

CITY COMMISSION CLOSED SESSION
CITY OF FRUITLAND PARK, FLORIDA

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SHADE MEETING
CONFIDENTIAL AND SEALED
SESSION BEFORE THE FRUITLAND PARK CITY COMMISSION

DATE TAKEN: MAY 23, 2013
TIME: BEGINNING AT 9:40 P.M.
CONCLUDING AT 10:38 P.M.
PLACE: FRUITLAND PARK CITY COUNCIL CHAMBERS
506 WEST BERCKMAN STREET
FRUITLAND PARK, FLORIDA
REPORTED BY: BETH J. BREESE, FPR
COURT REPORTER AND NOTARY
PUBLIC, STATE OF FLORIDA
AT LARGE

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1 BEFORE:

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MAYOR CHRISTOPHER J. BELL

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VICE MAYOR SHARON KELLY

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COMMISSIONER JOHN L. GUNTER, JR.

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COMMISSIONER CHRISTOPHER CHESHIRE

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COMMISSIONER AL GOLDBERG

7

ACTING CITY MANAGER/POLICE CHIEF TERRY ISAACS

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SCOTT A. GERKEN, ESQUIRE, ATTORNEY FOR FRUITLAND PARK

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MICHAEL J. ROPER, ESQUIRE, ATTORNEY FOR FRUITLAND PARK

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

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3 MR. GERKEN: The only people who will be in
4 attendance at the closed meeting will be Vice Mayor
5 Kelly, Commissioner Gunter, Mayor Bell, Commissioner
6 Cheshire, Commissioner Goldberg, myself as the city
7 attorney, Mike Roper as the city attorney -- and I
8 apologize, Mike. I told him we'd -- about a
9 half-hour, we'd be into this thing. Mike Roper, and
10 our court reporter. Oh, and our city manager --
11 acting city manager, Terry Isaacs.

12 MAYOR BELL: All right. And we'll adopt that.
13 We will start at this point with our closed meeting.
14 I would like to ask anybody that was not mentioned to
15 be excused.

16 MR. GERKEN: Now, after this meeting we will
17 reopen up -- if anybody wants to stay, we will reopen
18 the public session.

19 (Everyone with the exception of the
20 above-mentioned people left the council chambers.)

21 MAYOR BELL: What we want to do is I'm going to
22 announce again one more time that we are going to
23 move into a closed meeting. Present for that closed
24 meeting is Vice Mayor Sharon Kelly, Commissioner John
25 Gunter, Mayor Chris Bell, Acting City Manager Terry

1 Isaacs, Commissioner Chris Cheshire, and Commissioner
2 Al Goldberg, our city attorney Scott Gerken and...

3 MR. GERKEN: Michael Roper.

4 MAYOR BELL: Okay. And the court reporter --
5 but Mike Roper and our court reporter...

6 THE REPORTER: Beth Breese.

7 MAYOR BELL: Beth Breese. Thank you.

8 The approximate time for this meeting should be
9 about 30 minutes. And with that, we'll go into the
10 closed meeting.

11 MR. ROPER: And, Mayor Bell, just one other
12 suggestion. Perhaps, since we're creating a record,
13 you should announce that we are going to be
14 considering the Deborah Stein versus the City of
15 Fruitland Park litigation.

16 MAYOR BELL: For the purposes of this meeting,
17 we will be considering the Deborah Stein versus City
18 of Fruitland Park.

19 COMMISSIONER GUNTER: Is this still being
20 recorded?

21 MAYOR BELL: No.

22 MR. GERKEN: No.

23 MAYOR BELL: The court reporter's -- she's
24 making a transcript.

25 MR. GERKEN: Okay. What I can do is -- we've

1 done these a few times before, but I want to go
2 through a few of the ground rules, just to remind
3 everybody of what we're doing here tonight.

4 As you know, the subject matter to our
5 discussions has to be limited to settlement
6 negotiations or strategy sessions related to the
7 Stein litigation. So let's keep it on that -- that
8 matter. Basically, talking about that lawsuit.

9 The second thing is that, although we are in a
10 closed session now -- or commonly called a shade
11 meeting -- this -- the reason we have a court
12 reporter here this evening is so -- she's taking down
13 a verbatim transcript of everything that is said here
14 this evening. And at the conclusion of the
15 litigation, that transcript will be made public. So
16 anybody can see it. So anything you're saying this
17 evening, although it's in the shade at the moment,
18 will be made a public record at a later time, just
19 so -- for your edification.

20 Notice -- I think we have confirmed that notice
21 was given, advertised in the paper, with everybody's
22 names that are present here this evening. I would
23 ask -- oh, that's right. Our clerk is not here this
24 evening to confirm that. But she did -- Diane,
25 before resigning today or yesterday, did forward to

1 us proof of the publication -- which I think I
2 forwarded to you as well, Mike, so.

3 The other thing is that we do not take any
4 action on the litigation at this meeting. We're,
5 actually -- any action we would take -- if we come to
6 a conclusion like -- that you'd like to take some
7 action, it has to be in the open session. Now, that
8 can be after we go back into open session this
9 evening or just at an open session at a later date,
10 depending, frankly, where we go with our discussions
11 this evening.

12 I think that are -- that's the basic ground
13 rules.

14 Mike Roper is here this evening. He is the
15 lead counsel for the City, with the law firm of
16 Bell & Roper, handling the defense of the case. I
17 could tell you, but if it's all right, I'll just turn
18 it over to Mike. He'll give you a little rundown.

19 You-all are, obviously, familiar with the
20 basics of the case. But he can give you a little
21 summary of where we are right now. You saw the
22 little article in the paper and all of that and some
23 of the issues around, but he can give you a little
24 summary of where we are -- how it started, where we
25 are now, and what we need to do going forward.

1 Mike.

2 MR. ROPER: Yeah. Thanks, Scott.

3 And I'll just echo Scott's admonitions, I
4 guess, and just say, you know, this particular
5 case -- we have some other petty litigation with a
6 fair amount of overlap amongst some of the factual
7 circumstances surrounding the cases. So I'm perhaps
8 going to try and be a little bit even more
9 circumspect than I would normally be in this type of
10 a meeting.

11 I'll, certainly, answer any questions that
12 you-all may have, but, you know, even though this
13 matter may, ultimately, be resolved, the other cases
14 are still going. And I, certainly, don't want to
15 prejudice the City's position in any way in those
16 cases, so.

17 I think, as you all know, the primary purpose
18 for us being here tonight is to consider and for me
19 to seek the City's consent to the insurance company's
20 desire to enter into a settlement with Deborah Stein,
21 who is a current City employee.

22 Ms. Stein, as you all know, has an employment
23 labor claim against the City. She's represented by
24 counsel. I know that you all are familiar with the
25 general allegations, and so I won't belabor the point

1 in going into those.

2 But, essentially, the posture of that claim
3 right now is that a civil lawsuit has been filed and
4 is pending in the federal court, Middle District,
5 here -- up in Ocala, actually. And we've had ongoing
6 discussions with Ms. Stein's counsel. We have -- had
7 asked them not to proceed with the service of the
8 lawsuit in order to see whether or not we could get
9 this matter resolved without having to -- to go down
10 the litigation route.

11 My associate Cindy Townsend had a lot of
12 discussions and negotiations with their counsel.
13 And, ultimately, we were able to negotiate a demand
14 from plaintiff's counsel to settle the entire lawsuit
15 for a total sum of \$150,000. And that would be to
16 settle the claims both against the City and against
17 Mr. Bowers.

