

CITY COUNCIL CLOSED SESSION  
CITY OF FRUITLAND PARK, FLORIDA

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SHADE MEETING  
CONFIDENTIAL AND SEALED  
SESSION BEFORE THE CITY COUNCIL OF  
THE CITY OF FRUITLAND PARK

DATE TAKEN: JANUARY 24, 2013

TIME: BEGINNING AT 8:14 P.M.  
CONCLUDING AT 8:40 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

3 VICE MAYOR SHARON KELLY

COMMISSIONER JOHN L. GUNTER, JR.

4 COMMISSIONER CHRISTOPHER CHESHIRE

COMMISSIONER AL GOLDBERG

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ACTING CITY MANAGER DIANE GIBSON-SMITH

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SCOTT A. GERKEN, ESQUIRE, ATTORNEY FOR THE CITY

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

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3 MR. GERKEN: Okay. We'll go ahead and go off  
4 the record then. And for the record, I will point  
5 out that the mayor, immediately prior to this, did  
6 announce the commencement of this meeting, announced  
7 the persons who would be attending the meeting --  
8 which were the names of the five commissioners,  
9 myself, and the Acting City Manager, Diane  
10 Gibson-Smith -- and the estimated length of the  
11 meeting being 20 minutes or less, more or less.

12 I've just passed out to you a mediated  
13 settlement agreement. One thing I should point out  
14 to you -- I always find this interesting -- is for  
15 such an important matter, these mediated settlement  
16 agreements are typed by the lawyers and the  
17 mediator, without the benefit -- Diane's laughing,  
18 because it's without the benefit of staff, the way  
19 this always seems to work out. So they -- that's  
20 why the pages don't look right and the title is not  
21 centered and all of that.

22 But it -- the agreement is simple but is  
23 important. As you all know -- and I think perhaps  
24 all but Mr. Cheshire were here when it started four  
25 years ago. It's been over four years now. We

1 commenced the lawsuit, the City of Fruitland Park  
2 versus Ted Wicks and Wicks Consulting Services,  
3 Inc. -- the company, essentially, that Ted had  
4 sold -- for malpractice regarding the design and  
5 construction management of our sewer system.

6 We've had a myriad of problems, as you know,  
7 with the system since it's come into -- to -- to  
8 being. Things are much better now since we've added  
9 the two lift stations. But we went through a lot of  
10 frustration and continue to have ongoing maintenance  
11 concerns, which you -- I think it's safe to say, you  
12 all somewhat hesitantly, because Ted had been our  
13 city engineer for a number of years, commenced the  
14 litigation, feeling that you didn't have a choice,  
15 that you owed that to the taxpayers of the City.  
16 That suit was filed four years ago.

17 Since then, we've had a -- piles of pleadings  
18 and things going on. We are actually scheduled for  
19 the trial docket in a few weeks and were ordered to  
20 go to a court-ordered mediation.

21 Throughout this whole proceeding, we were aware  
22 that Ted had a half million dollar malpractice  
23 insurance policy. We, at various times, requested  
24 that they tender and we would accept as settlement  
25 of this matter, the -- the limits of that policy.

1 It has taken four years, but they have finally done  
2 that. They have tendered the maximum limits of the  
3 policy.

4 And if you're looking there at your -- your  
5 document, you'll see that they have offered to  
6 pay -- to write a check to the City of Fruitland  
7 Park for \$350,000. That's the good news, is that  
8 they're tendering the maximum policy from the  
9 insurance.

10 The reason that number is not \$500,000 is  
11 because the policy that was in play here was what's  
12 commonly called an -- an eroding policy. Meaning  
13 that the cost of defense of the policy are within  
14 the limits of the policy. So all as -- all the  
15 monies that the insurance company has spent over  
16 these four years to defend the litigation -- to pay  
17 their attorneys, to pay their experts, to pay their  
18 design folks -- they can take off the policy,  
19 leaving what's left to pay the City.

20 And, in fact, the fifth paragraph of this  
21 agreement is their representation to that fact.  
22 They have, literally, given us all the money that is  
23 available, left to be spent. They will be paying  
24 our experts' costs for their last depositions and  
25 all of that.

