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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

CASE NO.: 5:16-cv-326-OC-34PRC

GEORGE FERNANDEZ,

Plaintiff,

-vs-

CITY OF FRUITLAND PARK,  
a Florida Political Subdivision,  
and CHRIS BELL, individually,

Defendants.

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FRUITLAND PARK SHADE MEETING ATTORNEY/CLIENT

HELD BEFORE CITY OF FRUITLAND PARK CITY COUNCIL:

CHRIS CHESHIRE, MAYOR  
JOHN L. GUNTER, JR., VICE MAYOR  
CHRISTOPHER BELL, COMMISSIONER  
RAY LEWIS, COMMISSIONER  
RICK RANIZE, COMMISSIONER

April 13, 2017  
6:40 P.M. - 7:18 P.M.

CITY HALL COMMISSION CHAMBERS  
506 West Berckman Street  
Fruitland Park, Florida

Reported By:  
Evelyn Andrews, RPR, RMR  
Notary Public, State of Florida

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APPEARANCES:

On Behalf of the City of Fruitland Park:

ANITA GERACI-CARVER, ESQUIRE  
LAW OFFICE OF ANITA R. GERACI-CARVER, PA  
1560 Bloxam Avenue  
Clermont, Florida 34711

and

STEPHANIE McCOLLOCH, ESQUIRE  
McLIN BURNSD  
1000 West Main Street  
Leesburg, Florida 34748

ALSO PRESENT:

GARY LA VENIA, CITY MANAGER

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TRANSCRIPT OF PROCEEDINGS

THE MAYOR: All right. I'd like to call to order this scheduled attorney/client session, April 13, 2017. The time is 6:40 p.m.

Roll call. The persons who are in attendance are Mayor Christopher Cheshire; Vice Mayor John L. Gunter, Junior; Commissioner Chris Bell; Commissioner Ray Lewis; Commissioner Rick Ranize; City Attorney Anita Geraci-Carver; special counsel, Stephanie McColloch; City Manager Gary La Venia; certified Court Reporter Evelyn Andrews, Jasko Court Reporting Services, Inc., who shall record the time and termination of this session, all discussions and proceedings that occur, the names of all persons presented at the time during the session and the names of all persons speaking.

I do have one request from the court reporter, that we all speak at once. If we speak over each other she's never going to figure out what you say, so we'll try to do that.

George Fernandez versus City of Fruitland Park. I guess we go to Anita.

MS. GERACI-CARVER: Yes. So this meeting was publicly announced and we posted the notice. Stephanie McColloch is here. She's been appointed

1 by the City's insurance company to represent the  
2 City in this particular case. And so at this point  
3 I'll turn it over to Stephanie.

4 MS. MCCOLLOCH: Good evening everybody. I know  
5 I haven't met you before. My name is Stephanie  
6 McColloch. I work with McLin Burnsed. And I've  
7 worked with McLin Burnsed for my career, which has  
8 started in 2003. So just to give you an idea about  
9 me.

10 But I also do a lot of insurance defense with  
11 the insurance company and I am representing you  
12 through the insurance company with respect to the  
13 claims that were filed by Mr. Fernandez.

14 I've been in contact with Gary. We've spoken a  
15 lot about the case and we've spoken a lot about some  
16 of the issues that we're having, some of which are  
17 technical, and some of which are old, but we've, you  
18 know, made some changes in the way we're doing  
19 things going forward that I think will be better  
20 for the City to go ahead and put this claim to  
21 rest.

22 I'll start by just describing the lawsuit  
23 that's been filed. He's filed a six count Complaint  
24 in Federal Court. And I emphasize Federal Court,  
25 because Federal Court is much more expensive to



1 litigate in than State Court. In Federal Court  
2 there's a lot more deadlines and there's more, I  
3 guess, intricate involvement with the judge's  
4 scheduling and things like that. Everything is done  
5 according to schedule.

6 The litigation can take, you know, usually  
7 trials are not scheduled for a year-and-a-half after  
8 the lawsuits are initially filed. So there's a  
9 series of things and events that require attendance  
10 for that duration of time, at least. And it's very  
11 costly for defendants and for plaintiffs as well,  
12 but usually they don't have to pay anything until  
13 they, or if they recover.

14 So, his attorney has filed six counts. And  
15 some of those counts are State law claims, but some  
16 of those counts are Federal law claims. And I just  
17 want to talk about kind of the biggest exposure  
18 claims first, because I think those are the most  
19 important going forward.

20 He's filed suit under the Fair Labor Standards  
21 Act, which is a Federal law that governs employees  
22 and the wages and overtime pay that they receive.  
23 The argument there, of course, for them is that he  
24 was really an employee and not a volunteer. And the  
25 argument for us is that he was a volunteer member of

1 the fire department.

2 The issue that comes into play, we've already,  
3 you know, asked the judge to dismiss on those  
4 grounds, that this is a volunteer fire department;  
5 that he was paid a stipend; that he knew that it was  
6 a volunteer position; and all of those sorts of  
7 things.

8 And the judge has said that they have said  
9 enough to state a claim to prove that perhaps this  
10 applies and that he was misclassified as a volunteer  
11 rather than an employee.