18 And the essential terms of the settlement would
19 be that Mrs. Stein -- or Ms. Stein -- would execute a
20 general release in favor of both the City and
21 Mr. Bowers and all City employees and agents for any
22 and all claims that she might have arising out of her
23 employment with the City of Fruitland Park up to the
24 time that the release is signed. Okay?

25 So anything that's in the past, any action that

1 she may have had -- whether they be for any sort of
2 discrimination, any sort of Workers' Comp claim,
3 anything of that nature -- would be released, in the
4 past. And it would not -- that release,
5 unfortunately, would not apply to any future claims
6 that she might have in the future as a result of her
7 continued employment with the -- the City of
8 Fruitland Park.

9 The -- the settlement does contemplate that she
10 would remain employed with the City of Fruitland
11 Park.

12 Normally, in these types of cases, we attempt
13 to negotiate a resignation if the person is still
14 employed. We had those negotiations with plaintiff's
15 counsel, and there's been a slight development in
16 that regard that I'm going to make you aware of.

17 But at the time of my negotiations with them,
18 the demand was for the payment of another \$80,000 on
19 top of the 150. So a total of \$230,000 for her to
20 resign her employment.

21 We had discussions with the insurance carrier.
22 They were unwilling to -- to pay the additional
23 amounts to secure a resignation of her employment.
24 And so we did not pursue that -- that -- that angle
25 further.

1 In terms of the -- the demands that are
2 currently on the table, there are two --
3 essentially -- there are, essentially, two options
4 that are on the table. The second option was only
5 introduced yesterday when I had a conversation with
6 plaintiff's counsel. He called me yesterday to
7 provide, essentially, an updated or supplemental
8 demand.

9 The first opt -- the first demand that's on the
10 table and which I have authority from the insurance
11 company to accept and -- and need the City's consent
12 to proceed with is the -- the proposal I just
13 outlined to you: \$150,000, she signs a release,
14 there's not an admission of liability, she remains
15 employed. And that's, essentially -- those are the
16 essential terms of -- of the settlement.

17 The second proposal that was made yesterday was
18 that she -- was a demand for \$185,000 and she would
19 resign her employment. So now there's -- the demand
20 is for an additional \$35,000 in order for her to
21 resign her employment.

22 I discussed that yesterday and today with the
23 insurance company. Their position remains the same.
24 They're not willing to pay any additional amounts to
25 secure her resignation.

1 But as your counsel, I wanted to bring that to
2 your attention, that that was an additional proposal
3 that was put on the table yesterday. And -- and so
4 it's available for your consideration.

5 In terms of the -- the lawsuit itself, I think
6 it might be helpful for you-all to understand some of
7 the thought processes that went into the carrier's
8 decision to authorize the -- settle the case for
9 \$150,000.

10 This is a -- this is a little bit different
11 than -- frankly, than most of the sexual
12 harassment-type cases that are out there right now.
13 This is not truly a hostile work environment-type
14 case. Okay? This is the old school -- what we call
15 a quid pro quo case. Okay? This for that. This is
16 the situation where, you know -- the allegations, at
17 any rate, are that Ms. Stein's continued employment
18 here was contingent upon her engaging in certain
19 conduct with Mr. Bowers.

20 The distinction there is -- in any quid pro quo
21 case is, if the plaintiff proves their case, you
22 don't get to rely on the normal defenses such as we
23 had a policy, a written -- a sexual harassment policy
24 and -- and she didn't report it. And you don't get
25 to -- to rely on those normal defenses that you would

1 have in a hostile work environment case. If they
2 prove that the -- the conduct occurred --
3 essentially, it's a strict liability case. Okay?

4 So they're very difficult to defend. Really,
5 your only defenses are sort of factual defenses in
6 cases like this. Namely, i.e., it never occurred.
7 Or it occurred but it was consensual. Okay? Those
8 are -- that's what you're left with in defending a
9 claim of this nature.

10 Understanding that we have not really gotten
11 into full-blown discovery and things in terms of
12 taking depositions and putting people under oath,
13 there is at least some tacit acknowledgement on the
14 part of Mr. Bowers that there was some sort of
15 relationship between himself and Ms. Stein. The
16 nature and extent of that really hasn't been
17 explored, so I'm not confident that the -- the
18 it-didn't-occur defense is going to be of much help
19 in this particular case.

20 So, really, what we're down to is -- is a
21 defense that the relationship was consensual. The --
22 the difficulties that I perceive going forward in
23 defending the case is that you have Ms. Stein, who
24 will testify, obviously, and has already to a certain
25 extent given statements to law enforcement regarding

1 the nature of the -- her relationship with
2 Mr. Bowers.

3 As of today -- or as of this week, anyway --
4 Mr. Bowers was not talking to -- to me. I made
5 attempts to contact him through his attorney. He
6 indicated that he would not allow me to speak with
7 him. So as far as defending the City and defending
8 the allegations down the road, it's going to be
9 extremely difficult to do that. Okay?

10 From the insurance company's standpoint, what
11 they're looking at is if this case goes forward --
12 they've already hired me to defend the City in the
13 case. They've also had to hire a separate law firm
14 to represent Mr. Bowers in the case. I could not
15 represent him in the case. There's a conflict of
16 interest between the City's interests and Mr. Bowers'
17 interests, and we have to have separate counsel. And
18 the insurance company would be required to pay --
19 hire them and pay for him to be defended in the case.

20 The other issue is this case -- frankly, these
21 cases, you know, are very difficult -- very expensive
22 to defend. You know, unlike an automobile accident
23 where you have one event and you've got the witnesses
24 for that one event, oftentimes these employment cases
25 involve multiple incidents, multiple witnesses. The

1 discovery is -- is significant. The attorney's fees
2 and costs are significant. If the case were to be --
3 to continue to be litigated, just the defense costs
4 and the defense fees going forward I think would --
5 would significantly be more than \$150,000.

6 In addition to that, if our analysis -- once
7 again, admittedly, based upon just the initial
8 investigation -- and it's a very limited
9 investigation at this point in time. But, certainly,
10 you know, I -- I have to tell you candidly that I
11 evaluated -- it's a case of potential liability
12 against the City. And if -- if that -- if that
13 evaluation proves to be correct and the plaintiff
14 prevails with respect to any of the civil rights
15 counts, she would be entitled to an award of damages.

16 In this case, there really are not --
17 they're -- there's nothing in the way of economic
18 damages in terms of lost wages or lost income, lost
19 position, that type of thing. But -- so it's
20 primarily just an emotional distress, pain and
21 suffering award. From my perspective, those are very
22 difficult to -- to evaluate, but, you know, there
23 could be a significant award in that regard.

24 But, really, in these cases what's -- what's
25 the -- primarily the most dangerous item is, if the

1 plaintiff prevails, then the plaintiff's lawyer is
2 paid his attorney's fees as well. On top of any --
3 any award that's awarded to the plaintiff.

4 So I think you can see, what you're looking at
5 here is, if the case were to go forward, the ultimate
6 exposure to the City, the ultimate exposure to the
7 insurance company, would be well in excess of
8 \$150,000. Okay?

9 So if -- if there's -- there's an economic
10 analysis that's been conducted by the carrier based,
11 in part, upon our legal analysis of -- of the
12 potential exposure and liability of the City for this
13 claim. The -- the coverage agreement that you have
14 with the insurance trust -- and I think I said
15 insurance company earlier. It's more of an insurance
16 trust. It's not a commercial carrier.

