as a group, is there an individual animal control
25 officer that would be, like, in charge of that

1 group?

2 A. The -- you're -- you're talking within --
3 within this chain of command here (indicating)?

4 Q. Well, that's a great question. Where do
5 the animal control officers appear on page 1 of
6 Exhibit 1?

7 A. So they appear under community service
8 officers on this left column under the
9 administrative lieutenants.

10 Q. Right.

11 And so if we just follow this hierarchy on
12 page 1, the -- the person in charge of everything
13 shown on page 1 is the police commissioner?

14 A. Yes.

15 Q. Okay. Who is the police commissioner?

16 A. Tate Cymbaluk.

17 Q. How do you spell his last name?

18 A. That's a good one. C-y-m-b-a-l-u-k.

19 Q. Okay. And then underneath the police
20 commissioner is the chief of police?

21 A. (The deponent nodded affirmatively.)

22 Q. And who is that?

23 A. David Peterson.

24 Q. And then to the right of the chief of
25 police is human resources?

1 A. (The deponent nodded affirmatively.)

2 Q. Who is the person -- I -- I assume human
3 resources is a department?

4 A. It's a department of one. It's one
5 person.

6 Q. Oh. Okay. So who is --

7 A. Yeah.

8 Q. -- the one person?

9 A. That is Catherine Cagle, and I believe
10 she's married and her name just changed. Bear with
11 me. We'll go with Catherine Cagle for now, with a
12 "C"--C-a-g-l-e--and Catherine with a "C" as well.

13 Q. Okay. And does Catherine do human
14 resources for just the police department?

15 A. Yes.

16 Q. Okay. All right. And then there are
17 three positions below the chief of police: the
18 deputy chief, the investigations captain, and the
19 operations captain?

20 A. Correct.

21 Q. Okay. Is each one of those an individual?

22 A. Yes.

23 Q. And are they different individuals?

24 A. They are.

25 Q. Okay. So let's go ahead and -- who is the

1 deputy chief?

2 A. Steven Armstrong.

3 Investigations -- oh, I'm sorry.

4 (There was a discussion off the record.)

5 THE DEPONENT: Steven with a "v."

6 BY MR. SUMMERLIN:

7 Q. And the investigations captain?

8 A. This one is going to be hard to spell.

9 Q. Oh, man. I --

10 A. It's just --

11 Q. Okay.

12 A. -- another Steven, and his last name is
13 Gutknecht. It is G-u-t-k-n-e-c-h-t, I think.

14 Q. I love the Midwest.

15 A. That one just gets me every time.

16 Q. And then the operations captain?

17 A. Rodney Dickerson.

18 Q. All right. And underneath the deputy
19 chief is the administrative lieutenant?

20 A. Yes.

21 Q. Who is that?

22 A. It is Randy Haugenoe, H-a-u-g-e-n-a-u
23 [sic], I think. Sorry.

24 Q. All right. Close enough. No, it's --
25 it's not a test. You will not be graded.

1 All right. So Mr. Haugenoe is the
2 administrative lieutenant that is in oversight of
3 five departments, correct, one of which is the
4 community service officers?

5 A. Correct.

6 Q. All right.

7 A. Yeah.

8 Q. I think we said before, but maybe I
9 misunderstood, that parking enforcement was a
10 community service officer position?

11 A. Yeah.

12 And now that I'm looking at this, I
13 understand where you're going. So there's --

14 Q. Yeah, I just want to understand, like --

15 A. Yes.

16 Q. -- if you can explain it.

17 A. So community service officers include
18 things like parking, but parking of a different
19 sort. So parking as it pertains to anywhere but
20 downtown.

21 Hang -- hang with me. So this does --

22 Q. Okay.

23 A. -- make sense.

24 Q. All right.

25 A. Parking enforcement is called out as a

1 specific thing here because it is a joint
2 partnership with the City and the local parking
3 authority, and this parking enforcement refers to
4 just the downtown district. So we have a meter
5 maid, for lack of a better term, position that is
6 wholly kind of separate, and that's why it's called
7 out.

8 Whereas community service officers still
9 do parking. They can do parking downtown.
10 Largely, that's tasked to the one parking
11 enforcement person. So their parking, when I gave
12 that as an example of what they would do, would be,
13 like, people parking on sidewalks in residential
14 neighborhoods or other things.

15 Q. Non-downtown parking?

16 A. Non-downtown stuff.

17 Q. Okay.

18 A. Disconnected trailers and -- and so forth,
19 so --

20 Q. So if we wanted to build on this chart on
21 page 1, underneath community service officers, we
22 would have one box for animal control?

