

CITY OF FRUITLAND PARK EXECUTIVE SESSION
CITY OF FRUITLAND PARK, FLORIDA

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CONFIDENTIAL AND SEALED
SESSION BEFORE THE CITY OF FRUITLAND PARK CITY COMMISSION

DATE TAKEN: JANUARY 21, 2014

TIME: BEGINNING AT 6:35 P.M.
CONCLUDING AT 7:25 P.M.

PLACE: CITY OF FRUITLAND PARK COUNCIL CHAMBERS
506 WEST BERCKMAN STREET
FRUITLAND PARK, FLORIDA

REPORTED BY: BETH J. BREESE, FPR
COURT REPORTER AND NOTARY
PUBLIC, STATE OF FLORIDA
AT LARGE

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1 BEFORE:

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MAYOR CHRISTOPHER BELL
VICE MAYOR ALBERT O. GOLDBERG

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COMMISSIONER SHARON A. KELLY
COMMISSIONER JOHN L. GUNTER, JR.
COMMISSIONER CHRISTOPHER CHESHIRE

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CITY MANAGER GARY LAVENIA

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SCOTT GERKEN, ESQUIRE, ATTORNEY FOR CITY OF FRUITLAND PARK
GREGORY STEWART, ESQUIRE, ATTORNEY FOR CITY OF FRUITLAND PARK

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1 P R O C E E D I N G S

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3 MAYOR BELL: All right. So I need to announce
4 that we're going to enter into the session, announce
5 who's going to be there?

6 MR. GERKEN: Yes. The names of the individuals
7 and the estimated time.

8 MAYOR BELL: All right. So we're looking at
9 Mayor Chris Bell, Vice Mayor Al Goldberg,
10 Commissioner Chris Cheshire, Commissioner John
11 Gunter, Commissioner Sharon Kelly, City Attorney
12 Scott Gerken, Attorney Greg Stewart, City Manager
13 Gary LaVenia, and the certified court reporter, Beth
14 Breese.

15 MR. GERKEN: That's correct.

16 MAYOR BELL: And she's from First-Choice
17 Reporting.

18 And with that, we'll...

19 MR. GERKEN: And the estimated length of the
20 session is approximately 30 minutes.

21 MAYOR BELL: The estimated length of the
22 session is approximately 30 minutes.

23 COMMISSIONER KELLY: It's going to be longer.

24 MAYOR BELL: Okay. So with that, we'll close
25 out.

1 MR. GERKEN: Yes. And we'll begin the
2 attorney-client session. So all those except those
3 enumerated people will need to leave the room. You,
4 certainly, will be welcome to come back in at the
5 conclusion in about a half-hour. It may take longer.
6 If it takes less than that, we'll wait the half-hour
7 so that no one -- no one misses.

8 (Everyone excluding the above-mentioned persons
9 exited the council chambers.)

10 MR. GERKEN: With that, we will go ahead.

11 The typical ground rules -- as you know, Greg
12 Stewart is here tonight to tell you where we are on
13 the litigation.

14 When last we met, the instructions were to go
15 forth and see if we could get this thing resolved and
16 what it would take to resolve the litigation. He has
17 come to you tonight. There's been quite a bit of
18 back and forth, and we actually have a signed
19 settlement agreement from the plaintiff to present to
20 the City tonight for your consideration.

21 Before we do that, I will remind you that the
22 discussions this evening have to be limited to this
23 specific litigation. We can't get off into other
24 subjects. So any strategies and settlement
25 discussions with regard to this suit are what we're

1 talking about tonight.

2 There -- again, remind you that there is a
3 transcript being made of the proceedings. Even
4 though what you're saying here tonight -- there's no
5 audience here -- every word is being taken down, and
6 all of this will be made public in the future. So
7 don't say anything that you wouldn't want everyone to
8 know about, as you always do as elected officials.

9 And, third, we won't -- as you also know, we
10 don't take any action during this shade meeting. You
11 can give instructions to the attorney as far as how
12 you'd like the litigation to proceed, but any vote or
13 anything that would need to be taking place would
14 have to take place back in the regular session.

15 So with that, I will -- unless you have any
16 questions, we can turn it over to Mr. Stewart, who
17 has come in here prepared to --

18 COMMISSIONER KELLY: I -- I have --

19 MR. GERKEN: Yes.

20 COMMISSIONER KELLY: I have a question.

21 MR. GERKEN: Uh-huh.

22 COMMISSIONER KELLY: Apparently, the judge has
23 already been made an offer that we don't even know
24 what the offer is. But she made an offer to the
25 judge to -- about the settlement, and he's okayed it.

1 MR. STEWART: No. That's not correct.

2 Let me -- let me walk through the settlement,
3 and I'll talk a little bit about the procedure.

4 Greg Stewart, from the law firm of Nabors,
5 Giblin & Nickerson of Tallahassee.

6 As Mr. Gerken indicated, at our last executive
7 session the commission directed me to see if we could
8 come up with some negotiated terms.

9 What we have been able to negotiate is that the
10 City would create a common fund. And this is, in
11 essence, a pot of money that the City would hold,
12 that the City would administer. It would not be paid
13 out to anybody -- any lawyers to pay out. The City
14 would handle all of the money. That money would be
15 the full extent of the City's liability for any
16 purposes -- refunds, attorneys' fees, whatever might
17 come up.

18 The total amount we had that the City has
19 collected during the history of the fees is
20 approximately 562. So there -- it's a little bit
21 lower than what the total amount that's been
22 collected.

23 We have also incorporated as part of the
24 settlement that there is an application process. The
25 City would send a single-page application to all of

1 its utility customers and would publish an
2 advertisement, both of which were attached to the
3 settlement agreement. Those -- the City customer
4 would have 30 days to submit that completed
5 application. If they fail to do so, they would waive
6 any refund. Or 30 days from the publication of
7 the -- the ad.

8 The City would then get the applications. They
9 would then review them, make sure that it was a City
10 customer, that the City customer actually did pay the
11 fee, and verify the period of time that they paid the
12 fee. And that would then determine the extent of
13 refund that they potentially could have.

