

IN RE: CASE #2013 CA 000400

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SHADE MEETING BEFORE THE FRUITLAND PARK CITY COUNCIL

DATE TAKEN: September 5, 2013

TIME: Beginning at 6:00 p.m.
Concluding at 8:08 p.m.

PLACE: City of Fruitland Park
506 W. Berckman Street
Fruitland Park, Florida

REPORTED BY: Susan L. Davis, Professional
Court Reporter and Notary
Public, State of Florida at
Large

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1 BEFORE:

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4 CHRISTOPHER J. BELL, MAYOR
5 SHARON KELLY, VICE MAYOR
6 JOHN L. GUNTER, JR., COMMISSIONER
7 CHRISTOPHER CHESHIRE, COMMISSIONER
8 AL GOLDBERG, COMMISSIONER
9 SCOTT A. GERKEN, ESQ., CITY ATTORNEY
10 RICH CONNER, INTERIM CITY MANAGER

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ON BEHALF OF THE CITY OF FRUITLAND PARK.

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

2 MAYOR BELL: Okay. We will call to order this
3 special commission meeting of Fruitland Park. The
4 date is September the 5th, the year 2013. The time
5 is 6:06. We have been having some difficulties,
6 but we are good to go.

7 Tonight I have got the invocation to be
8 delivered by Commission Gunter with the pledge of
9 allegiance led by Vice Mayor Kelly.

10 All stand, please.

11 (Whereupon, the invocation and pledge of
12 allegiance was had.)

13 MAYOR BELL: Tonight part of our meeting is
14 to, actually to go into a closed meeting. We have
15 some negotiations to discuss regarding a lawsuit.
16 For that reason, the Sunshine State Rules allows us
17 to go into what's called or what we refer to as a
18 Shade Meeting where we get to discuss it privately,
19 at this time, and then later it becomes part of the
20 record once the case is settled.

21 So at this time what I would like to do is
22 announce that we will commence our attorney/client
23 discussions, and we will go into a closed meeting
24 to discuss settlement negotiations or strategy
25 related to Case Number 2013 CA 000400.

1 And that meeting, we are estimating it to last
2 approximately one hour. That's probably about as
3 close as we can estimate it at this time.

4 During that period we are going to ask that
5 anybody that's not to be in attendance not to stick
6 around.

7 MR. GERKEN: Yes. By law, we actually can
8 only have certain people here. It's not that we
9 excluding anybody we want to, but the law only
10 allows the Commission, the City Manager, and the
11 attorneys and the court reporter to be at the
12 session. Everybody else is not allowed to be here.

13 So the Mayor will need to just state those
14 names, read those off, and then we'll kind of clear
15 the room after that.

16 MAYOR BELL: All right. So present for the
17 meeting should be Commissioner Sharon Kelly -- or,
18 excuse me, Vice Mayor Sharon Kelly; Commissioner
19 John Gunter; Mayor Chris Bell; Commissioner Chris
20 Cheshire; Commissioner Al Goldberg; City Manager
21 Rick Conner; City Attorney Scott Gerken; and our
22 other attorney --

23 MR. ROPER: Mike Roper.

24 MAYOR BELL: -- Mike Roper. I just wanted to
25 make sure he's our other attorney, right?

1 And our court reporter?

2 THE COURT REPORTER: Susan Davis.

3 MAYOR BELL: Susan Davis. All right. With
4 that, we will close out our open meeting and move
5 into our closed meeting.

6 (A recess was taken from 6:11 p.m. until
7 6:12 p.m. while all other parties left the room.)

8 MAYOR BELL: With that, we'll turn it over to
9 our attorney.

10 MR. GERKEN: Yes. I'll be happy to run us
11 through and then Mike Roper is here. He is our
12 litigation counsel who is actually handling the
13 case, but I'm happy to, happy to kind of run us
14 through first the preliminaries.

15 As we always do at the Shade Meeting, just
16 understand what we are doing here this evening.
17 The statute that allows these type of meetings is
18 very explicit and very strict, and we have to make
19 sure we abide by it.

20 As you know, one of our sister cities has been
21 hammered by Sunshine Law violations lately, and we
22 certainly don't want these things to happen to us.

23 The subject matter of our discussions tonight,
24 and we have been through this before, is confined
25 to settlement negotiations or strategy sessions

1 related to litigation expenditures. Basically, we
2 are here to discuss the potential settlement and
3 litigation strategies that come with that of the
4 Richardson class action or proposed class action
5 fee case.

6 So, and I mention that because we are
7 restricted to that case. That would include we
8 shouldn't be discussing the other Richardson
9 lawsuit that is going on. That actually is not to
10 be discussed this evening or, frankly, any other
11 subjects. So try to stay on course, and I'll try
12 to do my best, if we get off there, to hit the
13 buzzer or tell us.

14 The second point to keep in mind is the reason
15 Ms. Davis is here is to have a court reporter to
16 make a verbatim transcript. The law actually
17 requires her to make a transcript of that soon
18 after our meeting, and we file that, seal it and
19 file that with Marie, as our City Clerk.

20 And that stays sealed until the conclusion of
21 the litigation, whenever that may be; be it by
22 court order or settlement or however that happens
23 in this case. Then it becomes a public record and
24 anybody who is interested can read the transcript
25 of everything that happened here this evening. But

1 until that time, it is closed for any of the public
2 to see.

3 Yes, Ms. Kelly?

4 MS. KELLY: Do you send a copy of it to the
5 other attorney?

6 MR. GERKEN: No.

7 MS. KELLY: No?

8 MR. GERKEN: Now, once it becomes public
9 record, they, like anybody, have a right to see,
10 but that's, of course, the whole thing is that they
11 shouldn't know what we are talking here tonight
12 because it can influence the case.

13 And the last thing is that we do not take any
14 action during this closed session. We can
15 certainly discuss it, discuss various, you know,
16 notions, settlement proposals and things, but the
17 actual action, if you, at the end of this, think or
18 feel that you want to make any kind of, accept an
19 offer or make a counter proposal or whatever you
20 might wish to do, if you wish to take action, that
21 would have to be at a open public meeting.

22 So what would happen is if we get here at the
23 end of the night, we end up this session, we then
24 will go into a regular open meeting where the
25 public can come back. And then you would have

1 to -- someone can make a motion to take some action
2 and vote on that and discuss it, if you wish, and
3 vote on that in public.

4 But, of course, the notion would be all the
5 strategies and stuff that goes into that was
6 discussed at the closed session, but the actual
7 action is taken in an open session. So is that --

8 MR. GUNTER: In the open session, do we have
9 to tell anyone what we discussed in our
10 negotiations?

11 MR. GERKEN: No. Just the terms. For
12 instance, if you're making a settlement offer, it
13 would be the, what the terms of that offer are.
14 This is the offer that --

15 MR. GUNTER: Do we have to declare what the
16 terms of the offer are?

17 MR. GERKEN: Yes.

18 MR. GUNTER: So I'd make a motion we accept
19 what we discussed in the shade meeting?

20 MR. GERKEN: You can't do that. You have to
21 actually say we make a counter proposal to pay X
22 and blah, blah, blah, blah, blah.

23 I mean, we can, you know, we can certainly --
24 I'm happy at that point, because I know that can be
25 a mouthful of a motion, to say, "Here's the

1 proposed, or here's a proposed settlement," and,
2 you know, you can move that.

3 So if we get to that point, we can deal with
4 that, but that motion would have to actually be in
5 the public.

6 We are in our closed session. Thanks.

7 MR. CONNER: Scott, when is the appropriate --
8 I know another thing we might be able to do, maybe
9 not here, but would it be appropriate for them to
10 make a motion in open session that says you or
11 someone is authorized to go meet with their
12 attorney and discuss a settlement so that --

13 MR. GERKEN: Yeah, I mean, we certainly can --

14 MR. CONNER: Kind of in the shade to kind of
15 determine the parameters --

16 MR. GERKEN: Yes. And by that, we wouldn't
17 even have to take any action. In other words, we
18 can just, in the Shade Meeting, talk about general
19 parameters and then send me off to go talk to the
20 other attorney and see if we can come back. That
21 certainly can be done.

22 And that may be a better way to do it,
23 particularly if what you're doing is a counter
24 proposal with a bunch of moving parts. And then we
25 can go talk to them, then bring back, if we can

1 reach some settlement agreement that's along the
2 parameters, we can bring that back at a subsequent
3 meeting, and you would vote on it in a public
4 meeting. That's another --

5 MR. GUNTER: That's what I was trying to get
6 at. Apparently, we have got the reporters sitting
7 out here --

8 MR. GERKEN: Yeah --

9 MR. GUNTER: -- and if we said, okay, this is
10 what we're going to offer them --

11 MR. GERKEN: It would be in the paper
12 tomorrow.

13 MR. GUNTER: -- it will be in the paper
14 tomorrow.

15 MR. GERKEN: Just like the offer that was made
16 to us. Yeah, you can do it either way.

17 And, Mike, I mean, is there any preference one
18 way or another from your end or...

19 MR. ROPER: I just think it's easier if we
20 discuss the parameters to try and get things
21 narrowed down a little bit before you take any
22 formal action with an open session.

23 MR. GERKEN: So it would be better to just
24 discuss it and then -- unless you are saying, yep,
25 we are going to take the offer they made, you just

1 give us the guidance we need to go off and -- I
2 don't see any heads nodding up and down. So then
3 we would go and, go and talk to the other side
4 tomorrow, as early as that, and see if we could
5 reach something, but that would be tomorrow.

6 MR. GOLDBERG: It wouldn't have to be
7 tomorrow?

8 MR. GERKEN: No, I mean, again, unless
9 you're -- they gave you until tomorrow to accept
10 the offer, that may, I mean, we are already -- I
11 don't anticipate you to accept that offer. So
12 really any counter proposal is a new offer that is
13 not under the same timeline.

14 As a practical matter, where the litigation
15 is, next Tuesday we have a class certification
16 hearing. That's not a dispositive hearing, as far
17 as up or down on the fees, but it does, the Court
18 gives its thumbs up or down on whether or not this
19 will be able to move forward as a class action.
20 And we'll talk a little bit about the effect of
21 that.

22 MS. KELLY: And if they say it's not going to
23 go forward as a class action?

24 MR. GERKEN: Well, I guess we can talk about
25 that now, the pros and cons. The advantages, if

1 you will, of a class action, the whole reason class
2 actions are there is to allow individual claims
3 that are similar in nature to be brought together
4 as one big claim to, for efficiency and also to
5 protect, in some ways, protect, in our case, the
6 Defendant, the City, from multiple claims.

7 So you don't have to get all these various
8 claims coming from all over the place. They can
9 end up in different courts with different judges
10 and different opinions. And it's inefficient to
11 try to handle all those cats running around at
12 once, so you herd them together into one common
13 suit and say let's do this together. Let's get one
14 answer. Let's have uniformity and do it all
15 together.

16 MAYOR BELL: Well, that would be an advantage
17 if we felt there was going to be additional
18 lawsuits filed.

19 MR. GERKEN: Yes. Correct. If you do not
20 think there is going to be additional lawsuits,
21 then that's not a worry that you would have.

22 From a practical matter, and Mike can weigh
23 into this as he feels necessary, if the class, if
24 it's -- if the people that are bringing the claims
25 or the people that they are proposing to group

1 together under the class don't have common, enough
2 commonality, they are in different circumstances,
3 we can argue that it's not appropriate for -- and
4 that's really what this hearing is about, for all
5 of these people to be grouped together in one.

6 The classic example that we have in this, I
7 mean, they say, well, everybody is paying the fee,
8 they are all in the same boat. We say, well, yes,
9 perhaps everybody is paying the fee, but they are
10 affected in completely different ways.

11 For instance, if you are a property owner who
12 pays property taxes, if this fees goes away,
13 it's -- everybody will pretty much admit that it's
14 more than likely that property taxes will go up at
15 some point, and you would be negatively affected.
16 The whole reason for doing this fee in the first
17 place was to try to move some of that burden off of
18 the property people, off the property tax people
19 and onto the actual users of the fee.

20 This throws that burden back on the property
21 taxes people and negatively affects -- that person
22 is completely different from somebody who is a
23 renter or particularly somebody who rented in the
24 past and is not even here anymore. They have
25 nothing to lose. They bring the thing, the suit.

1 They have everything to gain and nothing to lose
2 by, by prosecuting the case.

3 So those different classes have different
4 incentives and different outcomes on how they would
5 go. And we would think, at a minimum, they should
6 be broken into two separate classes and the class
7 representative who represents that class needs to
8 fairly represent that.

9 Because, in other words, you sort of are
10 breaking -- and that's just one example of the
11 different classes you can have.

12 Also as a practical matter, the larger the
13 class, the larger the potential, in this case,
14 refund that would be available. And all the
15 attorney's fees, all the costs, all the payouts
16 come from that refund. And so if the class is
17 whittled down to a smaller group, that caps the
18 ultimate recovery and the outcome of the parties.

19 So, as a practical matter, if the class is
20 limited in certain ways, that limits the liability
21 to the City from that class suit.

22 Is that --

23 MR. ROPER: Yeah.

24 MR. GERKEN: -- a fair way to put it?

25 MR. ROPER: I think that was very simple and

1 direct. You know, our primary argument against the
2 class certification is the conflict of interest,
3 economic conflict of interest that exists between
4 the parties, as Scott has outlined, and also an
5 argument that Mr. Richardson is not an appropriate
6 class representative, because, first of all, his
7 priors service as a commissioner when he voted in
8 favor of raising the police and fire fee in 2010.

9 And also by virtue of the fact that his
10 general animus towards the City makes him not
11 really suited as a individual who would properly
12 represent the interests of the class. He has his
13 own separate litigation against the City.

14 And those are the arguments that we'll, we'll
15 raise at the hearing on Tuesday.

16 MS. KELLY: How many actual people are
17 involved in this class action? Do they have like
18 six people that are -- or hundreds, or what? Do we
19 have any idea?