17 But the agreement that you-all have with them
18 for your employment practices coverage requires that
19 you-all consent to the settlement. Okay? And there
20 are -- there's a provision in -- in the policy which
21 provides that -- that if you do not consent to a
22 settlement, the insurance company has the ability,
23 essentially, to cap its exposure for both defense
24 costs and any future award of damages or plaintiff's
25 attorney's fees to the amount that they could have

1 settled the case for.

2 So, essentially, you -- you have the right not
3 to consent, but if you do that, then their liability
4 going forward is capped at \$150,000, in a nutshell.
5 Okay?

6 So, you know, that's -- that's -- that's where
7 we are at this point in time. There are -- there are
8 really -- as I said earlier, there are two options
9 that are on the table. There's the one that the
10 insurance company's authorized me to proceed with.
11 It's a \$150,000 settlement, subject to your consent.
12 The other one's the -- the one that kind of came out
13 of left field yesterday, with the \$185,000 demand,
14 which would include her resignation of her
15 employment. And that's -- that's kind of where we
16 are at this point in time.

17 You know, the case can be settled. You know,
18 obviously, there are -- I -- I've brought to you the
19 financial considerations that have gone into the --
20 my analysis, anyway -- of -- of where we stand.

21 Obviously, there's also a -- a benefit to the
22 citizens and the City to, you know, get this matter
23 behind you and -- and move forward. But those --
24 obviously, those are -- those are considerations for
25 you-all to -- to contemplate.

1 COMMISSIONER GUNTER: Eighty -- so 85,000?

2 MR. ROPER: Yes.

3 COMMISSIONER GUNTER: The insurance company's
4 picking up on that or no?

5 MR. ROPER: No.

6 MR. GERKEN: No.

7 COMMISSIONER GUNTER: The insurance company's
8 picking up the 150 and the City has to provide the
9 35,000?

10 MR. ROPER: That's correct.

11 COMMISSIONER GOLDBERG: Plus the 15,000 --

12 MR. GERKEN: Plus the -- you know --

13 COMMISSIONER GOLDBERG: So it really costs
14 us --

15 MAYOR BELL: The 150 was less --

16 MR. GERKEN: My -- my understanding is, on the
17 150,000, we would pay our deductible. Which is, I
18 believe, \$15,000. The insurance company would pay
19 the other 135,000.

20 COMMISSIONER CHESHIRE: Okay. That's what I
21 thought.

22 MR. GERKEN: I do think on the 185,
23 basically -- what the insurance company does is, if
24 that's an offer the City wants to do, that additional
25 35,000 has to come from the City too. So we would be

1 paying, effectively, 50,000, and the insurance
2 company would still be paying the 135.

3 Is that -- is that correct?

4 MR. ROPER: That's correct, Scott.

5 MAYOR BELL: What -- what about unemployment?
6 There'd be -- there'd be no unemployment at that
7 point?

8 MR. ROPER: Well -- okay. You're thinking on
9 that \$185,000 option?

10 MAYOR BELL: Yeah.

11 MR. ROPER: I didn't discuss that with the
12 plaintiff's counsel in terms of that, but I would --
13 normally, that would include any unemployment claim.
14 You know, they would agree not to make an
15 unemployment comp claim. That would be the normal
16 provision. We would, certainly, make that part of
17 the -- the proposal.

18 VICE MAYOR KELLY: But if you go back to them
19 with that, they're going to say, no. We're going to
20 go ahead and pursue getting unemployment too.
21 Because it wasn't originally talked about.

22 The insurance company's paying you just to tell
23 us that we have to go along with what they decide?
24 That's what it sounds like. It doesn't sound like
25 you're defending us.

1 MR. ROPER: Well --

2 VICE MAYOR KELLY: Sorry.

3 MR. ROPER: I -- I --

4 VICE MAYOR KELLY: You're giving in. Nobody
5 has said, did this really happen? I mean, there's no
6 proof that this did other than her saying it.

7 MR. ROPER: Just to be clear, Commissioner, the
8 insurance company's paying me to defend the City in
9 this litigation. I have provided my analysis of the
10 potential liability for the City in the case --

11 VICE MAYOR KELLY: Uh-huh.

12 MR. ROPER: -- and we've negotiated this deal.
13 And at the end of the day, it is up to the City to
14 decide whether or not they want to consent to --

15 COMMISSIONER GUNTER: How come --

16 MR. ROPER: -- this proposal or not.

17 COMMISSIONER GUNTER: -- nobody approached us
18 and said, what -- what are you-all willing to
19 negotiate at?

20 I mean, I don't know what she came in and said
21 that she wanted in the first place, but then nobody
22 come to the -- as far as I know -- and asked us,
23 well, do you -- what do you-all want from your end?

24 One thing I want for the City is that she be
25 gone. I mean, I felt -- whether he's guilty or she's

1 guilty, they both was involved. And we -- we've got
2 employees now that's just walking around on eggshells
3 because they're scared to say anything to her.

4 And --

5 VICE MAYOR KELLY: Yeah.

6 COMMISSIONER GUNTER: -- you know, to continue
7 being an employee here, they're still going to walk
8 on eggshells. Don't say nothing to her; she's going
9 to sue us again. Or, you know -- we can't fire her.
10 She can just do whatever she wants to do. So, I
11 mean, we're -- if you're representing us, how come
12 you didn't come and say, hey, what do you-all want me
13 to negotiate for you-all?

14 MR. ROPER: Well, that's why we're here.
15 That's why we're here tonight. I mean, if -- if --

16 COMMISSIONER GUNTER: Well, I thought we was
17 here to make a settlement. I didn't know we could
18 still negotiate.

19 MR. ROPER: You have -- the options that you
20 have on the table is -- you can reject the settlement
21 that's on the table, \$150,000, with the understanding
22 of the implications that I've outlined for you; you
23 can accept the \$185,000 demand, which would include
24 her resignation from -- of her employment; or you can
25 make a counterproposal.

1 MAYOR BELL: And -- so we could -- we could sit
2 here tonight and say we'll pay -- we'll agree to the
3 150 --

4 COMMISSIONER GUNTER: If she's gone.

5 MAYOR BELL: -- if she's gone, along with --
6 she has to resign?

7 MR. ROPER: Well, you could. Understanding
8 that that would be -- that that would be -- that
9 would trigger the hammer clause with respect to the
10 insurance company.

11 MAYOR BELL: Right.

12 MR. GERKEN: And I can -- and by the way, I can
13 tell you, in Mike's defense, that was -- from the
14 get-go, her leaving the employment was something that
15 has been brought up as far as we -- I talked to a few
16 of you, and we just knew that was something you would
17 want.

18 I mean -- and only until -- and, originally,
19 they -- she stated that she had no desire to leave
20 and wanted astronomical numbers if it was going to
21 include anything that included her leaving. It was
22 only just, literally, yesterday that this number came
23 down to anything plausible, this \$35,000 figure.

24 Because the insurance company, though, has --
25 has consistently stated, though, that any -- what

1 they call severance money -- they weren't paying.

2 That that wasn't something that --

3 COMMISSIONER GUNTER: Well, if that's the
4 case -- I mean, if the insurance company is saying
5 that -- that all we're going to pay is the -- the
6 150,000 and we're still out 15,000 --

7 MR. GERKEN: Yeah.

8 COMMISSIONER GUNTER: -- that's it. That's
9 what the insurance is giving. That -- you can --

10 MR. GERKEN: Well --

11 COMMISSIONER GUNTER: -- either take it or
12 leave it or -- or we'll fight it in court or
13 whatever, you know, we're going to do. I mean...