12 So, that doesn't mean that he wins the case,  
13 but what it means is, it's probably going to go to a  
14 jury. And so now we're talking about a year of  
15 litigation, or six months of litigation, at a  
16 minimum, including a lot of costs along the way.

17 We have the ability to try to move, again, but,  
18 for what's called summary judgment to take it away  
19 from the jury, but because the judge has already  
20 ruled that there are issues of fact here, in other  
21 words, there's some things that were done when this  
22 individual came on board for the volunteer fire  
23 department way back when in 2009 that were done in a  
24 way that gives him a pretty good argument that there  
25 may be some factors that go in his favor that he was

1 actually an employee.

2 And I can tell you what some of those factors  
3 are. For example, the way his personnel file was  
4 kept. It was kept like a personnel file. That's  
5 one of the factors that the Court looks at is, do  
6 you keep a personnel file on this person? Are they  
7 treated like an employee?

8 So every form that we see that he filled out  
9 from the employment application to actually when he  
10 was relieved of his services, the form itself reads  
11 like any typical employee application, employment  
12 application, employee discharge, and that sort of  
13 thing.

14 There's indications that he was responsible to  
15 report to the City as far as they had the ability  
16 to, quote, hire and fire him. Even though we didn't  
17 call it hiring and firing, just the way that it  
18 works in reality is that we were not happy with what  
19 he was doing, and we let him go.

20 Now, since this lawsuit has been filed, I've  
21 spoken with Anita and I've spoken with Gary, and  
22 we've talked about, you know, the ways of the past  
23 and the way going forward to protect yourself from  
24 the exposure for these kinds of cases. And, you  
25 know, it's not to say that you can't have a

1 volunteer fire department. You can. But we just  
2 need to go through everything. And I think Anita's  
3 already, you know, done that, and they've changed  
4 the forms. And the way things were done in 2009 are  
5 not the way things are being done now. So we're  
6 eliminating that exposure and minimizing that  
7 exposure going forward, but unfortunately we can't  
8 change what's already been done.

9 The other type of claim that they've brought  
10 under the Fair Labor Standards Act is, it's similar  
11 to a whistle-blower action but it's under the  
12 Federal law and it's for retaliation. And his  
13 argument or allegation is that he showed up at  
14 commission meetings and complained about the way  
15 monies were being spent and the way that  
16 firefighters were being paid, and that soon after  
17 that he was relieved of his duties.

18 And under the Fair Labor Standards Act there is  
19 exposure for retaliation. You can have a  
20 retaliation claim and the proof is not as strict as  
21 what's required for a State law whistle-blower  
22 action.

23 That being said, he also has a State law  
24 whistle-blower action, which he doesn't have, you  
25 know, as far as we know, to date we don't have a



1 signed Complaint or anything from him; but again,  
2 the same allegation, that he has complained about  
3 the way budgets were handled and firefighters were  
4 being paid, which would -- understand that under a  
5 whistle-blower action or under a retaliation claim,  
6 they don't have to be right. What you're doing  
7 doesn't have to be unlawful for them to prevail on  
8 the claim. They just have to perceive it as being  
9 unlawful. They complain about it. They voice their  
10 opinion. You know, they try to remedy the  
11 situation, and they're either terminated or let go,  
12 or there's some kind of adverse action taken towards  
13 them.

14 So the employee or the individual complaining,  
15 or blowing the whistle, doesn't have to be right on  
16 whether or not what they're blowing the whistle on  
17 actually happened or it was illegal or that sort of  
18 thing. So that claim as well.

19 The real big exposure for the Fair Labor  
20 Standards Act, other than when we get into this  
21 employee issue, if he's an employee we could be in  
22 big trouble, because -- and I'll tell you why. The  
23 Fair Labor Standards Act requires that employers  
24 keep very detailed records as the amount of hours  
25 that people work and the amount of money that .



1 they're paid, particularly when it comes to overtime  
2 hours.

3 Of course, he's going to allege that he worked  
4 60 hours a week, and, you know, he worked all this  
5 time. And of course, our people will probably laugh  
6 at that and say, you know, this guy maybe worked 30  
7 hours a week.

8 Unfortunately, we don't have the records to  
9 prove it. He's the only one that we, from my  
10 understanding, we don't have time records for. And  
11 part of that, we believe, but we don't have any  
12 evidence of, maybe that he did some things to his  
13 own computer and those records are no longer  
14 accessible. But that becomes a problem because it's  
15 our burden to keep those records, to maintain those  
16 records.

17 And without those records to say, hey, this  
18 guy, look it, he was only here, you know, 15, 20  
19 hours a week, so how could we possibly owe him  
20 overtime, then what we're left with is this he said,  
21 she said, factual battle where he's going to say  
22 that he -- he's going to testify under oath, I'm  
23 sure of it, because I've seen a lot of these cases,  
24 that he's worked, you know, in excess of 50 or 60  
25 hours a week, and that he would take things home.

1 And just because he wasn't here, he was doing things  
2 at home and he was planning things for the fire  
3 department, and that sort of thing.