20 MR. ROPER: Good question. There are only
21 three class representatives. There's
22 Mr. Richardson and the two, Mr. and Ms. Howard.

23 MS. KELLY: Right. But how many people are
24 actually going with them on this?

25 MR. ROPER: Potentially there are

1 approximately 1800 people that could be involved in
2 the class.

3 Part of the whole process of the class action,
4 however, is that during the process potential class
5 members receive notice of a class action. They are
6 give an opportunity to opt out of the class if they
7 so desire.

8 That process hasn't even begun at this point,
9 so we don't --

10 MS. KELLY: So could it be claimed as a
11 nuisance suit and just be thrown out because
12 there's not enough people interested in it once
13 they get that far on it?

14 MR. ROPER: Well, I mean, if we get to the
15 point where a sufficient number of people opt out,
16 that might be a claim that is true, but now that we
17 know who the potential class members are, it's not
18 appropriate for a class action.

19 However, there are cases where courts have
20 approved a class action with as few as even 15 or
21 20 people participating. And, you know, I think
22 that we might ultimately, at the end of the day,
23 end up with that many folks participating in the
24 class or just not opting out.

25 Remember, once the class is certified, you

1 have to take affirmative action to opt out. If
2 you, if you just don't say anything, you're in the
3 class, so --

4 MR. GERKEN: And, frankly, in most class
5 actions, most people don't do anything. The norm
6 is -- and you may have gotten some of these
7 yourself. You get a notice, and you don't even,
8 half the time people don't really even notice
9 something or they think it's junk mail and toss
10 them out.

11 You know, I got one last week that if you paid
12 a late fee to the cellular six years ago and two
13 bucks, you're in this potential class. I threw it
14 out. I guess I'm in the class.

15 But we have argued, one of the arguments
16 that -- and there is case, there is law to support
17 this, is that there truly is not a groundswell of
18 people in Fruitland Park who are opposed to the
19 fee; and, therefore, without this general notion
20 outside of Mr. Richardson and a few others who are
21 bringing this case, that they shouldn't be --
22 without the desire, this groundswell to do
23 something about it, they shouldn't go to the extent
24 of classifying a class.

25 I can tell you, from the early indications,

1 the Court is not buying that. He's not predisposed
2 to go for that argument. Rick was at the hearing,
3 and I think the judge was more or less of the
4 opinion, well, as long as there's a few people that
5 feel they were wronged, the court is willing to
6 hear them.

7 But there is certainly case law, and we are
8 still willing to make that argument, that there
9 isn't -- there isn't a desire. There's only a, a
10 loud minority who is opposed to this, to this fee.
11 And it's certainly not the will of the general, of
12 the people.

13 What they would argue, of course, is, well,
14 fine, you can certify the class and those people
15 can opt out or just not claim a refund and be
16 protected in that manner.

17 Keep in mind, the weird thing about a class
18 action is a lot of these things are double-edged
19 swords. On the one hand, we fight for the class
20 action, the certification as a class because we, we
21 don't feel it's appropriate because there's these
22 conflicts.

23 The problem is, and I use the example of a
24 Hydra, if you break it up, if you defeat the class,
25 there's always a chance that another group can

1 bring a separate class action on behalf of renters
2 or on behalf of property owners. So in some
3 strange ways, the City is protected by having one
4 big class. Let's get this over with once and for
5 all and be done with it. There is some advantage
6 to that.

7 From a pure practical matter though, that
8 tends to embolden the plaintiff. There's a large
9 pot of recovery and they tend to become very hard
10 headed and less interested in trying to resolve the
11 case.

12 I mean, is that a fair way to put that?

13 MR. ROPER: Yeah, yeah.

14 MR. GERKEN: And we truly think in this case
15 that there is a conflict, and we do not believe
16 that the class representative is adequately looking
17 out for the property owners of the City of
18 Fruitland Park, that the class representative has a
19 bias against the City of Fruitland Park that is out
20 to get the city and is not interested in actually
21 looking at the bottom line for the property owners.

22 I mean, we would feel that the property owner
23 is financially hurt by this lawsuit, and you need
24 someone who has no bias, who can actually look at
25 this as a property owner and say, "Hey, am I better

1 off by this lawsuit? No." And that's what we are
2 asking the --

3 MR. CHESHIRE: Can we argue that for
4 Mr. Howard as well, since he lost the election to
5 Mr. Gunter --

6 MR. GERKEN: You can say that, yeah.
7 Obviously, Mr. Richardson's bias is much more
8 apparent by the simple fact that he's filed a
9 Federal lawsuit and other things that have been
10 done, but we certainly can make the same argument
11 for the Howards, yes; that we would rather have a
12 neutral, unbiased class representative.

13 I think that that doesn't ultimately defeat
14 things, I just think what more than likely will
15 happen is they will try to find somebody else to be
16 the class representative, but I think we would
17 rather have somebody else and unbiased, to look at
18 that.

19 MAYOR BELL: My opinion, Scott, I think is I
20 would like to fight the class civil action.

21 MR. GERKEN: We will. Unless you tell us
22 otherwise, we will certainly be fighting class
23 certification and that will go forward next
24 Tuesday.

25 And the Court will probably not rule on

1 Tuesday. There will be some cases -- but anyway,
2 we will continue to move ahead, fight that class
3 certification. And then whatever, whatever will be
4 from that.

5 And then after that, depending on what
6 happens, we'll then potentially work towards the
7 disposition of whether or not the fee is legal in
8 the first place.

9 If you would like, I guess the next thing we
10 can do is literally just go through the settlement
11 proposal that they have made, unless you had any
12 other questions.

13 MAYOR BELL: I was just going to start. I
14 think probably we just need to make sure nobody is
15 in agreement with accepting the settlement.

16 MR. GERKEN: Okay. I guess we could start
17 with that. Does the loud laugh indicate no?

18 MS. KELLY: It does. Yes, it does. It does
19 indicate no. It's like, that's ridiculous.

20 MR. CHESHIRE: No.

21 MR. GOLDBERG: Heck, no.

22 MAYOR BELL: Okay. We vote no.

23 MR. GERKEN: Before we get to this, if you
24 wouldn't mind, and I'll try to just do this in a
25 narrative way. I want to go through how we got

1 here and, because I think it's important to know
2 that and what actually is at issue.

3 You'll remember back in 2009, at that point in
4 time the City had had -- was discussing, I think I
5 remember specifically at that time Chief Isom,
6 there had been a number of cases where there had
7 been everything from domestic violence disputes to
8 a variety of occurrences that happened at apartment
9 complexes and things that were generating a lot of
10 time for the police department and the fire
11 department.

12 And a general, almost philosophical discussion
13 at some point entailed about when you're paying for
14 those services, who should be paying for these
15 services? Should that be through property taxes or
16 would we rather have the actual people who are
17 generating the need and using the services pay for
18 them?

19 Traditionally, cities have paid for police and
20 fire services through, you know, there's a variety
21 of funding sources that you get from the state, but
22 the chief one from the City's standpoint is your
23 ad valorem and your property taxes.

24 Property taxes are typically looked upon as
25 the, something that people pay for the privilege of

1 living in an organized society. It has no
2 association with the services that you get. It's
3 just a tax that is authorized by the legislature
4 that you pay.

5 Our state constitution -- and this is kind of
6 where the lawsuit gets to, says that the ability to
7 tax is founded in the legislature that we have
8 property taxes, but other taxes that a municipality
9 might need to do a tax has to be authorized by the
10 legislature.

11 However, cities have home rule power. You
12 hear this at every -- that basically we can do
13 anything that the City wishes to do for municipal
14 purposes unless it's prohibited by law. And so we
15 specifically, by statute, have the ability to
16 charge, among other things, user's fees for
17 municipal services unless that fee is deemed a tax
18 because a tax has to be authorized by the
19 legislature.

20 And so the notion became back in 2009 about
21 the concept of charging user fees for these police
22 services. And, remember, you have property taxes,
23 you have taxes that have to be authorized by the
24 legislature. User fees, there is a statute that
25 authorizes user fees if it meets the elements of a

1 user fee.

2 The other thing that you hear a lot about and
3 it gets people -- are assessments. Many people
4 have been charging, through the past years,
5 particularly fire assessments, and they usually end
6 up being called a fire fee or a fire tax sometimes.
7 That word is used liberally, but these are actually
8 assessments.

9 Assessments are assessed against the property
10 owners. Assessment is, it says the properties are
11 special benefited by this service, so it's proper
12 to assess the property for those services. And the
13 classic one that they have said is for fire
14 protection. So fire protection protects these
15 structures and so it's appropriate.

16 And, frankly, the case that established that
17 came out of Lake County, that said it's appropriate
18 to do that, to do an assessment against properties.

19 There have been -- and this is the kind of
20 stuff you have heard about -- other cases that said
21 you can't do that for police services; that they
22 have said police services, unlike fire that helps
23 the structure, don't specially benefit the
24 property, because of all those other things the
25 police do, it's not appropriate to, to assess a

1 assessment against property owners for police
2 services.

3 The League of Cities attempted to pass
4 legislation in the last few years to get an
5 assessment against property owners authorized by
6 the legislature saying, "We don't care what the
7 courts are saying, we want the legislature to
8 authorize this," and it didn't pass. That's what
9 didn't pass. Not what we're doing, not a user fee,
10 but assessments that were done.

11 But so many people call it a police fee, that
12 that's when you hear about, oh, you can't do those,
13 the courts have said you can't do that.

14 Frankly, a user fee for police services is a
15 novel idea. There have been some cities that tried
16 it, but there really is not a lot of law and it's
17 not done very often. It is an extremely, as we
18 said in 2009 when this was done, it's not a
19 time-tested way. You're stepping out on a limb
20 doing this process. There is nothing that
21 expressly says you can. There's nothing that says
22 expressly you can't.

23 So you're going in there, whether or not the
24 Court feels that this isn't really a fee, this is
25 actually a tax dressed up as a fee. If the Court

1 says, "Hey, wait a minute, I don't think this is a
2 true fee, this is a tax," that's what they are
3 alleging, "you haven't been authorized to tax for
4 this," and it be struck down and --

5 MS. KELLY: Back in '09, when we discussed
6 this, at that time our fire department, the first
7 responders is who was getting calls --

8 MR. GERKEN: Yes.

9 MS. KELLY: -- to take care of people who were
10 calling and stuff like that. It wasn't for fires,
11 because we didn't have very many fires back then.
12 We don't now even.

13 But it's mainly for taking care of people that
14 have illness or something.

15 MR. GERKEN: And a whole nother nuance in the
16 law says, remember, I said you can assess for fire
17 services. The courts have also said you can't
18 assess for EMS and ambulance service; that that
19 doesn't benefit the property, so that's not
20 appropriate.

21 So we kind of went to the flip side of the
22 logic and said, well, they say it doesn't benefit
23 the property. It shouldn't go against the property
24 owners, we should actually get the users of the
25 services.

1 The problem, I think, the biggest problem, and
2 this is in this Shade Meeting here, that you have
3 with police and fire services is for a user fee,
4 the person has to voluntarily pay the fee and
5 typically they have the ability to opt out of the
6 services rendered or opt out of the fee.

7 And it's sort of a philosophical, can someone
8 truly opt out of police and fire services? Now,
9 without getting into too many other nuances, any of
10 these fees that are charged, stormwater fees, solid
11 waste collection fees, all these fees, can somebody
12 truly opt out of those fees?

13 Many people would say they can't, but they
14 have always traditionally been done that way. And
15 there's a lot of if it's been done that way, you
16 can continue to do it that way. Police and fire
17 have not.

18 But the worry is, the concern is, and Mike and
19 I have talked about it, there's a very real chance
20 with us sitting here, that the Court will say, "I'm
21 not buying police and fire fees as a user fee.
22 That is a traditional government service, and I
23 don't want to step out on a limb and be the first
24 judge to declare them legal. I'm going to say it's
25 a tax. And until the legislature says you can do

1 this, uh-huh, you can't do it. It's a tax. Strike
2 it down." And our fee is deemed an illegal tax and
3 potentially then have to refund the fees that have
4 been paid this, all this time.

5 Mike and I have discussed it. We've, you
6 know, tried to put odds on this. I would say, in
7 my humble opinion sitting here today, and I'll ask
8 Mike to nod his head or chime in, I would think
9 that there is a good chance that the Court is not
10 going to want to be the one to step out there and
11 say that I'm going to be the first judge to say
12 police and fire fees are legal. Let some
13 legislature decide that.

14 And if they strike down the fee, deem it a
15 tax, I think the odds of that are probably 60 --
16 60, 65 percent likelihood that the Court will do
17 that.

18 MR. CHESHIRE: Could you appeal that
19 afterwards?

20 MR. GERKEN: Absolutely. And it probably
21 would be. That would be up to you all, if you want
22 to do it, but that would normally be what would
23 happen. And that would go up to the Fifth DCA in
24 Daytona and then eventually even up to the Supreme
25 Court if the Legislature doesn't act on it.

1 MAYOR BELL: Well, all right, 66 percent is
2 your, your view?

3 MR. GERKEN: That's my guesstimate from the
4 earlier hearings we have had with the Court on, if
5 you were to ask me what I think, what do I think,
6 what I think Judge Takac, our judge right now, and
7 Rick was there, I think his words, for instance --
8 this is in the transcript of the hearing.

9 One of the first things the judge said is,
10 "Oh, yeah, cities, always trying to get their --
11 trying to avoid their fees for being called a tax,"
12 or something to that effect. I mean, words like
13 that --

14 MR. GOLDBERG: Isn't that a little
15 prejudicial?

16 MR. GERKEN: No, it's just, that's what courts
17 do. But things like that tip you off a little bit
18 to where you think the judge may ultimately be
19 ruling.

20 MAYOR BELL: See, I'm not sure he's right --
21 feels the same way or he wouldn't have, he wouldn't
22 have put that second, that order in there.

