

TOWN OF HOWEY-IN-THE-HILLS

CLOSED ATTORNEY-CLIENT MEETING

RE: McGill vs. Town of Howey-In-The-Hills
Case No.: 5:21-cv-00480-CEH-PRL

JULY 29, 2024

COUNCIL MEMBERS:

MAYOR MARTHA MacFARLANE
MARIE GALLELLI
GEORGE LEHNING
DAVID MILES
RENEE LANNAMAN

STAFF:

SEAN O'KEEFE, TOWN MANAGER
THOMAS WILKES, TOWN ATTORNEY

ALSO PRESENT:

DOUGLAS T. NOAH, OUTSIDE LEGAL COUNSEL

TIME: COMMENCED AT 2:02 P.M.
CONCLUDED AT 3:25 P.M.

PLACE: TOWN HALL
101 NORTH PALM AVENUE
HOWEY-IN-THE-HILLS, FLORIDA

STENOGRAPHICALLY

REPORTED BY: SHAWNA R. STIMSON, FPR, RPR-C
COURT REPORTER AND NOTARY PUBLIC

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P R O C E E D I N G S

MAYOR MacFARLANE: I'm going to call this Town Council meeting to order. This is July 29th, 2024, the shade meeting. So I wanted to acknowledge a quorum, so I'm going to ask Sean to do the roll call for me if you would.

MR. O'KEEFE: Sure. Mayor Martha MacFarlane.

MAYOR MacFARLANE: (Nods head.)

MR. O'KEEFE: Mayor Pro Tem Gallelli.

MAYOR PRO TEM GALLELLI: Here.

MR. O'KEEFE: Councilor Lannaman.

COUNCILOR LANNAMAN: Here.

MR. O'KEEFE: Councilor Miles.

COUNCILOR MILES: Here.

MR. O'KEEFE: Councilor Lehning.

COUNCILOR LEHNING: Here.

MR. O'KEEFE: Attorney Tom Wilkes.

MR. WILKES: Here.

MAYOR MacFARLANE: And you are?

MR. O'KEEFE: And I am Sean O'Keefe, town manager.

MAYOR MacFARLANE: Thank you. So this is the closed attorney-client session, and I'd like to say that it is commencing now. So, Sean, if you could lock that door for us.

1 MR. O'KEEFE: Yes.

2 MAYOR MacFARLANE: So the estimated length of
3 this attorney-client session is approximately an
4 hour. And the attendees are: Me, Mayor
5 MacFarlane, Councilor -- or actually it's Mayor Pro
6 Tem Marie Gallelli, Councilor George Lehning,
7 Councilor David Miles, Councilor Renee Lannaman,
8 Town Manager Sean O'Keefe, Town Attorney Tom
9 Wilkes, Attorney Douglas T. Noah, and our court
10 reporter, Shawna Stimson.

11 Everybody else is now asked to depart the
12 council chambers. And we are going to officially
13 commence this closed session.

14 This is the attorney-client discussion of
15 McGill versus the Town of Howey-In-The-Hills, et
16 al. Case No. 5:21-cv-00480-CEH-PRL, US District
17 Court, Middle District of Florida.

18 Mr. Noah.

19 MR. NOAH: Mayor, if I could just -- so that
20 there's no misunderstanding on the part of the
21 council, we have a court reporter. The court
22 reporter is going to record everything that's said.
23 And at no point are we allowed to go off the record
24 and say things that we don't want recorded. That's
25 not allowed. So as long as we're in closed

1 session, the court reporter is going to be
2 recording everything.

3 At the end of the litigation, the transcript
4 is available to be read by anybody who wants to
5 read it, so it's not like this is a meeting that
6 will be forever lost as far as what we say in the
7 meeting. Just wanted everybody to understand that.