4 And, you know, we may have some individuals  
5 that will testify that he did things differently  
6 than that, and he didn't work that many hours. But,  
7 again, that's a jury question and that's going to  
8 take you through extensive litigation to get there.  
9 And the real problem with that is, if he proves that  
10 he was entitled to recover overtime for even one  
11 week or \$1.00 of overtime, what the law says is, if  
12 you fail to pay an employee the proper amount of  
13 overtime, they get the amount that you should have  
14 paid them times two, and they get their attorney's  
15 fees paid.

16 So, the exposure isn't even necessarily always  
17 in this unpaid overtime. I mean, he could, you  
18 know, even on his best day, maybe he only proved  
19 that he's owed \$5,000.00 worth of overtime, or  
20 \$1,000.00 worth of overtime times two, the real  
21 exposure comes in is when his attorney's fees get  
22 paid, because his attorney charges about twice what  
23 I charge. And you can bet that by the end of a jury  
24 trial you're looking at about \$100,000.00, and  
25 that's a very conservative estimate.

1           His attorney's in South Florida. He's  
2 probably, you know, charging \$400.00 an hour, I  
3 would guess. You know, I'm not privy to his  
4 agreement, but that's -- I can say that you could  
5 expect \$400.00 an hour and you could expect probably  
6 a hundred to \$150,000.00 by the time it's all said  
7 and done.

8           So, that being said, I've been in  
9 communications with his attorney. We had a  
10 mediation and several depositions coming up and they  
11 had requested to depose some of our people as well.  
12 And what that would do is, obviously, take people  
13 away from their business and also incur more  
14 attorney's fees by my attendance and by his  
15 attorney's attendance.

16           We had a formal mediation scheduled. The  
17 attorney contacted me and we tried to reach a  
18 resolution without attending the mediation, because  
19 when you go to the mediation, you're paying another  
20 lawyer. The lawyer is a mediator, and they charge a  
21 lot of money, and you sit there all day and you do  
22 the same thing that can be accomplished through some  
23 conversations and e-mails and discussions.

24           And so we spoke, after Gary and I met, and we  
25 reached an agreement contingent on your approval for

1           \$45,000.00 inclusive of all attorney's fees, costs,  
2           everything for all six claims.

3           Also, in discussing this with the insurance  
4           company, I sent jury verdicts, and I looked at some  
5           jury verdicts of comparable cases, and I sent those  
6           over to the insurance adjuster as well. There was a  
7           similar case with a probationary firefighter who had  
8           only been employed with that city for about 90 days.  
9           That claim was awarded \$28,000.00 just for the back  
10          pay, not for the attorney's fees and everything  
11          else.

12          And then there was another one that was a  
13          retaliation claim, which is, you know, two of the  
14          counts, two of the six counts are retaliation,  
15          essentially, and that verdict was roughly  
16          \$128,000.00.

17          So, you know, I think this settlement is a good  
18          thing for you, because I think it's going to avoid a  
19          lot of costly expenses, litigation, and exposure  
20          could be a lot worse.

21          Like I said, it doesn't necessarily mean that  
22          he has the best claim ever, but you could spend, you  
23          know, \$100,000.00 to be right; or you could possibly  
24          spend, you know, the money to resolve it and use  
25          your resources to prevent this from happening later



1 on. And I think that everybody's been proactive in  
2 doing that. And because of this and the way that  
3 things were done back then, I think a lot has been  
4 changed that's going to minimize your exposure,  
5 either way you go, whether you decide to take the  
6 fire department as employees or if you, you know,  
7 want to maintain a volunteer fire department.

8 You know, like I said, a lot of the problem is  
9 no records. A lot of the problem is, unfortunately,  
10 just the way the law is drafted, because like I  
11 said, if he recovers \$100.00, he gets his attorneys  
12 fees paid. So that's where the big exposure is.  
13 That's where the problem comes into play.

14 And if he were to accept the settlement, then  
15 he'd be required to sign a release of all claims  
16 against the City of any kind. You know, we would  
17 sign -- he would sign a general release in addition  
18 to the release of the claims raised in this lawsuit.

19 So, you'd be done with him. You turn the page,  
20 you move forward, and you correct the things that  
21 maybe led to some questions of fact or some issues  
22 that you don't want to be arguing about in the  
23 future, or you don't want to have to be arguing  
24 about in the future.

25 THE MAYOR: What happens with exposure from



1 another firefighter who decides to sue us for the  
2 same exact thing? What happens?

3 MS. McCOLLOCH: Well, I think, Anita, you can  
4 correct me if I'm wrong, but I think that's kind of  
5 a minimal concern at this point, because, number  
6 one, we've changed the way we're doing things  
7 already as soon as this was filed, which we're going  
8 on nearly a year now.