23 MR. GERKEN: Well, and we'll go through that.

24 I just want to let you know that I do think
25 that there is a good chance that they could

1 ultimately prevail and have this overturned. I
2 think we have a good chance, but I would say it's a
3 little better than 50/50.

4 Mike, would you agree with that?

5 MR. ROPER: Yeah. No, I agree with what Scott
6 said. I think I'm probably a little more
7 pessimistic than Scott. I think I'm probably in
8 the 75, 80 range that we are not going to win this
9 because, primarily because of the issue of whether
10 or not this truly is a voluntary fee.

11 You know, and there are tons -- the problem is
12 there are, there are a lot of cases out there
13 dealing with assessments, but basically finding
14 that that's an improper way to raise money for
15 police services.

16 And I think, you know, although we can argue
17 all day to the judge that an assessment is
18 different from a fee, it doesn't really matter what
19 you call. At the end of the day, is it a truly, a
20 voluntary payment of that fee and does that person
21 paying the fee benefit in some way that the general
22 public doesn't benefit. And I think those are two
23 tough arguments here for us to prevail on.

24 MS. KELLY: May we see a copy of the
25 ordinance? Does it "say" voluntary in the

1 ordinance?

2 MR. GERKEN: It doesn't use the word
3 "voluntary", but it clearly says -- and they would
4 even admit that, that it -- you don't have to pay
5 it. It says flat out that if you don't want to pay
6 the fee, you just don't pay it.

7 The problem, again, in this closed session,
8 the ordinance also has provisions, as you know,
9 that says that if don't pay the fee, you
10 potentially could be liable, if services are
11 rendered, for the cost of those services.

12 And they have also tried to argue with the
13 Court that we were not vocal enough with the people
14 to tell them that this was a voluntary fee. For
15 instance, on the utility bill that people get, it
16 doesn't say anywhere on there this is a voluntary
17 fee.

18 And I don't think that was in any way
19 intentional, but that all -- I know that wasn't
20 intentional by the City, but that's, they throw
21 that all in the soup that it's really not a
22 voluntary fee.

23 MS. KELLY: Yeah, but it's public record;
24 correct?

25 MR. GERKEN: Yes. Correct.

1 MR. ROPER: It is public record and that's the
2 argument we have made, and we'll continue to make.
3 It's on our website. It was discussed in the
4 public.

5 The other issue that they have thrown in
6 there, is the argument that although we are not
7 doing this any longer, is that for a while on
8 nonpayment, late payment of utility bills, we were
9 charging a ten percent penalty fee on the voluntary
10 fee as well.

11 MR. CHESHIRE: That was just because of the
12 computer program.

13 MR. GERKEN: Yeah. The billing staff didn't
14 realize it was being done. Once it was pointed
15 out -- but, you know, they, of course, will say
16 it's not an innocent error, that the City was
17 trying to charge this.

18 MR. CHESHIRE: The fire assessments have been
19 said okay because it's property. If this goes to
20 the Court, is it possible to say, okay, the fire
21 fees are okay because they are kind of like an
22 assessment and we have already approved fire fees,
23 but your police fees are wrong, so you can kind of
24 split them up and say yeah, we'll take the fire
25 fees but the police fees are wrong? I mean, is

1 that --

2 MR. GERKEN: I think -- and Mike can speak to
3 that. I do think there is somewhat of a better,
4 again, because there's a lot of case law that
5 embraces somewhat charging fire assessments, that
6 case law kind of supports that notion --

7 MR. CHESHIRE: Will the judge look at it like
8 that or is he just going to blanket it and say
9 don't do them? Do you have to ask him to take them
10 separately, we want them looked at separately. If
11 you don't like the police fee, fine, but if you
12 like the fire fee...

13 MR. ROPER: We could do that. I mean, I think
14 that would be more of a fall-back position if we
15 saw that perhaps the tide was not running in our
16 favor.

17 Because once we, you know, once we concede
18 that perhaps, you know, he ought to look at these
19 as assessments, we are essentially giving up on the
20 police fee.

21 MR. GERKEN: And the problem is, this clearly
22 wasn't intended to be an assessment because you
23 didn't wish to assess the property owners. So it
24 has to be a fee.

25 But the notion is that perhaps there is a

1 little more law that's there to support a fire fee
2 versus a police fee. I think there is a chance.

3 MR. GUNTER: Like you said earlier, last year
4 on the fees and they said a fire fee is a
5 accounting nightmare; trying to separate the EMS
6 calls and everything else from the actual fire
7 calls.

8 MR. ROPER: And the other thing too, as Scott
9 mentioned earlier, is the courts have upheld
10 assessments for fire services but not for EMS
11 services. And I do believe that ours are for the
12 fire, so that's another consideration.

13 MR. CHESHIRE: We don't provide any of that.

14 MR. GERKEN: Right.

15 MR. ROPER: So we don't provide any EMS
16 services?

17 MR. GERKEN: We don't provide that.

18 MR. ROPER: Okay. Well, then that certainly
19 helps alternatively.

20 MR. GUNTER: We have first responders.

21 MR. CONNER: We have first responders. Some
22 aspects of EMS services are provided by our fire
23 department.

24 MS. KELLY: But we don't charge for it. That
25 has nothing --

1 MR. GERKEN: No, but we are providing a
2 service that we are charging for, arguably, in this
3 fee. That's the notion.

4 MR. ROPER: Right. In other words, the reason
5 fire services are allowed is because they benefit
6 the property, the actual property itself, as
7 opposed to EMS services which benefit --

8 MR. GERKEN: People.

9 MR. ROPER: -- the person.

10 MR. GERKEN: It's quite a quagmire, and it's a
11 very unsettled area of the law. That's why I
12 just -- there's a lot in, there's just a basic
13 premise when you're trying to do something new,
14 until it's endorsed by the legislature or by a
15 court, that new things are not often welcomed by
16 the courts.

17 They often will say, "Look, I'm going to
18 strike this down. Let the legislature deal with
19 this. Let them act and decide what we will do.
20 And until they do so, I'm not going to do
21 anything."

22 We, of course, that's where our Home Rule
23 comes in; say, look, that's why Home Rule is there.
24 This is something, there is nothing that says you
25 can't do this. This is within our Home Rule power.

1 These are our municipal services. We should
2 be allowed to do this. In other words, tie goes to
3 the City. I mean, we should be allowed to do this.
4 And clearly these people are benefiting from these
5 services. They are getting these services and it
6 should be allowed to be done.

7 But, in any event, I just think you need to
8 know that there's a very good chance, as I said, I
9 said 60 percent, Mike said, I think 75, perhaps,
10 cent chance that the Court can strike this down and
11 strike the fee.

12 And then the other issue would be whether or
13 not the Court would issue a refund. There is a
14 chance that the Court can say, "Okay. The fee is
15 illegal, but the City acted in good faith and we
16 are going to say they don't have to refund the
17 money." That's another potential outcome.

18 Usually they go in concert. I mean, if the
19 Court feels that it wasn't voluntary, that it's a
20 tax and it's wrong, then normally they are going to
21 order a refund.

22 But there is a possibility that the Court
23 could split the baby and say, "It's a tax, but the
24 City was acting in good faith. You know, this is
25 an unsettled area. Just don't do it going forward,

1 but you don't have to, you don't have to refund the
2 monies."

3 MR. CONNER: And, Scott, you and I talked
4 about this, but I think it would be good for the
5 commission to hear this part of the conversation,
6 because it occurred to me if -- kind of change the
7 subject for a second, but it comes back to what you
8 were talking about.

9 If the City actually settled it, we agree to
10 have the class certified as a class that
11 encompasses the entire community, and we settle it.
12 And in that settlement agreement it says the class
13 says it's okay to go ahead and move forward with
14 the fee, as they have proposed, does that set --
15 for the certification -- does that set a legal
16 precedent that says we can never be challenged
17 again?

18 MR. GERKEN: Yeah, there is some protection
19 that will be gotten, and I think that's a perfect
20 segue into perhaps the offer that we have here.

21 Yes, that if, if we reach a settlement, I
22 think we would, in essence, in that case, want a
23 class to be certified to incorporate all these
24 people so they are all bound by this settlement and
25 can't later come back.

1 Now, there is some chance that a future
2 person, who paid the fee, wasn't in this class,
3 wasn't around at the time, they could conceivably
4 come back in the future, but I think what we would
5 do, whatever settlement we make, we are going to
6 fix any of the potential issues with this fee so
7 that it wouldn't potentially be challenged again.

8 For instance, we will make darn sure that if
9 there's any question whatsoever about it being
10 voluntary, that that is done. And we would set
11 things up -- in other words, it would protect us
12 against everybody that's out there now.

13 And we would try to take steps, efforts to
14 amend our ordinance or address the voluntary fee
15 going forward so it clearly is a voluntary fee,
16 that it would withstand any other complaint in the
17 future. Does that make sense?

18 MR. CONNER: Yeah. And you and I had talked
19 about that, but I thought it would be good for them
20 to hear.

21 MR. GERKEN: Yeah. On that notion, and, Mike,
22 if you're all right, I'll just go through the five
23 things they say. I'll give you my two cents on
24 each of these things, if I'm going to be so bold as
25 to tell you my thought. And then you all can give

1 us the direction we need to go forward.

2 The first thing they have in here is that the
3 City must stop charging fees immediately or
4 immediately change its utility bills so donation is
5 clearly optional by having a spot to check mark as
6 a donation. The City will not object to the
7 Plaintiffs' position to benefit from the litigation
8 bestowed upon the class to use the future savings
9 on avoiding the fees.

10 If we were to settle, I would assume we would
11 want to continue having the fees, but we have
12 always said the fees are voluntary. I would think
13 we would go with the notion of clearly noting in
14 the utility bill that these are voluntary fees.
15 And that can be done by a letter or an insert in
16 the utility bill.

17 Personally, I do not think it's appropriate to
18 call it a donation because a donation to me means
19 that you are getting something for nothing. In
20 this case, they are getting a benefit. They are
21 getting a service. We just need to clearly state,
22 as was the intent of the ordinance, that it's
23 voluntary.

24 So I would think we could agree going forward
25 we'll continue to have a fee, but we will designate

1 on the utility bill and potentially we can do a
2 letter to the people that spells out that this is a
3 voluntary fee for police and fire services for the
4 City.

5 There's obviously the circumstance that
6 somebody gets that and more people opt out, but
7 that has always been the case in the City. It's a
8 voluntary fee that somebody has the ability of
9 that, and we have never been hiding that fact.

10 MAYOR BELL: So we can definitely state on
11 there that this fee is, is to be used for fire
12 and --

13 MR. GERKEN: Yeah. You know, the beautiful
14 thing about it is no one has ever claimed that
15 these monies are not being used for police and fire
16 services, exactly what -- nowhere in that whole
17 complaint and all that lengthy thing does it say we
18 are using these monies to pay for vacation homes
19 for commissioners or using these monies to pay
20 for -- it's going for the intended service. And
21 that's, but it's just a legality. So that would be
22 my notion.

23 I did confirm with, I spoke with Derek Schroth
24 today about their fees, their costs, and that I got
25 some clarification on. I'll get to some of that in

1 a little bit more.

2 He did say, confirmed our suspicion that the
3 last sentence that says the City will not object to
4 the Plaintiffs' position to benefit from the
5 litigation bestowed upon the class to use the
6 future savings on avoiding the fees, was done
7 solely to justify the amount of fees, attorney's
8 fees that are in the settlement, because when the
9 judge who ultimately has to approve the settlement
10 approves the fees, the amount of fees that are paid
11 to Plaintiffs' counsel are, are geared or set by
12 the benefit bestowed to the class. And so they
13 have to show what benefit they did and that would
14 be a benefit they would do.

15 I, frankly, am not real comfortable, because I
16 don't think it's true, that, for us to say that
17 it's a benefit for those people avoiding future
18 savings and avoiding the fees, because we have
19 always taken the position they are voluntary and
20 you don't have to pay them.

21 So anybody could always avoid the fee by
22 simply not paying it, which 140-some-odd people, or
23 whatever the number is now, have shown by not
24 paying the fee. And we have done nothing and will
25 do nothing against them with regards to paying the

1 fee.

2 MR. ROPER: And I think that that condition
3 goes away if we can reach an agreement on the fee
4 ultimately.

5 MR. GERKEN: Yes. And that's a good point.
6 That's there to justify the fee. If we can agree
7 to a fee, they really don't have an incentive for
8 us to admit that that was there.

9 I also don't think there's any need for us to,
10 frankly, admit any liability. We don't have to
11 admit that what we did was wrong in the settlement
12 of this case.

13 Second, the City consents to certification of
14 the class. I think class certification would be
15 something, if we reach a settlement, we would agree
16 to, so that's not really a problem. If we can
17 reach a settlement, we want a class.

18 Now, what that does mean for you, as elected
19 officials, letters are going out to everybody in
20 the city that talk about this lawsuit and the
21 settlement and all of this. So you'll get
22 questions and people asking about it.

23 And, you know, there will be a lot of press
24 and other things, but that cannot really be avoided
25 in order to settle this type of a lawsuit. And I

1 think, you know, it's...

2 The third thing, establish a common fund of
3 \$400,000 for refunds of the class expenses. I'll
4 let you tell me what you think is a just number.
5 \$400,000, I think the consensus from everyone has
6 been that's too high. I would agree.

7 My sense, keeping in mind though, that -- I
8 guess I can say this today -- that even speaking
9 with Mr. Richardson today and his counsel, they
10 would agree that they don't anticipate that there
11 will be that many people who file for refunds.

12 I don't think -- I mean, keeping in mind the
13 next thing that the refunds will be capped at a
14 hundred bucks a claim, there aren't enough people
15 out there who have a claim to run up to that
16 number.

17 So I think, in some ways, \$400,000 is an
18 artificial number. In fact, I think it is an
19 artificial number. I don't think the claims are
20 going to be that high. Again, some of that
21 \$400,000, I think, is to, again, justify the fees
22 and justify the settlement.