8 Yes, sir.

9 COUNCILOR LEHNING: Question. Is any of this
10 available to the McGill side prior to the --

11 MR. NOAH: No, that's why we're in the closed
12 session is to keep the opponents from hearing what
13 we're saying.

14 COUNCILOR LEHNING: Only after the trial is it
15 available?

16 MR. NOAH: Only after the litigation is
17 completed. Yes, sir.

18 COUNCILOR LEHNING: Thank you.

19 MAYOR PRO TEM GALLELLI: Or talking to towns
20 peoples, what transpired today in this meeting,
21 that's also not to be done?

22 MR. WILKES: Yeah, there is -- I mean, the
23 litigation police are not going to come and throw
24 you in jail if you say what happens today, but the
25 point is is that we're all here representing the

1 Town. We're all -- have a fiduciary duty towards
2 the Town and its citizens. And the Town is a party
3 in this lawsuit, so it's important for the Town --
4 the representatives of the Town, meaning the folks
5 around this table, to be able to talk
6 confidentiality with their lawyer, who is Mr. Noah.
7 And he needs the opportunity to talk to us without
8 Mr. McGill and his lawyer hearing about it, so
9 that's why we're here.

10 So the point is, is it's perhaps not illegal
11 to tell people what happened in the meeting, but
12 we're all expected not to.

13 MAYOR PRO TEM GALLELLI: Thank you.

14 MR. NOAH: The only thing I would add to that
15 is if you think about this just like talking to
16 your lawyer, if you were being sued individually,
17 if you talk about it, you run the risk that what is
18 said in here loses its privilege. And that's the
19 whole purpose of having executive council meetings
20 like this. Okay?

21 So as I've been introduced, my name is Doug
22 Noah. And for those who know me, Mr. Wilkes, Mayor
23 MacFarlane and Mr. O'Keefe, they'll back me up on
24 this, that once I start talking, I could just suck
25 all the oxygen right out of the room because I tend

1 not to -- I tend to go over my welcome sometimes.

2 So I think before I start all that, it would
3 help to know where we're going with this. So let
4 me give you the goal to have in the back of your
5 minds, and then I can just start with the verbal
6 salad.

7 So what we're trying to achieve here -- is the
8 case that I'm representing the Town on is in a
9 posture to where we need to decide if we are going
10 to litigate the claim or if we have any desire to
11 try to resolve the claim short of litigation. And
12 I'm looking for all of your input to let us know
13 what you would like to do with that.

14 So with that, you need to kind of know what is
15 going -- what the background of everything is so
16 you can make an intelligent decision toward that
17 aim. And so I have an outline of an agenda. The
18 outline of the agenda is -- there's some
19 introduction that I'd like to offer you, not in a
20 perfunctory sense, but to tell you what you can
21 expect out of me versus what you expect out of Tom
22 and so forth. And I'm on a first name basis if
23 that's okay with everybody.

24 Then I'd like for you to know a little bit
25 about the facts of the case and then where the case

1 is currently postured. And then after that I can
2 give you some impressions of the case, my
3 evaluation, where I think things are likely to go
4 depending on what we do. And then it's up to you
5 all to deliberate and tell me -- give me my
6 direction on what you think we should do.

7 We don't take a vote here today. This is
8 not -- you have to take a vote in public, in a
9 public meeting, but I think both Tom and I would
10 like your consensus as to where you think this case
11 should go.

12 So that is the informal agenda. I will tell
13 you that I work for you, not the other way around.
14 So if somebody wants to follow a different agenda
15 or if you have questions right off the top of your
16 head that you want answered, I'll do my best to do
17 that. But other than that, I can go ahead and
18 start the agenda. Thoughts?