14 Now, from -- under a class action, the way
15 these work is that the class members all share in the
16 costs. So the -- every class member -- out of their
17 refund comes a pro rata share of the attorneys' fees
18 and costs and any other fees that the Court may
19 negotiate.

20 And we went round and round, working on --
21 negotiating on the fees and trying to kind of figure
22 out if there's -- and, ultimately, we came to the
23 conclusion that we could never agree to that, what
24 they wanted.

25 And so we took the position that it is better

1 to cut the City's losses, let the judge decide the
2 fees.

3 Ultimately, every member of the class will get
4 a notice, a separate mailed notice -- not from the
5 City, but from the plaintiffs' counsel -- which
6 will -- notice of the hearing and tell them
7 approximately what the plaintiff is looking for in
8 fees. And every class member has the ability to go
9 to the judge and object to the amount of the fees or
10 the settlement as a whole.

11 And we're tentatively looking at a potential
12 March date where that would occur.

13 Now -- so the way that would work is that if I
14 paid \$150 of police and fire fees, and, ultimately,
15 50 perc -- the judge awards 50 percent of that fund,
16 the 530,000, for attorneys' fees and costs,
17 everyone's claim gets reduced by 50 percent. And
18 this is a very common way that class actions are
19 administered and settled.

20 Any remaining funds left after we pay the
21 refunds, we pay the attorneys' fees out of the fund,
22 we pay the costs, will, in fact, go back to the City.
23 And we have -- they have -- it would be used towards
24 funding fire services.

25 Now, there's a couple things about the

1 structure of this that make me think that you will
2 get a refund back of some of this money.

3 First of all, an application has to be filed,
4 as I indicated. A lot of times people don't. They
5 get it, they throw it out, they don't -- they ignore
6 it, whatever the case may be, and they don't file it.

7 Second, it's a fairly short time window, 30
8 days. So we believe that administering this -- it
9 will be over quickly and that there will be some
10 refund.

11 Obviously, it may all be paid out. But I think
12 that the way it's structured, there is a probability
13 there will be some refund back to the City out of
14 that -- that amount.

15 Now, the settlement has a couple advantages.
16 First of all, it ends all the discovery. So all the
17 depositions that are currently set for each of you
18 and all the work that staff is having to go through
19 to assemble documentation ends as soon as the City
20 approves it.

21 Secondly, it cuts off my attorneys' fees. It's
22 easy to -- you know, we can go and we can fight
23 attorneys' fees and we could -- we could fight this
24 to the end. But at the end of the day, you're going
25 to continue to incur bleeding.

1 And so my recommendation is that you settle
2 this case. And I believe that the settlement is a
3 fair and reasonable way of doing it.

4 Now, one other point that I wanted to talk a
5 little bit about. When we met last time, there had
6 been some previous discussion about \$100. We put a
7 cap on the refund of the citizens to \$100. And that
8 wasn't available. We -- we could have probably
9 negotiated that.

10 But my suggestion is that that is not the most
11 beneficial for the City. And the reason why is
12 that -- first of all, you can see in the press that
13 they're putting this \$100 cap as if this is the
14 City's idea. That wasn't the City's idea; that was
15 the plaintiffs' idea. So the way that's playing out
16 in the public is that the City is refusing to give us
17 all of the money back.

18 Secondly, the approach we've taken makes it
19 very clear the citizen gets 100 percent of what they
20 paid in the fees to the City, and if they have a
21 problem with what is deducted, it's between them and
22 the lawyer and not with the City.

23 Overall, though there may be some customers who
24 will get more than \$100 back, I believe that that is
25 the more beneficial approach to go. It is,

1 certainly, the more traditional way of resolving a
2 class action.

3 Now, I anticipate -- though I've used an
4 example in the term sheet I put together for you as
5 to what they might request -- 50 percent. I believe
6 they may ask for more than 50 percent. But in my
7 view it is -- that is really an issue between the
8 class members, the attorney, and the judge.

9 And if the City was to decide what the fees --
10 we wouldn't give them a dime. But he is going to get
11 fees, and we think that it's better for the City to
12 step back, stop your costs, stop your fees, and,
13 basically, let the judge do his job and provide an
14 equitable fee and -- and costs.

15 And with that, I'll answer any questions.

16 Oh, I'm sorry. Ms. Kelly, you had a -- let me
17 talk to you about the procedure.

18 COMMISSIONER KELLY: Okay.

19 MR. STEWART: Right now, the judge has not been
20 provided anything concerning the settlement. Unless
21 he reads the paper, apparently.

22 The only thing that's been submitted to the
23 judge is that after your meeting last week or the
24 week before, where you suspended the collection, I
25 prepared an order to the judge asking him to approve

1 that we don't have to put it on the next bill. That
2 has not been executed yet. That is the only thing
3 that's been submitted to the judge.

4 The procedure that will be followed is that if
5 the City approves this tonight, the judge will be
6 asked to set a hearing March 4th or 5th to approve
7 the settlement, order that notices be sent out to all
8 of the class members. And then the judge, at the
9 March hearing, will decide whether to approve the
10 settlement and approve fees and costs.

11 COMMISSIONER KELLY: I have another question.

12 MR. STEWART: Yes, ma'am.

13 COMMISSIONER KELLY: Why is Richardson's name
14 still appearing, you know, on all the documents and
15 everything?

16 MR. STEWART: Well, the reason why he is -- he
17 was taken out of the documents as a class
18 representative, which is how it was originally pled.
19 Because he was not named. But he was listed as -- in
20 the style.

21 And the way they handle courts' pleadings is
22 once you plead it, you have to kind of live with that
23 kind of -- that pleading. That's why it's there.

24 It's a -- it's a technicality of the court
25 system.

1 COMMISSIONER KELLY: Okay. But does that mean
2 that he will get money as a representative?

3 MR. STEWART: No.

4 COMMISSIONER KELLY: He should --

5 MR. STEWART: He -- no. What they are going to
6 ask for is that he be given money for what they call
7 extraordinary services. That is a very difficult
8 standard to meet. It rarely, if ever, has been done.
9 But that would be for the judge to decide.