23 From your standpoint though, that number will
24 be out there. The City of Fruitland Park agrees to
25 spend -- to pay \$400,000. Most people are not

1 going to -- are going to get lost in the detail
2 that it isn't really \$400,000, but I think, partly
3 because of that, because it is an artificial
4 number, that number could certainly be lowered
5 because no one actually expects it to go that high
6 anyway.

7 And I don't know what Mike thinks on that, but
8 I think -- I think the other side would accept a
9 number lower than that, as long as they get the
10 other things they are after.

11 MR. ROPER: Yeah. I mean, I think if it's
12 made clear, and I think it will be, that this
13 refund is going to have to be, ultimately be
14 financed by increases in property taxes, I think
15 that the folks that are actually seeking a refund
16 will be few.

17 And even if we were to take the current, I
18 think there's 1800 utility customers, give or take,
19 right now, capped at \$100 a piece, you know, you're
20 talking about \$180,000 right there. So I don't
21 know where the \$400,000 even comes from, but --

22 MR. GERKEN: Yeah. I think if everybody
23 current and everybody past submitted a claim, it
24 wouldn't end up being \$400,000.

25 MS. KELLY: Well, then he wants the balance to

1 go to the Fire Department. He's just trying to --

2 MR. GERKEN: I know. The next -- yes. I'm
3 sorry.

4 MR. GOLDBERG: Speaking on those lines then,
5 you know, if this does go through and there are
6 refunds and, yes, maybe to remedy that cost offset
7 we have to increase the ad valorem percentage.

8 So could somebody out there potentially bring
9 suit against Mr. Richardson and Mr. Howard and
10 Ms. Howard for -- what was that term you used? You
11 used a term, you said -- when he talking earlier
12 about how it would adversely affect property
13 owners.

14 MR. ROPER: Right.

15 MR. GOLDBERG: So could that be a possibility?
16 I'm not asking for legal advice, just a yes or no.

17 MR. ROPER: I mean, to the extent --

18 MR. GOLDBERG: No?

19 MR. ROPER: To the extent that -- it would be
20 a difficult case. To the extent that, to the
21 extent that you argued, as a class representative,
22 you had an obligation to represent the best
23 interests of the class, and you ended up costing
24 them more money than you got them recovered at the
25 end of the day, I guess an argument could be

1 fashioned, but I don't think it's a very good
2 claim. Especially if the Court approves the
3 settlement and approves the class action.

4 MR. GOLDBERG: Okay.

5 MR. GERKEN: I like your thinking, but I don't
6 think it would be -- I can't imagine it would make
7 a good claim.

8 The number four, which goes through this claim
9 procedure, frankly, I think most of that, if we can
10 agree on a number and all that, is not
11 objectionable.

12 It's a very relatively short window of up to
13 three months that people would have. If you're an
14 existing utility customer, you would get an insert
15 in your bill that gives you the ability to pay a
16 claim, you send that back, swearing that you have
17 paid that.

18 The City obviously has the ability to check
19 the records and make sure these people actually
20 have paid that much in fees. And if they do, they
21 get their hundred bucks.

22 Anybody else, there is just going to be a
23 notice on the website and in the paper saying
24 anybody that may have a claim -- there's class
25 action notices every day in the paper that shows,

1 I'm sure you haven't seen them, but they are there
2 if you're looking in those sections of the paper,
3 that says if you have a claim, that you have the
4 ability to come forward.

5 And if, that after three months, if they
6 haven't, they lose their ability and it's forever
7 done. So I think, frankly, that procedure, with
8 some tweaking, isn't bad.

9 MR. GUNTER: In that insert that we would mail
10 out with the water bill, can there also be an
11 explanation down there that if you opt out of this,
12 or if the majority of people opt out in the City of
13 Fruitland Park, then the current rate would more
14 than likely go up one mil or --

15 MR. GERKEN: That's a very good question. I
16 think the short answer is no, because I think
17 whatever notice is going to have to go out, this is
18 why, initially will be for the parties to try to
19 fashion. The Court will give us a chance to do
20 that.

21 If we cannot, ultimately I would think, and
22 Mike can probably chime in on this, the judge would
23 approve the notice that would go out. And I don't
24 think they are going to allow what would amount to,
25 some may call it politicking, you know, us trying

1 to urge them not to pay.

2 But on the other side, there's not going to be
3 any ability for them to say, hey, make the claim,
4 get the City. It's going to have to be a very
5 neutral -- there's a case that's there, you have
6 the ability to file this, and you have \$100, you
7 know, if you want to file this, you can get a \$100
8 claim.

9 MR. CHESHIRE: But that doesn't mean I can't
10 go out to all my neighbors and tell them that this
11 is coming out of your pocket no matter what you do.

12 MR. ROPER: Well, there probably will be some
13 limit on class communication in terms of any direct
14 contact, but obviously you all are a public body
15 and matters come up for discussion on public
16 issues.

17 MR. GERKEN: You are elected officials who
18 represent your constituents there. You certainly
19 have the ability to talk to your constituents and
20 that is going to be kind of an interesting issue.

21 They have previously filed a motion trying to
22 limit communications. They wanted sort of almost
23 what I would call a gag order saying we can't talk
24 to anybody about this. The Court though does
25 recognize that the City, to function, has to be

1 able to talk to the people, and so they limited an
2 order, but it limits us to we can't send out
3 notices to potential class members and that, but
4 there's nothing about you as elected officials.

5 However, I do agree with Mike. You're not
6 going to be able to openly go out there and I
7 think -- I mean, Mike, would you agree? I'm sure
8 the Court is going to have some sort of limiting
9 order saying neither side can go out there and
10 lobby one way or another.

11 There's going to be a notice that will do all
12 the talking and that notice will go out to the
13 people and let them go from there.

14 Now, if those people among themselves -- you
15 know, it's a free country -- talk about, hey, wait
16 a minute, I'm smart enough to realize that if we
17 put in for this 100 bucks, our taxes are going up.
18 Hey, Ed, let's not do this, that's for them to do.

19 MAYOR BELL: Well, what I'm wondering is
20 somehow in this language we can show that this
21 lawsuit is actually against the residents of the
22 City of Fruitland Park. And in the end, it's going
23 to be the residents of Fruitland Park that pay it
24 back.

25 MR. GERKEN: You're not going to be able to do

1 that in the notice. I would not count on that in
2 the notice.

3 I hear what you are saying, and I would agree,
4 but just like we are going to fight their ability
5 to say it was an illegal tax or it was wrong, they
6 can't go on that side, and you're not going to be
7 able to say this is something bad for the City or
8 please don't make a claim.

9 MS. KELLY: We can't put in that this may
10 result in higher property taxes or anything like
11 that?

12 MR. GERKEN: Not in that notice, no.

13 MR. CHESHIRE: But if the Defendant is the
14 City, who is the City? Are we just the City or is
15 it my wife as a resident? Is it --

16 MR. GERKEN: The Defendant is literally the
17 City of Fruitland Park.

18 MR. CHESHIRE: So the Plaintiff is potentially
19 the City of Fruitland Park. So the City of
20 Fruitland Park is suing the --

21 MR. GERKEN: Suing the City --

22 MR. CHESHIRE: -- City of Fruitland Park?

23 MR. GERKEN: -- of Fruitland Park. All these
24 members, the citizens, on behalf of occupants,
25 people paying this fee, are suing their city, yes.

1 MR. GOLDBERG: So essentially they are taking
2 money from the City, which is actually basically
3 being used for them, out to give to them, but then
4 they suffer because --

5 MR. GUNTER: They are suing their own selves.

6 MR. GERKEN: There's going to be a hard -- I'm
7 going to get -- I mean, it's going to be
8 interesting.

9 There is the notion that, hey, it's a hundred
10 bucks and a hundred bucks is a hundred bucks. I
11 want my hundred dollars. And if somebody else is
12 getting their hundred dollars, why shouldn't I?
13 Some of you commissioners may even be lining up for
14 your hundred bucks. I don't know, but I won't pass
15 judgment on anybody one way or another.

16 MR. GUNTER: Now that you brought this up as a
17 voluntary fee and all, can I get a tax statement so
18 I can file it on my income tax?

19 MR. GERKEN: Donation, we are not calling it a
20 donation. No, it's not a --

21 MR. GOLDBERG: Yeah, an income tax donation.

22 MR. GERKEN: The detail, if we get to that,
23 we'll deal with the notice. I think that will be
24 something -- ultimately the judge, I think, is
25 going to -- it's going to be difficult, I think,

1 from the way the sides are going to be, to come up
2 with a notice that we'll both be able to agree on.

3 MR. ROPER: I don't --

4 MR. CHESHIRE: The judge doesn't see how silly
5 this is? I mean that the City is suing itself and
6 eventually --

7 MR. GERKEN: Well, that's part of what we'll
8 be pointing out on Tuesday.

9 MR. ROPER: Yeah. You know, it's not going
10 to, probably it's not going to be in the notice,
11 but there are other avenues --

12 MR. GOLDBERG: What if someone --

13 MR. ROPER: -- and forums.

14 MR. GOLDBERG: -- once they get this and they
15 are, they are like confused, and they call you and
16 they ask you a question. Am I supposed to say,
17 "I'm sorry, I can't discuss this because it's still
18 a pending litigation?" Or at that time it would
19 not be pending litigation, would it?

20 MR. ROPER: It would not be pending litigation
21 at the time and absent some specific order from the
22 judge --

23 MR. GOLDBERG: I mean, but we have to have the
24 ability to communicate with the citizens.

25 MR. ROPER: I agree, absolutely.

1 MR. GERKEN: We will certainly be fighting for
2 that ability to communicate with the citizens.

3 MR. GOLDBERG: I mean, if you don't say
4 anything, then they feel you're covering stuff up.
5 It's like a double-edged sword. You're damned if
6 you do, damned if you don't.

7 And I don't want to be damned either way, I
8 just want to tell the citizens, yes, this could
9 potentially cause other side effects.

10 MR. GERKEN: You can speak your mind on that.

11 MR. ROPER: Absolutely. One of the things
12 that we fought very hard for, as Scott mentioned,
13 you know, the suggestion from the Plaintiff was
14 almost that there be a gag order.

15 And, you know, and in response we said,
16 listen, number one, the judge really doesn't have
17 that authority to impose that sort of an order on a
18 separate, co-equal branch of government.

19 And secondly, in order to do their jobs, they
20 have to be able to talk to the citizens. So that
21 argument has been made and --

22 MR. GERKEN: We are prohibited right now from
23 sending out any kind of a notice to potential class
24 members in that way, but we weren't doing that
25 anyway. That's not something we were doing, but

1 that's about it.

2 MAYOR BELL: So right now if my neighbor
3 called me up, I'm able to talk about it?

4 MR. GERKEN: Yes, talk freely about the case.
5 You have every ability to speak your mind as an
6 elected official, yes.

7 MAYOR BELL: And this potential settlement is
8 public record?

9 MR. GERKEN: This settlement they made to you
10 is public record, yes.

11 MAYOR BELL: Right.

12 MR. GERKEN: The last thing is, remaining
13 funds in the common fund shall be distributed as
14 follows: \$15,000 for Jim; \$15,000 for Mike and
15 Nancy; \$125,000 for attorney's fees and costs; and
16 all remaining funds thereafter shall be retained by
17 the City for the Fire Department.

18 Breaking that down, it is normal in class
19 lawsuits for the class representative to get some
20 fee for their time and involvement.

21 I'll let Mike perhaps discuss whether or not
22 \$15,000 is a reasonable fee and ultimately that's
23 up to you all as to what is a proper or appropriate
24 fee for the class representatives.

25 \$125,000 for attorney's fees and costs. I

1 asked Derrick today how in the world that number
2 came from, how much time does he actually have in
3 the case. He admitted to me that he has less than
4 half of that in actual time. His, if he was doing
5 this on an hourly fee basis, it would probably be
6 somewhere around 50,000 bucks in total fees.

7 MAYOR BELL: See, I have already, I have
8 already mentioned to Scott that what I -- that I
9 would like to file public records requests to the
10 City of Eustis and to the City of Lady Lake
11 requesting the time sheets --

12 MR. GOLDBERG: Billing.

13 MAYOR BELL: -- on Mr. Schroth and compare
14 that to what he's trying to say in this.

15 MR. GERKEN: What the \$125,000 is, is
16 basically it's putting a multiplier in effect and
17 looking at the outcome for the class; saying if
18 they do achieve \$400,000 in a fund and they do
19 achieve the recognition that they have saved future
20 fees, that the court typically bases the amount of
21 the attorney's fees -- it's almost like a Morgan &
22 Morgan contingency case -- on the outcome of the
23 case.

24 And it's a percentage. Ten to twenty percent
25 of the ultimate outcome is thrown around as a

1 reasonable class, or class attorney's numbers. And
2 that's what his thinking was. That's where the
3 \$125,000 came from.

4 He did acknowledge that if he just went on a
5 straight hourly basis, probably somewhere around 50
6 would be what he's got in at this point. And so --

7 MR. GOLDBERG: You said 10 to 15 percent of
8 the award or --

9 MR. GERKEN: Ultimate outcome.

10 MR. GOLDBERG: Of the \$400,000?

11 MR. ROPER: Well, and that's where that issue
12 about the benefit conferred on the class, that's
13 where that issue comes in, because he's trying to
14 pump up --

15 MR. GOLDBERG: I know I'm old school, but that
16 math doesn't add up.

17 MR. GERKEN: Well, he's saying not just the
18 \$400,000 or so of refunds, but you'd have to put
19 some dollar figure on the value of avoiding the
20 future fees that they have saved these people from
21 paying.

22 MR. ROPER: That's the analysis. And it's
23 \$500,000 incidentally.

24 MR. GERKEN: Oh, 5. I don't expect you -- I
25 mean, I don't think you should award \$125,000 in

1 fees if you're making a counter offer. I think
2 somewhere lower than that.