1           But we have an offer where they will pay the  
2           City \$350,000 within 20 days of approval, were you  
3           to approve that here this evening.

4           The -- essentially, we would dismiss the  
5           lawsuit. There would be no admission of wrongdoing,  
6           which is very typical in these type of things. And  
7           that would be it. You would be free to use those --  
8           although these monies are monies for the sewer  
9           system, the funds would not be restricted. You, as  
10          the city commission, could use that -- now, I,  
11          certainly, can see you wanting to put those monies  
12          into the sewer system. That would be the logical  
13          first candidate. But just for whatever your --  
14          whatever your curiosity is, you wouldn't be limited  
15          to that. You can make that decision in the future,  
16          where you'd like to put that money.

17          Also remember, though, it's not \$350,000.  
18          Because from that \$350,000, we have to pay our trial  
19          attorney, who did this on a contingency matter of  
20          30 percent, which is -- the math -- doing the math  
21          quickly, is \$105,000. And you take off that -- the  
22          additional costs of experts is an additional cost  
23          that they've advanced of some \$20,000. So at the  
24          end of the day, the City would be getting a check,  
25          after you pay the expenses, of approximately

1           \$225,000.

2           Although it is less than what is necessary to  
3           make us whole, I, without reservation, recommend  
4           that you accept this. 'Cause it isn't going to get  
5           any better. This is all the insurance that is  
6           there.

7           Frankly, the -- the problem here is that we  
8           don't -- didn't have and don't have enough insurance  
9           for this type of matter. And I think that, frankly,  
10          happened because Ted was our city engineer for all  
11          these years, and it wasn't considered a high  
12          priority when -- when this happened. I think no one  
13          would have envisioned this type of debacle with our  
14          system. But, unfortunately, it did happen.

15          At one point -- the only reason you would not  
16          accept this settlement, if you think about it, is if  
17          you think Ted Wicks has money that he's squirreled  
18          away someplace that we could somehow get. If we  
19          went ahead and got a trial and got a judgment  
20          that -- let's say we get a million-dollar judgment.  
21          We've actually -- at various times, our experts have  
22          estimated our damages were in the neighborhood of a  
23          million five, when you figure in all the time and  
24          everything we've had. That, though, would be a --  
25          the proverbial piece of paper you can hang on the

1 wall unless you can actually collect that judgment.  
2 And the only parties would be Ted Wicks and Wicks  
3 Consulting.

4 Many of you probably know Ted. I was -- would  
5 not think he would be independently wealthy, but  
6 just to be -- and he has represented all along that  
7 he doesn't have any additional monies.

8 In the abundance of caution, though, we are not  
9 allowed to do financial discovery as part of this  
10 process. But we are able nowadays -- through the  
11 joy of searches and things, we were able to do asset  
12 searches and things on Ted. Which pretty much  
13 confirmed what you'd think.

14 He -- a couple things to keep in mind. Ted's  
15 been married for a number of years. This would be a  
16 judgment just against Ted. Which would mean any  
17 assets that he owns jointly with his wife we  
18 couldn't touch. And it also means that he enjoys  
19 the exemption -- a homestead exemption. You can't  
20 touch one's homestead and a variety of other things.

21 Having said that, he does own a home with his  
22 wife. However, it is mortgaged. There's two  
23 separate mortgages on his house. Frankly, the only  
24 assets that we found that would be possible to  
25 get -- and there may be other things out there. We

1 can't get all the accounts and all these things.  
2 But the only assets that we uncovered through  
3 typical collection asset searches that were even a  
4 potential of recovery was a vehicle -- a  
5 two-year-old truck -- and a vacant residential lot  
6 in Eustis that would appear to be free and clear.

7 Having said that, Ted had a \$600,000 judgment  
8 entered against him a year and a half ago in a  
9 failed development. That is out there.

10 MAYOR BELL: Wow. So we'd be fighting against  
11 them?

12 MR. GERKEN: Yes. In fact, I had heard -- and  
13 Diane had heard this as well -- that he had filed  
14 bankruptcy, which that would -- if I had a \$600,000  
15 judgment against me, then I might consider it. But  
16 in this case -- but we couldn't find any evidence of  
17 that. I don't think he actually has.