14 VICE MAYOR KELLY: Have you ever -- have you
15 ever gone to court on an issue of this and -- and
16 fought for the -- you know, the ones you're
17 defending?

18 MR. ROPER: Yes, ma'am.

19 VICE MAYOR KELLY: And how many have you won?
20 I'm sorry. I'm just -- you know.

21 MR. ROPER: I've won many cases, ma'am.

22 VICE MAYOR KELLY: Okay.

23 MR. ROPER: I've been a trial lawyer for 28
24 years. I've lost my share too, but, yes. I've
25 tried -- I've tried labor law cases in federal court.

1 I've tried cases in front of this particular judge in
2 the past, Judge Hodges.

3 And, you know, I -- one thing that I'll tell
4 you is I understand that you-all are hearing this
5 somewhat in a vacuum in this -- in this presentation
6 here. The demand from when we started this -- this
7 negotiation process was \$485,000 to settle the case.
8 Okay? All right.

9 We've been negotiating with the plaintiff's
10 counsel strenuously, and Scott and I have been
11 talking about this as the negotiations have gone
12 forward. Okay?

13 When I initially got this case and I thought
14 there was no chance we would have any reasonable
15 settlement whatsoever, then we were proceeding to
16 litigate the case. Okay? And that's when they got
17 reasonable, and they got to a range where the
18 insurance company was willing to make the economic
19 analysis that I just outlined for you.

20 COMMISSIONER GUNTER: Uh-huh.

21 MR. ROPER: So frankly, I'm a little surprised
22 that they're -- I'm sitting here -- or standing here
23 in front of you today having this conversation.
24 Because I, frankly, didn't think they'd ever get down
25 into -- into the area that they are now.

1 Scott mentioned from -- from day one I
2 attempted to negotiate a resignation as part of the
3 package. Okay? Because I understand, in
4 representing multiple governmental entities
5 throughout the state in these types of cases -- and
6 private employers in these types of cases -- I
7 understand the implications of having an employee
8 continue to work under these circumstances. Okay?

9 But, like anything else, there is a price to be
10 paid to -- to secure that resignation. At one point
11 in time, that price was \$80,000. As of yesterday, it
12 was \$35,000.

13 COMMISSIONER CHESHIRE: Is that a good price,
14 sir?

15 MR. ROPER: It -- it -- it amounts to
16 approximately a year and a half of her salary.

17 COMMISSIONER CHESHIRE: Right. I knew that.

18 MR. ROPER: So it requires -- it would require
19 her -- you know, from looking -- to give you some
20 sort of framework on that, one of the elements of
21 damage that can be recovered in -- in a situation
22 where the person has been wrongfully terminated and
23 they're out of a job, they can secure a front pay.

24 And, generally, just a rule of thumb, it's,
25 normally, two years of front pay is what -- what the

1 courts will award. So that's -- it's in -- it's in
2 the ballpark.

3 MAYOR BELL: Our insurance company -- if -- if
4 there's a wrongful termination suit filed six --
5 three months from now, are they -- is that something
6 that they'd be responsible to cover or to litigate
7 for us at that point or...

8 MR. ROPER: Yeah. I mean -- you know, I don't
9 want to be in the position of -- of giving coverage
10 opinions about what the insurance company is going to
11 do or not do. Because, you know, my role in this
12 case is --

13 MAYOR BELL: Okay.

14 MR. ROPER: -- is your counsel. But -- but,
15 generally, you know, whoever your employment
16 practices carrier is at the time that you get that
17 claim in would be the one that would be required
18 to -- to cover.

19 MAYOR BELL: The reason I ask that -- I mean,
20 they're not -- they're not looking at the possibility
21 that here -- here's somebody that -- that is suing
22 the City and won that might just be looking for a
23 second time around?

24 MR. ROPER: That's the discussion I had with
25 them. Okay? I think they're -- they didn't -- they

1 didn't articulate this to me, but I think their
2 thought process is we may not be the insurance
3 company on the loss at that point in time. Okay? So
4 we don't want to buy off on a claim now that we may
5 not even be around when the claim comes down the
6 pike, two years from now, three years from now, four
7 years from now.

8 You know, if you're asking me candidly, I think
9 that's the analysis.

10 MAYOR BELL: Got you.

11 MR. GERKEN: It was, certainly, brought to
12 their attention. Why not settle everything now?
13 But...

14 MAYOR BELL: They'll have some claims from us
15 in the future.

16 VICE MAYOR KELLY: Why settle? This just
17 irritates me so bad. She has no proof other than her
18 word. Okay? Nobody ever saw them doing anything
19 together. Why are we giving in on this?

20 COMMISSIONER CHESHIRE: Because if we don't and
21 it comes over \$150,000...

22 COMMISSIONER GOLDBERG: We have a -- we have,
23 basically, \$150,000, and that would include...

24 COMMISSIONER CHESHIRE: Everything.

25 COMMISSIONER GOLDBERG: Everything.

1 MR. ROPER: What I would think it would include
2 would pay for retaining my firm and retaining a
3 lawyer to represent Mr. Bowers.

4 COMMISSIONER GOLDBERG: Which would be eating
5 up...

6 VICE MAYOR KELLY: Yeah. So why should we do
7 anything about him?

8 MR. ROPER: Well, because --

9 COMMISSIONER GOLDBERG: (Inaudible.)

10 VICE MAYOR KELLY: (Inaudible.)

11 MR. GERKEN: He was working for the City at the
12 time.

13 MR. ROPER: He's an insured under the policy.
14 I mean, just like if one of you-all were sued --

15 MR. GERKEN: Right.

16 MR. ROPER: -- individually, the City -- the
17 carrier would represent you-all.

18 COMMISSIONER CHESHIRE: I don't think
19 anybody -- if any of us like -- Scott, do you -- is
20 it -- the \$35,000, is it --

21 MR. GERKEN: You know, I hate to call it a
22 calculated risk, but in many ways that's what it is.
23 I mean, obviously, the -- the city manager and the
24 staff and the department heads have been counseled
25 that you can't take any action in regards to her.

1 And, theoretically, if she does things worthy of
2 discipline, she should be treated just like any other
3 employee and disciplined accordingly. No less, no
4 more.

5 VICE MAYOR KELLY: No. She needs --

6 MR. GERKEN: But we --

7 VICE MAYOR KELLY: -- to be gone.

8 MR. GERKEN: But we do understand, you know,
9 the difficulty of the situation and that the chance
10 is that when she leaves someday, even if we've done
11 absolutely nothing wrong at all, that she would claim
12 that somehow she felt retaliated against. So that
13 could happen, but --

14 MAYOR BELL: But -- but she will not be able to
15 go back behind this wall and use anything that's
16 happened from -- from that -- from the point of
17 settlement back as a basis for any future claim,
18 though.

19 MR. ROPER: Well, to the extent that -- she
20 wouldn't be able to bring a lawsuit based on conduct
21 that's occurred prior to the filing of this lawsuit.

22 MR. GERKEN: Anything up until then. Correct.

23 MR. ROPER: A retaliation claim is, in essence,
24 based on the fact that she made these claims earlier;
25 now she's claiming to be retaliated against. So in

1 that sense, you know, the facts and circumstances
2 could be rehashed. But not -- there couldn't be any
3 further claims for damages made on her behalf.