3 I mean, frankly, Mike and I have talked about
4 maybe ultimately as much as half of that, but
5 somewhere around 50, 40 or 50, if you're going to
6 settle this, would be a reasonable thing. I think,
7 I think they don't anticipate you to pay \$125,000
8 in fees.

9 Where would those fees come from, by the way?
10 And he did clarify though that the \$125,000
11 includes costs, so it's not all going to the
12 attorney. They have about \$10,000 in miscellaneous
13 costs between deposition transcripts -- I don't
14 know if you were there when he told me that --
15 deposition transcripts, filing fees, out-of-pocket
16 costs that they would be reimbursed for part of
17 that.

18 But that, all of the attorney's fees and
19 costs, the way they have done this, is \$125,000.

20 MAYOR BELL: But they haven't taken
21 depositions on this.

22 MR. ROPER: Technically they have. As you'll
23 recall, the two cases were consolidated in front of
24 the Federal Court and depositions were taken on
25 issues relating to both cases.

1 MAYOR BELL: And they had questions regarding
2 this?

3 MR. ROPER: Yeah. For example, Jeannine
4 Michaud, she was asked questions both about the
5 retaliation claim and about the fee claim.
6 Mr. Cottrell, the same, same thing.

7 MR. CHESHIRE: So when that second case comes
8 due, when they ask for legal fees, we can say,
9 well, we have already paid part of the legal fees.

10 MR. ROPER: Well, that was one thing I was
11 going to say is, if we agree to pay costs, we
12 should have them designate what costs we are paying
13 so that they don't try and double dip later on if
14 we get to that point.

15 MR. GERKEN: We literally have the invoice
16 virtually on here what these costs are for.

17 MAYOR BELL: Is there a way -- these two
18 claims were initially together --

19 MR. ROPER: Correct.

20 MAYOR BELL: -- and have been separated. Is
21 there a way of settling them now as one claim?

22 MR. ROPER: I think the answer to that is no.
23 I think, first of all, I don't know that there is a
24 realistic chance to settle the First Amendment
25 claim. I can't really get into that today.

1 MR. GERKEN: Remember, we can't talk about the
2 other case.

3 MAYOR BELL: Right.

4 MR. ROPER: But as it relates to the case that
5 we are here about, it might pose a problem for
6 Mr. Richardson, as a class representative, to
7 negotiate his own case as part of the class
8 settlement.

9 In other words, his obligation is, as a class
10 representative, is to the class. And his personal
11 interests that might be related to his own lawsuit
12 shouldn't really enter into that equation. So I
13 don't really think there is a valid ability to do
14 that.

15 MR. GERKEN: I think they would have to be
16 settled separately in the future claim for those
17 obvious reasons.

18 MS. KELLY: Now, if you are successful in
19 proving that he doesn't represent a class and they
20 have to find somebody else --

21 MR. GERKEN: Yes.

22 MS. KELLY: -- then he wouldn't be able to get
23 that 15,000?

24 MR. GERKEN: Correct. I guess at the end --
25 yes, he wouldn't be able to, if he's struck down as

1 the class representative, he can't get a class
2 representative fee.

3 MS. KELLY: Okay.

4 MAYOR BELL: Let's go and let's do --

5 MR. GERKEN: I think that's enough for me.
6 Y'all tell me what your thoughts are, and we'll --

7 MAYOR BELL: Well, let's start at each point.
8 Do we want to start at any point or do you want
9 to --

10 MR. GERKEN: However you would like to do
11 that.

12 Mike, is there anything else you needed to
13 chime in on?

14 MR. ROPER: No. I think those are the main
15 points that we need direction on.

16 MR. CHESHIRE: Can I ask a general question
17 first? What's our strategy? I mean, you both come
18 here, and it's doom and gloom, and we're going to
19 lose? I mean, is there anything we -- is there
20 anything we can do to, I mean, we have the notion
21 that Mr. Schroth shouldn't be representing him
22 because he represents other cities.

23 I mean, is there some sort of action we can
24 take against Mr. Schroth? I mean, is there things
25 we can actually do to make this change a little? I

1 mean, what's our strategy if we go forward and
2 don't settle? I mean, do we have some sort of --

3 MR. CONNER: Plan B.

4 MR. CHESHIRE: -- Plan B or --

5 MR. GERKEN: Absolutely --

6 MR. CHESHIRE: -- I mean, it feels like we've
7 been getting hit by them and we're standing there
8 going, hell, let's, let's keep taking this. I
9 mean, what are we going to do? You can't fight
10 City Hall. I mean, he's doing a pretty damn good
11 job of fighting City Hall.

12 MR. GERKEN: Obviously going -- when we are
13 out there, we say this is a voluntary fee that's
14 done under the Home Rule powers and Florida
15 Statute 166. It meets all the parameters, and you
16 are able to this and it's legal. And we ask the
17 court to uphold it as a fee, and they get nothing.

18 Just when we get to the settlement negotiation
19 here, with us sitting here in the room, we just try
20 to be a little more of, like a medical, just be
21 very frank. These are, these are what you
22 potentially have coming.

23 Yes, one of the issues that will come up is,
24 is Mr. Richardson an appropriate class
25 representative. We will challenge that.

1 Another issue is, is class counsel an
2 appropriate class counsel for this kind of case; in
3 part, because of -- and that's something that we
4 can discuss some more. In part, because of the
5 potential conflicts of representing other
6 municipalities that depend on Home Rule to survive.

7 MR. GUNTER: I would think that would be with
8 the Florida Bar Association. Can't you turn in
9 somebody for ethics?

10 MR. GERKEN: I don't think this amounts to an
11 ethics violation, but it is an interesting conflict
12 issue; and it's particularly an issue of whether or
13 not they are appropriate class counsel because of
14 those -- the appearance of a conflict.

15 If somebody out there, you know, if somebody
16 out there who is looking at this case says, well,
17 was this some kind of a setup that a local
18 government attorney is getting this class action
19 done so that it insulates --

20 MR. GUNTER: Exactly. That's the way I look
21 at it. If Lady Lake or Eustis was suing us, that's
22 a different story, but when he takes on a private
23 client to sue us, that's like, hey, I'm going to
24 get them. I drove through Fruitland Park and a
25 police officer waved at me, and I'm going to get

1 them. You know, that's --

2 MR. GERKEN: I don't know. I don't know what
3 the incentive or desires are --

4 MAYOR BELL: Scott, have we been in touch with
5 the League of Cities at all regarding this?

6 MR. GERKEN: No. Ironically, we talked to the
7 League of Cities back in 2009 when we initially did
8 this and discussed it with their, some of their
9 representatives, and they basically said what we
10 all hear today. It's an unproven thing, and it's,
11 you know --

12 MAYOR BELL: All right. I was thinking a step
13 up from the fees --

14 MR. GERKEN: But, no, we have done nothing
15 recently with regards to getting the League of
16 Cities involved.

17 MAYOR BELL: I would like to go ahead and at
18 least get a letter or make contact with the League
19 of Cities giving them the picture, especially now
20 that it's separated out into -- you know, before
21 you had said it was a little messed up, but now
22 it's pretty clear.

23 You got a, you got a city attorney, who
24 represents two other cities, neighbor cities, suing
25 us over our local Home Rule. What is their opinion

1 on that?

2 MS. KELLY: And I would like to see you get a
3 hold of the Bar Association and find out if there's
4 anything. If you don't ask, you don't find out.
5 You know, nothing will be done if somebody doesn't
6 call them and say, look, we have a problem here.

7 MR. GERKEN: Call the Bar and ask essentially
8 for an ethics opinion --

9 MS. KELLY: Yes.

10 MR. GERKEN: -- on whether this is a conflict
11 of interest?

12 MS. KELLY: Definitely.

13 MR. CHESHIRE: Do you have a, do you have a
14 board that you're a member of the government's
15 attorneys? You know, like a special --

16 MR. GERKEN: There's the Florida Municipal
17 Attorneys Association, but that's just made up of
18 municipal attorneys.

19 MR. CHESHIRE: Is there any regulatory board
20 on them or --

21 MR. GERKEN: None that I'm aware of, no.

22 MR. CHESHIRE: So it's not like you could go
23 to them and say, hey, he's doing this. Do you know
24 if that's okay or no, that's not okay?

25 MR. ROPER: I mean, you know, the Florida Bar,

1 you have the ability to seek an advisory opinion.

2 And I will tell you candidly, from my
3 perspective, I don't see this as a conflict of
4 interest as it relates to the City of Fruitland
5 Park.

6 The issue on the class certification in terms
7 of whether or not Mr. Schroth is appropriate class
8 counsel is whether he is in a position to
9 vigorously and adequately represent the interest of
10 the class.

11 You know, I perceive it more as, frankly,
12 perhaps a conflict that he might have with his
13 other municipal clients, not necessarily a conflict
14 as it relates to the City of Fruitland Park.

15 In other words, if it's, if it's me -- and
16 let's just take it out of the city context right
17 now. But if it's me and I have a car dealership,
18 and I have a lawyer that's representing me and my
19 car dealership and then he's over here suing
20 another car dealership, I have got the problem with
21 him; me, not, you know, not the other car
22 dealership he's suing. So that's kind of how I see
23 it.

24 But that being said, we certainly have the
25 ability to seek an advisory opinion. I just don't

1 know that there's much --

2 MR. GERKEN: I do not think it's an ethical
3 violation. I don't think it's a conflict in that
4 sense of the word; although, it could be from just
5 a class representative, because is he clearly able
6 to vigorously represent the class? Has he even
7 informed his cities that's doing this? I don't
8 know.

9 MAYOR BELL: That's what I was going to say.
10 In my conversations with a few of the other
11 Commissioners from Eustis and Lady Lake, they were
12 both very surprised and did not have knowledge that
13 their attorney was doing this.

14 And so I think whatever, whatever we need to
15 do at this point to make that well known needs to
16 happen. That's one of the reasons -- whether or
17 not the result of a public records request will
18 help us that much, as far as determining fees or
19 not, I believe it still puts the two cities on
20 notice that something is going on.

21 MR. GERKEN: You said you've already talked to
22 the cities?

23 MAYOR BELL: I have talked to a couple.

24 MR. GERKEN: I guess they are aware now.

25 MAYOR BELL: I have talked to a couple of the

1 commissioners of the city.

2 Scott, I'll just take this and give you my
3 opinion and then --

4 MR. GERKEN: Okay.

5 MAYOR BELL: -- we'll go around.

6 About the only settlement part here that I'm
7 in agreement with at this point is -- it's not what
8 we asked for here; and that is, changing our
9 utility bill to make sure the people are aware that
10 they can opt out.

11 I'm not in favor of, of establishing a common
12 fund of 400,000. I'm not, I'm not in favor of
13 offering refunds up to a 100,000 -- I mean \$100.

14 I'm not in favor of paying \$15,000 to Jim or
15 to Nancy and Mike. I might consider 25,000 to the
16 attorney for his research and advising us on the
17 fact that our bills did not show that -- maybe did
18 not show that that was voluntary as it should have
19 been shown.

20 So I think I guess that's where I'm at on
21 this.

22 MR. GERKEN: Essentially the voluntary, no
23 refunds, \$25,000 for the attorney and -- okay.

24 MAYOR BELL: That's where I'm at. John?

25 MR. GUNTER: When I first looked at this, I

1 threw it off to the side and said, "I can't believe
2 it."

3 But \$400,000, yeah, I don't want to put that
4 much in there. But, you know, from what they're
5 asking for, the \$100 cap, that's not a big deal.
6 And I don't think that many people are going to
7 request it.

8 The 15,000, 15,000, my initial thinking was to
9 give them each \$500 and that was just to show that
10 we've got citizens that are suing Fruitland Park.

11 And then on the attorney fees, I -- you know,
12 he said 50,000. My initial thinking was 40,000. I
13 mean, if we go anywhere towards settlement. And if
14 we're going to fight it all to the way to the end,
15 fight it.

16 MAYOR BELL: Sharon?

17 MS. KELLY: Were -- I want to ask a question
18 first. Were you aware that Mike Howard was one of
19 our police officers, past police officers?

20 MR. ROPER: I wasn't aware that he was in the
21 past. I'm aware that he is now at the City of
22 Leesburg.

23 MS. KELLY: Well, he was one of ours in
24 Fruitland Park, and he left, I think, under unhappy
25 circumstances. So he could be a -- the same thing

1 with Richardson as with him.

2 MR. GUNTER: That's something there. I don't
3 understand why a police officer is objecting to
4 fees being collected to go to the police department
5 too. I cannot --

6 MR. CHESHIRE: Because you beat him. That's
7 why. That's why.

8 MAYOR BELL: Sharon, how are you sitting on
9 it?

10 MS. KELLY: I don't mind having voluntary
11 above where it says police fees and fire fees.
12 That's fine.

13 400,000 is way too much. I would like to see
14 the cap at -- right now it's, what is it? We
15 charge --

16 MR. GUNTER: It's like \$96 a year.

17 MS. KELLY: A year?

18 MR. GERKEN: \$4.00 each one, for a total of \$8
19 per month.

20 MS. KELLY: I wish that that could be lowered,
21 that \$100, to like \$30 or something as a cap and
22 then they wouldn't be so apt to try to get it.

23 And I entirely object to the 15,000 for Jim
24 and for Mike and Nancy.

25 And the attorney, 35 or 25. Chris, is what

1 you said was 25; correct?

2 MAYOR BELL: I suggested 25 for the attorney
3 and nothing for --

4 MS. KELLY: Yeah, I'll go along with that.

5 MAYOR BELL: I'm calling that research. Al?

6 MR. GOLDBERG: When I first read it, I kind of
7 had the same sentiments as Commissioner Gunter. It
8 was like -- never mind, you don't want to know what
9 I was thinking. It would not be pretty.

10 I agree with not the word donation, because it
11 doesn't mean what it means. Voluntary is
12 acceptable.

13 I agree the 400,000 is probably high. I would
14 probably cap it at 50.

15 And I would give the same remuneration to
16 Mr. Richardson and Mike and Nancy; 50 bucks.

17 MAYOR BELL: How much?

18 MR. GOLDBERG: 50, yeah. They can be part --
19 if they are part of the class, they need to accept
20 what the class is going to get.