18 And, frankly, it's probably because even though  
19 there may be large judgments, he's, essentially,  
20 judgment-proof. There don't seem to be any assets  
21 worth recovering. So, again, if we thought or if any  
22 of you thought that Ted had this money lying around  
23 to pay us, it would make going forward worthwhile.  
24 But we're getting everything we can get out of the  
25 insurance company.

1           The other thing I should mention, because we've  
2 mentioned it in the past, was -- and it irks me.  
3 I'll be honest with you -- that this insurance  
4 company waited around four years to pay this. Now,  
5 if you think about it, they really didn't benefit,  
6 'cause they're paying -- and I guess they get the  
7 interest, if you want to call it, off the last four  
8 years of that money they didn't have to pay out. But  
9 they're paying out what they would have had to pay  
10 out anyway. So that largely negates our ability to  
11 go after them for a bad faith case.

12           The other part of that that hurts any kind of  
13 bad faith case -- which would be another reason to  
14 perhaps say no to this judgment or to this  
15 settlement -- is that, by all evidence, Ted, up until  
16 recently, was not willing to settle, I guess is the  
17 simplest way to put it. I mean, he -- and as long as  
18 he is not demanding that his insurance company settle  
19 for him and he's not a willing dance party -- in  
20 other words, if for the last four years, Ted has been  
21 telling the insurance company, please settle. I want  
22 you to get done with this, and they strung along and  
23 ignored what their insured was saying, that would --  
24 and -- that would help our case. But there seems to  
25 be no evidence -- in fact, quite the contrary, from

1 everything we learned at the mediation.

2 So I'm not a bad faith litigation attorney, but  
3 we, literally, checked with others, and Bob Dellecker  
4 is experienced with this, and he just says there's  
5 really no plausible case for bad faith now that  
6 they've finally tendered what amounts to the limits  
7 of their policy. He has passed along -- he  
8 wholeheartedly recommends settlement.

9 He -- similar to this -- recognizes that it's  
10 not going to make the City whole, but it will,  
11 certainly, be appreciated to have that extra money.  
12 It will be cash, not just a promise, within --  
13 literally, within the month you'll have the money.

14 So I -- unless -- I'm happy to answer any  
15 questions you have, frustrations to be expressed,  
16 whichever. But I think, ultimately, the good news is  
17 this was worth the City doing. I mean, even though  
18 it's not a million dollars, it's -- it is positive  
19 money that can go back into the City and can be used  
20 to make things better, so.

21 Yes.

22 VICE MAYOR KELLY: What happened -- what was  
23 the guy that was working with him that was the one  
24 that was actually in charge?

25 MR. GERKEN: Jack?

1 VICE MAYOR KELLY: Yeah.

2 MR. GERKEN: He died.

3 VICE MAYOR KELLY: So nothing happened?

4 Nothing else?

5 MR. GERKEN: And he actually was working as a  
6 subcontractor to Ted, in essence. So all our -- our  
7 claim is versus Ted.

8 Now, Ted could go after him.

9 VICE MAYOR KELLY: Why couldn't we go after  
10 him? Because he was the one that was sitting in here  
11 every day running everything.

12 MR. GERKEN: Well, all of our contracts, all of  
13 our agreements, were with Ted. And Ted -- Jack,  
14 although he's the person we dealt with, was -- was  
15 through Ted. And that's why I said -- we would go  
16 after Ted. They -- he could then, if he felt Jack  
17 had messed up, can -- can seek recovery from him.

18 If we got a \$500,000 judgment against Ted and  
19 then Ted felt it was Jack's fault that this happened,  
20 he could try to recoup some of that from him. That's  
21 a simple way of putting it, but that's about the way  
22 it goes.

23 But our cause of action is largely via -- via  
24 Ted Wicks Consulting Group.

25 VICE MAYOR KELLY: And you don't think that's

1 why Ted didn't think there was any reason to go ahead  
2 and pay this before this? That...

