

IN THE CIRCUIT COURT OF FLORIDA  
FIFTH JUDICIAL CIRCUIT, IN AND  
FOR LAKE COUNTY

CASE NO.: 2013-CA-400

JAMES RICHARDSON, individually and  
as a representative of a class of  
all similarly situated others and  
MICHAEL HOWARD and NANCY HOWARD,  
his wife, individually, and as a  
representative of a class of all  
similarly situated others,

Plaintiffs,

vs.

CITY OF FRUITLAND PARK, FLORIDA, a  
political subdivision of the State  
of Florida,

Defendant.

\_\_\_\_\_ /

STATE OF FLORIDA )

COUNTY OF LAKE )

ATTORNEY-CLIENT SESSION of the Fruitland Park  
City Commission, at 506 West Berckman Street, Fruitland  
Park, Florida, on Thursday, December 12, 2013, at 9:40  
o'clock, p.m., before Susan M. Dow, Registered Diplomate  
Reporter, Certified Realtime Reporter and a Notary  
Public in and for the State of Florida at Large.

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1 PRESENT:

2 Chris Bell, Mayor

3 Sharon Kelly, Commissioner

4 John Gunter, Jr., Commissioner

5 Chris Cheshire, Commissioner

6 Rick Conner, Interim City Manager

7 Scott Gerken, Esquire, Counsel for the City

8 Gregory Stewart, Esquire, Counsel for the City

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

2 MAYOR BELL: The session has commenced. The  
3 time now is 9:39, and the estimate length of the  
4 session is 30 minutes.

5 MR. GERKEN: 30 minutes. I'm always wrong  
6 with these, though, so 30 minutes to an hour.

7 MAYOR BELL: As far as roll call, the names of  
8 the people that are going to be in attendance are,  
9 Mayor Chris Bell. Vice-Mayor Al Goldberg is not  
10 going to be here. Commissioner Chris Cheshire,  
11 Commissioner John Gunter, Commissioner Sharon  
12 Kelly, our city attorney, Scott Gerkin, attorney  
13 Greg Stewart, our interim city manager, Rick  
14 Conner, our certified court reporter, Susan Dow  
15 from First Choice Reporting, who will record the  
16 time and termination of the session, all  
17 discussions and proceedings that occur, and the  
18 names of all persons present at any time during the  
19 session, and the names of all persons speaking.  
20 That's quite the speech there. Thank you, sir.

21 And with that, we'll turn it over to our  
22 attorney.

23 MR. CONNER: Scott, are we, in some way,  
24 supposed to keep minutes?

25 MR. GERKEN: The court reporter keeps the

1 transcript, yes.

2 MR. CONNER: Never mind. We are on pause  
3 there?

4 THE CLERK: We're on pause.

5 MR. GERKEN: Thank you.

6 This is -- as I remind you every time,  
7 remember that this is a meeting, an attorney-client  
8 session, that is to discuss the police and fire  
9 service fee case, and because of that, our  
10 discussions are to be confined to that subject and  
11 not to get into any of the other subjects that we  
12 have. Sometimes you're tempted to do that.

13 What we're doing, as you know, we've recently  
14 hired, and they came very well recommended, the  
15 Nabors, Giblin firm, and particularly Greg Stewart,  
16 to represent the city in this action.

17 Greg is here this evening. He's had a little  
18 bit of time to get up to speed on the case to  
19 review the pleadings, review the case file. He's  
20 met opposing counsel, and he's had an opportunity  
21 to appear in at least one hearing in front of Judge  
22 Takac and get some feedback from all of that.

23 Based on that, he is here tonight to give you  
24 his impression of the case and his recommendations  
25 moving forward, and also to get feedback from you,



1 answer your questions and go from there.

2 MR. CONNER: Scott, while he's coming up,  
3 something that I had forgotten, that I think is  
4 always helpful to remind the commission of is, even  
5 though it's a closed session, at some point, it  
6 becomes open session.

7 So if you say something, you might want to  
8 remember that --

9 MR. GUNTER: You said it.

10 MR. GERKEN: Or somebody will remind you  
11 someday, yes, everything you said. The reason the  
12 court reporter is here this evening is to take down  
13 a verbatim transcript that will be transcribed soon  
14 after this, sealed, delivered and the clerk keeps  
15 that. It remains sealed until the conclusion of  
16 the litigation, but thereafter, it will be  
17 revealed.

18 We have already had requests to get those  
19 transcripts as soon as it is open, so I'm sure they  
20 will be read at that point.

21 So it's one of those classic your words will  
22 be held against you, but outside of that, you're  
23 obviously able to speak openly with your attorney  
24 to get input for purposes of litigation at this  
25 point.