4 The -- the -- any future claim would have to be
5 based on some future conduct or -- or something on
6 the part of the City.

7 MAYOR BELL: Can this be handled in two
8 separate issues? I mean, can we go ahead and agree
9 on the -- on the 150 tonight and then come back and
10 continue to negotiate the termination?

11 MR. ROPER: It's possible, but I -- you know,
12 my -- I think my advice would be to -- to try and get
13 it wrapped up in one if you could. There's a --
14 there's a concern about -- it's easier to get it
15 resolved as part of the -- of a single lawsuit.

16 MAYOR BELL: Okay. In other words, if tonight
17 we said, okay. We agree with the -- with the 150.
18 We'll -- we'll concede that. But we're not willing
19 to go to 35. We'll go -- we'll go 10, 15, you know,
20 some other number. Is that -- is that -- I mean,
21 that wouldn't invoke the hammer clause at this point?

22 MR. GERKEN: In other words, you'd say -- I
23 mean, confidentially telling your attorney going
24 forward that we would pay \$15,000 to have her gone?
25 I'm just making up a number.

1 MAYOR BELL: Right.

2 COMMISSIONER GUNTER: Call it a severance
3 package.

4 MR. GERKEN: But if they wouldn't do that,
5 we -- would you -- if they said no to \$15,000, would
6 you then say, well, then, we'll do the 150 and she
7 stays?

8 MAYOR BELL: No. I think we'd have to agree to
9 the 150.

10 MR. GERKEN: That's what I'm saying. If they
11 won't go for it -- you, basically, say, we'll do the
12 150 or 165 and she leaves?

13 MAYOR BELL: Right.

14 MR. GERKEN: Does that make sense?

15 MR. ROPER: Yeah. I mean, we could -- we could
16 make -- I mean, the City could make a
17 counterproposal.

18 MR. GERKEN: You can make a counterproposal and
19 dual -- dual --

20 MAYOR BELL: Yeah. And at the same time, we're
21 satisfying what the insurance is looking for at this
22 point.

23 MR. GERKEN: You don't want to in any way
24 jeopardize the -- that -- risk the hammer clause
25 but...

1 MAYOR BELL: Right.

2 MR. GERKEN: You'll do that, but you also would
3 offer that you do some other -- say, 165 -- and she
4 leaves. That would, I guess, include, though, the
5 City paying the additional \$15,000.

6 VICE MAYOR KELLY: Say ten.

7 MR. GERKEN: I'm -- and, again, I'm --
8 confidential. This essentially -- whatever number
9 you wanted to authorize going forward.

10 MR. ROPER: And there may be a real desire from
11 their end to terminate employment. She may want
12 that.

13 MR. GERKEN: And the fact that they've come
14 recently down markedly from -- from 85,000 down to
15 35,000, sort of out of the blue, without us even
16 bringing the issue up in the meantime -- maybe
17 there's a desire to do that. I don't know.

18 MR. ROPER: Yes. You can talk.

19 CHIEF ISAACS: What if we put out a number,
20 plus we wouldn't challenge unemployment benefits?

21 VICE MAYOR KELLY: No. We don't want her to
22 get unemployment.

23 MR. GERKEN: I think the -- yeah. I think --
24 as Michael said, I think that would be termed, she'd
25 be resigning and would not be entitled -- it would be

1 considered a voluntary resignation, and she's not
2 entitled to unemployment benefits.

3 MR. ROPER: But -- but we would address it
4 specifically in any --

5 MR. GERKEN: Right.

6 MR. ROPER: -- settlement papers.

7 MR. GERKEN: Right.

8 MR. ROPER: To answer the Chief's question,
9 yes. You, certainly, could do that. But, you know,
10 I think it would be cleaner to just wrap it up into a
11 fixed amount and a known quantity.

12 MR. GERKEN: And one other issue we have,
13 which -- you know, they passed in recent years that
14 law capping severance pay. So I don't think we can
15 just go out there and negotiate a separate severance
16 package, believe it or not. And if we settle this
17 lawsuit and then try to go to her at a later time and
18 negotiate a severance, believe it not, we're limited
19 on how much money we could pay under those
20 circumstances.

21 COMMISSIONER GUNTER: I know under a severance
22 package -- and I just went through this. And I
23 couldn't claim unemployment for six months.

24 MR. GERKEN: Right.

25 COMMISSIONER GUNTER: 'Cause I had six months'

1 salary.

2 VICE MAYOR KELLY: Yeah. But you had six
3 months' worth of salary.

4 COMMISSIONER GUNTER: Right.

5 VICE MAYOR KELLY: Yeah.

6 COMMISSIONER GUNTER: So it would be the same
7 thing with her.

8 MR. GERKEN: No. There -- I was just
9 talking -- there's a Florida statute that went into
10 effect -- I don't know -- a year or two ago. It was
11 recently. It, literally, capped the ability -- I
12 don't think it envisioned this situation, frankly.
13 It was really envisioning -- they didn't want the
14 City paying out large settlement bonuses to city
15 managers or people --

16 VICE MAYOR KELLY: Yeah.

17 MR. GERKEN: -- when they leave these two-year
18 things. So the voters said, well, we're going to tie
19 the hands -- and I think it, essentially, limits it
20 to, like, five months of compensation or something
21 like that.

22 MR. ROPER: Six weeks.

23 MR. GERKEN: Is it six months of compensation?

24 VICE MAYOR KELLY: He said six weeks.

25 MR. GERKEN: Six weeks? It's a very small --

1 so it's a very small amount.

2 COMMISSIONER GOLDBERG: Offer her that.

3 MR. GERKEN: I don't think -- I don't think
4 you're going to sit back -- I think it's part of the
5 overall settlement numbers that we're talking about
6 here and -- to get the whole case, I think.

7 MAYOR BELL: But if we -- but if we offered 160
8 at this point and they rejected -- they accepted the
9 150 and rejected the, basically, ten, is that -- can
10 we continue negotiating that at that point?

11 MR. ROPER: You'll find it more difficult. And
12 that's kind of what I was referring to as it -- it's
13 better if we -- we contemplate it as one settlement
14 of the litigation and any future claims that she
15 might have, as opposed to trying to negotiate a
16 separate agreement with her. Because then we might
17 run afoul of that -- that statute that Scott was --
18 referenced.

19 VICE MAYOR KELLY: On top of -- that's 25,000
20 if we go to ten. Fifteen for him and then ten for
21 her. And it's all we can afford, 'cause that's all
22 that's in our budget.

23 MAYOR BELL: No. We want --

24 VICE MAYOR KELLY: You know, we just --

25 MAYOR BELL: We -- basically, we've only got

1 one shot at the ball game here, you know, in this
2 type of case. So I don't know if ten -- if ten's
3 going to do it or if we need to show a good faith
4 number and go 15, maybe. That's...

5 COMMISSIONER GUNTER: Where does your salary
6 come out of?

7 MR. ROPER: My salary? I get paid by the
8 insurance company --

9 MR. GERKEN: The insurance company.

10 MR. ROPER: -- to represent you-all.

11 COMMISSIONER GUNTER: Does it come out of her
12 150?

13 MR. ROPER: No. No. It's a separate expense.

14 VICE MAYOR KELLY: They pay that.

15 COMMISSIONER GUNTER: Well, how did we -- Ted
16 Wicks -- and I still --

17 MR. GERKEN: We were the plaintiff on that one.
18 This time we're the defendant. Yeah.

19 MAYOR BELL: In other words, she won't -- she
20 won't collect 150.

21 MR. GERKEN: If you flipped it around, I'm
22 sure --

23 COMMISSIONER GUNTER: Oh, I know her attorney
24 isn't --

25 MR. GERKEN: If you flip it around, her

1 attorney is probably getting paid out of -- I mean, I
2 don't know what their agreement is. It doesn't
3 make -- but I'm sure somehow he's getting paid out of
4 the \$150,000 settlement.