3 MR. GERKEN: I don't know. I don't know. As  
4 you know, they hadn't even made an offer -- we got to  
5 the end of the mediation last Wednesday, and they had  
6 still not made an offer. And Diane can tell you --

7 ACTING CITY MANAGER GIBSON-SMITH: They made  
8 one offer.

9 MR. GERKEN: There was -- it was \$50,000.

10 ACTING CITY MANAGER GIBSON-SMITH: It was  
11 \$50,000.

12 MR. GERKEN: And I was -- \$50,000. Exactly.  
13 And we're --

14 ACTING CITY MANAGER GIBSON-SMITH: And that was  
15 the only offer they made.

16 MR. GERKEN: It went from 50,000 and then there  
17 was lot of talk. And then they -- the mediator,  
18 frankly, was very good.

19 ACTING CITY MANAGER GIBSON-SMITH: He was  
20 wonderful.

21 MR. GERKEN: And he literally disappeared for a  
22 while and I think had what I would call a  
23 come-to-Jesus type of meeting with them and just said  
24 that this has got to be paid.

25 One of the things we had working for us is we

1 have a contract that allows prevailing party's  
2 attorney's fees.

3 Ironically, one of the problems we've almost  
4 had in this litigation is there were so many things  
5 wrong in various areas that it -- to gather all those  
6 things together created some sort of confusion at  
7 times. I know that sounds crazy, but, you know --  
8 there were problems because the -- the lines were in  
9 the wrong place or there were contract -- there were  
10 problems because we didn't have accurate as-built  
11 plans. There were problems because we didn't have  
12 lift stations that we needed to have. There were  
13 problems because these grinder pumps weren't enough  
14 to -- to move the -- the waste the way it needed to  
15 be. There were problems because the lines didn't  
16 have appropriate air pockets.

17 There are probably -- and to go over all -- and  
18 putting all these things together and getting the  
19 experts to -- trust me, we're talking about  
20 engineers, who think very in-the-box. It took a lot  
21 of time to get all their testimony together and get  
22 their damages calculations. And if it had been one  
23 thing, it probably would have been a lot more of a  
24 streamlined situation.

25 But at the end of the day, I -- again, I -- I

1 really don't think that we have any other option but  
2 to accept this.

3 COMMISSIONER GUNTER: But let me ask just for  
4 my, kind of, information. I know how ignorant I am  
5 when it comes to stuff like this. But the insurance  
6 company is actually paying out the 500,000.

7 MR. GERKEN: Well, the --

8 COMMISSIONER GUNTER: If their -- their  
9 attorneys is getting the first 150,000.

10 MR. GERKEN: They've been paying that, I would  
11 imagine, over four years. In other words --

12 COMMISSIONER GUNTER: Right.

13 MR. GERKEN: -- they've -- they've -- they've  
14 been paying checks to the insurance company that's  
15 defending it for four years. And, in fact, at the  
16 mediation, they told us that -- I don't have it  
17 exactly. But I think it was \$138,900 had been  
18 expensed going into the mediation on attorney's fees,  
19 expert fees. These experts are not cheap. I can say  
20 that.

21 COMMISSIONER GUNTER: No. I understand that.

22 MR. GERKEN: But they've written those checks  
23 over the four years. And that all comes off of the  
24 \$500,000 premium. Yeah. They're not writing a check  
25 now for \$150,000.

1 COMMISSIONER GUNTER: Right. Yeah. I  
2 understand that.

3 MR. GERKEN: But yes. They are -- you're  
4 right. Totally, they're paying \$500,000.

5 VICE MAYOR KELLY: But they're -- but it's  
6 going to them.

7 COMMISSIONER GUNTER: That's what I'm saying.

8 MR. GERKEN: No. The insurance company is -- I  
9 mean, the law firm is completely independent of the  
10 insurance company. As a law firm, they had to pay  
11 out of their pocket --

12 COMMISSIONER GUNTER: They had their own  
13 lawyers --

14 MR. GERKEN: No. It was not in-house counsel.  
15 They hired a law firm to defend them. And they had  
16 to write them real money, real checks.

17 VICE MAYOR KELLY: Why does it come out of our  
18 settlement?

19 MR. GERKEN: 'Cause that's the policy that they  
20 had with Ted. Ted bought a policy I would never buy.

21 And, frankly -- I mean, I have my own -- I  
22 shouldn't tell you this. I have my own malpractice  
23 coverage. And the first question that we asked is,  
24 are costs of defense included. 'Cause that -- as you  
25 can see here -- radically affects the actual amount

1 of coverage that you have.