1 I'm glad you reminded them, because sometimes  
2 you forget that this will all be made public. Not  
3 that you'd say anything you wouldn't want to hear  
4 anyway.

5 Greg, without any further adieu, I'll let him  
6 go forward.

7 As I bring him up here, the class has been  
8 certified previously. The plaintiff had actually  
9 filed a petition for summary judgment, and I think  
10 as you all are aware, you have some depositions  
11 coming up in February.

12 So with that intro, as far as where we are,  
13 I'll let Greg take the case.

14 COMMISSIONER KELLY: I have one question.

15 MR. GERKEN: Yes.

16 COMMISSIONER KELLY: Is he the attorney for  
17 the insurance company or for us?

18 MR. GERKEN: No, the City of Fruitland Park is  
19 paying Mr. Stewart. There's no insurance company  
20 involved anymore.

21 COMMISSIONER KELLY: Very good.

22 MR. GERKEN: All right. Thank you.

23 MR. STEWART: Thank you, Scott.

24 Mr. Mayor, members of the commission, as  
25 indicated, my name is Greg Stewart with the law

1 firm of Nabors, Giblin and Nickerson, and I'm from  
2 the Tallahassee office of Nabors, Giblin.

3 Just so you have a very brief understanding of  
4 who we are, our firm only represents governmental  
5 entities, and we represent Florida Association of  
6 Counties, we're special counsel to them.

7 We've represented, perhaps, every county in  
8 the State of Florida on one matter or another.

9 We represent numerous municipalities, and this  
10 is what we do. We specialize in governmental  
11 representation.

12 As Scott indicated, the posture of the case is  
13 is that the class has been certified, the notices  
14 have gone out, and the way that will work is that  
15 the individuals have a right to opt out of the  
16 case.

17 If they don't do anything, they are in the  
18 class, and they will be bound by whatever the judge  
19 does in this case. And the time period, I believe,  
20 for the final ballots or opt outs to come in, I  
21 think, is a couple of months. They've extended a  
22 little bit.

23 Now, there is a Motion for Summary Judgment  
24 that has been filed, and what that is, is that the  
25 plaintiffs have said there's no facts in dispute,



1 and the facts clearly establish that the fees, the  
2 fire fee and the police fee, are invalid, and that  
3 is set for a hearing in March before Judge Takac.

4 Now, prior to that, obviously, your  
5 depositions are being set, and before that, we'll  
6 meet with you, we'll help prepare you for that  
7 deposition and just give you what we anticipate you  
8 might be asked about, but your depositions will be  
9 taken as part of this case.

10 Now, one other matter that has occurred that  
11 is relevant, is important for your consideration  
12 tonight, is the plaintiffs have filed what's called  
13 an offer of judgment. And what that means is that  
14 they have offered to settle the case for \$430,000.  
15 And if, in fact, they are able to get a judgment  
16 that exceeds that by 25 percent, they will then get  
17 their attorney's fees.

18 Normally in a class action, what happens? If  
19 the plaintiffs win, there's a pot of money created,  
20 and it's called a common fund, and the attorney's  
21 fees are paid out of that common fund.

22 So everybody's recovery gets reduced as they  
23 contribute to the fees, but now they have filed  
24 this offer of judgment.

25 So if they are able to beat that amount, you



1 will then have to, in addition to refunding the  
2 money, you will have to pay their fees. So that's  
3 an important factor to keep in mind.

4 Now, I have had an opportunity to look at the  
5 depositions, and we've gone through the pleadings,  
6 as Scott said, and the -- it appears to me that the  
7 fees are going to be invalidated, and I say that  
8 for a couple of reasons.

9 One is the concept of a voluntary fee is  
10 really not a very common concept within the State  
11 of Florida, but in those circumstances where they  
12 are found to be voluntary, there's all kinds of  
13 protections that have to be built in. You have to  
14 do it. Clearly on the bill reflect that it's  
15 voluntary, you have to kind of -- there cannot be  
16 any confusion whatsoever.

17 Based on what I've reviewed, those protections  
18 are not in place, and those fees will be  
19 invalidated. That is my opinion.

20 Now, I've also had an opportunity to be in  
21 front of Judge Takac, and we had a hearing on  
22 Tuesday, and that -- it was obvious to me that  
23 Judge Takac has already made up his mind that these  
24 are certainly not voluntary fees, that the bill  
25 itself references that the utilities will be paid

1 off, turned off, if you don't pay the fee, and the  
2 fire fee and the police fee are part of that, so I  
3 think he clearly has -- that's where he's heading.