9 Also, the other issue, because one of the  
10 problems with this case is, we don't have the  
11 records. So we don't have the records. And as a  
12 fire chief, we can assume that if he's deemed an  
13 employee, that he should be deemed an administrative  
14 employee. And they may look at some kind of, you  
15 know, fire chief's across the board, what do they  
16 typically make? They make more than the average  
17 firefighter. The overtime standards may be  
18 different. He may -- you know, there's just a lot  
19 of exposure with his claim, especially for the back  
20 pay more so than the overtime for the retaliation,  
21 because what his back pay should have been could be  
22 higher and then we've got to look backwards at the  
23 retaliation claim, and he could recover up to three  
24 years of back pay.

25 So, three years of back pay is a big chunk of

1 change for somebody that's, you know, working 60  
2 hours versus somebody who basically may be very easy  
3 to prove that they're only working 15 hours or  
4 they're only volunteering 15 hours or whatever  
5 because we have the records there. They're right  
6 there. You know, we don't have that problem with  
7 the other firefighters. We had that problem with  
8 this one.

9 THE MAYOR: What --

10 MS. GERACI-CARVER: One thing. I'm sorry. One  
11 thing I wanted to point out is, while you have  
12 insurance coverage, back wages is not covered. So  
13 if they determine that you have to pay back wages,  
14 that actually is paid by the City itself. It's not  
15 paid by your insurance company because it's  
16 considered wages.

17 And the other thing, just to point out is, this  
18 transcript is sealed until the close of the case,  
19 but just keep in mind that -- certainly ask anything  
20 that you want, but just know that it will become  
21 public at some point.

22 COMMISSIONER LEWIS: What about the missing  
23 records?

24 MR. LA VENIA: I'll answer that question. When  
25 this occurred, I told you we tried to have our

1 computer company in and try to recover the records,  
2 because it was a belief that perhaps those records  
3 might have been destroyed by the Plaintiff --

4 MS. McCOLLOCH: Intentionally.

5 MR. LA VENIA: -- in this case, intentionally.  
6 They couldn't do it.

7 Subsequently, recently, as late as this week  
8 we've contacted -- and regardless of whether we  
9 settle or not, we're going to look at FDLE. We  
10 contacted the Sheriff's Department. They don't have  
11 a forensic group that can handle this. FDLE does,  
12 as long as it's part of a criminal investigation.

13 Destroying public records, if that were the  
14 case, if that were to be proven, is a criminal  
15 offense. We will pursue that with or without a  
16 settlement.

17 COMMISSIONER BELL: Well, my question is, with  
18 the settlement, does that allow for -- are we  
19 allowed to?

20 MR. LA VENIA: We can still pursue a criminal  
21 act if that be the case; can we not?

22 MS. McCOLLOCH: Well, I'm not a criminal  
23 attorney, so I'll just preface it with that.

24 But what I will say is that typically the way  
25 that it works is, we would file a motion with the

1 court. It would not be a mutual release. They  
2 haven't asked for a mutual release. Now, if they  
3 did ask for a mutual release, that would be  
4 something different. But typically the way it works  
5 is, the language of the release is that we're not  
6 admitting any liability, that we think we have valid  
7 defenses to all of his claims, but that we're  
8 entering into this agreement to resolve litigation  
9 and the burdens and costs that are associated with  
10 that.

11 And that in exchange for the payment by the  
12 insurance company of the amount to him and his  
13 attorney combined, I mean, we don't know how much is  
14 going -- who's going to get what out of that pot,  
15 but understand, he's not going to get \$45,000.00 out  
16 of it.

17 MR. LA VENIA: We understand that.

18 MS. MCCOLLOCH: You know, so we allocate that  
19 from the insurance company. And in exchange for  
20 that, he's releasing all the claims in the lawsuit.  
21 He has to file a dismissal of the lawsuit with  
22 prejudice. So that means, he can't bring it again.  
23 That's it. It's done. And they would sign a  
24 general release, essentially releasing the City from  
25 any further liability for anything that occurred



1 during his employment here.

2 So that's the language, you know, that  
3 typically --

4 MR. LA VENIA: Would be in the settlement.

5 MS. McCOLLOCH: -- is associated with this.

6 COMMISSIONER LEWIS: I didn't hear anything in  
7 there that would preclude the City from pursuing  
8 criminal actions. Nothing you said about the  
9 release --

10 MS. McCOLLOCH: Correct.

11 COMMISSIONER LEWIS: -- is that, so.

12 MS. McCOLLOCH: Unless, you know, it was a  
13 mutual release, which they have not asked for as of  
14 today, so.

15 MS. GERACI-CARVER: Sometimes the -- a mutual  
16 release means --

17 COMMISSIONER LEWIS: What is that?

18 MS. GERACI-CARVER: -- we're releasing him of  
19 anything. So if we have a cause of action against  
20 him --

21 COMMISSIONER LEWIS: Gotcha.

22 MS. GERACI-CARVER: -- we would be giving up  
23 that right. They haven't asked for it. Now, I've  
24 seen some recently where that's been asked for, and  
25 there's been language put in that the City would not



1 pursue criminal charges. Whether that's enforceable  
2 is a question, but they haven't asked for that.

3 THE MAYOR: If, if FDLE took the computer and  
4 looked at it and said, look, there's all those  
5 records, we found them, would that make a difference  
6 to what's going on right here with you? Would you  
7 be like, oh, the case will be dropped because we  
8 have the records now; we shouldn't settle. Would  
9 that change anything as far as this?