5 COMMISSIONER GOLDBERG: So she may get --

6 MR. GERKEN: Don't know what she'd get.

7 COMMISSIONER GOLDBERG: -- 80,000?

8 MR. ROPER: I don't know. It's, normally, 40
9 percent, but I don't know.

10 MR. GERKEN: It's, normally, at 40 percent.

11 MR. ROPER: Right.

12 MR. GERKEN: So out of that 150, whatever that
13 math is.

14 VICE MAYOR KELLY: You offer them one amount,
15 and then, when they reject it, you give them another
16 one that's lower. Just -- that's how you negotiate
17 with them.

18 MR. GERKEN: My whole thing for you is I do not
19 want you to do anything to jeopardize that --
20 invalidating or putting in effect that hammer clause.
21 So I think what you're -- I would advise you to,
22 certainly, authorize settlement at those terms. But
23 if -- if, you know, you can send Mike out with -- to
24 negotiations, authorize him to offer something and --
25 and which would include her termination.

1 Are you comfortable with that, Mike?

2 MR. ROPER: Yeah. Absolutely. I mean, I --
3 you know, I -- I mean, I don't want to see them get
4 any more -- any more money than -- than the lowest
5 amount that can settle the case. Okay?

6 VICE MAYOR KELLY: Yes.

7 MR. ROPER: Obviously, because of this format,
8 it's difficult for me to get advice from you-all on
9 short notice. So to the extent that you-all can feel
10 comfortable giving me some parameters in terms of --

11 MAYOR BELL: If we said --

12 MR. ROPER: -- what you would --

13 MAYOR BELL: If we said yes to the 150 and up
14 to an additional 15,000?

15 MR. ROPER: Yeah. 'Cause -- 'cause what I
16 would do is I would go back to plaintiff's lawyer and
17 say, hey, listen. The \$35,000 -- they're never going
18 to do that. I think -- you know, if I went back to
19 them and pushed them, I may be able to get ten out of
20 them. You know, and -- you know, but it's -- you
21 know, you got to come -- let me know today because
22 getting in front of the commission is difficult and
23 time-consuming.

24 You know, I'll give them the spiel and see what
25 we can do. But I just need some -- some general

1 guidelines as to what you-all would be comfortable
2 with and that I could try and hammer out a deal. So
3 when I came back to you, I have we can get it done
4 for this number.

5 MR. GERKEN: And I assume the way this would
6 work is you gave them that, you know, we'll do this
7 or try to get this -- you wouldn't be approving
8 anything tonight. I mean, you wouldn't -- you
9 wouldn't go in that open session and you'd actually
10 vote on a settlement. Rather --

11 COMMISSIONER GUNTER: Yeah. We're still
12 negotiating.

13 MR. GERKEN: -- Mike would go back to them and
14 negotiate. And then, when he comes back to you in
15 the future, he'll -- here's the deal that, you know,
16 we can do.

17 VICE MAYOR KELLY: Okay.

18 MR. GERKEN: They wouldn't go -- they wouldn't
19 budge on the other thing or whatever, and here's the
20 plan.

21 MR. ROPER: And -- and as I said, the -- the
22 additional \$35,000 option was just added yesterday.
23 I mean, I'm comfortable that the 150 is the bottom
24 line. 'Cause I've beaten on them, you know, time and
25 time again. Okay?

1 So I'm -- when I sit in front of you and say
2 you're not getting that for less than 150, I -- I --
3 that deal, I'm comfortable with.

4 The \$35,000 additional amount was just brought
5 up yesterday. It was out of left field, and I
6 haven't had a chance to really negotiate with him on
7 it. But I told him I would present it to you-all
8 tonight and let -- let him know what the thoughts
9 were, so.

10 VICE MAYOR KELLY: Fifteen.

11 COMMISSIONER GUNTER: Well, I know that this
12 end of the table down here wants her gone.

13 MAYOR BELL: I think it's all the way.

14 COMMISSIONER GUNTER: And in talking with the
15 City employees that's with her on a daily basis in
16 here, I got to tell you --

17 VICE MAYOR KELLY: Oh, yeah.

18 COMMISSIONER GUNTER: -- they're walking on
19 eggshells. They -- they -- you know, she's the
20 custodian and they're scared to tell her to -- would
21 you please empty the trash can for us.

22 COMMISSIONER GOLDBERG: I'm thinking she can
23 turn around and say it was a hostile work
24 environment.

25 MR. ROPER: I -- I understand. I mean, I -- I

1 empathize.

2 COMMISSIONER GUNTER: And like you said, in
3 most cases, they do -- they leave.

4 MR. ROPER: Right.

5 MAYOR BELL: So the question is --

6 VICE MAYOR KELLY: How much money do we --

7 MAYOR BELL: What is it worth -- what is it
8 worth to us -- what's the max amount that it's worth
9 to us? Obviously, you can go ahead and offer her
10 half of whatever that amount is and negotiate from
11 there. But the question is what -- what is that --
12 that max amount that it's worth to us to see her
13 gone.

14 COMMISSIONER GUNTER: A hundred and fifty.

15 MAYOR BELL: She's not leaving for the 150.

16 COMMISSIONER GOLDBERG: There was 15 mentioned;
17 right?

18 VICE MAYOR KELLY: Yeah. We mentioned it.

19 COMMISSIONER GOLDBERG: But will you off -- go
20 in and straight-up offer 15K, or will you start off,
21 like, well, they said they would probably go about
22 75?

23 MR. ROPER: I think I'll use that technique.

24 COMMISSIONER GOLDBERG: You know, and then see
25 what they say.

1 COMMISSIONER GUNTER: More than six months'
2 back salary. What does she make? I don't even know
3 what she makes.

4 VICE MAYOR KELLY: No. That's -- well, we
5 don't have our treasurer to ask.

6 MR. ROPER: It's around 24. Don't hold me to
7 that. It's around that amount.

8 COMMISSIONER GOLDBERG: Does that include
9 benefits and everything?

10 MR. ROPER: No. That's probably just her
11 salary.

12 COMMISSIONER CHESHIRE: That's pretty high for
13 a custodian. I'm telling you.

14 MR. GERKEN: So with the benefits and all, that
15 would probably be approximately --

16 COMMISSIONER CHESHIRE: Six months?

17 MR. GERKEN: Yeah.

18 MAYOR BELL: All right. So do I hear 15?

19 VICE MAYOR KELLY: Don't let him --

20 COMMISSIONER GUNTER: Max.

21 MAYOR BELL: Max?

22 COMMISSIONER CHESHIRE: That's fine.

23 COMMISSIONER GOLDBERG: Okay.

24 MR. ROPER: As long as the agreement is
25 ironclad. No retaliation, no prejudice, she leaves

1 here with no claims.

2 MAYOR BELL: Where does she live?

3 CHIEF ISAACS: Lady Lake.

4 MAYOR BELL: Okay. So she's out of Fruitland
5 Park?

6 CHIEF ISAACS: Yeah.

7 COMMISSIONER GOLDBERG: She can't -- she can't
8 visit Fruitland Park.

9 MR. GERKEN: No. I don't -- no. But I --

10 MR. ROPER: Normally, what we would do is -- is
11 we would -- you know, as part of the resignation
12 there would also be an agreement that she would not
13 apply for reemployment with the City.