4 Now, the amount that the -- the amount of fees  
5 that we're looking at are basically back to 2009  
6 when they were first implemented, and it's my  
7 understanding that the amount that has been  
8 collected is about \$500,000 to this point, between  
9 \$4- and \$500,000. That is the amount that you have  
10 at risk as we sit today.

11 That amount continues to grow, because you're  
12 continuing to charge the fee. So every month that  
13 goes by, that amount that you may have to refund  
14 increases some more.

15 Why that becomes even more important is that  
16 because they have filed the offer of judgment, and  
17 that is -- whether they get attorney's fees is  
18 whether they get a recovery of more than 25 percent  
19 of the \$430,000. Every month that the total amount  
20 at risk goes up increases the chance that they are  
21 going to get attorney's fees, and thereby raise the  
22 cost to the city.

23 Now, in looking at the case, and I know that  
24 this is a sensitive issue. I know that there is a  
25 member of the class, he's not a representative, but

1           it's Mr. Richardson, who is a plaintiff in this  
2           case, and I've had circumstances where I have  
3           represented other governmental entities where a  
4           member of the council or the commission has to  
5           actually file suit against the county or city, and  
6           I understand the dynamics that we're dealing with  
7           here, but it is very important in this case that we  
8           have to look in terms of where we are going to take  
9           the city in the future. We cannot get too mired  
10          down in this litigation just because of this  
11          gentleman and the circumstances.

12                    And so I'm attempting to craft a way that we  
13           can move forward, but we have to kind of put that a  
14           little bit behind us.

15                    And my recommendations are, initially, suspend  
16           the fee, both fees, at this point in time. Do that  
17           so that the damages don't keep increasing, that you  
18           do not add to your risk of having to pay attorney's  
19           fees, and I think that that would be my first  
20           recommendation.

21                    My second recommendation is that you allow us  
22           to attempt to negotiate a settlement, and that  
23           settlement, we don't know what they're willing to  
24           accept, but it's worth our efforts to go to them,  
25           see if we can arrive at a number, resolve this



1 issue once and put this behind the city.

2 Now, I've recognized that the fire fee and the  
3 police fee are important to your budget process.  
4 There are fire fees that are valid in the State of  
5 Florida that can be crafted, and if, in fact, that  
6 is where the city wants to go, then we can assist  
7 you or at least point you in the right direction to  
8 put in a fee that is valid, that will be available  
9 and can be upheld in the courts and assist you in  
10 developing your fire department.

11 Police fees are almost exclusively not allowed  
12 to be collected by a fee, and so the police fee is  
13 going to be problematic no matter what, but we can  
14 help you in going forward with the fire.

15 So that would be my recommendation. Suspend  
16 the fee, allow us to go forward in an attempt to  
17 negotiate a settlement, and then should the city  
18 want to go forward with a fire fee, we can give you  
19 recommendations on how you would go crafting one  
20 and implementing that.

21 Now, any questions? I know it's been a long  
22 meeting for you, so I'll try to cut to the quick,  
23 so --

24 COMMISSIONER GUNTER: In your opinion, already  
25 being before the judge, you think he's going to



1 rule against us?

2 MR. STEWART: Absolutely. I have absolute  
3 confidence. His whole manner in this case, the way  
4 he just talked about the fee, I have no doubt in my  
5 mind that he is -- his mind right now is certainly  
6 there, and I think that's where he'll end up.

7 COMMISSIONER KELLY: You're aware that our  
8 fire department is a volunteer fire department,  
9 right?

10 MR. STEWART: I am, and that still can be done  
11 partially by fee. And a history, that early on --  
12 I represented Lake County, early on, and they had  
13 assessments in place, and they had basically, what  
14 Lake had in the old days, was they had a central  
15 administration that was by a county employee, and  
16 it was volunteer departments, and we imposed an  
17 assessment that was upheld.

18 So it can be done, even though it's voluntary.  
19 It impacts on the amount, but if the service  
20 provides the benefit to the property, then you can  
21 do it regardless.

22 COMMISSIONER GUNTER: I think that the last  
23 time that they gave us a proposal, which we turned  
24 down, the biggest concern of the thing was that  
25 besides the two plaintiffs getting X number of

1 dollars, was the actual attorney's fees. Do you  
2 think that you could negotiate those fees down? I  
3 mean, you're saying that there's still a \$400,000  
4 judgment out there, correct, is that what they  
5 want?