21 MAYOR BELL: What about the attorneys?

22 MR. GOLDBERG: Oh, I have to go with the
23 judgment of the professional people who know where
24 the things are happening. I wouldn't go any higher
25 than 50,000 tops.

1 MS. KELLY: But if we, if we can keep it
2 lower, then they would have to pay them some money
3 themselves.

4 MR. GOLDBERG: Well, I wouldn't pay them
5 anything. No, no, no.

6 MR. CHESHIRE: I think if you give him what
7 he's looking for, he'd settle it.

8 MR. GOLDBERG: Probably. If he gets his, if
9 he gets his pound of flesh, he might convince the
10 others that, hey, you know what, maybe we need --
11 is that a theory that he'd go with? If you keep
12 the attorney happy, that he can help --

13 MR. GERKEN: I would hope not.

14 MR. ROPER: It's always good to keep the
15 attorney happy.

16 MR. GOLDBERG: Yes.

17 MR. ROPER: You know, it's always been my
18 impression this lawsuit has been about attorney's
19 fees. I think most class action cases are about
20 attorney's fees. So I think it's probably the most
21 important consideration.

22 MAYOR BELL: Chris?

23 MR. CHESHIRE: My biggest problem, I think all
24 of our biggest problems is who is suing us. You
25 know, if it was a regular citizen, we wouldn't have

1 as much angst and anger and, you know. So I think
2 sometimes -- and I think the same thing that Rick
3 had told me. It's probably what you think, I can't
4 even read the damn thing. After reading half of
5 that, it's like are you kidding me? But -- I
6 completely lost my train of thought. See what
7 happens?

8 MR. GOLDBERG: It's the chair, a good chair.

9 MR. CHESHIRE: My biggest problem -- and I
10 agree with about 50 for the attorneys and work up,
11 start down and work up a little bit.

12 I agree with lowering, you know, 50 or 75,000
13 for the class, because not that many people are
14 going to do it.

15 I think my biggest problem is, is that we come
16 out and say this is voluntary, we did nothing
17 wrong. My biggest thing is that we did not do
18 anything wrong. We did not, you know, lie to the
19 taxpayers of Fruitland Park. We did not lie to the
20 citizens. We did everything we could to make those
21 fees that we thought were fine. And that's my
22 biggest thing is that we didn't do anything wrong.

23 You know, the money, yes, that bothers me. We
24 are probably going to have to, you know, if you
25 think about it, wouldn't it be better to get rid of

1 it sooner than later. I would love to go to court,
2 but I don't think, unless we go all the way up to
3 the Supreme Court with it and how much is that
4 going to cost us?

5 Up to -- and how much just for if we took it
6 to court now? Is it going to be more than \$50,000
7 for you guys to bring it to court for us or...

8 MR. ROPER: Yeah. We are talking about a
9 class action lawsuit. I mean, it's...

10 MR. CHESHIRE: So, I mean, part of me says
11 logically we should settle, but the other part is I
12 want to make sure whatever is written down that
13 it's says that we did nothing wrong.

14 I wasn't here at the time, but you guys did
15 nothing wrong. You didn't do anything wrong to the
16 citizens. I mean, that's my biggest thing is that
17 we are, you know --

18 MR. GERKEN: Well, I said before that I don't
19 think they are even asking. There would be no
20 admission of liability. We don't have -- this is
21 not an illegal tax. That's clear.

22 MR. CHESHIRE: But no admission of liability,
23 that's used all the time. And it's like, oh, you
24 don't admit you're liable, but you're not saying
25 you weren't guilty.

1 MR. GERKEN: I think some of that, honestly --
2 and this is something that the City probably needs
3 to talk about on another level, is getting the word
4 out. I mean, the way this is described to the
5 public will go a long way with that, the public
6 relations.

7 MAYOR BELL: Let me just run down each item
8 here real quick.

9 MR. CONNER: It might -- if I could ask Scott
10 another question.

11 Would it, would it change any perspective or
12 any of the legal ramifications of this situation if
13 we stopped charging a \$4.00 police fee and a \$4.00
14 fire fee and charged an \$8.00 fire fee?

15 Having listened to your descriptions of how
16 the law is structured, the questions all go away if
17 it becomes an \$8.00 fire fee; is that correct?

18 MR. ROPER: Not necessarily.

19 MR. GERKEN: No. I think you are going to
20 have many of the same things. There's still, at
21 minimum, you're going to have the fact that for
22 four years you have been --

23 MR. CONNER: No, I'm not talking about --

24 MR. GERKEN: Moving forward.

25 MR. CONNER: I'm saying today we say we'll

1 stop those fees. We are going to charge an \$8.00
2 fire fee, a voluntary \$8.00 fire -- or not
3 voluntary \$8.00 fire fee; which, by the way, so
4 that you have a perspective on this, the Fire
5 Department's budget is \$150,000. \$8.00 on 1561
6 accounts brings in \$150,000 and \$3,000 -- 150 and
7 3000.

8 So if they know that, you know, moving forward
9 there is the reasonable possibility that they can
10 have an unchallengeable or very remotely
11 challengeable fee, if that's exactly what they are
12 doing, is that -- does that help? I don't know if
13 it helps or not, but I thought it was worth
14 mentioning.

15 MR. ROPER: Well, you said fee, but maybe
16 assessment. Is that what you -- a fire assessment?

17 MAYOR BELL: It's got to be a fee.

18 MR. GERKEN: You would want it still to be a
19 fee. You know, I think if we settle this, they
20 have no problem calling it whatever the heck it is.
21 I mean, going forward with police or fire fee.

22 I don't think, I don't think it's affected
23 whether it's a police or a fire fee, as long as we
24 clearly say it's voluntary. And even if it's a
25 fire fee, there has to be that voluntary nature of

1 it for it to be considered a user fee.

2 MR. CONNER: But if you decide not to settle,
3 and I'm not, for heaven's sake --

4 MR. GERKEN: You want to change it and say
5 let's call -- you're still going to have a lawsuit
6 there because you're going to have --

7 MR. CONNER: But only as it pertains to the
8 past, not whether or not they can move forward. Am
9 I correct?

10 MR. GERKEN: Yes. And they are going to
11 continue to charge prospectively the \$8.00 fee.
12 They are challenging both the police fee and the
13 fire fee --

14 MR. CONNER: But you feel the judge would
15 always look more favorable upon --

16 MR. GERKEN: Frankly, I would be more
17 concerned that that would be viewed upon as like an
18 admission of liability if we change in the middle
19 of the stream. Wait a minute, we know we can't do
20 a police fee. Let's do a fire fee.

21 MR. CONNER: Again, just asking.

22 MR. GERKEN: As you know, previously we had
23 recommended, frankly, that we just stop charging
24 the fee until such time as this gets resolved one
25 way or another. Frankly, that's what I would

1 recommend, but I understand the need. Budgets are
2 tight and --

3 MR. CONNER: But wouldn't that be the same
4 admission?

5 MR. GERKEN: No. I think we would just say
6 that, that was the notion is, we are just going to
7 stop -- or clearly call it a voluntary fee going
8 forward. And we can just say we are just doing
9 that to cap liability until it's resolved one way
10 or another. We don't want to continue to increase
11 the numbers and increase the pot.

12 By just changing it to a different number,
13 you're not capping your liability as long as the
14 number keeps going up.

15 MAYOR BELL: Scott, I think on Item 1, the
16 consensus is that we will -- we are not going to
17 stop charging the fees, but we will adjust the
18 bill.

19 On Number 2, on your recommendation if they do
20 want to settle, that we will consent to the
21 certification of the class.

22 And Number 3, I think we'll hold off on that
23 one until we look at the rest of the things and
24 determine what to do.

25 The claim procedures, the challenging, what

1 everybody has a problem, what I hear across the
2 Board is a cap of \$100 if we do offer a refund. I
3 suggested no refund. I think John was at \$100,
4 then we had a -- in between we had suggested 50 and
5 30.

6 To me, offering a refund, again, is an
7 admission of we did something wrong. That's kind
8 of where I'm at with it.

9 MR. GUNTER: Yeah.

10 MAYOR BELL: I don't think, I don't -- going
11 back to what this lawsuit is all about, we feel
12 it's the attorney fees. I don't think whether we
13 pay back any money at all is really going to matter
14 to this attorney.

15 MR. GERKEN: Well, there has to be some money
16 going to the class to justify any attorney's fees.

17 MAYOR BELL: We're giving in that we are going
18 to adjust the bill.

19 MR. GERKEN: I know.

20 MAYOR BELL: So we are admitting at that
21 point, hey, the bill might be a little bit more.
22 That's why I say let's change it from attorney's
23 fees to, hey, we believe for all that research you
24 did, we are going to pay you a certain amount of
25 money.

1 MR. GERKEN: You know, playing the other
2 devil's advocate that I have heard on that is that
3 we have always said that the fee is voluntary, that
4 people didn't have to pay it. So if it's truly
5 voluntary, they shouldn't want a refund.

6 And we should just put our money where our
7 mouth is and say, fine, if they want to claim, if
8 they want to now claim that the voluntary payment
9 wasn't voluntary and get their money back, so be
10 it. They can live with that on their conscience.

11 But I hear what you're saying. I clearly hear
12 what you're saying about the perception of the
13 admission of liability if we give back some money.

14 I think though what you're going to find from
15 the attorney is he -- believe it or not, attorneys,
16 he's not going to feel it's appropriate if there's
17 no payment whatsoever to the class.

18 Trust me, we have made this argument. We made
19 this offer before about just stop the fee, call it
20 voluntary going forward, pay your attorney's fees
21 and be done. And what we get back is there has to
22 be something going to the class, some sort of --

23 MR. ROPER: Yeah. And I think primarily
24 because the judge isn't going to approve the
25 payment --

1 MR. GERKEN: A settlement that doesn't -- only
2 monies are going to the attorney.

3 MR. ROPER: Yeah, exactly. You know, there
4 has to be some, some monetary benefit to the
5 members of the class.

6 MR. GOLDBERG: I got a quarter from AT&T in a
7 little cardboard thing, a check and everything.
8 Did they realize it cost them five times as much to
9 send me that quarter?

10 MR. GUNTER: Scott, I assume that I get this
11 form in my utility bill, and I can, hey, it's
12 almost Christmastime, I can use an extra \$100. And
13 I fill it out, and I can send it back in.

14 Now, my utility bill comes again, and I just
15 continue paying the fees, or do I have to mark --
16 what does it say about you have to check the mark?

17 MR. GERKEN: We're not doing that. We are
18 just going to say that we are going to clearly put
19 on that it's voluntary. Just like people now have
20 opted out. There's over 100 people --

21 MR. GUNTER: So I --

22 MR. GERKEN: You can say I don't want to pay
23 it going forward.

24 MR. GUNTER: What if we give the option of the
25 cap, the \$30 dollars or whatever y'all just said,

1 or the option of two months free?

2 MR. GERKEN: We've got loans that are pledged.
3 We have licensed our revenues and --

4 MAYOR BELL: What if you want to donate that
5 \$30.00 to the Fire Department?

6 MR. GERKEN: Sure.

7 MR. GUNTER: Check this --

8 MR. GERKEN: It's what they want with that
9 money. It would be their money --

10 MR. GUNTER: That's a good idea. And in the
11 form, if you'd like the \$30 to go to the Fire
12 Department --

13 MR. GERKEN: That would be one of the offers
14 that --

15 MR. GOLDBERG: Yeah. Designate that any
16 monies derived from that claim could be put to the
17 Fire Department -- public -- let's not call it the
18 Fire Department. Let's call it Public Safety
19 Department. No?

20 MAYOR BELL: Sure.

21 MR. GOLDBERG: If they are going to donate
22 that money back. If they say on --

23 MR. CONNER: Here's what the city manager told
24 me this. Recently they may have gotten a ticket
25 from a policeman. Fireman only help them.

1 Policeman are sometimes their enemies.

2 So you always want to use the Fire Department
3 if you can because everybody likes the Fire
4 Department. They didn't make anybody mad. Police
5 make people mad. I'm just telling you --

6 MS. KELLY: Well, what about if it went into
7 the charities account for the water bill? It would
8 go into something to eventually help them.

9 MAYOR BELL: Yeah, but they're tying, always
10 tying it into the Fire Department. So that's why
11 I'm saying, I mean, it's going to come back to the
12 general fund.

13 MS. KELLY: Yeah, but if the Fire Department
14 can't use it, they --

15 MAYOR BELL: No, no. It will go back into the
16 general fund at the direction of the Fire
17 Department.

18 MR. GERKEN: In other words, you would support
19 the concept of some kind of refund if they're given
20 an option, if people are given an option of would
21 you like to donate your refund to --

22 MS. KELLY: The Fire Department.

23 MR. GERKEN: -- the Fire Department or a
24 different cause that everybody can stand by that
25 benefits the City.

1 MR. GUNTER: Make sure it's clear that if you
2 check here, you're money will be paid to the Fire
3 Department.

4 MR. GERKEN: Would they still have the option
5 of taking it themselves? They either take it
6 themselves -- or give that money to the Fire
7 Department or not take any --

8 MR. GOLDBERG: Or not take anything at all.

9 MR. GUNTER: No, I don't want that option. I
10 want the, if you check it, then we will give it to
11 the Fire Department.

12 Our internal auditors will move it from one
13 line item to another. I don't want to send them a
14 check and then they turn around and donate it back.

15 MR. GERKEN: Yeah. But they would still have
16 the option of getting the money themselves. I
17 don't care about that, I want my 50 bucks.

18 MR. GUNTER: Correct.

19 MR. GERKEN: Or just check the box, send it
20 back, give it to the Fire Department.

21 MR. GUNTER: Yeah. Send the form back.

22 MR. GERKEN: Or just do nothing and --

23 MAYOR BELL: Yeah, I was going to say make it,
24 make it where it has to be very easy for them to
25 donate it back to the Fire Department.