14 COMMISSIONER GOLDBERG: That would take a lot
15 of --

16 MR. ROPER: And, you know, some -- some of the
17 issues that we would, normally, include I just don't
18 think are worthwhile here.

19 For example, we can't have a confidentiality
20 clause, obviously, because it's a public entity, and
21 we can't have that.

22 I would advise against any sort of, you know,
23 nondisclosure or nondisparagement language, just
24 because I think, first of all, most of it's out in
25 the public domain anyway. I don't see any way of

1 getting rid of that. And that type of language can
2 sometimes be misconstrued.

3 VICE MAYOR KELLY: Look at this (indicates).
4 We got hit with this tonight at the commission
5 meeting for everyone to know that we're paying the
6 150.

7 MAYOR BELL: Yeah. He was here.

8 VICE MAYOR KELLY: Yeah. You were. Yeah.

9 MR. GERKEN: It might have been before he got
10 here. But some people in our audience here were
11 asking about it.

12 VICE MAYOR KELLY: Uh-huh.

13 MR. GERKEN: This won't in any way jeopardize
14 the ability to settle at this 150 if you go back
15 to -- to talk to him?

16 MR. ROPER: No.

17 MR. GERKEN: Like, it's you've got to accept by
18 tonight or it's off the table?

19 MR. ROPER: No. No. I mean, he knows that
20 we're here tonight to consider that. I mean, I --
21 frankly, he's the one that's created this issue by
22 making this at the end of -- yesterday. So I think,
23 you know, we're well within our rights to go back to
24 him. Especially if I know from you-all that, you
25 know, if we can't get the thing for the 165, you're

1 okay to do it for the 150 with her staying, then I
2 can negotiate within those parameters.

3 I'd have to come back to you, obviously, to
4 have you formally approve it, depending on what I
5 find out in our negotiations, but I don't think it --
6 it's not going to jeopardize the 150.

7 I mean, certainly, the insurance company's been
8 working towards trying to get a global resolution of
9 it. They're not going to, you know, pull the trigger
10 on it either, so.

11 MAYOR BELL: Okay.

12 VICE MAYOR KELLY: Is this going to have any
13 bearing on the other lawsuits that we've got going on
14 right now?

15 MR. ROPER: Well, it doesn't have any -- it
16 doesn't have any direct legal bearing, but it,
17 obviously -- you know, there's some -- there's
18 some --

19 MAYOR BELL: There's plenty in Fruitland Park.

20 MR. ROPER: You know, frankly -- you know, I
21 think -- you know, I mean, if you want to hear me
22 talk about fighting, I'll come back to you and talk
23 to you about the Richardson case. We won't talk
24 about that today, but, you know, we can -- you know,
25 I can -- a different -- a different...

1 COMMISSIONER GOLDBERG: Strategy?

2 MR. ROPER: Strategy. But at any rate, I don't
3 want to -- that's beyond what we're here today --
4 tonight for.

5 But, you know, I don't like to pay these claims
6 either. I understand the dynamic that you're dealing
7 with. You know, I represent cities throughout
8 Central Florida, and -- but I -- this is a case that
9 I think you should seriously consider trying to get
10 settled.

11 MR. GERKEN: The other thing -- stating the
12 obvious, which I often do -- the nature of this case
13 is not the kind of case that anybody in the City of
14 Fruitland Park -- or anybody, frankly, involved with
15 it -- wants to go forward and labor through a trial
16 and testimony and all of these type of things. I
17 truly think it's in the best interest of the City to
18 put this behind you.

19 And if you have -- you know, your insurance
20 company has approved the settlement, so that's an
21 opportunity that we have here. If you can get it --
22 congratulations to you. If you can -- if we can get
23 this worked out with a global settlement with her
24 leaving, all the more better. But it's still a good
25 thing to settle it with -- with the 150 if you can

1 accomplish that.

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

3 MR. GERKEN: I think just the -- the consensus.
4 I mean, if that's what your -- that's your guidance
5 here tonight.

6 VICE MAYOR KELLY: No more than 15. Yeah.

7 MAYOR BELL: All right. Al?

8 COMMISSIONER GOLDBERG: Same.

9 COMMISSIONER CHESHIRE: I think that's fine. I
10 just have one quick question.

11 If he comes back and says, give me 18, do you
12 come to us and say he wants to give you 18? So if
13 it's that close, we're -- we're comfortable a little
14 bit. You know what I'm saying?

15 MR. ROPER: Yes.

16 COMMISSIONER CHESHIRE: You don't say, oh,
17 we're just doing the 150 if it's, you know, close to
18 our 15?

19 MR. ROPER: Yes.

20 COMMISSIONER GOLDBERG: What about seventeen
21 five?

22 COMMISSIONER CHESHIRE: Unbelievable.

23 COMMISSIONER GOLDBERG: Which is half of what
24 he was asking for.

25 MR. ROPER: Whatever his response is, I will

1 definitely let you know.

2 COMMISSIONER GOLDBERG: How will you -- how
3 will you get that information out to us?

4 MR. ROPER: Probably the easiest way, the
5 quickest way, would be for me to call you all
6 directly. Or I can call Scott and he could call you
7 directly. However you-all prefer to do that.

8 COMMISSIONER GOLDBERG: That's fine.

9 MR. ROPER: The problem -- the problem is -- is
10 if you're going to authorize any additional
11 negotiation, we probably need to do it in this type
12 of setting.

13 COMMISSIONER GOLDBERG: But at least we know --
14 I mean, if they say it's fine, then we don't -- we
15 know we don't need to have another meeting.

16 MR. ROPER: Correct.

17 MR. GERKEN: Well, you're going to have to have
18 a -- you're going to have to, at some point in time,
19 approve in an open meeting --

20 COMMISSIONER GUNTER: Right.

21 MR. GERKEN: -- the final settlement.

22 COMMISSIONER GUNTER: Yeah. Can we call a -- a
23 shade meeting without -- we have to advertise a shade
24 meeting; correct?

25 MR. GERKEN: Yes.

1 COMMISSIONER GUNTER: Okay.

2 MAYOR BELL: Do we have to do that in a regular
3 meeting?

4 COMMISSIONER GUNTER: Yeah. That was my
5 question.

6 VICE MAYOR KELLY: Well, we've got one
7 scheduled for June 8th; right?

8 MR. GERKEN: No. You can have your shade
9 meeting whenever. We've just been tying it at the
10 same time as -- no. You can have it -- in fact, the
11 one on June 8th isn't a regular meeting.

12 VICE MAYOR KELLY: No. It's a workshop.

13 MAYOR BELL: Yeah. But I mean, specifically
14 just for the shade meeting.

15 COMMISSIONER GUNTER: If it's a workshop, it's
16 going to be --

17 MR. GERKEN: I have to request a shade meeting
18 at a -- it doesn't have to be a regular meeting. It
19 can be a special meeting. It can even be a workshop.

20 VICE MAYOR KELLY: Yeah.

21 MR. GERKEN: A noticed meeting of the -- the
22 commission. I have to request the need for a shade
23 meeting. So I guess if Mike talks to them and they
24 put something out there in the gray area that's --
25 you know, they say 25 -- and we think there's a need

1 to talk together and have another shade meeting, I
2 can request a shade meeting of you, and we can -- we
3 can have that at that point.