10 MS. McCOLLOCH: No. I mean, it wouldn't change  
11 anything, because you're still talking about -- I  
12 mean, it's like I said, you're going to spend that  
13 kind of money to be right.

14 You're going to spend more than that to be  
15 wrong, because your big exposure is the attorney  
16 fees. And understand that his pricier claims are  
17 the retaliation and the whistle-blower claims. You  
18 know, I mean, if we had those records we might be  
19 able to prove that he didn't work any overtime or he  
20 worked minimal overtime; but remember, if he worked  
21 ten hours of overtime and the Court rules that we're  
22 obligated to pay it, I mean, and that's a crap shoot  
23 as well, I mean, you're looking at, is he an  
24 employee; is he a volunteer?

25 If he is an employee, there's still another

1 layer. I mean, was he a chief? Is he exempt? You  
2 know, what kind of things in the way that we paid  
3 him would make him exempt? You know, I don't think  
4 he's -- even if he were deemed an employee and we  
5 were trying to say he was exempt, I don't think we'd  
6 win that argument because we only paid him a  
7 stipend, so we didn't meet the requirements required  
8 for paying somebody a salary and calling them, you  
9 know, an administrator. So we're kind of danged if  
10 we do, and danged if we don't, so to speak.

11 THE MAYOR: Even with the records, it doesn't  
12 make a difference even with the records, even if  
13 they have to get them, so at this point, no  
14 difference? No difference?

15 MS. McCOLLOCH: Not significantly because the  
16 problem is --

17 THE MAYOR: There's too many.

18 MS. McCOLLOCH: -- like I said, even if he  
19 shows he gets \$100.00 of overtime, the attorney gets  
20 paid. And that's where the exposure is. That's  
21 where the hundred, \$150,000.00 comes in. So even on  
22 our best day, or even if he shows, you know, there's  
23 no overtime, but he's able to prove either the  
24 retaliation claim or some kind of State law  
25 whistle-blower claim, if he proves that, then the

1           measure of damages is back pay, it's not overtime,  
2           you know, is what he'd be entitled to. So, and  
3           that's after, you know, participating in a lot of  
4           litigation and racking up more costs and expenses,  
5           not to mention the time away from doing the jobs  
6           that, you know, all of our employees, chiefs, former  
7           chiefs, you know, maybe some of the other volunteer  
8           firefighters, Gary.

9           They did sue Mr. Bell originally. They did end  
10          up dropping him out. But he would still -- he was  
11          still going to be deposed, I mean, so.

12          They'll take their time deposing everybody to  
13          spend a lot about nothing and that's just the way  
14          litigation goes sometimes. They don't know that he  
15          may not have the information they're seeking, but  
16          they want to depose him, so we have to produce him  
17          to be deposed, and that's time away from things that  
18          he could be doing, you know, for the City's  
19          business.

20          THE MAYOR: I have one more question and it's,  
21          if you settle this, and you're talking about  
22          whistle-blowers and things like that, and then you  
23          pursue a criminal case against him, to me, that's a  
24          complete whistle-blower. I mean, that's -- I mean,  
25          it's almost like, look we paid you off and now we're

1 going after you. To me that's almost -- he's going  
2 to sue us again.

3 MR. LA VENIA: Okay. I don't want to belabor  
4 that.

5 THE MAYOR: Okay.

6 MR. LA VENIA: But all I'll say is this, and  
7 anybody can tell me, Gary, just shut up.

8 If the FDLE comes in -- we settle the suit.  
9 Okay. This whistle-blower matter, I understand  
10 there's a lot of exposure there. Okay, fine.

11 After the fact, if we were to find that he  
12 destroyed public records, does that indicate  
13 retaliation if there's a wrongdoing? If there's a  
14 wrongdoing, the wrongdoing exists. It's not our  
15 doing, it's his doing. He would have committed the  
16 crime. The City has no culpability in a crime that  
17 he commits.

18 I'm not saying he's not going to ask to be  
19 for -- whatever, he's going to be asked to be immune  
20 from any prosecution, should there be any indication  
21 that criminal wrongdoing was involved. He may very  
22 well ask for that in the agreement. He may not.  
23 But if he doesn't, what exposure is there with us  
24 going after something that may be criminally wrong?  
25 And I'm not saying we're going to be able to find



1           it.  Quite frankly, you know, he may be very good at  
2           his chosen profession, and that is IT work, and he  
3           may be able to have hidden it, and we may not be  
4           able to recover anything.  And maybe there's nothing  
5           there.  Maybe I'm just, you know, swinging at  
6           shadows or trying to grab shadows here.

7                     But my question essentially is, what's the  
8           exposure and does the Mayor have a valid question  
9           there in terms of retaliation in another suit?

10                    THE MAYOR:  I think the thing is, though,  
11           that's not even part of today's discussion, so that  
12           will be held over to some other time.