23 A. (The deponent nodded affirmatively.)

24 Q. And we would have a box for non-downtown
25 parking?

1 A. And -- and other just code
2 enforcement-related things, yes.

3 Q. Anybody else that would fall under
4 community service officers? Do you guys have
5 officers in schools or anything?

6 A. We do, and they're separate, so, no,
7 nothing --

8 Q. Okay.

9 A. -- else.

10 Q. All right.

11 MR. SCHMIDT: Gene, do you mind if we go
12 off the record for just one second?

13 MR. SUMMERLIN: No.

14 (The proceedings recessed at 10:40 a.m. and
15 reconvened with everyone present at 10:41 a.m.)

16 BY MR. SUMMERLIN:

17 Q. Okay. So we just had a -- a brief
18 off-the-record discussion, and there's a -- a bit
19 of a correction to the organizational chart. Do
20 you want to go ahead and make that?

21 A. Yes. I mistakenly indicated that Randy
22 Haugenoe was the administrative lieutenant. He is
23 the administrative sergeant, and the administrative
24 lieutenant is Dustin Celander. Celander is
25 C-e-l-a-n-d-e-r.

1 Q. All right. So under community service
2 officers, we've got animal control and then
3 non-downtown parking, other code enforcement --

4 A. Correct.

5 Q. -- right?

6 Who, within animal control, would be in
7 charge?

8 A. That's probably a level of detail I
9 couldn't tell you. What their rank is within that
10 department, I don't know.

11 Q. Okay. Do you know how many employees
12 there are within animal control?

13 A. I could tell you that within community
14 service, there's about three -- three or four. Go
15 to my cheat sheet.

16 Actually, there's a better description of
17 it. It's code compliance instead of code
18 enforcement, but things like parking tickets,
19 impounding vehicles, stuff like that.

20 Q. Okay. And that was on what page?

21 A. That is page 13.

22 Q. All right.

23 A. Usually in here, there's a list of
24 everybody and -- and what their position is.

25 MS. WALL: 2.

1 THE DEPONENT: Page 2?

2 MR. SUMMERLIN: Okay.

3 BY MR. SUMMERLIN:

4 Q. Take a look at page 7.

5 A. Yeah. There we go. So there's four.

6 Q. All right. And Carli Wade is the
7 community service officer supervisor?

8 A. Yes.

9 Q. And then we have Madison Ambrosini?

10 A. Yes.

11 Q. Oh, gosh.

12 A. Yulissa Jimenez.

13 Q. Thank you.

14 And Amber Pelzl?

15 A. Pelzl.

16 Q. Pelzl?

17 A. Yeah.

18 Q. Okay.

19 (There was a discussion off the record
20 between Mr. Summerlin and Ms. Wall.)

21 BY MR. SUMMERLIN:

22 Q. Take a look at page 9 of Exhibit 1, and
23 that's just kind of a breakdown of the calls for
24 service; correct?

25 A. Yes.

1 Q. And if we look at animal calls, which is,
2 like, the fourth line --

3 A. Yes.

4 Q. -- there are 2,200?

5 A. (The deponent nodded affirmatively.)

6 Q. Is that a number that you, as the city
7 administrator, monitor at all?

8 A. No.

9 Q. Okay. You said you started in 2016?

10 A. (The deponent nodded affirmatively.)

11 Q. Are you aware whether the number of animal
12 call -- calls has increased since your beginning
13 with the City?

14 A. I'm not. I couldn't tell you what it's
15 been, but generally, calls for service have
16 increased.

17 Q. Okay. Is that just due to growth of the
18 city, or is it --

19 A. Population --

20 Q. -- due to a myriad of reasons?

21 A. Population growth.

22 Q. Okay. Let me just kind of switch gears
23 for a second. So with respect to budgeting, can
24 you -- and I don't want to get into, like, the, you
25 know, super fine details of this, but can you kind

1 of generally tell me how the City's budget gets put
2 together? And just to give you an example of kind
3 of just what I'm looking for or the level of
4 nongranularity I'm looking --

5 A. Yeah.

6 Q. -- for, it's just like, you know, do
7 departments request a certain amount, and then, you
8 know, what happens with those requests, and how
9 does the budget get finalized? Just kind of that
10 overview.