2 Ted was foolish to buy a policy like that.

3 COMMISSIONER GUNTER: Well, it was probably --  
4 the price difference.

5 MR. GERKEN: Oh, absolutely. The premiums  
6 difference are --

7 COMMISSIONER GUNTER: Yeah.

8 MR. GERKEN: And I think -- this is a -- this  
9 is a lesson for us as a City to learn the next time  
10 we have a project of this magnitude, to make sure  
11 that, one, we have adequate insurance. A higher  
12 dollar amount, frankly, in retrospect, certainly,  
13 would have been -- should have been done. And,  
14 secondly, that we actually review those policies to  
15 see whether or not it has these kind of eroding  
16 balance provisions.

17 That's actually a -- a -- I deal with these  
18 projects all the time, and rarely do policies get  
19 examined to that --

20 MAYOR BELL: And who was our attorney at that  
21 point?

22 MR. GERKEN: Yes. I was the attorney when this  
23 all happened. But, frankly, at the \$500,000 -- the  
24 policy, I can honestly say, never -- I was -- I never  
25 was asked nor did I ever review the policy. We

1 confirmed that we had \$500,000 in coverage, which,  
2 thankfully, was still there. A lot of insurance  
3 companies have gone under in recent years. But -- so  
4 we still have a living, breathing insurance company  
5 that can write a check.

6 So that's -- you know, if you take a glimmer of  
7 good news out of this, we -- we are actually getting  
8 money. And in probably some cases where the  
9 insurance company went under --

10 MAYOR BELL: What insurance company is that?

11 MR. GERKEN: I knew you were going to ask that.  
12 It's not one of the big ones.

13 Do you remember, Diane?

14 ACTING CITY MANAGER GIBSON-SMITH: I don't  
15 remember the company name.

16 MR. GERKEN: Shucks.

17 ACTING CITY MANAGER GIBSON-SMITH: I don't  
18 think I saw the policy.

19 COMMISSIONER GOLDBERG: The bottom line in this  
20 whole thing is Ted's not touched. The insurance  
21 company's paying us.

22 MR. GERKEN: Right.

23 COMMISSIONER GOLDBERG: Ted --

24 MR. GERKEN: Ted personally --

25 COMMISSIONER GOLDBERG: -- has no financial --

1 MR. GERKEN: -- will not be paying a dime.

2 COMMISSIONER GOLDBERG: Right. So it -- it --

3 MR. GERKEN: Now, he'll have -- I mean, he'll  
4 have a bad mark against him. And, frankly -- and Ted  
5 expressed that. I mean, Ted, basically, is retired  
6 at this point. He is working a little, part time,  
7 doing small jobs.

8 And, in fact, one of the questions that was  
9 asked at the mediation, that was posed to him, is,  
10 you know, this -- this will ruin you. If we go to  
11 court and win a judgment against you, it'll be in the  
12 press, it'll -- it'll -- you know, a million-dollar  
13 judgment that -- against you. And what will you do?  
14 And he said, well, I'll just retire. I mean, he  
15 says, I'm pretty much there anyway. And...

16 VICE MAYOR KELLY: Which means he's got money  
17 put aside for his retirement.

18 MR. GERKEN: I don't -- I don't have any reason  
19 necessarily to believe that. I mean, you can retire  
20 on a -- and frankly, sadly, retirement benefits are  
21 typically exempt from recovery as well. Qualified  
22 pension plans, 401(k) plans, all those things are  
23 exempt from recovery.

24 COMMISSIONER GOLDBERG: They're probably all  
25 buried.

1 MR. GERKEN: I -- and, again, I haven't seen  
2 any evidence he has those, but if he were, they  
3 wouldn't be...

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

5 MR. GERKEN: We just need -- not to do it here.  
6 Now's the time, whatever questions you have, to  
7 answer them. But once we go back into session, I  
8 would just need a motion to approve the settlement  
9 agreement.