13                    MS. McCOLLOCH:  And not only that, I mean, I  
14           think my advice with resolving the thing is to put  
15           it behind you, to move forward, resolve the matter,  
16           reduce your exposure going forward, which is already  
17           in the works and --

18                    COMMISSIONER BELL:  I mean, that was going to  
19           be my --

20                    MS. McCOLLOCH:  Let sleeping dogs lie.

21                    COMMISSIONER BELL:  That was going to be my  
22           question.  Do we want to allow a mutual agreement to  
23           be part of this or do we want to --

24                    VICE MAYOR GUNTER, JR.:  Not if it's not asked  
25           for.



1 MS. McCOLLOCH: If it's not asked for, then --

2 VICE MAYOR GUNTER, JR.: If it's not asked for,  
3 don't say nothing.

4 MS. McCOLLOCH: But if it's --

5 COMMISSIONER BELL: If it's asked for?

6 MS. McCOLLOCH: If they request the language of  
7 a mutual release, you know, that's something that  
8 sometimes can uphold a settlement, and sometimes it  
9 can impinge a settlement if we don't agree to that.  
10 I mean, it can -- they can say, well, forget it,  
11 we're just going --

12 COMMISSIONER LEWIS: If we won't, we tip our  
13 cards. Think of it in a card game. I mean, it's --

14 COMMISSIONER RANIZE: I've got a statement and  
15 one question. The statement is: We will have two  
16 more lawsuits. We have a former fire chief who was  
17 fired from this agency for a reason. He will -- he  
18 will file a suit, I guarantee you.

19 MS. McCOLLOCH: How long ago?

20 COMMISSIONER RANIZE: Three years. Two  
21 years -- well, he was the chief before Forrest took  
22 it.

23 MS. McCOLLOCH: Well, and here's the thing --

24 COMMISSIONER RANIZE: It was Chief Forrest.

25 MS. McCOLLOCH: Right. We're not here to talk

1 about that, understand; but that being said, I will  
2 just say generally that this type of claim can only  
3 be brought within two years from the last paycheck  
4 they received.

5 COMMISSIONER RANIZE: Has he been gone two  
6 years?

7 MR. LA VENIA: Yeah.

8 COMMISSIONER RANIZE: Okay. That's fine.

9 MS. MCCOLLOCH: Or three years if they can  
10 prove it was a willful violation of the law.

11 I don't think there's any, you know, real  
12 threat that a judge would find that you willfully  
13 violated the law, because it seems as though the  
14 volunteer process was in place and that was the  
15 intent, but it just didn't come out that way  
16 legally.

17 And that's, you know, there's an issue of fact  
18 legally; but your intent was never, I know these  
19 people are employees and I'm going to pay them. We  
20 still -- there's still a fact issue, are they  
21 employees? Are they volunteers? You intended for  
22 them to be volunteers and you paid them in the  
23 manner that is allowed for volunteers. So it was  
24 never this issue of you willfully trying to not pay  
25 somebody what you were supposed to pay them.

1           COMMISSIONER RANIZE: My question is: Do we  
2 have his time records from his full-time employer?

3           MS. McCOLLOCH: No, not at this stage.

4           COMMISSIONER RANIZE: Then why are we  
5 discussing with -- because he could -- how is he  
6 going to double-dip? How can he do a 40-hour job  
7 for a company that he works for, that he's employed  
8 by, and say he works 60 hours for us and a hundred  
9 hours a week?

10           MS. McCOLLOCH: Because that's what employees  
11 do that file lawsuits. They will get up under oath  
12 and say, I worked on Saturdays and Sundays. I took  
13 things home. I stayed up till midnight.

14           And, again, I mean, even if he worked 41 hours  
15 a week and he recovers a hundred bucks of  
16 overtime --

17           COMMISSIONER RANIZE: Did he turn in hours that  
18 he worked and days that he worked and times that he  
19 worked or is he just grasping at straws?

20           MS. McCOLLOCH: That's our obligation to keep  
21 the records, and those are the records that aren't  
22 there. That's the problem.

23           COMMISSIONER RANIZE: He's claiming he did it  
24 with no proof?

25           MS. McCOLLOCH: He's claiming that he worked --

1           you know, the allegations that they're required to  
2           make generally is, he's claiming that he worked in  
3           excess of 50 hours a week.

4           And it's our obligation under the law to keep  
5           the records of the hours that people work. And --

6           VICE MAYOR GUNTER, JR.: Yeah, but the whole  
7           terminology volunteered you think they're doing it  
8           for nothing in the first place.

9           COMMISSIONER RANIZE: Another thing that scares  
10          me is the overtime hours. The attorney fees and  
11          that don't scare me, 'cause I just got out of a  
12          five-year lawsuit in Federal Court and we won. We  
13          prevailed. I had \$38,000.00 out-of-pocket expense.  
14          The judge gave me 1,800. Our attorney filed  
15          \$178,000.00. He got 5,200. That's all the judge  
16          allowed.

17          MS. McCOLLOCH: Right.

18          COMMISSIONER RANIZE: They can ask what they  
19          want, the judge makes the determination. But the  
20          overtime issue, the overtime hours does scare me  
21          because that comes out of our pocket and not out of  
22          the --

23          MS. McCOLLOCH: And so would the back wages.  
24          So if the retaliation claim is proven, then back  
25          wages are coming out.