10 COMMISSIONER GUNTER: You said you estimate
11 that the -- their fees are going to be half of the
12 230,000 number -- or 265,000.

13 MR. STEWART: Well I -- I don't really -- I
14 really haven't estimated what I think it will be. I
15 used 50 percent because I'm math --

16 COMMISSIONER GUNTER: That's fine.

17 MR. STEWART: -- impaired.

18 COMMISSIONER GUNTER: That's fine. I'm just
19 looking -- okay.

20 Their fees is that amount. Okay. And then 50
21 percent comes out of the -- the rebate or whatever
22 the utility customer gets; correct? It would go
23 towards that?

24 MR. STEWART: Yes, sir.

25 COMMISSIONER GUNTER: What -- what if we don't

1 have but only \$100,000 worth of rebate? Then what
2 percentage goes to --

3 MR. STEWART: What -- the way that would work
4 is that the maximum amount of \$530,000 is all the
5 City has to pay. The fees and costs will come off
6 the top. If there's not enough to pay all the
7 refunds, then everyone's refund is reduced pro rata
8 to get it to the 530,000.

9 MAYOR BELL: But this is after the -- the
10 attorneys' fees and all that?

11 MR. STEWART: Yes, sir. Yes, sir. That comes
12 off the top.

13 MAYOR BELL: I mean, that was my concern. And
14 I thought about it a little bit today. 'Cause I
15 haven't opted out yet. Because I was worried that if
16 I opted out, that leaves more money on the table that
17 could be used to pay the fees. Or to calculate fees
18 based on it.

19 MR. STEWART: Well, it -- that would not have
20 an -- that would not have an effect, if you opted
21 out. It would -- in fact, it's -- it's one less
22 claim that can be made that they can take a piece of
23 the attorneys' fees.

24 In essence, if you opt out, it's like I don't
25 want anything to do with your lawsuit. I paid the

1 money and -- and, you know, conceivably, you could
2 sue individually if you wanted to. I'm not saying --
3 obviously, you wouldn't.

4 But as long as you're in the class, your refund
5 is going to be split with attorneys' fees.

6 If you opt out, none of it will be taken for
7 attorneys' fees. You're out of it completely.

8 And -- and, obviously, that's an individual
9 decision in terms of whether you opt out. But it was
10 adopted by the City, and that -- it may, from
11 appearance point of view, appear a little
12 inconsistent if you -- if you don't opt out.

13 MAYOR BELL: All right. Well, that's -- that
14 was the only reason I had not opted out, is I did not
15 want to possibly leave more money on the table.

16 MR. STEWART: I think the deadline for opting
17 out is February 28th.

18 MAYOR BELL: Yes.

19 MR. STEWART: If I recall correctly.

20 COMMISSIONER GUNTER: I put mine in over the
21 weekend. I didn't want Chris to be the only one.

22 VICE MAYOR GOLDBERG: Yeah. I've got to get
23 mine in too.

24 COMMISSIONER CHESHIRE: Mine -- mine's put in
25 there.

1 VICE MAYOR GOLDBERG: Can I ask a question?

2 MR. STEWART: Yes, sir.

3 VICE MAYOR GOLDBERG: Has there been any
4 discussion of fees for the class, the main class?
5 The Howards?

6 MR. STEWART: Yes. Basically --

7 VICE MAYOR GOLDBERG: Just out of curiosity.

8 MR. STEWART: -- what -- what they, I believe,
9 are going to ask for -- well, let me -- they have --
10 we've already worked on the notice. If the City
11 approves that, it will go to the class members. It's
12 not part of this settlement, but it was a separate
13 notice that we wanted to make sure we had an
14 understanding as to what was going to the class.

15 I believe they're going to ask for \$255,000 for
16 attorneys' fees and costs, 24,000 for the Howards,
17 10,000 for Mr. Richardson. And then there's an
18 estimate of about \$1,000 of City costs that we get
19 reimbursed out of that too.

20 Again, generally speaking, in the class
21 actions -- and I've done many class actions -- the
22 class representative amounts are relatively nominal.
23 A couple thousand, few thousand.

24 VICE MAYOR GOLDBERG: But that is kind of above
25 and beyond the normal?

1 MR. STEWART: For a lawsuit that hasn't even
2 been active for a year -- 'cause this was filed in
3 February of 2013 -- I think it's a little high.

4 But -- but again, I -- you know, my judgment
5 may be misplaced. But it seems to me the best person
6 to make that decision is the judge.

7 COMMISSIONER CHESHIRE: If he puts in extra --
8 as much money -- because then they have to send a
9 notice to all the people in Fruitland Park in the
10 class saying that the Howards want \$24,000.

11 VICE MAYOR GOLDBERG: Of your money.

12 MR. STEWART: And the notice that we have
13 approved -- or we've worked on with them -- has them
14 specifically spelling out these amounts. That they
15 will be seeking these amounts. So my thought was
16 that that might get the citizens' attention.

17 And so -- but -- but again, ultimately, it is
18 their money that they're getting refunded. And
19 they're dealing with the attorney. And so it really,
20 ultimately, is between them, the plaintiffs' counsel,
21 and the judge.

22 COMMISSIONER CHESHIRE: Do we have to mail out
23 applications? We're going to mail an application to
24 every citizen? Or do they have to come here and get
25 the application?

1 MR. STEWART: What I would suggest we do is
2 we -- we -- we made the application a single form so
3 it would be small. And we believe that what the
4 appropriate way to deal with it, if possible, was to
5 have it included in the utility bill. 'Cause that's
6 for current customers.

7 The ad would be published, which is just one
8 time. It's a relatively small ad.

9 I would suggest that it's -- makes sense to
10 send them out, have them at the front counter, just
11 sitting there, and people can grab them and -- make
12 it easy for them.

13 If we're paying that money back and -- you
14 know, we -- we've said from day one this is a
15 voluntary fee. We should make it easy for them to
16 get it back.