19 MAYOR MacFARLANE: Please begin.

20 MR. NOAH: Okay. So by way of introduction,
21 you all may want to know who you're talking to and
22 why I'm here instead of Tom having this particular
23 conversation with you. The reason is is the Town
24 of Howey-In-The-Hills is a member of something
25 called the Florida Municipal Insurance Trust. As a

1 member of that trust, you have certain privileges,
2 and one of those are that there's an aspect of it
3 that works like insurance. And when the Town gets
4 sued, then the insurance company will put on a
5 legal defense and typically cover the exposure of
6 that lawsuit, will typically cover the attorney's
7 fees of that lawsuit, with the exception of a
8 deductible. We say a reservation but some -- you
9 would know it is a deductible, that if the Town has
10 a \$25,000 deductible and there is an exposure, the
11 League would pay the exposure, but then you would
12 have to reimburse the League the 25,000. And I
13 don't know if you do or not because I really don't
14 get into those kind of disputes. Okay?

15 So when the League puts on a defense, this
16 aspect of the Florida Municipal Insurance Trust,
17 this aspect of their operations is conducted by
18 something called the Florida League of Cities.
19 They are the ones who monitor claims. They hire
20 the lawyer for you. They look over my shoulder --
21 just like Tom does on your behalf, they look over
22 my shoulder on behalf of their members to make sure
23 that I'm doing what I'm supposed to be doing. So
24 they are the ones who are putting on the defense.
25 And that's why you're talking to me today, because

1 that is a legal defense that you have as a service
2 that the League provides to all of you.

3 Because the League pays me, sometimes there is
4 a question in people's mind. Who do I represent?
5 Do I represent the League? Do I represent the
6 Town? Who in the world do I represent? And I
7 wanted to dispel that I represent the Town. The
8 Town as a whole as it makes decisions in this room,
9 that's who my client is. Okay? My duties and
10 responsibilities run to all of you in the same way
11 that Tom's does. I have a duty to you to be
12 competent and to keep your confidences and to give
13 you my best impressions on what I think the Town
14 should do or how it's postured in this particular
15 case.

16 The difference between Tom and I is that I
17 represent you in this one narrow aspect. Tom
18 represents you on everything. So I don't get to
19 second guess Tom on anything he tells you, but Tom
20 gets to second guess me on this case because he
21 represents you just like I do. So may sound unfair
22 but that's the profession that we've chosen here.

23 So I represent you just like Tom does. And
24 Tom and I have been working closely. We share --
25 we routinely share ideas. We routinely share

1 thoughts on defenses. And especially in the recent
2 posture of this case, Tom has helped me think
3 through a number of different issues for the
4 benefit of all of you. And we take all of those
5 recommendations to heart and we follow up on them.
6 When I say "we," I've got a small team that I work
7 with of other lawyers and stuff.

8 So that's why you are talking to me today.
9 That's who I am. I'm trying to reassure you that I
10 do have your best interest at heart. Okay? So
11 with that, those are the introductions. And if
12 nobody has any questions about that, then I'll go
13 into the basic facts of this case.

14 The basic facts are very easy to iterate.
15 There was a council member once upon a time, and
16 his name was McGill. He was elected to represent
17 the Town as a council member, and he represented
18 the Town from the time that he was elected until a
19 recall vote, and then by popular vote he was
20 removed from office at that time. So we're talking
21 about a relevant time span of however many months
22 or couple years that that occurred.

23 He has made several allegations. The
24 allegations that he made is that the Town violated
25 his first amendment right to expression. And the

1 Town did that in four ways: It prevented him from
2 putting certain topics on agendas to be discussed
3 during Town Council meetings; it prevented him from
4 engaging in discussion during Town Council
5 meetings; when the minutes of the Town Council
6 meetings were approved, he was denied the
7 opportunity to attach additional written comments
8 to those minutes; and he requested special --
9 special meetings for the Town Council. And he was
10 sometimes granted permission to have a special
11 meeting and he was sometimes denied. That's the
12 factual allegations. That's the fact pattern that
13 brings us here. It's pretty simple and straight
14 forward.

15 So with that, when he filed his lawsuit, he
16 filed it against the Town generally and then two
17 individual members, the Town mayors, Mayor
18 MacFarlane and the prior mayor.