1 MR. GOLDBERG: Yeah. Make it the first line.

2 MS. KELLY: And \$30 is the amount.

3 MR. GERKEN: To me, in effect, by not making a
4 claim, that's basically what you're doing because
5 that's where the money is now.

6 MAYOR BELL: But this would also show them
7 that it's definitely going to the Fire Department.

8 MR. GUNTER: Yeah. But if you don't make a
9 claim, it comes out of the general fund.

10 MR. ROPER: No. If you don't make the claim,
11 whatever is left over at the end of the day goes to
12 the Fire Department is his proposal.

13 MAYOR BELL: Yeah, but this is --

14 MR. GUNTER: Yeah. It's coming out of the
15 400,000.

16 MR. ROPER: Right.

17 MR. CHESHIRE: I don't like the idea of --
18 it's too complicated. I think people are going to
19 sit there and not get it and not do it. You know,
20 if we have another check thing, we are going to
21 have to give more money to the Fire Department.

22 MAYOR BELL: Well, I think it ought to just be
23 the two, the two choices. Either --

24 MR. GERKEN: Self, Fire Department, you're
25 done.

1 MAYOR BELL: Yeah, either yourself or the Fire
2 Department.

3 MR. GERKEN: If they do something.

4 MAYOR BELL: If they do something.

5 MR. ROPER: And then if they do nothing, it
6 would go to the Fire Department anyway.

7 MAYOR BELL: Or if they do -- if they do
8 nothing, yeah, if you do nothing, your \$30 will go
9 to the --

10 MR. GUNTER: That's already in there.

11 MAYOR BELL: Will go to the Fire Department,
12 or you can take the money.

13 MS. KELLY: What now -- what we are charging
14 them is going into the Fire Department. It's not
15 going into a fund for the Fire Department.

16 MR. GERKEN: I think what you're trying to say
17 is you think if they have the notion of
18 affirmatively saying that money goes to the Fire
19 Department, they may be more likely to have it go
20 to the Fire Department.

21 If they think their only thing is get 100
22 bucks or nothing, they might just claim the 100
23 bucks for themselves not realizing the nuance that
24 it goes back to the City.

25 MAYOR BELL: Exactly. So, in other words, we

1 are committing \$30 per head to the Fire Department.
2 And if they do nothing with this, then that's going
3 to go to the Fire Department budget.

4 MR. ROPER: Remember, they still have to go to
5 the extent of proving that they have paid these
6 fees. There's an obligation for them to show that
7 they have paid utility bills by, in the amount of
8 X.

9 MR. CHESHIRE: How would they do that?

10 MR. GERKEN: Well, really we have the records.
11 I don't see --

12 MAYOR BELL: The other thing is, we are
13 starting, we are starting with 50,000 -- 30 bucks
14 is 50,000?

15 MR. CONNER: 48,7.

16 MAYOR BELL: All right. So we are talking
17 \$50,000 that we are saying is going to go to the
18 Fire Department budget unless you want to take your
19 30 bucks out of that; where we prove that you paid
20 in the 30 bucks, we'll give you the 30 bucks and
21 that goes to the budget for the Fire Department.

22 MR. GERKEN: An interesting tax this year too.
23 If they affirmatively can get the money they get
24 and then they donate it, is that income,
25 miscellaneous income that they earned or -- I don't

1 think it is, but...

2 MAYOR BELL: Does that sound all right?

3 MR. GUNTER: He's talking about miscellaneous
4 income. It's not going to the fireman, it's going
5 to the Fire Department.

6 MR. GERKEN: No, but if you have the ability
7 to take it yourself, and you say no and I defer it
8 and give it to somebody else --

9 MR. GUNTER: Oh, you're talking about the
10 individual.

11 MR. GERKEN: -- if you do it that way.

12 MR. CHESHIRE: I think that if you put 50,
13 guys -- do the \$30, I'm more for 32 because it's
14 four bucks, so you may have to give me four months
15 back. It sounds stupid, but it's a little more
16 level.

17 MAYOR BELL: Sure.

18 MR. CHESHIRE: Okay. So you've got 50 grand
19 sitting in the pot. To hell with the Fire
20 Department thing. If people don't go and sign
21 their thing, I just want the money to go back into
22 the general fund. If there's \$20,000 left over,
23 put it back in the general fund if nobody uses it.

24 Give the attorney whatever he gets. Jim and
25 whatever, give him 500 bucks, whatever you decide,

1 but I think the majority of people aren't going to
2 ask for the money back.

3 MAYOR BELL: Well, the reason I'm saying do
4 nothing and that money will go to the Fire
5 Department, that way people realize, I mean, the
6 connection is made that this is Fire Department
7 money. You know, that's, that's what this is all
8 about.

9 MR. CHESHIRE: Legally is that weird? I mean,
10 I see Scott kind of...

11 MR. GERKEN: No. I think it's just we all
12 know that's where it's going anyway. It is a
13 little odd. I don't know why he would necessarily
14 have a problem with it though.

15 MR. CHESHIRE: I guess the thing is too, if we
16 want to start somewhat low because they are going
17 to try and negotiate -- no matter what we do, they
18 are going to say no, 50 is not enough, we want
19 something that --

20 MR. GUNTER: What do we do about the 147? How
21 long do we wait to see how many opt out?

22 MR. GERKEN: Well, we can do it indefinitely.

23 MAYOR BELL: I think, there again, I talked to
24 Rick about it a little bit. What I would like to
25 do, and I don't know if this is, whether we need to

1 talk about that or not, but to make it, instead of
2 signing just one paper that says I'm out of this
3 thing forever, is to make it a monthly --

4 MR. CONNER: If I could, if I could throw out,
5 having done this in the past, what -- when I get my
6 utility bill, it says water, waste water, solid --
7 you know, I hope it will eventually say solid
8 waste, all these fees.

9 And then in the place where initially has been
10 voluntary fire fee, voluntary fire and police fee,
11 whatever, \$8.00. And then there's the column of
12 all the figures, the water usage and everything
13 else, and it comes down a bottom.

14 In the past when we have initiated these,
15 you -- and you clearly state on there if you do
16 not, if you do not wish to pay the \$8.00 fee,
17 deduct it from your total. The first month you get
18 50 percent participation or 55 percent
19 participation. The second month you get 65 percent
20 participation -- it's too late, sorry.

21 And it just continues in time, and it will
22 stabilize somewhere around 90 percent. And so
23 because eventually, four months later, you get your
24 water bill or your utility bill, you open it up,
25 there's the bottom on that. You write the check.

1 You have got places to go. You're writing your
2 bills, and you put that on there.

3 So each month it's there. And you can't -- I
4 would recommend against, well, all I got to do is
5 fill out one form forever and I don't do this,
6 because I may want to do it.

7 And what we found was, is if you track the
8 economy, when things got really tough and, I mean,
9 this is the roughest spot I think we have had in a
10 long time, but there were some rough times through
11 there.

12 And if you track when the rough times were
13 coming in, you dropped to maybe 80 percent or maybe
14 70, 80 percent. And then as soon as the rough
15 times were over, we saw it pick back up again.

16 So I think people really monitor, to some
17 extent, I can't afford that this month; I'll take
18 it off, I need this money. And then they don't
19 worry about it as much.

20 MAYOR BELL: And in the meantime, we could do
21 a little bit of public...

22 MR. CONNER: Education.

23 MAYOR BELL: -- education so they understand
24 what that...

25 MR. ROPER: How do we deal with the folks that

1 do automatic debit?

2 MR. CONNER: And that question came up before.
3 And the answer was I didn't -- when I was doing
4 this, we never had that type of paper. One-tenth
5 of one percent of people did it.

6 MR. GOLDBERG: That's easy for me because I
7 don't have to worry about it.

8 MR. CONNER: But I think, my suggestion to you
9 is, if it's on the bill, then they can call the
10 bank every month and say when you pay the bill this
11 month --

12 MR. GERKEN: Every month they have to call the
13 bank?

14 MR. GOLDBERG: No. Usually you have to call
15 the City and say, you know, when you put that debit
16 in there, I need you to deduct this out. That's
17 going to be an increased amount of work.

18 MR. CONNER: If we approach it that way,
19 you're absolutely correct. My suggestion is don't.

20 MR. GOLDBERG: I don't think you can call the
21 bank and say, "When you get this bill, I want you
22 not to pay all of this, just pay this."

23 MAYOR BELL: Yeah, but how many of the ones
24 that have opted out at this point --

25 MR. GOLDBERG: Are on automatic?

1 MR. GERKEN: A significant amount. I don't
2 know. A good percentage.

3 MR. CONNER: And maybe that's why, because
4 they can do it automatically one time. That's
5 why...

6 MS. KELLY: Automatically one time?

7 MAYOR BELL: There again, we could do it --

8 MS. KELLY: They should be allowed to do each
9 month.

10 MR. CONNER: Or a renewal period, yeah.

11 MAYOR BELL: Send them the letter out each
12 quarter?

13 MR. CONNER: Or each year. If you do not
14 return this form --

15 MR. GERKEN: Keep opting out every time?

16 MAYOR BELL: I don't know if we have to cover
17 that tonight.

18 MR. GERKEN: Yeah. I think the notion that it
19 be voluntary in some way is sufficient.

20 MAYOR BELL: All right. So I believe I'm
21 hearing \$32.00 right now as a cap, it will be --
22 try to tie that into, if they don't, let them know
23 for sure that the money, if they don't take it,
24 it's there to support the Fire Department. Sound
25 good? Okay. All right.

1 MS. KELLY: But we are going to keep taking
2 out fire and police fees?

3 MAYOR BELL: Yeah, we are doing that.

4 I don't know about the -- it says they wanted
5 us to do this thing in a local newspaper for a
6 period of 60 days. I say scratch the newspaper and
7 put it on our website.

8 MR. GERKEN: Yeah. I don't think they
9 expected every day for 60 days in the newspaper.
10 Maybe once a week.

11 MAYOR BELL: I would say just put it on the
12 website.

13 MS. KELLY: We have to put it in the
14 newspaper, because people don't live here --

15 MR. GOLDBERG: You have to, you have to do it
16 legally. Do you have to do a legal notice on that?

17 MR. GERKEN: There would be some kind of --

18 MR. GOLDBERG: I mean, I've seen them in like
19 USA today and --

20 MR. GERKEN: I wouldn't get tripped up on that
21 issue.

22 MR. ROPER: I mean, I think the Court is going
23 to require some sort of more comprehensive
24 publication for folks that used to live here, but
25 don't live here anymore.

1 MAYOR BELL: Let's try to keep it to a
2 minimum.

3 The remaining funds, I think I'm hearing
4 anywhere from 5,000 to 500, but I think the
5 majority is saying zero for Jim and zero for Mike
6 and Nancy. Is that...

7 MS. KELLY: Yes, because --

8 MAYOR BELL: I know John's thought is he would
9 like to be able to throw them to the dogs and say
10 they sued everybody, but we got this (indicating).
11 They are asking for 15,000 from their fellow
12 citizens.

13 MS. KELLY: And \$100.

14 MR. GOLDBERG: I think you should give them
15 whatever the class gets. That's it. If they are
16 legitimate, then they should reflect on that and
17 say, well, you know, but that's not the way certain
18 individuals think, so.

19 MAYOR BELL: Right.

20 MR. CONNER: I'm not on the line here, but I
21 got to say he's got a good point. Everybody else
22 is getting 32 bucks and your whole purpose was to
23 help everybody else.

24 MAYOR BELL: All right. 32 bucks for Jim and
25 32 bucks for --

1 MS. KELLY: Make them do the same thing as
2 everybody else. They're suing --

3 MR. GERKEN: Is that on top of the, they get
4 their 32 bucks as a class member and --

5 MAYOR BELL: No.

6 MR. GERKEN: So you are saying nothing?

7 MAYOR BELL: Nothing. They can just file for
8 their, their refund.

9 MR. GOLDBERG: That might put like a 16th of a
10 tank of gas in his truck.

11 MAYOR BELL: Now, to make it a legitimate
12 offer, I probably -- you know, I hate to do it, but
13 25,000 is probably a little bit low. I don't know.
14 You know, if it's all about attorney's fees, if we
15 are going to make them a legitimate offer, probably
16 50 is going to be more, will get more attention
17 than 25.

18 MR. GUNTER: They are going to counteroffer,
19 so make it 30 and go from there.

20 MR. CHESHIRE: Is he the type of attorney
21 that, you know, like in real estate negotiations,
22 you really low ball them and they get pissed off
23 and don't want to talk to you, or is he, you know,
24 oh, I understand? What's his attitude?

25 MR. GERKEN: I don't know (unintelligible).

1 THE COURT REPORTER: I'm sorry. I can't hear.

2 MR. GERKEN: I said I don't know. I think you
3 can make whatever kind of offer you want. I mean,
4 I truly think that the offer you're making back, it
5 almost would be easiest to say no. I mean, it's
6 just -- I don't know about Mike's thoughts, but, I
7 mean...

8 MR. ROPER: I think he understands this is a
9 negotiation. I don't think he would have been as
10 candid as he was with us this afternoon had he
11 expected you to have wrote him a check for
12 \$125,000, so.

13 MR. GERKEN: So I think with the notion that
14 that's the way you come out and then see what they
15 say from there.

16 MAYOR BELL: What if we stated \$25,000 and
17 then \$10,000 for expenses?

18 MR. GUNTER: 35,000 total?

19 MR. CONNER: With a cap of 10,000 for
20 expenses, because he's got prove them.

21 MR. GERKEN: He's got to document the
22 expenses.

23 MAYOR BELL: What do you think?

24 MR. GERKEN: I think just like they didn't
25 expect you to take their offer, I don't expect them

1 to take this, but I do think it's a, you know, it
2 certainly opens up dialogue.

3 And, you know, I think we are going to have
4 the hearing next Tuesday. This isn't going to get
5 resolved by then, and we will move forward from
6 there.