17 COMMISSIONER GUNTER: You said that the City's
18 going to administrate paying the utility customers;
19 correct? Or is that --

20 MR. STEWART: Yes. Yes.

21 The way that will work is we will have the
22 fund. We'll have to have it some -- segregated in
23 our accounts. That after we verify the
24 applications -- when we do the verification and we
25 have the attorneys' fees, we'll do the calculations

1 and we'll determine who gets what amount, and we'll
2 send the checks.

3 Now, there has been some discussion concerning
4 can we do it as a credit off future bills. I -- I
5 would suggest we don't do that. It seems that it's
6 better from a citizen's perspective to get that check
7 in hand.

8 COMMISSIONER GUNTER: Okay. Who -- who
9 verifies the amount that they're going to get now?

10 MR. STEWART: The City. City staff.

11 COMMISSIONER GUNTER: Should we have an outside
12 person do that? I mean, I don't want the citizens
13 coming up and say, hey, here they are trying to, you
14 know, mess us over again by not -- the staff is doing
15 it, and we don't know what they're doing to us.

16 MR. STEWART: Well, I think that -- that really
17 is going to be -- I mean, the City has the ability to
18 do whatever it needs to do to administer it. And
19 they don't need to go to the Court to do that.

20 So if we want to have someone else do it -- we
21 have talked with Amanda about it, and she can pull
22 the information. But it -- it is a relatively simple
23 process. Because we just find out when they hooked
24 up and --

25 COMMISSIONER GUNTER: Well, everything is

1 simple. Putting the fees in was simple.

2 MR. STEWART: I understand.

3 MAYOR BELL: That form that she's -- she's just
4 going to go through and see the forms so that -- I
5 mean, that's -- there's a basic formula to do it.

6 COMMISSIONER GUNTER: I understand that. But
7 still, somebody's going to say, hey, with the City
8 handling it theirselves [sic]...

9 MR. STEWART: Yeah. It -- it is a -- I mean,
10 this is not something that's going to start tomorrow,
11 even if you approve it. I mean, it's got to be
12 approved by the Court. They have to get the
13 applications in. So we're looking, probably, May to
14 do this.

15 So the City has the ability to do that if it
16 deems appropriate.

17 COMMISSIONER KELLY: There's going to be a lot
18 more work on our staff, though, correct?

19 MR. STEWART: Certainly. Certainly. Yeah. I
20 mean, there's -- it just -- I mean, it's going to be
21 an intense amount of time in addition to her other
22 duties, so...

23 But -- but it is an easier one because we only
24 go back to 2009. It's very set in terms of the
25 amount of the fee during what period of time. So,

1 you know, it -- it probably can be done fairly
2 easily.

3 But -- but that's -- if we want to bring
4 someone else in, it can be done.

5 VICE MAYOR GOLDBERG: Do these checks have to
6 be special? Worded special or anything? That says,
7 like, you know, by you endorsing this, you -- you
8 have been settled in full?

9 MR. STEWART: No. Because the settlement
10 agreement has that kind of language in it. It has
11 that this is in full liability of -- this and the
12 class members and in fulfillment of the City's
13 responsibility. So it has some release language in
14 there.

15 COMMISSIONER CHESHIRE: Next thing -- this
16 isn't for him, but do we have the \$530,000 somewhere?

17 MR. LAVENIA: We're going to have to approve --
18 that has to come out of reserves. Yeah. We've
19 already got a call in to --

20 MR. STEWART: Paragraph seven is the paragraph
21 that deals with that.

22 MR. LAVENIA: You know, it's reserves. Yeah.

23 COMMISSIONER CHESHIRE: We've got well over a
24 million in reserve.

25 MR. LAVENIA: Yeah. We're going to have to

1 take it out of reserves.

2 COMMISSIONER CHESHIRE: And may I -- may I ask
3 you what your lawyers' fees are so far?

4 MR. STEWART: I do not have an up-to-date
5 total. I can get that for you.

6 VICE MAYOR GOLDBERG: How about just a
7 ballpark?

8 MR. STEWART: I would say probably 20 to
9 25,000.

10 MR. GERKEN: I think that's about right. I
11 think it was -- I was going to say 22,000, something
12 like that, to date.

13 They'll be much higher if this doesn't resolve.

14 MR. STEWART: Right.

15 COMMISSIONER KELLY: So we're paying 520 -- is
16 that right?

17 MR. STEWART: Five hundred and thirty.

18 COMMISSIONER KELLY: Five hundred and thirty.

19 MR. STEWART: Plus the -- plus the attorneys'
20 fees for us.

21 COMMISSIONER KELLY: And then 22. So that
22 brings it up to --

23 COMMISSIONER GUNTER: Five fifty.

24 VICE MAYOR GOLDBERG: Five hundred and fifty
25 thousand.

1 MR. GERKEN: Again, the hope would be -- and I
2 think it's more than probable -- that you're not
3 going to have to actually pay out that entire
4 \$530,000, assuming not everybody --

5 COMMISSIONER GUNTER: That's the max.

6 MR. GERKEN: Yeah. That's your max. There's
7 going to be a material amount that's going to come
8 back to the City. Assuming there are people that
9 aren't going to request their refund --

10 COMMISSIONER GUNTER: Now --

11 MR. GERKEN: -- to support the City or just old
12 customers that, you know, won't --

13 COMMISSIONER GUNTER: The -- the thing about us
14 taking it out of reserves --

15 MR. GERKEN: Uh-huh.

16 COMMISSIONER GUNTER: -- we can't put none of
17 it back in the reserves. It has to go to the fire
18 department.

19 MR. GERKEN: To the fire. Now, you can then --
20 you can always budget monies to put in the reserve.
21 So other -- yes. These specific funds would have to
22 be used for the fire department. But the funds you
23 otherwise would have budgeted for the fire
24 department --

25 MAYOR BELL: Okay.

1 MR. GERKEN: -- can be put in the reserves.

2 COMMISSIONER KELLY: Why -- why did they pick
3 the fire department instead of the police department?

4 MR. STEWART: It's the issue with Chief Isaacs,
5 that --

6 VICE MAYOR GOLDBERG: It's more or less a slap
7 in his face.

8 MR. STEWART: Yes.

9 VICE MAYOR GOLDBERG: It really hits him
10 directly, imagewise. It says that we're not going to
11 let you take any money and do anything with the
12 police department. And this is probably why.