19 After we -- after we exchanged discovery --
20 and all discovery is is that they tell us facts and
21 give us documents that they think are relevant. We
22 give them -- we tell them facts and we give them
23 documents that we think are relevant to this
24 dispute. And after we do that, we have an
25 opportunity -- when I say "we," I mean your lawyers

1 on your behalf. We have an opportunity to go to
2 the Court and to say that this is as good as his
3 case gets, and we don't think that there is a
4 viable theory to go forward to a jury. We think
5 the Court should throw this out as a matter of law
6 at this juncture.

7 That's been done. The Court came back with
8 its decision, which I'm going to explain in just a
9 few minutes. But the upshot of it is, it granted
10 our motion in part and it denied our motion in
11 part. So the individuals are now out of this
12 lawsuit. The mayors are no longer in in their
13 individual capacity. Now it is only the Town that
14 is defending the lawsuit.

15 What are they defending? Well, what
16 Mr. McGill presented was that his expression had
17 been restricted in those four ways that I told you
18 about: Not getting his topics on the agenda; not
19 being able to express himself; not being able to
20 attach documents to the minutes; and not being
21 granted special meetings.

22 What our take was was a practical take when we
23 made this argument to the Court. What we argued
24 was that he got to say everything that he ever
25 wanted to say in a Town meeting. And since he had

1 that opportunity, there was no other restriction of
2 speech that is relevant. Whether or not he had his
3 topics on the agenda doesn't matter, because he got
4 to talk about it during the meeting anyway.

5 Whether he got to attach documents to the minutes,
6 didn't matter. Whether he got special meetings,
7 didn't matter.

8 It turns out that that practical way of
9 arguing the case was shortsighted in this respect.
10 The Court had a more nuanced approach, and what it
11 did is it analyzed each four of those allegations
12 and looked at them as separate restrictions on
13 speech. And what it determined is it agreed with
14 the Town that he was given full opportunity to say
15 whatever he wanted to say during a meeting. We
16 spent a lot of time going through all of your
17 minutes during the time that he was an elected
18 official. We pointed out to the Court in what we
19 call pinpoint citations that, Judge, listen to this
20 part of the tape or recording and you're going to
21 hear this is where he talked about this, this is
22 where he talked about that. And we went through
23 all of that in painstaking detail and the Court
24 agreed with you. So you won on that one.

25 Then the Court said that since you won on that

1 one, it also doesn't have -- you also win on
2 attaching documents to the minutes. That doesn't
3 matter because he said everything during the
4 meeting that he had to say.

5 What the Court did say is that putting the
6 topic on the agenda is a different type of
7 expression. And getting a special meeting is a
8 different type of expression. And there what the
9 Court said was that not all of his topics were put
10 on an agenda and not all of his topics were given a
11 special meeting, and, as a result, that creates a
12 disputed issue of fact that the Court cannot
13 resolve. Whenever you hear that phrase, "disputed
14 issue of fact," what that means is this is not a
15 legal determination anymore. This is something
16 that must go to a jury.

17 So the posture that we are currently in, what
18 is going to the jury are two issues: One, did the
19 Town restrict or retaliate against Mr. McGill by
20 not putting his topics on an agenda? And,
21 secondly, did they do -- did the Town do the same
22 thing by not giving him special -- a special
23 meeting? That's what's going in front of the jury.

24 Now, I can evaluate that claim, but I want to
25 give everybody an opportunity to -- I just want to

1 pause here. If anybody has questions about the
 2 posture that we're currently in or what the Court
 3 said or the facts of the case, anybody curious more
 4 than what I've -- I'm giving you the 15,000-foot
 5 view, but I understand you may have more specific
 6 questions.