6 MR. STEWART: They've asked for \$430,000.

7 COMMISSIONER GUNTER: \$430,000.

8 MR. STEWART: And assuming that we accepted  
9 that, then the fee would be calculated out of that.

10 COMMISSIONER GUNTER: And what are they going  
11 to do with this \$430,000, divide it between the  
12 attorneys, between the two plaintiffs, and then the  
13 rest of whoever don't opt out of the --

14 MR. STEWART: Well, that would be subject to  
15 the Court, obviously. They can't just do it. They  
16 have to go to court and get it approved.

17 The attorney would get attorney's fees out of  
18 that pot of money. The named plaintiffs, which is  
19 not Mr. Richardson, it's the Howards, are the only  
20 named class representatives. They would apply for  
21 some amount of money. All of that would reduce the  
22 recovery to the citizens of Fruitland Park.

23 COMMISSIONER CHESHIRE: Don't the citizens get  
24 their recovery first, and then what's left over  
25 goes to the attorney?

1 MR. STEWART: It's off the top. The fees and  
2 the costs will be off the top.

3 MR. CONNER: Something that I think is very  
4 important, Mr. Stewart, to clarify for you, if I  
5 understood correctly, and I hope I did, if we move  
6 forward, taking it off the settlement for a minute  
7 and talking about moving forward, and we do the  
8 assessment, it would be -- even though you could do  
9 it on the monthly bill, it would be against the  
10 property, not the tenant; is that correct?

11 MR. STEWART: Assessments are benefits to the  
12 property, and so it is a charge against the  
13 property.

14 MR. CONNER: Okay. And I wanted you all to  
15 know that, because you talk about this is a fair  
16 thing or it offsets taxes.

17 COMMISSIONER GUNTER: When you go to  
18 assessment, though, now you've got to come up with  
19 some type of a formula system that this property is  
20 valued at this amount, and this property is valued  
21 at a different amount, and one is going to be  
22 paying a little bit more fire fee than the other  
23 one.

24 MR. STEWART: Well, not on value. Usually  
25 assessments for fire service are not based on



1 value.

2 COMMISSIONER GUNTER: Square foot.

3 MR. STEWART: Well, it could be calls for  
4 service, and it could be that residential property  
5 in the city receives 60 percent of the calls, and  
6 so 60 percent of the cost would be allocated  
7 against residential property on a per unit basis.  
8 That's a way you could do it. That's how it  
9 frequently is done.

10 And so then the property owner --

11 MR. CONNER: I thought it would be important  
12 for their benefit, because one of the arguments for  
13 having the fee was that it goes to the tenant, not  
14 the property owner, and if you go to this program,  
15 you can, as he stated, but I just wanted you to be  
16 aware you're not accomplishing the exact same  
17 result that you started out to accomplish.

18 COMMISSIONER GUNTER: Our goal, when we first  
19 put these in, it would be fair to everybody.  
20 Everybody that paid a utility bill, they paid for  
21 it. If you had a renter that was renting and  
22 paying the utility bill, his rent is still going to  
23 stay the same, but if you had a renter that the  
24 assessment went onto the property owner, and then  
25 he comes back to the renter and says: Well, you



1 know, \$4 or \$48 a year, they raised my taxes, I've  
2 got to raise your rent \$100 a month. That was the  
3 whole intention to help the lower income personnel  
4 or residents of the town.

5 MR. STEWART: And there are a multitude of  
6 ways of doing this, but there is some difficulty in  
7 terms of charging the tenants, and I mentioned this  
8 to Mr. Conner and Mr. Gerken, that the City of  
9 Tallahassee is in the middle of a class action  
10 lawsuit, and they do very similar to what you do.  
11 They put it on the utility bill, Tallahassee as a  
12 utility, and the challenge is that the tenant is  
13 just living there. The benefit comes to the  
14 property and ought to be applied to the owner.

15 I don't know how that's going to come out, but  
16 there's always some way to cut it one way or the  
17 other.

18 COMMISSIONER GUNTER: So we're not the only  
19 one in this particular --

20 MR. STEWART: Oh, no.

21 MAYOR BELL: That's why he's in business.

22 MR. STEWART: The one reason why, on  
23 assessments, and it is important to consider, is  
24 that you can allocate the assessment on the basis  
25 of who is using the service, and that is an

1 equitable way of allocating it.

2 COMMISSIONER GUNTER: This is a different  
3 subject we'll get in later. I need to get back to  
4 the prior settlement that we turned down, I  
5 believe, was \$15,000 for one and \$15,000 for the  
6 other, \$150,000 for the attorney fees, \$100 for  
7 each resident or \$130 for each resident?