13 You know where that came from.

14 COMMISSIONER KELLY: Yeah. I know.

15 VICE MAYOR GOLDBERG: From -- from --

16 COMMISSIONER KELLY: And it's a little bit
17 ridiculous.

18 VICE MAYOR GOLDBERG: -- our buddy over on the
19 other side of the road.

20 MR. STEWART: I -- I don't disagree.

21 COMMISSIONER KELLY: It's a volunteer fire
22 department. Now -- well...

23 MR. STEWART: And depending on what the extent
24 of the -- that the City has at the -- doing -- I
25 mean, you -- it is a budgetary matter where you shift

1 things around and things but...

2 MAYOR BELL: Well, we don't have -- I don't
3 know what the amount's going to be. What -- what was
4 in the budget for the -- budget for the fire
5 department is?

6 MR. LAVENIA: One hundred and six thousand.
7 But that's just a guess.

8 MAYOR BELL: Does it -- does it have to go to
9 them in this budget year?

10 MR. STEWART: No. Anytime. It can go -- you
11 can -- I mean, there is no limitation other than it
12 has to be spent for fire department. So if you want
13 to put it in reserves for next year's budget and --
14 that's your prerogative.

15 MAYOR BELL: So really it doesn't...

16 MR. STEWART: Yeah. I mean, it's --

17 MAYOR BELL: Just say it goes back into the
18 general fund.

19 MR. STEWART: It's -- it's -- as the Vice Mayor
20 indicated, it was intended to be a slap at Chief
21 Isaacs. But, ultimately, how it impacts the City
22 probably is irrelevant.

23 COMMISSIONER KELLY: The problem is that the
24 fire department's going to see it as a windfall and
25 want to spend it all right away.

1 MR. STEWART: I understand.

2 Any other questions that I can answer?

3 VICE MAYOR GOLDBERG: What's your prediction on
4 Mr. Richardson gaining any monetary award?

5 MR. STEWART: Well --

6 VICE MAYOR GOLDBERG: From -- from your gut
7 feeling.

8 MR. STEWART: My gut is that he will not get
9 fees.

10 VICE MAYOR GOLDBERG: Remember, this -- this --
11 it's not every Court in the world here.

12 MR. STEWART: I understand that. And -- and --
13 and there's a couple things that I think I'm -- I'm
14 hoping kind of come into play with this.

15 Right now, the City is under the gun. Every
16 time we go into the court hearing, we just get
17 pounded. The judge makes it very clear how he views
18 the fees.

19 If we settle this and we're kind of on the
20 sidelines, then it seems to me that the judge's focus
21 may be more on the plaintiff, the plaintiffs' lawyer
22 fees, Mr. Richardson. This is the same judge that
23 said Mr. Richardson should not be -- you know, he's
24 got a monetary claim. I think these are unusual, to
25 try to have a class member show extraordinary

1 services.

2 And, again, we're talking about a lawsuit that
3 has not been pending a year. Which is -- I mean,
4 some of these class actions go ten years.

5 So my gut feeling is -- is that he will not get
6 fees. But, you know, I don't know for sure.

7 COMMISSIONER CHESHIRE: What about the
8 attorney? I mean, is it customary for the judge to
9 give him what he asked for? Or does he sit there and
10 look and say this is high and let's knock this down.
11 This isn't -- you know?

12 MR. STEWART: Well, the theory -- well, under
13 class actions, you, generally, are not entitled for
14 any more fees than you've actually incurred. And he
15 has not incurred \$250,000 in fees. And he gave me a
16 number at some point early in our discussions that it
17 was 100 and something -- low hundreds.

18 But there is a provision in class actions that
19 if it's a novel concept, if it's -- it's really an
20 unusual case and you took it on, with a high risk of
21 losing, there is a multiplier that the Court can give
22 when those types of circumstances exist.

23 I don't, personally, think those circumstances
24 do exist in this case. But that's what the
25 plaintiffs' attorney is counting on to get fees.

1 His actual hourly fees are substantially lower.
2 And I haven't seen his time bill, so I don't know how
3 much of that was related to the federal lawsuit,
4 which shouldn't be compensated in this.

5 COMMISSIONER CHESHIRE: But we're saying too,
6 if I hear -- we're not going to oppose or -- or any
7 of that. So we're just going to sit there and let
8 the judge -- you're not going to go in and argue and
9 say --

10 MR. STEWART: Yes.

11 COMMISSIONER CHESHIRE: -- you can give us the
12 multipliers and...

13 MR. STEWART: Yeah. That -- that is -- that is
14 part of the arrangement, that we are not going -- we
15 would agree not to do, either pro or -- for or
16 against anything.

17 And -- and, again, that does go back to the
18 fact that to do that incurs more attorneys' fees,
19 because I have to bring experts in to argue that.
20 And it really ultimately -- I'm -- I'm thinking that
21 if the class members go there and articulate their
22 views of this, that the judge will listen.

23 And -- and -- but ultimately, I think that the
24 class members need to carry their own word on that.

25 COMMISSIONER KELLY: But you're saying that

1 this is a hard case for them to win and that's why
2 the fee's going to go higher? I mean --

3 MR. STEWART: No. No. What I'm -- what I --
4 well, that's what -- that's one of the factors that
5 can be considered in whether the Court uses a
6 multiplier. To say this was a cutting-edge case, new
7 law.

8 There really wasn't -- I don't know if that's
9 going -- I mean, I'm -- and, again, it's very
10 difficult to anticipate what a judge will do. But
11 it's hard for me to think that they can make that
12 argument, when all through this case they've been
13 talking about how clearly these fees are
14 unconstitutional. So if it was so clearly
15 unconstitutional, how is it that big of a battle?