1 THE MAYOR: The other question I had. If you  
2 could move forward with this, the last time we had  
3 something like this, we said, if we move forward, if  
4 we wind up losing, our insurance company basically  
5 said we pay everything. There was some sort of --

6 COMMISSIONER LEWIS: I was about to say, we had  
7 a meeting today. It was explained, everything over  
8 and above 45,000 would come back to the taxpayers of  
9 Fruitland Park.

10 Right now the taxpayers of Fruitland Park that  
11 we represent, we have 15,000 skin in the game. The  
12 rest of it at this point is insurance company money.

13 If we decide to not enter into this agreement,  
14 it all goes back to everything above that goes back  
15 to our money. Okay. So the insurance company would  
16 still be in for what they've offered, but everything  
17 above that now comes back to the citizens of  
18 Fruitland Park to have to pay the freight.

19 MS. GERACI-CARVER: So they're exercising their  
20 hammer clause.

21 COMMISSIONER LEWIS: They call it a velvet  
22 hammer. They don't take it back to zero, the money  
23 that they put on the table --

24 MS. McCOLLOCH: Correct.

25 COMMISSIONER LEWIS: -- stays in the equation,

1 they don't pull it back out into their pocket. It  
2 stays. But now we go forward, I believe the defense  
3 cost now become our cost on a going forward basis.

4 The things that Stephanie's talked about all  
5 become -- come from the funds of the City, you know,  
6 from the City. And if we lose, you know, it's all  
7 out of the City.

8 MS. McCOLLOCH: And that's accurate in --

9 COMMISSIONER LEWIS: It's not a risk I'm  
10 willing to take, I can tell you that.

11 MS. McCOLLOCH: The other thing to kind of  
12 explain about that is, you know, right now you're  
13 paying your deductible and the insurance company is  
14 paying the rest of the settlement funds.

15 In addition to that, they're not, you know,  
16 splicing between or allocating this much for this  
17 much, and this much for that much. You know,  
18 they're not saying that any of it isn't covered at  
19 this point. They're saying they they'll be paying,  
20 you know, the \$30,000.00, which is their part, you  
21 know, of the settlement, less the deductible.

22 But, you know, even if he's right in that there  
23 is a clause that if, you know, the settlement was  
24 reasonable and we don't accept it, then when -- if  
25 they go forward and they get a judgment that's more

1 than that, then the insurance company is only liable  
2 to pay up to the amount that they wanted to settle  
3 for, which is the \$45,000.00. And if that is  
4 spliced out even further, in that some of it is back  
5 wages that's not covered, you know, there could be  
6 an issue there, too. So it's essentially the  
7 payment of your deductible to put it behind you.

8 THE MAYOR: Our purpose tonight is to accept  
9 this agreement?

10 MS. GERACI-CARVER: Pretty much.

11 THE MAYOR: Are we accepting this agreement or  
12 we're giving direction?

13 MS. GERACI-CARVER: You would give direction,  
14 and then at the public meeting you could accept it.

15 VICE MAYOR GUNTER, JR.: Can we give a  
16 counteroffer?

17 MS. GERACI-CARVER: You can give direction to  
18 the attorney to do that.

19 THE MAYOR: I think you're playing with the  
20 insurance company's money, you're not playing with  
21 the citizens of Fruitland Park's money.

22 MR. LA VENIA: 15 is 15 for us.

23 THE MAYOR: Whether we give him 30 or we give  
24 him 45, or we give him 27, we pay 15.

25 MR. LA VENIA: We're in for 15 already.

1 MS. McCOLLOCH: The negotiations started --

2 VICE MAYOR GUNTER, JR.: What was the original  
3 offer? They come down to 45, hadn't they? What was  
4 the original that they was asking for?

5 MS. McCOLLOCH: It was in excess of \$100,000.00

6 COMMISSIONER RANIZE: I wasn't aware of that.

7 MS. McCOLLOCH: It was in excess of  
8 \$100,000.00.

9 THE MAYOR: Do we like to do a consensus or a  
10 motion?

11 MS. GERACI-CARVER: No formal action, just a  
12 consensus. And then if the consensus is to approve  
13 it, then in the public meeting you could approve  
14 it.

15 THE MAYOR: Can we approve it in this next  
16 public meeting or do we have to have it on the  
17 agenda?

18 MS. GERACI-CARVER: Yes. No, you can put it in  
19 this meeting tonight.

20 THE MAYOR: Okay. Let's just run through and  
21 see if we have a consensus. Ray?

22 MS. McCOLLOCH: Well, let me just inquire of  
23 you, Anita, as far as how they wish to proceed.  
24 Because typically what we would do is have the  
25 Plaintiff sign a release. I mean, if they were



1 giving me the direction to go ahead and execute the  
2 paperwork, or have the Plaintiff execute the  
3 paperwork, I don't know necessarily that it needs to  
4 come before them again until -- unless this mutual  
5 release happens or they want to change the language  
6 to make the City sign it and execute it; because  
7 otherwise it's just going to be the Plaintiff's  
8 signature on any release.