8 MR. GERKEN: \$100 cap.

9 COMMISSIONER GUNTER: \$100 cap for each  
10 resident and get rid of the --

11 MAYOR BELL: So that agreement, that proposal,  
12 is off the table at this point?

13 MR. STEWART: I would suspect that's off the  
14 table. There is the possibility to try to -- I  
15 mean, I think the dollars have gone up, but I think  
16 that we could still try to go and negotiate under  
17 those terms and try to get there, but I don't --  
18 I've not -- you know, I was not involved in those  
19 discussions, and I don't know exactly where the  
20 plaintiffs are. They seem to be emboldened by the  
21 judge.

22 COMMISSIONER GUNTER: Scott, did we do a  
23 counteroffer?

24 MR. GERKEN: We did. Mike Roper was the  
25 attorney at the time. As you know, we had a shade

1 meeting. He discussed with them, but my  
2 understanding is they got nowhere. They had the  
3 offer of whatever that was, \$430,000. You were  
4 discussing somewhere around \$100,000, 100 range,  
5 and it didn't get very far at all.

6 COMMISSIONER CHESHIRE: If you go and don't  
7 negotiate with them and bring it to the judge,  
8 obviously the judge isn't going to rule in our  
9 favor, but at the same time, do you think he's  
10 going to go and give maximum: Okay. Let's give  
11 you \$500,000 or say: Okay. You guys made a  
12 mistake, and let's cap it at \$250-, or is there any  
13 way to kind of -- I mean, what's the odds of just  
14 playing it out?

15 MR. STEWART: The judge has that ability. My  
16 perception of the judge is that whatever amount  
17 they show we collected is what he's going to order  
18 refunded.

19 COMMISSIONER CHESHIRE: And if we did do that  
20 for some -- could you appeal, or would that even be  
21 worthwhile?

22 MR. STEWART: Generally that type of question,  
23 if, in fact, there's any type of evidence that this  
24 is what the city collected, then that's going to be  
25 supported on appeal, because if it's a factual



1 issue, the appellate court won't even look at it.

2 COMMISSIONER CHESHIRE: So basically what we  
3 should do is try and get out of it for as little  
4 money as possible at this point.

5 COMMISSIONER KELLY: You can't talk to the  
6 judge and say the intention was to help the  
7 citizens and get enough money to run the city  
8 without raising their taxes outrageously. I mean,  
9 that's what our intent was. We're here to protect  
10 the city and the residents who live here, but we  
11 have to pay the bills, too.

12 MR. STEWART: I appreciate that, and my  
13 understanding is that has been expressed to the  
14 Court in the prior hearings with Mr. Roper, but I  
15 just don't see this judge -- I mean, he seems  
16 pretty much right on track with where he's headed.

17 COMMISSIONER CHESHIRE: There's no way to  
18 switch judges?

19 MR. STEWART: I don't believe so.

20 COMMISSIONER CHESHIRE: All right. So as I  
21 understand, any settlement made, Mr. Richardson  
22 would not receive any of that at this point?

23 MR. STEWART: He would not be entitled to a --  
24 well, he'd obviously get a part of whatever utility  
25 bill, but he's not a class representative. He was



1 excluded by the judge. So he would not be entitled  
2 to a class fee, which is what that \$15,000 was,  
3 because he is not a class representative.

4 MAYOR BELL: If, as individuals, we exclude  
5 ourselves from the class, does that do anything to  
6 this at all?

7 MR. STEWART: No.

8 COMMISSIONER CHESHIRE: Does it help if we get  
9 more people to exclude themselves? Does it matter  
10 if half of Fruitland Park says: We don't want it?

11 MR. STEWART: You know, the particular letters  
12 that have gone out. The letters, the language of  
13 the letters, have been approved by the Court.

14 I think my recommendation would be that, you  
15 know, whatever action you take about excluding you  
16 from the class, then that's fine, but I do not  
17 believe that you should engage in a concerted  
18 campaign to get people to not become members.

19 COMMISSIONER KELLY: We can't. The judge has  
20 already given us a written order that we cannot do  
21 that.

22 MAYOR BELL: We can't knock on doors.

23 MR. STEWART: I think that would be -- the  
24 whole tenor that this litigation has been going  
25 under, every little thing you do is going to be

1 under great scrutiny, so I would be hypercautious.

2 COMMISSIONER CHESHIRE: How do we stop the  
3 police and fire fees at this point? Stop them  
4 January 1st? Bills have gone out in December,  
5 right?