7 COUNCILOR MILES: Is this the same judge that
 8 ruled on the case? I was the chair, president,
 9 whatever you want to call it, of the committee that
 10 put together the petition to --

11 MR. NOAH: For the recall?

12 COUNCILOR MILES: For the recall.

13 MR. WILKES: No. I can answer it. They're
 14 not the same judge. You have Judge Honeywell
 15 and --

16 MAYOR MacFARLANE: It's right there.

17 MR. WILKES: I've forgotten who the recall
 18 judge was.

19 COUNCILOR MILES: I was looking for this. I
 20 didn't realize I had put it out.

21 But I was the chair of a committee of about
 22 five people. He sued us separately, and we
 23 prevailed in that lawsuit. He had it removed from
 24 state court and moved into federal court. He had
 25 us redo the petition. I'm not a lawyer so I didn't

1 quite get it good enough for the federal judge to
2 approve it. But ultimately we prevailed in that.
3 We did the petition drive twice in two -- two
4 petition drives, and he was removed from office in
5 August of '19?

6 MAYOR MacFARLANE: 2020.

7 COUNCILOR MILES: 2020. It took a long time
8 just to follow the statute to do that.

9 Does the fact that that was dismissed have any
10 bearing on this case? And he was taken out of
11 office -- I think it was roughly 75 percent of the
12 electorate voted for him to be pulled. I mean, it
13 was a super landslide at that point in time. Does
14 that case have any bearing on this case?

15 MR. NOAH: First of all, thank you for your
16 question. And the answer is, it had some bearing
17 on the case. So the first part was I mentioned
18 that Mr. McGill stated that the Town restricted his
19 ability to speak or to express himself. He also
20 alleged that the Town retaliated against him
21 because he exercised his speech.

22 One of the allegations of retaliation was
23 exactly this, that the Town initiated this petition
24 to do the recall as a result -- and he has his own
25 explanation for this and his own spin. But like

1 you say, the Court has already resolved this issue.
2 And so what the ultimate case was, you're exactly
3 right, you prevailed on the recall. The recall was
4 completely legal and valid. And the Court said
5 that that recall process was not part of
6 retaliation. You all have won that issue in this
7 particular case as well. So that issue is now
8 gone. That is not going to a jury.

9 There were some other things too. Like I
10 said, I was giving you the 15,000-foot view before.
11 But there are certain behaviors or retaliatory acts
12 that he was attributing to the mayors and to
13 different -- all of that stuff is gone except for
14 the things that I've now told you about. All
15 that's gone. Meaning that the jury doesn't have to
16 hear it because the Court has ruled on it.

17 COUNCILOR MILES: And they won't even hear
18 about it?

19 MR. NOAH: They won't even hear about it.
20 Another one of those things. He alleged that the
21 Mayor intentionally blocked -- would not call on
22 him during Zoom meetings when you all were in COVID
23 and you were conducting meetings via video
24 conference. He said that he was intentionally
25 muted out. He was intentionally not called upon,

1 all these kinds of things. All of that has been
2 removed from this case as well.

3 Anything else before I go to just a little bit
4 of evaluation?

5 All right. So in order for you all to know
6 what is a good decision here as far as should we
7 consider some sort of settlement, should we explore
8 that with him, should we go right to the merits and
9 have this case resolved by trial? You want to know
10 two things, I think. One is exposure and one is
11 risk. So here's what I mean by those two terms.
12 Exposure just means if you go to trial, what
13 happens at that point? What is the worst thing
14 that the Town is going to see?

15 Well, in this case, Mr. McGill has filed this
16 suit under something called 42 U.S.C. Subsection
17 1983. It's the mechanism of 1983. It's a statute
18 that what it does is for constitutional violations,
19 it creates -- it's like a tort. It's like any
20 wrong that you've ever seen. If somebody runs into
21 you in your car and they're negligent, just in the
22 same way you can sue them for things like my
23 medical bills, my pain and suffering, subsection
24 1983 gives litigants the same right to file for
25 those type of damages for a constitutional claim.

1 So any actual damages that he has would be an
2 exposure. That could be something that the Town or
3 the League on the Town's behalf would have to pay
4 one day.