9 MS. GERACI-CARVER: Yeah, that's fine then.  
10 I think under those circumstances we'll wait. If  
11 the consensus is to approve it, they'll just give  
12 you direction. And once you're ready for a final  
13 approval, it'll come back.

14 COMMISSIONER LEWIS: It'll be at a future  
15 meeting.

16 THE MAYOR: Okay. Very good.

17 MS. McCOLLOCH: And with the understanding that  
18 final approval wouldn't be necessary unless the  
19 City's required to execute some document as part of  
20 the settlement.

21 MS. GERACI-CARVER: Right. And then it won't  
22 come back before you. You wouldn't have public  
23 comment on it. Only if they were to ask you for a  
24 mutual release.

25 THE MAYOR: Ray?

1           COMMISSIONER LEWIS: I hate it with a passion,  
2 but I want to say, we accept it. We enter into this  
3 agreement.

4           COMMISSIONER BELL: Yeah, for the benefit of  
5 the City, that's the best way.

6           VICE MAYOR GUNTER, JR.: I mean, we don't have  
7 no other choice.

8           THE MAYOR: John, Rick?

9           VICE MAYOR GUNTER, JR.: I know.

10          COMMISSIONER RANIZE: My entire career we  
11 fought this and I hate this, but the City doesn't  
12 have the money to fight it. Now, if it was the  
13 county, they have the money to fight it.

14          THE MAYOR: Okay. And I'm of this --

15          COMMISSIONER RANIZE: I just --

16          THE MAYOR: Sorry.

17          COMMISSIONER RANIZE: I wish we could just add  
18 a stipulation to it but we can't. I have to agree  
19 with it. Don't want to, but I have to.

20          THE MAYOR: I have to agree with it as well.

21          Commissioner Bell, Vice Mayor Gunter, and  
22 myself, this is about the -- I don't know how many  
23 times we've gone through this, and a couple times  
24 before we yelled and screamed and hollered, and now  
25 we're both -- you got to do what you got to do.

1           So we give you direction to execute, how would  
2           you like to say it, to -- how should I say it,  
3           Anita?

4           MS. McCOLLOCH: Have the Plaintiff execute the  
5           documents to effectuate the \$45,000.00 settlement.

6           And then, you know, just while I'm here, if it  
7           is requested for a mutual release, is that something  
8           that you give direction for me to agree to, and then  
9           it would come before the Commission for signature  
10          and final approval, but it would really more or less  
11          be a seal of approval, essentially, I mean, if it's  
12          what we talked about today.

13          THE MAYOR: I guess we have to do that.

14          COMMISSIONER BELL: That always bites to have  
15          to give up on something like that, but at the same  
16          time, you never know on the other side whether  
17          you're just going to keep something -- keep that  
18          wound open or not.

19          COMMISSIONER RANIZE: Just amputate it and move  
20          on.

21          COMMISSIONER LEWIS: Are we good then?

22          MS. GERACI-CARVER: Is that an agreement?

23          COMMISSIONER LEWIS: Yeah.

24          THE MAYOR: I just did one thing, I don't know  
25          if I'm supposed to say this, Anita, you tell me, a

1 whole bunch of wording I'm supposed to say here, the  
2 entire session shall be recorded, do I need to say  
3 this or --

4 MS. GERACI-CARVER: No.

5 THE MAYOR: We're okay?

6 MS. GERACI-CARVER: We're good.

7 THE MAYOR: Okay. At this point does anybody  
8 have any other comments, any Commissioners,  
9 attorneys?

10 I am going to adjourn the attorney/client  
11 session.

12 (The hearing was concluded at 7:18 p.m.)

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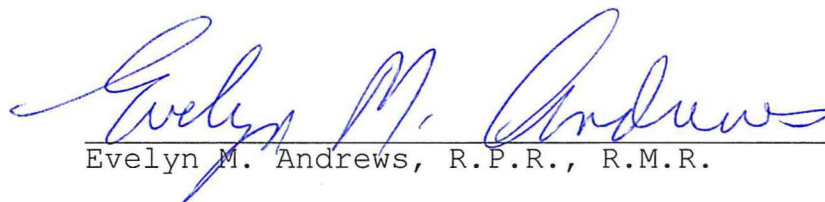
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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA  
4 COUNTY OF LAKE5 I, EVELYN M. ANDREWS, Registered Professional  
6 Reporter, Registered Merit Reporter, Notary Public, State  
7 of Florida, HEREBY CERTIFY THAT I was authorized to and  
8 did stenographically report the foregoing proceedings;  
9 and that the transcript, pages numbered 3 through 36, is  
10 a true and accurate record of my stenographic notes.11 I FURTHER CERTIFY that I am not a relative, or  
12 employee, or attorney, or counsel of any of the parties,  
13 nor am I a relative or employee of any of the parties'  
14 attorney or counsel connected with the action, nor am I  
15 financially interested in the action.16  
17 DATED this 28th day of April, 2017.18  
19   
20 Evelyn M. Andrews, R.P.R., R.M.R.  
21  
22  
23  
24  
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