4 MR. ROPER: And, you know, this -- this -- this
5 dynamic that we're talking about now, I'll use that
6 to our benefit when I'm talking to the plaintiff.
7 I'll say, listen. I can't keep going back and forth
8 on this. You've got to cut to the chase, you know.
9 Let me know -- I need your bottom, bottom line,
10 because every time, you know, it's a week or two
11 weeks before I can get back in front of the
12 commission. Time is getting away from us.

13 You know, I'll use that to our advantage in
14 terms of trying to get him to cut to the chase.

15 COMMISSIONER GUNTER: Let me ask you the --
16 when Scott called us last week and told us we were
17 having this meeting, he told us not to say a word
18 about what's going on.

19 MR. ROPER: Yes.

20 COMMISSIONER GUNTER: I come down here the next
21 day to city hall, and they know more about what's
22 going on than I do. Because, apparently, Debbie had
23 done went to public works and told them that she was
24 getting this X number of dollars and all this other
25 stuff. And it has spread around here like wildfire.

1 MR. ROPER: Well, that's unfortunate. I mean,
2 that's --

3 COMMISSIONER GUNTER: And then --

4 MR. ROPER: That makes it more difficult.

5 COMMISSIONER GUNTER: And then the newspaper
6 wrote an article. We read it in the newspaper.

7 VICE MAYOR KELLY: Yeah.

8 COMMISSIONER GUNTER: You know, they know more
9 about what's going on than we do. We kept our mouths
10 shut up here, but everybody else knew.

11 MR. ROPER: Right. No. I understand. And I
12 understand it's frustrating. And, you know, I
13 guess -- you know, it makes the whole process much
14 more difficult.

15 COMMISSIONER GUNTER: What I'm getting at -- is
16 that a disadvantage to her in this whole process,
17 that she's going out and telling these people
18 different things?

19 MR. ROPER: Well, I mean, to the extent that it
20 may make you-all less inclined to resolve the case,
21 yes.

22 COMMISSIONER GUNTER: Well, I'd mention that to
23 her lawyer that, hey --

24 MR. ROPER: I -- I don't -- well, you know
25 what? I -- yeah. I'm not sure where that came from.

1 VICE MAYOR KELLY: What do they call it?

2 COMMISSIONER GUNTER: I don't know what they
3 call it.

4 VICE MAYOR KELLY: What do they call it when
5 they can't talk about stuff? A gag -- put a gag --
6 tell her attorneys to put a gag order on her.

7 MR. ROPER: Well, I mean, I'm sure that her
8 attorney has advised her that it's probably not in
9 her best interest to -- to discuss the details of the
10 settlement negotiations.

11 MAYOR BELL: All right. I think we're back to
12 Chris again.

13 COMMISSIONER CHESHIRE: Oh. Yeah. I said that
14 was fine with me if he comes back if they make
15 another offer.

16 MAYOR BELL: All right. John?

17 COMMISSIONER GUNTER: Yeah.

18 MAYOR BELL: Sharon?

19 VICE MAYOR KELLY: Fine.

20 MR. ROPER: Okay. So just -- just as -- so I
21 understand, I've got authority up to \$165,000 to see
22 if we can negotiate an overall resolution which
23 includes her resignation in the manner that we
24 discussed.

25 VICE MAYOR KELLY: Or less.

1 MR. ROPER: Yeah. I'll come back to you-all if
2 there's some sort of reasonable response. If he just
3 says, no, it's \$35,000, that's it, do you-all want me
4 to go ahead and shut it down for the 150?

5 VICE MAYOR KELLY: Yes.

6 MAYOR BELL: Fall back to that.

7 COMMISSIONER GUNTER: When -- when we vote on
8 this, is this like putting on the taxes? It has to
9 be unanimous?

10 MR. GERKEN: No. No. I guess the last two --
11 the last two that have to vote might get lucky. But
12 no. We'll take the majority.

13 MR. ROPER: I mean, as I said, you know,
14 ultimately, I'm going to have to come back to you-all
15 and say --

16 COMMISSIONER GUNTER: (Inaudible.)

17 VICE MAYOR KELLY: (Inaudible.)

18 MAYOR BELL: (Inaudible.)

19 MR. ROPER: -- this is what happened.

20 MR. GERKEN: Please don't try to talk over each
21 other. It's difficult for our court reporter.

22 MAYOR BELL: I apologize.

23 MR. GERKEN: She's very patient with us, but --
24 thank you, Beth.

25 MR. ROPER: You know, whatever occurs, I'm

1 going to have to come back to you-all and let you
2 know what transpired and this is what we can do and
3 have you-all formally vote on any -- any -- and
4 approve the -- or not approve it -- depending upon
5 what your decision is.

6 MR. GERKEN: So I -- in other words, we would
7 probably only have another shade meeting if there's
8 something in between 35 and 15 that gets offered
9 back. Otherwise, if it's, you know, 165 or less,
10 we'll just -- we'll just put together a proposed
11 settlement agreement and bring that to the --

12 MR. ROPER: Right.

13 MR. GERKEN: -- to the Commission to approve.

14 MAYOR BELL: All right.

15 MR. GERKEN: But that would be a public
16 record-type document that's -- you know, that's
17 just -- that's the way it works.

18 COMMISSIONER GOLDBERG: That's something that
19 would be in a public meeting? Not a shade meeting?

20 MR. ROPER: Ultimately, yes.

21 COMMISSIONER GOLDBERG: Okay.

22 MR. ROPER: Ultimately, you would have to vote
23 to approve the settlement in a public meeting.

24 COMMISSIONER GOLDBERG: So if you get -- let's
25 say they -- tomorrow you call them, and they say,

1 okay. Fine. You would draw the agreement up, and
2 then our next meeting, that would be on the agenda
3 for us to vote on that?

4 MR. ROPER: Correct.

5 COMMISSIONER GOLDBERG: You wouldn't need
6 another shade meeting?

7 MR. ROPER: No. Not if we have a deal and it's
8 within the parameters that we discussed.

9 COMMISSIONER GOLDBERG: Okay.

10 MAYOR BELL: All right.

11 MR. GERKEN: Mike, you need anything else from
12 us tonight?

13 MR. ROPER: No. I -- I -- I think I've got all
14 the direction I've got -- need.

15 MAYOR BELL: All right. So do I announce the
16 closing?

17 MR. GERKEN: Yes.

18 MAYOR BELL: With that, we'll -- we will close
19 the shade meeting.

20 MR. GERKEN: Okay. And we can go back into
21 open.

22 MR. ROPER: Thank you all very much for your
23 time.

24 (The meeting was reopened to the public.)

25 MR. GERKEN: You can announce the termination

1 of the special session and the reopen of the general
2 meeting.

3 MAYOR BELL: Okay. With that, we -- we'll
4 announce the closing of the -- of the shade meeting
5 or closed meeting. And we will now readjourn into
6 open session.

7 MR. GERKEN: Please deliver it sealed to my
8 office. I'll get it to the clerk. Thank you.

9 (The proceedings were concluded at 10:38 p.m.)

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CERTIFICATE

STATE OF FLORIDA
COUNTY OF LAKE

I, BETH J. BREESE, Florida Professional Reporter and Notary Public, hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript, Pages 3 through 55, is a true and complete record of my stenographic notes.

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Dated this 4th day of June, 2013.


Beth J. Breese
Florida Professional Reporter