5 In this case Mr. McGill cannot put any
6 particular number up on a board about what his
7 actual damages are. But he also gets non-economic
8 damages. He can tell the jury that if they find
9 that there was a violation, that he is entitled to
10 some sum of money, and that number is almost
11 whatever a jury is going to say is reasonable to
12 compensate him for not being able to have his items
13 on the agenda, not to have his special meetings.

14 So that is one piece of knowledge that you
15 want to have. What is that number worth? Usually
16 when there is not a hard number for the jury to
17 double, usually that's what I think of like in an
18 employment case, somebody has lost wages, two years
19 of lost wages, call it \$100,000, the jury it's not
20 uncommon for them just to double that. And so
21 you're looking at a \$200,000 exposure.

22 When somebody can't put any number up on the
23 board, your guess is as good as mine. But, you
24 know, some juries think that \$10,000 sounds like a
25 lot of money. They will give him \$10,000. Some

1 juries will give him a dollar, nominal damages.
2 That's all you get for prevailing. Some might
3 think it's an egregious harm and give him \$50,000.
4 Anybody's guess in this room is as good as mine,
5 except I can tell you that my experience, for what
6 it's worth, if there is not a sum of money, \$10,000
7 sounds like a lot of money to a jury.

8 So -- and the thing is, that's going to be
9 covered by the League. I don't give insurance
10 opinions in here. Just understand what I'm saying.
11 This is just based on my experience dealing with
12 the League for 35 years. I've never seen them not
13 cover compensatory damages when they put on defense
14 to a client. Maybe it's happened but it hasn't
15 been my experience.

16 MAYOR PRO TEM GALLELLI: Can I ask you a
17 question about that?

18 MR. NOAH: Of course, yes.

19 MAYOR PRO TEM GALLELLI: If they can't put
20 a -- he can't put a dollar value, does the jury
21 hear that, which makes them, like, why can't they
22 put a dollar value to what he's asking for? Is it
23 just being a -- a noodge.

24 MR. NOAH: Again, what the jury may do, the
25 jury -- let me answer it this way first. A large

1 part of it depends on how bad they think the
2 violation is, start with that. And the second part
3 is how well can the attorney lawyers make an
4 argument to turn some sort of violation into a
5 monetary damage.

6 So here's what I would say to that. If the
7 jury finds that there was in fact a violation of
8 his expression, and what would happen is the lawyer
9 would give some form of argument. I haven't
10 thought through the nuances of what this might be,
11 but in the case of a car accident, this person
12 wakes up every morning -- from now for the rest of
13 her life she's going to wake up every morning stiff
14 when she comes out of bed. What is that stiffness
15 worth? Just give her \$10 a day for the stiffness.
16 Now you multiple that by 365 days a year and
17 stretch that number out through her expected
18 lifetime. That would be a way to articulate a
19 non-economic damage to where it makes sense to a
20 jury and a jury could put a number value on it.

21 And, you know, you have lawyers who make those
22 arguments all the time, and they can be quite
23 compelling. And so you get a huge number. You get
24 a million dollars. Other advocates just don't
25 articulate and can't put it in as good a way, and

1 so the jury doesn't know what number, and so maybe
2 \$10,000 sounds like a lot of money. That's about
3 the best I can do to answer it.

4 MAYOR PRO TEM GALLELLI: Okay, thank you.

5 MR. NOAH: That's how they do it. It's almost
6 like circumstantial. Anything else about exposure
7 before I go to risk?

8 Risk. Risk only means what is the probability
9 that there will be an exposure? So what I'm just
10 trying to say in blunt language is, are you going
11 to lose this case or are you going to prevail on
12 this case? Well, what I think is there is a chance
13 that -- well, let me give you my honest opinion
14 first, and then I'm going to talk about chances.