6 MR. CONNER: They'll be going out soon.

7 MR. GERKEN: We discussed this. What we could  
8 is bring back for your January meeting a  
9 resolution, initially, just to suspend charging the  
10 fees going forward at this point. In that  
11 resolution, we certainly don't need to admit any  
12 liability. Just essentially say there is  
13 uncertainty as to the validity of the fee. Until  
14 this is established, we're not going to continue to  
15 charge those, and I'll work with Greg on drafting  
16 that, but I would support that recommendation as  
17 well, and literally just saying: Look, this is a  
18 timeout until we get this established.

19 As Greg said, just to chime in here, the great  
20 white hope, and frankly, that the city had not only  
21 the overall fairness of what you were trying to  
22 establish, but the voluntariness of the fee is what  
23 we had hoped would sustain them.

24 It is clear that the judge, he's made numerous  
25 comments, that under the circumstances, and these

1 are at hearings that I've gone to, I didn't have  
2 the pleasure of the most recent hearing, but he's  
3 apparently echoed it again, that he does not find,  
4 under the circumstances, that the way it all came  
5 about, that he interprets them as being voluntary.

6 MAYOR BELL: The fact that we try to negotiate  
7 a settlement at this point, is that something the  
8 judge is encouraging, is that why he's made the  
9 statements?

10 MR. STEWART: Well, I don't know whether -- I  
11 would say he's encouraged us to sit down and talk.  
12 He has certainly asked the question at the hearing  
13 the other day: Why doesn't the city just repeal  
14 these fees? I've done this a long time. I  
15 understand what he was telling me at that point.

16 And so he's not indicated that you need to go  
17 back and negotiate with the plaintiffs, but, you  
18 know, he's saying you're digging yourself deeper,  
19 because you keep collecting the fees, and that's  
20 the obvious next step is to try to work out and  
21 resolve it all at one time.

22 COMMISSIONER KELLY: We didn't have a good  
23 attorney to tell us that, that it would help to do  
24 that, and we thought it would make us look guilty,  
25 so that's why we didn't. I mean, we didn't feel



1 like we were doing anything wrong. We were trying  
2 to save the residents tax dollars.

3 MR. STEWART: One of the concerns that I have,  
4 in my view of the case, and again, because I deal  
5 with a lot of governments, you know, you're  
6 collecting money every month. It's getting bigger  
7 and bigger.. You may have that attorney's fee  
8 issue.

9 If, in fact, you have to pay it out, you're  
10 now going to have a hole in your budget, and so  
11 you're kind of making -- the longer you go with  
12 this, if that is going to be the outcome, and my  
13 opinion it is going to be the outcome, you're just  
14 going to make it worse going down this trail, and  
15 it's best -- it's time to put this case behind you.

16 COMMISSIONER CHESHIRE: What happens if we  
17 give them the \$430,000, they take attorney's fees,  
18 they give \$15,000, only a couple hundred people  
19 take their money out, and there's \$150,000 left  
20 over, does that come back to us or what happens to  
21 that extra?

22 MR. STEWART: It depends on the structure how  
23 this works. I know that the prior settlement there  
24 was people had to make claims on the amounts, and  
25 if they didn't come and make claims, then that

1 money, I think, was going to revert back to the  
2 city, and that, again, is part of the negotiations  
3 we can try to address.

4 COMMISSIONER KELLY: Then you've got trust  
5 companies that are going to want to control the  
6 money and pay it out, and they're going to have to  
7 have their share of the fees for them, so there  
8 won't be anything coming back to the city.

9 MAYOR BELL: What do you need from us tonight?

10 MR. STEWART: Well, I think, at this point,  
11 you're in executive session, so you can't take  
12 action, but I think that that is -- if I can get  
13 direction that you would like me to open up  
14 negotiations, I think that's -- I can do that. I  
15 mean, obviously, whatever we come back with and  
16 negotiate, we bring to you, and you have to approve  
17 it.

18 COMMISSIONER KELLY: I'd like to see you talk  
19 to the judge and let him know we're the good guys  
20 here.

21 COMMISSIONER GUNTER: You're staying they're  
22 at \$430,000 is what they're at. What starting  
23 amount are you going to go in with?

24 MR. STEWART: To be honest, we have not  
25 really, among ourselves, talked about an opening

1 gamut, so to speak, in terms of negotiation. We  
2 obviously would like to get as low as possible.

3 We also know we've got to have a little bit of  
4 room before we end up back at \$430-.

5 COMMISSIONER GUNTER: That's why they need me  
6 in there to negotiate.

7 MR. CONNER: If anybody can hang onto a penny.

8 MR. STEWART: But at the end of the day, it's  
9 not going to be \$100,000, and it's probably going  
10 to be over \$300,000, but, you know, we have to make  
11 that first offer, but what I would propose is that  
12 Scott and I have the ability to kind of work  
13 together to kind of come up with a negotiation  
14 strategy.