16 COMMISSIONER KELLY: Well, yeah. And if --
17 they're the ones that are saying that.

18 MR. STEWART: Yes.

19 COMMISSIONER KELLY: And I voted last time
20 against this because I don't think they are illegal.
21 And I think that they could be won in court. But
22 nobody wants to take the risk because of the -- how
23 much it's going to cost us.

24 MR. STEWART: Well, my -- as I told you last
25 time -- and I -- and my philosophy is -- is that you

1 don't need things should or could. You need the
2 straight scoop.

3 My opinion -- and I've done a lot of fee cases
4 all over the state -- is that both those fees are
5 unconstitutional.

6 VICE MAYOR GOLDBERG: Would you -- would you
7 get the court date -- is it -- is it going to be,
8 like, one day they're going to do this all?

9 MR. STEWART: Yes. It -- it's anticipated that
10 it would be done -- and I think the date is
11 March 5th. And I think -- they had already filed a
12 motion for summary judgment. And so we -- they want
13 to use that date, which is March 5th, and they have
14 all afternoon set aside. So it would be done at one
15 time.

16 And the first aspect would be approve the
17 settlement agreement. Which I'm hopeful the judge
18 would do.

19 And then the second would be going into the
20 fees.

21 VICE MAYOR GOLDBERG: And anybody can attend
22 that?

23 MR. STEWART: Yes.

24 Now, there -- there -- there is a provision in
25 there that the City and the commission will not take

1 a position, pro or con, on fees. So as much as you
2 might have to bite your tongue, we would ask that if
3 you approve the settlement that you agree not to take
4 a position publicly.

5 VICE MAYOR GOLDBERG: But we could be there?

6 MR. STEWART: You could be there but not take a
7 position publicly, for or against.

8 VICE MAYOR GOLDBERG: Oh, I -- I would never
9 say anything in a court of law anymore.

10 MR. STEWART: Okay. Well, that --

11 MAYOR BELL: Now, coming back to that
12 provision, what does that allow us to say from up
13 here, from out there, any -- as far as regarding
14 this -- this settlement?

15 MR. STEWART: I would -- I think you're free to
16 discuss the case, but I would -- I would refrain from
17 discussing anything concerning the amount --
18 attorneys' fees, representative fees,
19 Mr. Richardson's fees, or costs -- anything. 'Cause
20 that's the area.

21 So in terms of that the -- the residents are
22 going to get notices that will tell them,
23 applications to file in order to process a refund --
24 I think that's appropriate. That the residents will
25 get a notice of the hearing where the settlement will

1 be discussed with the Court. I think that's
2 appropriate.

3 I don't think it's appropriate to say the
4 lawyer's going to be asking for some incredible
5 amount of money, and you ought to go down there and
6 protest.

7 COMMISSIONER GUNTER: Yeah. But didn't you say
8 the utility customers are going to get a notice
9 stating how much?

10 MR. STEWART: Yes. But that's going to come
11 from the plaintiffs' lawyer, not from the City.

12 COMMISSIONER GUNTER: Right. Correct.

13 MR. STEWART: Right. They will get that in the
14 mail.

15 COMMISSIONER GUNTER: Okay. So in other
16 words --

17 MR. STEWART: That's going to happen. They're
18 going to get the notice anyway.

19 COMMISSIONER GUNTER: They're going to know how
20 much this actually cost them.

21 MAYOR BELL: Well, once -- once that -- if they
22 come up and ask us that question about the fees, we
23 should still try to remain as neutral as possible?

24 MR. STEWART: I -- I would just say that we
25 agreed not to get in the middle of that.

1 COMMISSIONER GUNTER: Just tell them they'll be
2 getting a notice to show all the fees.

3 MR. STEWART: Right.

4 COMMISSIONER KELLY: Yeah. But you know these
5 other attorneys are going to make up that notice, and
6 they're going to hide it as much as they can. I
7 mean --

8 MR. STEWART: Well --

9 COMMISSIONER GUNTER: That's hard to --

10 COMMISSIONER KELLY: -- the amount of what --
11 you know, what everybody's -- everybody's getting a
12 portion of this amount of money or something. And
13 that --

14 COMMISSIONER GUNTER: Do -- do they have to
15 separate --

16 COMMISSIONER KELLY: -- is specified.

17 MR. STEWART: No. And -- and that notice has
18 been drafted. They drafted it, I changed it, and
19 it's been approved by us.

20 And it very specifically says the amount of
21 attorneys' fees and costs, class representative fees,
22 and fees to class members who provided extraordinary
23 services shall be determined by the Court. The
24 amounts sought for such fees and costs are as
25 follows: attorneys' fees and costs, \$255,000; class

1 representative fees, \$24,000; fees to class members
2 who provided extraordinary services, \$10,000; and
3 City costs to administer the fund and pay class
4 members pursuant to the settlement agreement
5 estimated at \$1,000.

6 MAYOR BELL: What about names?

7 COMMISSIONER CHESHIRE: Yeah. I was going to
8 say, where are the names?

9 COMMISSIONER KELLY: Yeah. There are no names
10 in there. That -- they could sit there and point to
11 the attorneys.

12 MR. STEWART: No. Class -- there's only two
13 class representatives, and that's the Howards.

14 COMMISSIONER CHESHIRE: Yeah. But nobody knows
15 that.

16 MR. GERKEN: Well, they're named on the top.

17 MR. STEWART: Yeah. They're named on the top.

18 COMMISSIONER CHESHIRE: Okay.

19 MR. GERKEN: It says class representatives are
20 the Howards. And it also has Mr. Richardson's name.

21 COMMISSIONER KELLY: As what?

22 MR. STEWART: So the Howards --

23 MR. GERKEN: As an individual plaintiff.

24 MAYOR BELL: They're getting 24 apiece?

25 MR. STEWART: Twelve each.

1 MAYOR BELL: Oh, okay.

2 MR. STEWART: But -- but, as I said, this --
3 this notice is what we want the judge to approve.
4 And I rewrote this notice to make it absolutely
5 crystal clear that anyone who reads it knows that
6 there's going -- they're going to be asking for a lot
7 of that money. And it also says your fee -- your
8 refund's going to be reduced by those, so...