11 A. That's pretty close. So the departments
12 make a request beginning in the summertime of the
13 year. That's usually our budget period. It starts
14 around June. And it's typically from the chief of
15 police. He will request, you know, a budget of a
16 million dollars for the police department.

17 That gets sent to my office for an initial
18 review, at which point we attempt to, you know, at
19 least do a cursory review of what's in there. If
20 it's -- you know, all of a sudden, it's a hundred
21 million dollars, we would say, "Okay. You probably
22 have to work on this more." But we don't actually
23 get into a full detailed review until it is
24 presented to the city commission, and that's done
25 later in the summertime, usually with that city

1 commissioner sitting in the room and our finance
2 director, and it's reviewed in detail line by line,
3 which is a public process. The public's invited to
4 that. It's an open meeting.

5 And then in September or October time
6 frame, the completed budget is presented for public
7 review and voting. So it's a public hearing at a
8 commission meeting.

9 Q. Okay. And it's the commission that
10 actually adopts and approves --

11 A. Yes.

12 Q. -- the budget?

13 A. Yeah.

14 Q. Okay. What's your background?

15 A. In terms of, like?

16 Q. Education.

17 A. Education?

18 Q. Employment.

19 A. It's here.

20 And my -- my formal degree is civil
21 engineering.

22 Q. How did you end up as a city
23 administrator?

24 A. I worked for the City as the public works
25 director for a number of years before becoming the

1 city administrator, and at the time, the City, for
2 the last four years, had not had an administrator.
3 We're very small and were run by about four or five
4 department heads, one of which was the public works
5 director and naturally grew into this position when
6 it was created.

7 Q. Okay. And just generally, did you -- when
8 did you start as the --

9 I'm sorry. You said --

10 A. Public works director?

11 Q. Public works, yeah.

12 A. 2013.

13 Q. All right. I know just kind of
14 anecdotally that, you know, this section of North
15 Dakota has experienced an economic boom over the
16 last decade or so.

17 A. Yes.

18 Q. Has that resulted in significant
19 population increases in Williston?

20 A. It has (nodding affirmatively).

21 Q. Okay. And I imagine over that same period
22 of time -- not to say that the government wasn't
23 complex before, but it's -- the -- the government
24 services have grown as well?

25 A. Yes.

1 Q. Okay. Do you have any involvement in the
2 pound or the place where animals that are collected
3 by animal control are housed?

4 A. In terms of how it's operated?

5 Q. Yeah.

6 A. I do not.

7 Q. Any -- any role in how budgeting occurs
8 for them?

9 A. In my capacity to review the budget as a
10 whole, yes.

11 Q. Okay. Is there -- I mean, do they call it
12 the Williston City Pound or the Police Department
13 Pound?

14 A. We call it the -- yeah.

15 Q. Is there a name for it?

16 A. Not a good one, obviously, because I can't
17 remember it now. I think we call it the animal
18 control facility.

19 Q. Okay. But that's where --

20 A. Yeah.

21 Q. -- like, actual dogs and cats are housed?

22 A. Yes.

23 Q. So let's just call it -- it's -- it's the
24 animal control facility now. How's that?

25 A. Yes.

1 Q. All right. So is that a government-owned
2 and -operated facility?

3 A. It is not government-owned. It is leased.

4 Q. Okay. Describe that relationship for me.

5 A. With the owner?

6 Q. Yeah. With the lease of the animal
7 control facility.

8 A. The space is privately owned --

9 Q. Okay.

10 A. -- and the City leases kennel capacity.

11 Q. Whom is the space owned by?

12 A. It's owned by a local family, the Anderson
13 family.

14 Q. Okay. Where is that located at?

15 A. It is approximately one mile east of
16 town --

17 Q. Okay.

18 A. -- on -- on Highway 1804.

19 Q. For -- for the purposes of these
20 questions -- and I know you indicated that the
21 space is owned by the Anderson family. I assume
22 it's not -- that's not the name on a deed or
23 anything like that, but let's --

24 A. Probably not, yeah.

25 Q. If we talk about the Anderson family as

1 the owners of that facility, we're on the same
2 page; right?

3 A. Yes.

4 Q. Okay. All right. So does the Anderson
5 family or their employees operate the facility?

6 A. I don't know. You know, for us? Is that
7 what you're asking?

8 Q. Well, that's a good question too. Let's
9 go back.

10 When you say that the "City leases kennel
11 capacity," is that -- what does that mean?

12 A. That means the City leases space inside
13 the kennel building for the housing of -- and
14 sheltering of animals that are apprehended by the
15 City.