10 COMMISSIONER GUNTER: I think I said a year and  
11 a half ago let's settle for 250,000 and get out of  
12 it.

13 MAYOR BELL: Yeah.

14 MR. GERKEN: You know, I actually think you  
15 did. And that's, essentially, where we've ended up.  
16 But, I mean, they wouldn't have --

17 COMMISSIONER GOLDBERG: But he didn't want to.

18 MR. GERKEN: Yeah.

19 COMMISSIONER GUNTER: That's true.

20 MR. GERKEN: I -- yeah. I --

21 COMMISSIONER GOLDBERG: Again, it wouldn't have  
22 affected him one way or the other. He could have  
23 just said his attorney's fees or the insurance that  
24 covers the attorney's fees was coming off the --

25 MAYOR BELL: Yeah. I know.

1           COMMISSIONER GUNTER: That's kind of like a  
2           depreciating loan. Let's drag this thing out a  
3           little bit further.

4           MR. GERKEN: I mean, I think that's --

5           COMMISSIONER GUNTER: (Inaudible.)

6           MR. GERKEN: I honestly think that that's --  
7           that's very well what could have been happening all  
8           this time. Is hoping that the City would get tired  
9           or we would have a change or what -- something would  
10          happen and they -- they could get out of it. When  
11          they real -- literally realized they're two weeks  
12          from trial, they're up against the wall, they don't  
13          have a choice, they -- they finally tendered the  
14          policy.

15          VICE MAYOR KELLY: I have a question.

16          MR. GERKEN: Yes.

17          VICE MAYOR KELLY: What if we said no to this;  
18          okay?

19          MR. GERKEN: Uh-huh.

20          VICE MAYOR KELLY: And we went to trial --

21          MR. GERKEN: Uh-huh.

22          VICE MAYOR KELLY: -- and were awarded a  
23          million dollars? Just...

24          MR. GERKEN: Right.

25          VICE MAYOR KELLY: Okay. Would they pay this

1 much of it?

2 MR. GERKEN: It would get worse.

3 MAYOR BELL: Yeah. It would.

4 MR. GERKEN: We'd actually get less. Because  
5 then they would take all costs --

6 COMMISSIONER GUNTER: Attorney's fees.

7 MR. GERKEN: -- and experts to go to trial.

8 Now -- that's why I said, the only -- let's say --  
9 good question.

10 Let's say we go to trial and get a  
11 million-dollar judgment against Ted Wicks Consulting  
12 Group. The insurance company's still there with  
13 their \$500,000 policy, which is now -- say only has  
14 250 left. And it -- because our own attorneys  
15 estimated -- this is something else to keep in  
16 mind -- that they would probably spend 40 to \$50,000  
17 in costs to try this case, which we would be on the  
18 hook for.

19 So let's say they have another \$50,000. Then  
20 their 350 goes down to 300. Plus, we'd have to pay  
21 another 40 or 50 for our own experts and costs.  
22 That -- basically, we'd lose \$100,000.

23 The only reason to do that is if we thought we  
24 could get that \$100,000 and then some out of Ted,  
25 personally.

1 COMMISSIONER GUNTER: And is that -- that a  
2 separate -- entirely different suit?

3 MR. GERKEN: No. We'd have the judgment. But  
4 we'd have to then go check it. And, as I said,  
5 there's somebody -- BB&T, the bank, has a \$600,000  
6 judgment, plus interest, against Ted right now. And  
7 they have --

8 VICE MAYOR KELLY: But if he hits the lottery  
9 next week...

10 MR. GERKEN: If he wins the lott -- if he wins  
11 the lottery --

12 VICE MAYOR KELLY: (Inaudible.)

13 MR. GERKEN: -- he could put it in his wife's  
14 name, and he wouldn't have the winning ticket  
15 somehow.

16 COMMISSIONER GOLDBERG: He's free.

17 MR. GERKEN: Yes. Theoretically, if he -- if  
18 Ted won the lottery next week and we did this, well,  
19 we made a bad call. Yes. But I --

20 COMMISSIONER GOLDBERG: He'd be in South  
21 America.

22 MR. GERKEN: Keeping in mind, I don't think  
23 that's going to happen, this -- and -- and, frankly,  
24 Diane and I talked about it. And Bob Dellecker's a  
25 wonderful attorney, by the way. Talked about it at

1 the mediation. And as Bob said -- we were all --  
2 were kind of worried they'd come back with, you know,  
3 200,000 or something kind of in the middle. But when  
4 they -- which would make it sort of a hard call.  
5 This, frankly, even though the whole thing kind of  
6 chafes you a little bit, the way it came about, this  
7 really isn't a hard call for the City to make.