9 MAYOR BELL: So we can't -- if Mr. Howard wants
10 to come back up to the podium, we can't quote his
11 words as being criminal?

12 MR. STEWART: And -- and what do you mean?
13 I -- I'm -- I'm --

14 COMMISSIONER GUNTER: A comment he made at a
15 meeting.

16 VICE MAYOR GOLDBERG: You had to be there. He
17 gave a --

18 MAYOR BELL: He went on a rampage. That's why
19 I was wondering if -- if maybe using what he said at
20 that last meeting might disqualify him, actually,
21 as -- as a rep.

22 MR. STEWART: Well, and not having been there,
23 I can't -- can't tell you, Mayor.

24 VICE MAYOR GOLDBERG: Channel 9 News archives.

25 MR. STEWART: Okay.

1 VICE MAYOR GOLDBERG: Right there.

2 MR. STEWART: Well, I would suggest that the
3 intent of the settlement is to get the City out of
4 this and to move forward. And that is really what my
5 best advice to you is, is that these things just
6 grind you down. And you had a year where it's been
7 grinding you down.

8 It's time to put this behind you and move
9 forward. And you can't until you settle it.

10 COMMISSIONER GUNTER: And I think they'd settle
11 it anyways.

12 MAYOR BELL: Yeah. 'Cause after the
13 settling -- we still got this group that wants to be
14 involved. After the settlement is made, fees are
15 determined, is there any gag order at that point?

16 MR. STEWART: No. And -- and -- and Ms. Kelly
17 and I, we've talked about this concerning the federal
18 settlement. And Mr. Gerken and I have talked at
19 length.

20 It is very, very difficult for a public body to
21 have a settlement that has a gag order. They're
22 almost always struck down. Because public policy,
23 you know, is that the public should always be able to
24 approach a public body and -- and say what they want.
25 And, obviously, you now have the -- the new statute

1 that requires public comment.

2 I -- I appreciate it when you take a beating at
3 a meeting in terms of the -- them getting up there
4 and misstatements and lies and whatever the case may
5 be. It's not the road to go down.

6 COMMISSIONER KELLY: So we're supposed to just
7 sit up here and take it. Okay. Call us whatever you
8 like. It's okay.

9 MR. GERKEN: One question, just for the benefit
10 of the commission. Can they encourage people to go
11 to the hearing and be heard about the fees? Is
12 that...

13 MR. STEWART: I -- I -- I don't think there
14 is -- there is no limitation in the agreement that --
15 and I would encourage you not to do things from the
16 dais. I think if you're going to -- have someone in
17 conversation, I would stay away from the fees. But I
18 would say, all of this is going to get discussed by
19 the judge and decided. And if you want to see it or
20 hear about it, then you ought to go. And you'll get
21 a notice of it.

22 MR. GERKEN: And the second question -- can
23 they, for instance, share with people that they've
24 opted out and encourage people not to request an --
25 not to request a refund? That whatever is left

1 unclaimed would come back to the City?

2 MR. STEWART: I think that there's -- you know,
3 certainly, it's appropriate if -- tell individuals
4 you've opted out. And if anybody asks -- well, I
5 don't know what to do with this thing, say, well, I
6 opted out.

7 You know, I -- I think -- I know how things get
8 twisted here. So I'm kind of trying to dance a line
9 here a little bit in terms of -- you know, that
10 you're not overtly trying to undermine the class.
11 But I mean -- so to the extent of telling what you've
12 done, that's fair game. And I think there's nothing
13 wrong with that.

14 COMMISSIONER KELLY: I don't think you
15 understand as an individual why we did what we did.
16 It was either raise the taxes a mil or whatever --
17 which is a large sum of money; okay? Or put fees on.

18 And we did the fees because we could do a
19 smaller amount that would impact people a lot less
20 than having to raise their taxes. Which we could
21 have done. But we didn't need that excess amount of
22 money, and we wanted to keep it low.

23 That's not being told to the judge. He doesn't
24 realize that that's what we were after, not to -- you
25 know, we can legally raise taxes.

1 MR. STEWART: Well, I -- I think whatever --
2 whatever was in your -- your good heart in terms of
3 trying to deal with it, it, certainly, has been lost
4 in -- in this case.

5 COMMISSIONER KELLY: Yeah.

6 MR. STEWART: I agree.

7 MR. GERKEN: Actually, Ms. Kelly, that was -- I
8 could tell you -- told to the judge. And that was
9 not Greg's fault in any way. It was told to the
10 judge.

11 In fact, Hank Fishkind, the economist, filed an
12 affidavit, which the judge admitted in evidence,
13 which spelled out exactly the -- the reason that --
14 these fees keep property taxes low. And if you don't
15 have these fees, property taxes are going to go up.
16 And the Court dismissed all that and said I don't
17 care. It's, you know --

18 MAYOR BELL: Not the issue.

19 MR. GERKEN: That's not the issue. Correct.
20 This was more of a procedural, constitutional -- and
21 he found the fees not to be voluntary and not to
22 be -- and not to be proper.

23 COMMISSIONER KELLY: Well, I wonder how well it
24 would look on his resume when he bankrupts a city
25 because of the fees he allowed to --

1 MR. GERKEN: Well, it's not going to bankrupt
2 the City. If we thought this was going to bankrupt
3 your city, we, certainly, wouldn't be bringing an
4 agreement to you.

5 VICE MAYOR GOLDBERG: And, Sharon, it wasn't
6 the judge. It was the initial instigator of the
7 class who is causing this whole effect. You can't --
8 the judge --

9 COMMISSIONER KELLY: We all agree --

10 VICE MAYOR GOLDBERG: -- is just doing his job.

11 COMMISSIONER KELLY: Never mind.

12 VICE MAYOR GOLDBERG: That's all he's doing.
13 He's just up there, he's hearing the case, he's
14 making an opinion on a case, judging a case, and
15 that's all he's there for.