15 I think the plaintiffs are very confident  
16 they're going to win. They see the same thing I  
17 do, so I don't think they're going to give a lot.

18 So perhaps we can kind of, you know, even if  
19 we have to pay out more money, we add more of these  
20 protections in, so if it isn't claimed by the  
21 citizens it comes back or reduction in fees, those  
22 types of things.

23 MR. GERKEN: One thing that we are -- and I  
24 think that's a key point. One thing I think we are  
25 hopeful for is there are a lot of citizens, and I



1 guess I'm optimistic, who get it, will not be  
2 claiming their refund. And so I do think that's  
3 important that -- it's not typical norm in these  
4 types of cases, but if they're still willing to  
5 build in a cap, for one, and a -- if it's not  
6 claimed, that the money comes back to the city, I  
7 think that would be, in some ways, the actual  
8 number doesn't matter as much, then, because if you  
9 never get there, it's not going to --

10 COMMISSIONER GUNTER: If it comes back, it  
11 lowers the actual number.

12 COMMISSIONER CHESHIRE: I think as long as the  
13 attorney is paid, he's not going to care. He's  
14 going to make sure he gets his fee.

15 COMMISSIONER KELLY: And I'd like the Howards  
16 to get as little as possible, also. They haven't  
17 done anything to benefit the city.

18 MAYOR BELL: Well, can we move forward?

19 COMMISSIONER GUNTER: I don't see where we  
20 have an option.

21 MR. GERKEN: I will bring a resolution to you,  
22 then, for January to suspend the fees, and Greg and  
23 I will move forward in that direction.

24 COMMISSIONER GUNTER: When does our billing go  
25 out on the water bills? It's cutoff by the 10th or

1 something like that.

2 MR. CONNER: I want to say we're almost there.  
3 It's like in the next five days or six days, I want  
4 to say, is the billing cycle. I believe I'm right  
5 on it.

6 MAYOR BELL: So could we get it?

7 MR. GERKEN: I think so, and with a little  
8 leeway, I could check with Amanda in billing. If  
9 they know it's coming, they could probably -- I'm  
10 not sure they all go out the same time each month.  
11 I thought there were a couple of different cycles.

12 COMMISSIONER KELLY: No, they all have to be  
13 in by the 10th of the month.

14 COMMISSIONER GUNTER: Can you say -- it won't  
15 be until January we get the resolution, but can we  
16 retroactive it back to December?

17 MR. GERKEN: I don't know if it's going to  
18 matter. They've already paid it and been billed.  
19 I think the --

20 COMMISSIONER GUNTER: I'm saying all we have  
21 to do is call the printing company down there that  
22 sends out the billing and tell them just to drop  
23 the -- that shouldn't take but one phone call.

24 MR. STEWART: Well, let me raise one other  
25 issue.

1 MR. GERKEN: That's right, yes.

2 MR. STEWART: During the course of the hearing  
3 the other day, or Tuesday, and the hearing concern,  
4 the change in the language on the bill that in  
5 September we added language, which the city felt  
6 clarified that we weren't going to be charging late  
7 fees on the fire, plaintiffs took great exception  
8 with that, and the judge was very sympathetic to  
9 their position, basically saying you shouldn't have  
10 changed that bill without coming to the Court.

11 So I specifically asked the judge, at that  
12 hearing, well, should the city elect to stop  
13 collecting these fees, do we have to come back to  
14 the Court? He would not commit that we could do it  
15 on our own, so we may have to get Court approval.

16 COMMISSIONER GUNTER: He wants us to drop the  
17 fees, but yet --

18 MR. STEWART: Now, the plaintiff indicated he  
19 had no problem with it if he elected to do it, so  
20 we may be able to get him to agree that we can do  
21 that change, but that's kind of what we're dealing  
22 with.

23 COMMISSIONER CHESHIRE: If you have to go to  
24 the judge, how long does that take? Can you just  
25 call him up and say: We'll write-up -- do we



1 actually have to going in front of him?

2 MR. GERKEN: You can't just call up the judge,  
3 but we can get -- it would be easier if we could do  
4 that. If we can get the plaintiff -- go ahead,  
5 Greg.

6 MR. STEWART: If we could get the plaintiff to  
7 agree to that, and frankly, what I would propose is  
8 that we go to them and say: Look, we want to sit  
9 down, we want to seriously work this out. We want  
10 to sit there and immediately stop collecting the  
11 fees going forward, see if they'll consent, agree  
12 to an order of the judge, and then we'll just walk  
13 the order and get it signed. But again, nothing  
14 has been easy in this case.