16 MR. SUMMERLIN: Okay. I'm sorry. Could
17 you read that back.

18 (The previous answer was read back by the
19 court reporter:

20 "A. That means the City leases space
21 inside the kennel building for the housing of --
22 and sheltering of animals that are apprehended by
23 the City.")

24 BY MR. SUMMERLIN:

25 Q. Okay. So does that mean that the -- the

1 City has employees that are there caring for the
2 animals, or does the Anderson family or, you know,
3 their operation care for the animals, or is it
4 something different?

5 A. I believe the City cares for the animals.
6 I couldn't speak to whether or not the Andersons do
7 as well.

8 Q. Okay. So part of the -- the duties of the
9 community service officers that are in animal
10 control would be, you know, kind of the day-to-day
11 husbandry of the animals that are there?

12 A. Yes.

13 Q. Okay. Do you know whether the space that
14 the City leases from the An -- Anderson family is
15 all of the space used to house animals at that
16 facility?

17 A. I do not.

18 Q. Okay. I'm guessing you don't know the
19 answer to this either, then. So do you know
20 whether the Anderson family operates some other
21 animal housing business out of that facility?

22 A. I don't.

23 Q. Okay. I think animal housing is -- would
24 we call it a kennel? I don't know how I, you
25 know --

1 MR. SCHMIDT: Your words, not mine, Gene.

2 MR. SUMMERLIN: Yeah, I know, and I don't
3 know where they come from, so that's -- that's my
4 problem.

5 BY MR. SUMMERLIN:

6 Q. I assume the City pays the Anderson family
7 some amount for that?

8 A. Yes.

9 Q. Okay. And that would be part of a budget
10 that the city commission approves?

11 A. Yes.

12 Q. Okay. My understanding is that when an
13 animal is picked up by animal control and animal
14 control houses that animal, that the owner of the
15 animal may be -- may be charged a fee for that. Is
16 that right?

17 A. Hmm, when an animal is picked up, the
18 owner is charged a fee to house the animal?

19 Q. Yeah. So if -- and maybe I'm just --
20 yeah, I -- I think that's my question.

21 A. Yeah, generally. I don't know if that's
22 the case all the time, but generally, the animals
23 that are housed at that facility, a fee is -- is
24 assessed to the owner of the animal.

25 Q. Right. Yeah --

1 A. Yeah.

2 Q. -- there's, like, a charge because we've
3 cared for your animal --

4 A. Correct.

5 Q. -- for however many days?

6 A. Correct.

7 Q. Yeah.

8 A. Yeah.

9 Q. Does the money that the -- that's paid for
10 housing an animal go to the City, or does it go to
11 the Anderson family?

12 A. The money paid is remitted directly to the
13 City.

14 Q. Okay. The City may then use that to pay
15 part of the lease payment or whatever; right?

16 A. Correct.

17 Q. All right. Is the amount of money that
18 the City receives for housing animals something
19 that is tracked by the City? I mean, is there --

20 A. Yes.

21 Q. -- a budgetary item?

22 A. Yes.

23 Q. Okay. Do you know where I would find
24 that?

25 A. I can certainly get it from our auditor.

1 We can pull a report on it.

2 Q. Okay.

3 A. I don't know if that would be something
4 that you could readily get on your own. All of our
5 financials are on the website, but that one
6 might -- that might be a little detailed, though,
7 too granular for the website to pull. But --

8 Q. Okay.

9 A. -- any request through our city auditor
10 could produce that information.

11 Q. And I assume the same would be true of the
12 amount that the City pays to the Anderson family
13 for the lease?

14 A. Correct.

15 Q. Okay. But do you know whether there's
16 a -- a contract between the Anderson family and the
17 City for the lease of that space?

18 A. I don't.

19 Q. Okay. Is there any other place that the
20 City keeps animals that have been picked up by
21 either the police department or other community
22 service officers?

23 A. Not right now.

24 Q. Okay. Was there in the past?

25 A. Well --

1 Q. Or are there plans to do so in the future?

2 A. In the future, yes; in the pa -- past,
3 I -- I don't know. As long as I've been here, I
4 don't -- I don't believe so.