8 MAYOR BELL: Right.

9 MR. GERKEN: And I -- I wholeheartedly would  
10 recommend you take the settlement.

11 MAYOR BELL: Any other questions?

12 VICE MAYOR KELLY: They're offering 350 --

13 MR. GERKEN: Yes.

14 VICE MAYOR KELLY: -- because that already  
15 includes the money they've taken out for their  
16 attorneys?

17 MR. GERKEN: That's -- they have 500,000.  
18 They've paid their attorneys and experts and all  
19 that. And then they have 350 left, and they're  
20 turning that 350 over to the City. Yeah.

21 So from that 350 --

22 COMMISSIONER GUNTER: And we have 100,000 --

23 MR. GERKEN: -- we have to pay our 30 percent  
24 to our lawyer. That's 105,000. And then they  
25 have --

1 MAYOR BELL: Plus another 20,000 for experts.

2 MR. GERKEN: Yeah. I know it sounds small, but  
3 Bob waived a bunch -- he waived interest and some  
4 costs that --

5 ACTING CITY MANAGER GIBSON-SMITH: He bought us  
6 lunch.

7 MR. GERKEN: And bought lunch. He waived  
8 \$5,000 in costs and things because --

9 COMMISSIONER GOLDBERG: Whose credit card?

10 ACTING CITY MANAGER GIBSON-SMITH: His.

11 COMMISSIONER GOLDBERG: Okay.

12 COMMISSIONER GUNTER: So we're going to --

13 MR. GERKEN: So we'll end up, literally -- the  
14 number I think I saw today -- it wasn't a final --  
15 was one -- \$224,900 and something -- right at  
16 \$225,000, we'll have at the end of the day, to put  
17 into the city -- wherever you want to put it in the  
18 city budget.

19 MAYOR BELL: Okay. Any other questions? If  
20 not, we will close this out.

21 MR. GERKEN: Yes. I think --

22 VICE MAYOR KELLY: Okay. Are we supposed to  
23 tell you whether we want you to --

24 COMMISSIONER GUNTER: And that won't even pay  
25 for the two lift stations.

1 MAYOR BELL: What?

2 COMMISSIONER GUNTER: That won't even pay for  
3 the two lift stations.

4 MR. GERKEN: No. It's enough to cover one and  
5 a little more. One and part of the second one, I  
6 guess. But...

7 MAYOR BELL: How do we close this out?

8 MR. GERKEN: Simply that. At the conclusion of  
9 the attorney/client session the meeting shall be  
10 reopened -- that means the big meeting -- and the  
11 person presiding the meeting shall announce the  
12 termination of the session.

13 So all you need to do is --

14 MAYOR BELL: This session is now terminated.

15 MR. GERKEN: Thank you.

16 Now, back in the regular session. I don't know  
17 if there's anyone -- I think everybody's gone home.  
18 If you wish to then -- this is back in the open  
19 meeting. I guess we can -- we can conclude the  
20 litigation session.

21 THE REPORTER: You do need to order this;  
22 right?

23 MR. GERKEN: Yes. I -- I need this one. Yes,  
24 please.

25 THE REPORTER: Sealed?

1 MR. GERKEN: Yes. Ordered and sealed. Thank  
2 you. You can send that to me.

3 (Whereupon, the proceedings were concluded at  
4 8:40 p.m.)

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1 CERTIFICATE

2

3 STATE OF FLORIDA

4 COUNTY OF LAKE

5

6 I, BETH J. BREESE, Florida Professional Reporter and  
7 Notary Public, hereby certify that I was authorized to and did  
8 stenographically report the foregoing proceedings and that the  
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10 of my stenographic notes.

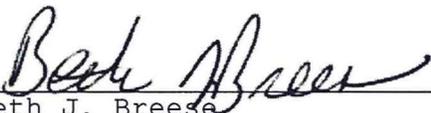
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Beth J. Breese  
Florida Professional Reporter

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