16 But the original thing comes from one
17 individual.

18 MAYOR BELL: All right.

19 COMMISSIONER KELLY: Who had a mental problem.

20 VICE MAYOR GOLDBERG: I -- I don't know.

21 COMMISSIONER KELLY: Okay. I can't say that,
22 but...

23 MR. STEWART: Any other questions --

24 COMMISSIONER KELLY: I take that back.

25 MR. STEWART: -- Mr. Mayor, members of the

1 commission?

2 VICE MAYOR GOLDBERG: You will keep us apprised
3 of the date for this; right?

4 MR. STEWART: Yes. At --

5 VICE MAYOR GOLDBERG: Thank you.

6 MR. STEWART: I know it is March 5th. I'll
7 send that, make sure everybody --

8 VICE MAYOR GOLDBERG: Concrete?

9 MR. STEWART: -- has that.

10 MAYOR BELL: Well, let me ask you this. If
11 this isn't going to be heard by the judge till
12 March 5th, again, tell me the advantages of voting on
13 this tonight.

14 MR. STEWART: Well, we -- in order to have it
15 heard on the 5th, we have to have the judge do a
16 preliminary approval of the settlement. And we have
17 to send notices -- these notices to the people far
18 enough in advance so that they -- they have --
19 there's a -- there's one other thing they have to do
20 on these -- for these hearings. Any -- people in the
21 class can go, but if they want to talk, they have to
22 file an objection five days prior to it, the way this
23 is working.

24 So in order to get it to the judge so we can
25 start that process and give the citizens as much

1 notice as possible so they can file it, that's why we
2 believe it's important that we approve today.

3 COMMISSIONER KELLY: Who came up with the
4 530,000, that figure?

5 MR. STEWART: It went back and forth in terms
6 of negotiating. It was, like, up at 600,000 for
7 them. And we had started at, like, 400 or something,
8 4 -- 420. And it just -- it was kind of back and
9 forth negotiations.

10 COMMISSIONER CHESHIRE: Can I ask you a quick
11 question?

12 MR. STEWART: Yeah.

13 COMMISSIONER CHESHIRE: And I'm going to be a
14 pain.

15 In 2009, if you would have been here and we --
16 they would have asked you, should we do this, would
17 you have said it's unconstitutional back then and
18 said not to do it?

19 MR. STEWART: Yes.

20 COMMISSIONER KELLY: This is -- no case like
21 this has ever been --

22 COMMISSIONER CHESHIRE: You said that too,
23 Scott; correct?

24 MR. GERKEN: (Nods head.)

25 COMMISSIONER KELLY: -- fought before; correct?

1 COMMISSIONER CHESHIRE: So I think we really
2 need to start paying more attention to what we're
3 doing --

4 MR. STEWART: The -- there is a --

5 COMMISSIONER CHESHIRE: -- so these things
6 don't happen.

7 MR. STEWART: There is a -- there is a similar
8 fee that was in the City of Wildwood.

9 MAYOR BELL: And they're being sued right now.

10 MR. STEWART: They are being sued. I'm
11 actually -- they called me about it and -- and -- but
12 they -- they repealed theirs, I believe, two years
13 ago.

14 And I've also gotten a call from the City of
15 Ocala that they have been contacted by Mr. Schroth
16 concerning their fire fee. But their fee is
17 different. That's a different fee. Theirs is an
18 assessment, not a voluntary fee.

19 COMMISSIONER GUNTER: Tavares has got an
20 assessment on the fire utility bill.

21 MR. STEWART: Well, I need to look -- yeah.
22 And -- and assessments are valid fees. Those are
23 valid. That's -- that is something that you might
24 want to think about down the road a little bit.

25 MR. GERKEN: That's for fire.

1 MR. STEWART: That's for fire, not for police.
2 And -- but that's kind of a little bit outside of
3 what we should be going too much into at an executive
4 session.

5 MAYOR BELL: All right. Any other questions?

6 COMMISSIONER KELLY: If a bunch of people
7 showed up at the hearing and ahead of time they all
8 filed their objection thing, could the judge be
9 convinced to throw it out at that point? Or would he
10 still have to go through and make a decision on it?

11 MR. STEWART: Well, he would def -- he would --
12 only things he would be considering is the settlement
13 and the amounts of fees. And I'm assuming that most
14 of the people who would come to the hearing would not
15 object to the settlement; they would object to the
16 fees and costs, you know.

17 But the judge has the ability to do both.

18 COMMISSIONER GUNTER: Ain't nobody going to
19 show up.

20 MR. STEWART: Thank you, Mr. Mayor.

21 MAYOR BELL: All right. So what -- what we
22 need tonight then is to go ahead and approve this
23 settlement; is that right?

24 MR. GERKEN: Yeah. You'd have to do that in
25 the regular session, though. That would be...

1 MR. STEWART: Yes.

2 MAYOR BELL: Okay.

3 MR. GERKEN: Once you reopen that.

4 COMMISSIONER KELLY: Do you have to have 100
5 percent agreement for that?

6 Don't look at me like that.

7 MR. GERKEN: You do not. But please don't do
8 like we did last time on one of these, Ms. Kelly.
9 Just a majority vote is all that's required for the
10 approval of the settlement agreement.

11 MR. STEWART: Do you want me to...

12 MR. GERKEN: Yes. If you would let the others
13 know.

14 (The meeting was reopened to the public.)

15 MAYOR BELL: With that, we have adjourned the
16 attorney-client session, and we will reopen the
17 special city commission meeting. And I guess we've
18 terminated the session.

19 THE REPORTER: Mr. Gerken, just for the
20 record...

21 MR. GERKEN: Yes. That's the termination of
22 the special session. Yes.

23 THE REPORTER: And you need this delivered
24 sealed? Ordered and delivered sealed to your office?

25 MR. GERKEN: Yes. Please. If you could do

1 that in typical -- and just have it sealed and
2 delivered to me, and I'll get it to our clerk. Thank
3 you.

4 (The proceedings were concluded at 7:25 p.m.)

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CERTIFICATE

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COUNTY OF LAKE

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