5 Q. So at least not since 2016?

6 A. Correct.

7 Q. Okay. What -- what is the plan for the
8 future?

9 A. A new animal -- what did you call it? --
10 animal housing facility or kennel will be completed
11 here in about a week, and --

12 Q. Oh.

13 A. -- we'll open up.

14 Q. Okay. And will that be City-owned?

15 A. Yes. Yeah.

16 Q. And you said in a week?

17 A. Yeah, I believe so. I think the ribbon
18 cutting is next week.

19 Q. Wow.

20 Where is that located at?

21 A. That is located south of -- south of town.
22 It's within the city limits. It's adjacent to the
23 City's police training range.

24 Q. And is there also a humane society
25 building in Williston?

1 A. There is.

2 Q. Okay. And I take it that is privately
3 owned?

4 A. It is.

5 Q. Okay. That -- and you may not know this,
6 but do you know what the humane society does in
7 Williston?

8 A. Cares for stray animals.

9 Q. Okay. I -- does animal control also do
10 that? I -- let me -- let me just provide some
11 context for this question. I've had experience in
12 other jurisdictions where, like, the humane society
13 is kind of the functional animal control unit in
14 some places. And so I'm just trying to kind of
15 understand how they operate either together or
16 separately--animal control and humane society--in
17 Williston.

18 A. Mm-hmm.

19 Q. You may know that; you may not. But any
20 information you can provide on that?

21 A. I would -- I would say that there's a
22 partnership of some type there. Maybe it's at
23 least communication on -- on what the other group
24 is doing, but can't speak to any, you know,
25 operational tasks that are shared or anything like

1 that. I'm not aware of anything that the humane
2 society does specifically for the PD.

3 Q. Okay. There's no contract between the
4 humane society and -- and the Williston Police
5 Department that "Oh, humane society is going to
6 address these issues, and animal control address
7 these other issues," or anything like that?

8 A. I'm not aware of any.

9 Q. Okay. If there is any kind of agreement,
10 you would expect that -- would -- would the best
11 person to ask be the -- the person that's in charge
12 of the community service officers?

13 A. Absolutely (nodding affirmatively).

14 Q. Okay. I'm not trying to make you the --
15 the source of information for things that you're
16 like, "That's not my job."

17 A. I'll be the first to say there's a lot of
18 stuff I don't know.

19 Q. All right. In any of your discussions
20 with the city commissioners or individual city
21 commissioners, have you discussed why Williston has
22 a pit bull ordinance?

23 A. Yes.

24 Q. Okay. Tell me about those discussions.

25 A. The discussions are part of executive

1 session.

2 MR. SCHMIDT: Is that -- have you had
3 anything that was outside -- because that would all
4 be confidential.

5 MR. SUMMERLIN: Okay.

6 MR. SCHMIDT: Are there any discussions
7 that are outside of executive session? Because,
8 obviously, we're objecting to things that are done
9 in executive session, but anything outside of
10 executive session you talked about?

11 THE DEPONENT: No.

12 MR. SUMMERLIN: All right. So do you want
13 to just, like, designate this next portion of the
14 transcript as confidential?

15 MR. SCHMIDT: Depends on what you're going
16 to ask.

17 MR. SUMMERLIN: I'm going to ask what the
18 discussions were in executive session.

19 MR. SCHMIDT: Well, I mean, it is
20 confidential under North Dakota law. That can't be
21 discussed. If you're asking what was discussed
22 during executive session, we -- I'm going to object
23 and instruct him, I guess, not --

24 Do we need the magistrate on the phone to
25 address that issue --

1 MR. SUMMERLIN: Oh, no. No. No.

2 MR. SCHMIDT: -- if you want to?

3 MR. SUMMERLIN: I mean, I'm not familiar
4 with North Dakota law.

5 MR. SCHMIDT: Yeah.

6 MR. SUMMERLIN: Let's just create the
7 record and -- I mean, we're not going to fight
8 about it now, you know.

9 MR. SCHMIDT: Well, those are also -- I
10 mean, there's also attorney-client that comes into
11 play because I'm present at those.

12 MR. SUMMERLIN: Okay.

13 MR. SCHMIDT: So is there -- I -- I would
14 take attorney-client privilege and --

15 MR. SUMMERLIN: Let -- let me ask some --
16 some kind of more background --

17 MR. SCHMIDT: There might be --

18 MR. SUMMERLIN: -- questions.

19 MR. SCHMIDT: -- a better way to get
20 there.

21 MR. SUMMERLIN: Yeah. Okay.

22 BY MR. SUMMERLIN:

23 Q. With respect to discussions about why
24 Williston has the pit bull ordinance, have any of
25 those discussions taken place outside of the

1 context of this litigation?