15 MAYOR BELL: You had conversations with  
16 Mr. Schoft?

17 MR. STEWART: Yes, I did. And, you know, he's  
18 obviously pushing very hard on his case. I think  
19 all the depositions that he's setting for all of  
20 you, I think, to a certain extent, he's going to  
21 take a lot of time, and he's doing that for a  
22 reason.

23 So if we can move quickly, we may be able to  
24 kind of get all of that resolved and not need to do  
25 those depositions.

1 I think that lawyers generally want to get  
2 paid, and he needs to resolve this case to get  
3 paid, and so I'm hopeful that that will be an  
4 incentive to him that yes, we can resolve it now,  
5 and we can move on, and hopefully he'll be more  
6 interested in that. But I have talked to him.

7 MAYOR BELL: Okay. Again, you'll come back  
8 next meeting with a resolution?

9 MR. GERKEN: Yes, assuming we work through  
10 this minor court issue.

11 MAYOR BELL: When do you think you'll start  
12 negotiations?

13 MR. STEWART: Probably what I would suggest is  
14 that Scott and I will get on the phone tomorrow,  
15 perhaps, if you're going to be around. We can  
16 start talking strategy, and then -- probably  
17 Monday.

18 COMMISSIONER KELLY: Let's please not wait  
19 until after the first of the year.

20 MR. STEWART: Absolutely. We need to move  
21 quickly on this, and I have to be down this way  
22 for -- I represent Orange County in matter, so I  
23 need to be in this area next week.

24 So if, in fact, Mr. Schoft is available, and  
25 we are able to arrive, it might be worth just kind

1 of setting up a meeting and sit down with  
2 Mr. Schoft and kind of start broaching these  
3 subjects. But I agree with you, that's exactly  
4 what needs to be done. We need to move quickly.

5 COMMISSIONER KELLY: I would like for you to  
6 try to talk to the judge, and tell him these are  
7 good guys. We're not doing anything.

8 MR. STEWART: I'll do my best.

9 COMMISSIONER KELLY: Every cent we collected  
10 went right back into the city.

11 MR. GERKEN: That's been one thing that no one  
12 has disputed, that these funds have been used for  
13 police and fire services.

14 And I'm available tomorrow afternoon. I know  
15 I'm jammed up in the morning, but I'm available in  
16 the afternoon.

17 MR. STEWART: That will be fine.

18 Any other questions that I can help you with?

19 COMMISSIONER KELLY: I have one question.  
20 When we have to do our depositions, is there any  
21 possibility that Mr. Richardson will be there?

22 MR. STEWART: Absolutely. I'm sure he'll be  
23 there.

24 COMMISSIONER KELLY: He's not in this case,  
25 though.



1 MR. STEWART: He's still in the case. He's  
2 not the class representative.

3 COMMISSIONER CHESHIRE: Hopefully we won't  
4 have to do depositions.

5 MAYOR BELL: But being in that case, that  
6 doesn't mean that he'll receive any additional  
7 funds?

8 MR. STEWART: No. The funds go for the person  
9 who is the class representative and the headaches  
10 that they have to put up with being the class  
11 representative. That's what the money's for, and  
12 he's not the class representative, so he will not  
13 be entitled to any payment other than the refund  
14 that he might be entitled to from the fees.

15 MR. BELL: And he wouldn't have a separate  
16 agreement with the attorney regarding any  
17 attorney's fees that he collects?

18 MR. STEWART: That I can't tell you. I don't  
19 know. I mean, you know, I would think that it  
20 might be inappropriate for the lawyer to have a  
21 side deal with Mr. Richardson, saying that he,  
22 Mr. Richardson, would get some kind of the  
23 attorney's fees. I would think that would be  
24 inappropriate, and I don't have any reason to  
25 believe Mr. Schoft would enter into something like

1 that.

2 MAYOR BELL: All right. Any other questions?

3 If not, we'll appreciate it.

4 MR. STEWART: Thank you, sir.

5 MAYOR BELL: We'll adjourn the attorney-client  
6 session.

7 (Whereupon, the attorney-client session was  
8 concluded at 10:20 o'clock, p.m.)

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1 CERTIFICATE OF REPORTER  
2

3 STATE OF FLORIDA )

4 COUNTY OF MARION )  
5

6 I, Susan M. Dow, Registered Diplomate  
7 Reporter, Certified Realtime Reporter, certify that I  
8 was authorized to and did stenographically report the  
9 foregoing proceedings, and that the transcript is a true  
10 record.

11 Dated this 24th day of December, 2013.  
12

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14 Susan M. Dow, RDR, RMR, CRR  
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