7 MAYOR BELL: I mean, my initial reaction is
8 probably about three or four others and --

9 MR. GERKEN: Did we say, did we say how much
10 was going to be in the fund? You said \$32.00 per
11 person. I don't know if it matters too much,
12 because that's not going to add up to much.

13 MAYOR BELL: 32 would come to what about?

14 MR. CONNER: 50,000. Oh, you are right --

15 MR. GERKEN: Remember, there's past people,
16 so. And frankly, I don't think we even know at
17 this point what the number is going to be.

18 MR. GOLDBERG: Because he talked about that
19 today.

20 MAYOR BELL: Did he figure 2000 people?

21 MR. GUNTER: But I can tell you now, with a
22 \$32 cap, I'm not going to mess with it --

23 MAYOR BELL: Mess with it --

24 MR. GUNTER: -- period.

25 MR. ROPER: And remember, the attorney's fee

1 comes out of the fund as well.

2 MR. GOLDBERG: So you have to add that into
3 it.

4 MR. GERKEN: So you've got to have at least 35
5 plus --

6 MAYOR BELL: So a cap of 100,000.

7 MR. GERKEN: \$100,000. And out of that comes
8 the 25 in fees, 10,000 in expenses, and a \$32.00
9 per person claim.

10 And they did also clarify that the way this
11 was proposed, their fees and costs come last, so
12 that if the class claims --

13 MR. GOLDBERG: Exceed the cost?

14 MR. GERKEN: -- eat up the monies, then there
15 wouldn't be -- I don't know if you were there,
16 Mike, when they said that.

17 MAYOR BELL: They're trying to look like good
18 guys now.

19 MR. GERKEN: So \$100,000 fund out of which
20 comes the \$32.00 per person claim, the \$10,000 --
21 up to \$10,000 documented expenses, and \$25,000 in
22 attorney's fees.

23 MAYOR BELL: If he jumps on that, I'm going to
24 shoot myself.

25 MR. GOLDBERG: I don't think he's going to

1 jump on it, but I think it'll make him think.

2 MR. CHESHIRE: I have a question, and it's
3 sort of goes along with the lines of what Scott
4 said.

5 If, you know, we're sort of not even offering
6 in some ways, so would we be better off if we don't
7 offer them anything and just say don't offer them
8 anything and make them sweat a little? Or is that
9 not a good thing?

10 MAYOR BELL: Well, I would say definitely
11 let's put a time limit on this thing. Give them
12 one week?

13 MR. GOLDBERG: Are you going to present this
14 tomorrow?

15 MR. GERKEN: Yeah, I'm going to probably get
16 back with him tomorrow. Yeah. I told him today I
17 would get back with him.

18 MR. GOLDBERG: Call me after you talk with
19 him.

20 MR. GERKEN: I'll let Mike do that.

21 MR. GOLDBERG: Yeah. Call me and let me know
22 what --

23 MAYOR BELL: Is one week a good time?

24 MR. GERKEN: That's perfectly fine. I don't
25 know, unless we want to literally end it prior to

1 the certification hearing.

2 MAYOR BELL: When is the certification
3 hearing?

4 MR. ROPER: Tuesday.

5 MAYOR BELL: Are you sure?

6 MR. GERKEN: Well, that will give them the
7 weekend. You can always refute the offer.

8 MR. GOLDBERG: Give them the weekend to mull
9 that over.

10 MR. ROPER: Yeah.

11 MS. KELLY: Mike, are you going to be making
12 this offer with enthusiasm and like you really
13 think it's a good offer and they need to take it?

14 MR. ROPER: I'll be as enthusiastic as I can.

15 MS. KELLY: Yeah. Because I can see it on
16 your face. You think it's a terrible offer.

17 MAYOR BELL: Once this offers expires --

18 MR. GERKEN: I think at this point we are
19 really just talking about general parameters and
20 discussing it, but we are not like extending, are
21 we, a formal offer?

22 MR. ROPER: Well, I think we need to think
23 about that because, you know, if, you know, if
24 that's the case, then, you know, it may become a
25 matter of public record, and I'm not sure we want

1 to do that.

2 MR. GERKEN: Right. We are not going to be,
3 here is the offer, a counteroffer from the City. I
4 think we are basically, what you were saying
5 earlier, is here are some parameters; go back and
6 discuss with them the possibilities of that and see
7 what the response is.

8 And if they say great, we can put together a
9 proposed offer and bring it to you for potential
10 approval.

11 MR. ROPER: And if I'm giving you the
12 impression I don't think it's a legitimate offer,
13 that's not my intention at all. I mean, this is a
14 negotiation. So, in terms of an initial offer, I
15 think it's perfectly reasonable.

16 You know, I mean, I don't think it will settle
17 the case, if that's what the question is. Do I
18 think this will settle the case? No. But I think
19 it starts a dialogue and may get you closer to
20 settling the case.

21 MAYOR BELL: I mean, seriously, this is
22 probably the best that I am going to suggest. So
23 if they don't take this, I'm probably going to push
24 it to be that we continue. I mean, that's my
25 thoughts.

1 MR. ROPER: You know, we can couch it to them
2 in those terms; say, listen, you know, we are
3 trying to cut to the chase here. Attorney's fees
4 are continuing to accrue.

5 And time is getting away from us, and we're
6 having hearings and class certifications. And, you
7 know, if the judge doesn't certify the class, then
8 the price of poker just went down for you guys.

9 So, I mean, there certainly is a number of
10 different --

11 MAYOR BELL: And like I said, I think, I think
12 if we go ahead and get a little bit of political
13 interest on the outside too, that that might come
14 about too. So I really would like Scott to proceed
15 with the public records request.

16 MR. GERKEN: You want me to make a public
17 records request on behalf of Fruitland Park or just
18 attorney's fees from --

19 MAYOR BELL: I think to request the billing.

20 MR. GUNTER: Do you think Scott should do it
21 or --

22 MR. ROPER: Let me suggest, let me suggest
23 that I do that. I'm out of the fray here. I'm
24 from Orlando. You know, let me do that.

25 MR. GOLDBERG: Scott's got to live here.

1 MR. ROPER: Scott is closer in this community,
2 and it's probably more appropriate that I do it.
3 So I'll be happy to.

4 MAYOR BELL: On behalf of Fruitland Park?

5 MR. ROPER: On behalf of my client, the City
6 of Fruitland Park, yes.

7 MAYOR BELL: Okay. The residents of Fruitland
8 Park.

9 MR. CHESHIRE: How long do you foresee this
10 taking? Say the negotiations go through the 1st to
11 September 10th. Is this something that has to be
12 settled by the end of the year, or just kind of
13 years of back and forth in court, or is it...

14 MR. ROPER: I mean, I think I know where -- I
15 think they know where they want to be. So I don't
16 think -- if we got the number and they were fine
17 accepting it, I don't think it would take them very
18 long to do that.

19 Now, how long would it take the judge to
20 approve everything...

21 MR. CHESHIRE: I mean, if we say they know
22 where they want to be, but we're not going to go
23 there --

24 MR. ROPER: Right.

25 MR. CHESHIRE: -- and we are going to go to

1 court, is this a quick and easy thing? Or is it,
2 you know, this is going to settled in 2025?

3 MR. GERKEN: No. I think what will happen is
4 if we don't settle this class certification one way
5 or another, there's probably going to be a motion
6 for summary judgment done sometime after that.

7 This will not take as long as, for instance,
8 the other case that we have.

9 MR. ROPER: Yeah. But there is going to be
10 some time there, because obviously if the class is
11 certified, then notices have to go out to the
12 potential class members. They have to have time to
13 opt in or opt out of the class. Those things are
14 all going to take time.

15 MR. GERKEN: They'll be into 2014, but within
16 this fiscal year would be my prediction we would
17 have some sort of order from the Court.

18 MS. KELLY: I'm sure then that it's going --
19 you said it's going to take time. You're going to
20 be wanting information from everybody that's been a
21 water customer, correct, to send these notices to?

22 MR. ROPER: Ultimately the Court is going to
23 require this.

24 MS. KELLY: Okay. Well, make sure that our
25 staff has time to get it, because I don't like the

1 way we've been pushed so hard to get these things
2 done in a couple of days where they can't get their
3 own work done. It's bad.

4 MR. ROPER: I understand that they are under a
5 lot of demand, so we'll try and be more cognizant
6 of that.

7 MR. CHESHIRE: You were with them today, and
8 you stated that you know where they want to be.
9 You just stated that; you kind of know where they
10 want to be. I mean, what...

11 MR. ROPER: I misspoke. What I meant to say
12 was they know where they want to be.

13 MR. CHESHIRE: Oh, okay.

14 MR. ROPER: I have an idea of where they want
15 to be, but I think they know ultimately what they
16 are willing to take. So I don't think it's going
17 to take them long to make a decision, as opposed
18 to, to us.

19 You know, we have to come and do this type of
20 a meeting and have these discussions. And, you
21 know, I think they can make their decisions on
22 their end fairly quickly.

23 MS. KELLY: Could we do -- I'm off the subject
24 now, but could we do an interview with like the
25 newspaper or something like that to let them know

1 what our things are on this, since this is public
2 record?

3 MR. GERKEN: Certainly. I mean, cities have
4 communications with customers.

5 MAYOR BELL: Not what we discussed here
6 tonight.

7 MS. KELLY: No, no, no, not that. But what,
8 but like we don't feel we did anything wrong
9 because of Home Rule, and it kept from making their
10 property taxes being increased. I mean, that was
11 the whole purpose behind putting the fees in place.

12 MR. GERKEN: Yeah. It's something beyond --
13 that has nothing to do with the litigation. The
14 City can certainly speak its case as it wishes, but
15 as far as the litigation --

16 MR. ROPER: Unless you want to make it part of
17 the litigation strategy, we probably shouldn't
18 discuss it.

19 MR. GERKEN: Yeah, we are not going to get
20 into that now.

21 MR. GOLDBERG: Do we direct you to go forward
22 with what --

23 MR. GERKEN: I mean, no. We are not doing
24 that -- I don't think we are taking any action.
25 You don't have a proposed, here's a settlement.

1 We are just going to go, and we have some
2 direction of the general parameters of what you're
3 looking for. And I think that Mike will discuss
4 that with Mr. Schroth tomorrow and, you know...

5 MAYOR BELL: That's basically all I have to
6 announce is that we have given you some parameters?

7 MR. GERKEN: Yeah. You don't even have to
8 announce that. I mean, we are not voting on
9 anything. We are not taking any official action.
10 Yeah, you can just say that there's no, you know,
11 action -- no action being taken at this point.

12 Correct, Mike?

13 MR. ROPER: Yeah.

14 MR. GERKEN: We just have our instructions of
15 general parameters that we need.

16 If, in fact, we can get to some sort of a
17 settlement, obviously, that would have to come back
18 to the commission and be approved in an open
19 meeting at a subsequent date.

20 MR. CHESHIRE: As we go on, and you talk to
21 him tomorrow and he says, "I really want this and
22 this," will you talk to us individually, or you'll
23 have another meeting and discuss what he's saying
24 and --

25 MR. GERKEN: It's almost a judgment call

1 sometimes, but it depends on how close this is to
2 your parameters and along with that.

3 Obviously, the safest thing is to do another
4 Shade Meeting in the future, but we'll just have to
5 see how they respond.

6 MR. CONNER: Do you have to, now that you have
7 done this process, do you have to have another
8 regular open meeting to then declare another Shade
9 Meeting, or can you now just post a Shade Meeting?

10 MR. GERKEN: I would have to, if we were going
11 to have another Shade Meeting, request that at
12 another open meeting.

13 MR. CONNER: Okay. If you talk to them -- and
14 if you don't mind me asking this. I'm trying to
15 save you a little trouble.

16 You talk to them with these parameters, and
17 they say, well, you know, that gives us some
18 perspective, we'll now make another offer to you,
19 that becomes public record as soon as they make it,
20 right? So you can provide it to the commission
21 without --

22 MR. GERKEN: Yes.

23 MR. CONNER: There's no --

24 MR. GERKEN: Just like I did last time. I can
25 forward it around. Here's an offer from the

1 people --

2 MR. CONNER: The Commissioner was asking me
3 and I wasn't --

4 MR. GERKEN: Matter of fact, I think last time
5 I literally sent it out saying I'm not going to do
6 anything unless you want to have a special meeting
7 or Shade Meeting and discuss it, let us know. And
8 that's the way it went.

9 So, yes, if we get any kind of counteroffer,
10 we would have to do the same thing.

11 MAYOR BELL: We have got a very full schedule
12 between now and pretty much the end of September
13 and probably maybe into the first part of October.
14 If you want to --

15 MR. GERKEN: We will have plenty of
16 opportunities to request meetings.

17 MAYOR BELL: Yeah, to request meetings, but
18 really, let them know it's going to be tough to, if
19 they are even thinking close, it might be to their
20 advantage just to accept what we're doing.

21 MR. GERKEN: I understand.

22 MAYOR BELL: All right. So with that, we'll
23 close the Shade Meeting?

24 MR. GERKEN: Yes. Announce the termination of
25 the attorney/client session Shade Meeting, and we

1 reconvene the Special City Commission Meeting.

2 MAYOR BELL: All right. As Scott said, we'll
3 terminate the attorney --

4 MR. GERKEN: Attorney/client session.

5 MAYOR BELL: Attorney/client session and
6 reconvene as our regular special meeting.

7 (The Shade Meeting was concluded at 8:07 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:
COUNTY OF LAKE:

I, SUSAN L. DAVIS, Florida Professional Reporter and Notary Public, State of Florida at Large, certify that I was authorized to and did report the foregoing proceedings, and that the transcript, Pages 3 through 110, is a true and correct record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED this 16th day of September, 2013.


SUSAN L. DAVIS, FLORIDA PROFESSIONAL
REPORTER AND NOTARY PUBLIC
MY COMMISSION #EE 039717
EXPIRES: DECEMBER 12, 2014
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