2 A. No.

3 Q. Okay. So everything that we're talking
4 about, you know, discussions that have happened
5 with the commissioners in executive session have
6 been with Brian president -- Brian president --
7 with Brian present and discussing his legal advice
8 or opinions related to the litigation or issues in
9 the litigation?

10 A. Yes.

11 Q. Okay. Does that -- and there have been no
12 other discussions that you've had with
13 commissioners outside of Brian's presence?

14 A. Regarding --

15 Q. Re --

16 A. -- the -- the --

17 Q. Regarding the rationale for the --

18 A. Correct.

19 Q. -- pit bull ban.

20 A. Correct.

21 MR. SUMMERLIN: Okay. All right. Can we
22 take a break for a second?

23 (The proceedings recessed at 11:05 a.m. and
24 reconvened with everyone present at 11:13 a.m.)

25

1 BY MR. SUMMERLIN:

2 Q. Okay. Just have a few more things to kind
3 of follow up on.

4 Do you know who Susan Schneider is?

5 A. No.

6 Q. Okay. Do you know who Susan Moeller --
7 M-o-e-l-l-e-r --

8 A. Yes.

9 Q. And is it -- does she say Moeller?

10 A. I think so.

11 Q. Okay.

12 A. Yeah.

13 Q. Ms. Moeller was an animal control
14 officer/community service officer in Williston?

15 A. Yes.

16 Q. Okay. Do you know why she left?

17 A. I don't.

18 Q. Okay. And it looks like maybe sometime in
19 2020?

20 A. Sounds about right.

21 Q. Okay. Do you know where she's located
22 now?

23 A. I don't.

24 Q. All right. With respect to -- and I'm
25 going to call them animal control officers, and I

1 want to include community service officers that do
2 animal control in that. Okay?

3 A. (The deponent indicated.)

4 Q. Am I correct that sometime in 2019/2020,
5 the number of animal control officers in Williston
6 increased?

7 A. I actually don't know.

8 Q. Okay. That's not something you're aware
9 of?

10 A. Not -- not that I can recall specifically,
11 no.

12 Q. Okay. Do you know who Brad Bekkedahl is?

13 A. Yes.

14 Q. Who is Brad Bekkedahl?

15 A. Brad is a city commissioner.

16 Q. Okay. Is he currently a city
17 commissioner?

18 A. Yes.

19 Q. What about Chris Brostuen?

20 A. Brostuen. Also --

21 Q. Brostuen.

22 A. -- a city commissioner.

23 Q. Okay. And Deanette?

24 A. Piesik.

25 Q. I was like, "I could say it."

1 A. You'll get --

2 Q. I'll get --

3 A. Yeah.

4 Q. I'll be three -- oh for three. Okay.

5 Also a city commissioner?

6 A. Yes.

7 Q. Okay. All right. Did you have a
8 discussion with Ron Berman concerning this case?

9 A. Yes.

10 Q. When did that take place?

11 A. Man. Last year.

12 Q. All right. Was he here, or was it on the
13 phone or Zoom or something?

14 A. He was here.

15 Q. Okay. What do you recall discussing with
16 him?

17 A. I remember we talked about much of what
18 we're talking about here today, the nature of our
19 police department's organization --

20 Q. Okay.

21 A. -- City structure, City government.

22 Q. Do you recall, did you have any discussion
23 with him on the basis to ban specific breeds of
24 dogs?

25 A. Generally talking about the ordinance. So

1 within the context of the ordinance, yes.

2 Q. Okay. I'm trying to figure out how to ask
3 this question. Do you have any basis to believe
4 that certain breeds of dogs are more dangerous than
5 other breeds of dogs?

6 A. I don't know.

7 Q. Okay. That's kind of beyond your area of
8 expertise?

9 A. Yes.

10 MR. SUMMERLIN: All right. That is all
11 that I have. Thank you very much, and it was very
12 nice to meet you.

13 THE DEPONENT: All right. Thank you.

14 MS. WALL: Thank you.

15 MR. SCHMIDT: We'll read and sign.

16 (The proceedings concluded at 11:17 a.m.)
17
18
19
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25

CERTIFICATE OF DEPONENT

I, David Tuan, the deponent in the foregoing deposition, certify that I have read the attached 53 typewritten pages of my deposition upon oral examination, taken at the time and place indicated, and that it is a complete and accurate transcript of my deposition, with corrections, if any, noted herein along with the reason for each correction.

Dated at Williston, North Dakota, this _____ day of _____, 2022.

DAVID TUAN

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