15 My honest opinion is that I'm still kind of
16 stubbornly hanging on to this idea of no harm, no
17 foul. I don't think that the jury is going to get
18 very excited about this case. It's not a table
19 pounder, some of my colleagues say, because you
20 don't -- if somebody is not restricted from
21 talking, then it's hard to understand what the
22 difference makes if you didn't put it on an agenda.

23 And, Tom, if you're disagreeing with me on any
24 of it, please feel free -- you won't embarrass me
25 if you contradict me on this. A lot of this is

1 judgment. A lot of this we're talking about our
2 own individual judgment, our own individual
3 experience. But I don't see this case as a table
4 pounder. If somebody gets to say whatever they
5 want, whether it went onto the agenda or whether
6 they could say it in the form of a special meeting,
7 to me that's the difference without -- that's a
8 distinction without a difference. I just don't get
9 what the big deal is.

10 Now, it's possible, though, that they get a
11 jury instruction from the judge where the judge
12 says something like, I have already found this.
13 And since I've already found that these are two
14 different types of expression, if you think that he
15 has been restricted in expressing himself in this
16 way, then you can rule in his favor. Let's assume
17 that. And that issue goes -- that issue will go to
18 a jury.

19 This -- Mr. McGill, in my impression -- again,
20 you all know him better and you may have deeper
21 feelings than I have. I think he makes a very good
22 first impression. I think he is a good looking
23 guy. I think he's articulate. I think he
24 expresses himself largely pretty well.

25 What I also think -- and those who were in

1 his -- Tom was in there with me. Those who were in
2 his deposition with me I think agree with this. It
3 doesn't take very long for him to be expressing
4 himself before you start to see what the Town was
5 dealing with. And I think that that comes through
6 to a jury.

7 What I also think -- and I think Mayor
8 MacFarlane and I were alone in her deposition, but
9 the presentation -- and I'm not saying this because
10 I work for her. I work for all of you. But I'm
11 evaluating the case. Her presentation is very
12 artful. So when she says I am happy to consider
13 anything he wants to put on an agenda as long as we
14 haven't already exhausted that issue, as long as it
15 is truly something for a town council to consider
16 and not at this time -- this is before we had the
17 Town manager. Mr. O'Keefe wasn't here. Then we
18 had a strong mayor form of government, and there
19 was certain HR issues, personnel issues that were
20 solely within her bailiwick. It didn't go to the
21 Town commission. And so -- or the Town Council.

22 So if -- as long as it was relevant to Town
23 business, as long as it hadn't been exhausted, it
24 just wasn't being repeated for the purpose of being
25 repeated, as long as it wasn't goes to slander

1 somebody for a decision that has already been made
2 and resolved, I'm happy to listen to whatever he
3 wants to put on the agenda. I just want to have
4 some background for why I'm putting it on the
5 agenda because Town -- now I'm in Tom's world --
6 but Town Council meetings are when you all conduct
7 business. The public is invited. They have a
8 right to be there. And under a state statute --
9 not the first amendment but under a state statute,
10 they have a right to be heard on certain things,
11 but you can control content. And so as long as it
12 is relevant to what the Town's business is, I'm
13 happy to put those issues on the agenda. Same goes
14 for special meetings.

15 So I think that there is always room that I am
16 wrong. So please, everybody understand, there is
17 no controlling all the variables. I am not the
18 jury. I am not everything that they are going to
19 hear in terms of evidence. They may disagree with
20 me because they have a different world view than I
21 have. But my feeling is, it is a case that I am
22 happy to go -- me and my team -- but we are happy
23 to go and litigate this case, and we think putting
24 McGill -- this is largely how it comes down --
25 McGill against MacFarlane, we think MacFarlane wins

1 90 percent of the time. Okay? There's a
2 10 percent of the time out there that we just can't
3 control. Right?

4 So what I think is we're looking at low
5 exposure, I think what we're looking at is fairly
6 low chance of incurring the exposure. Okay?
7 That's the good news.

8 Now, this is the part where I manage
9 expectations. I can be wrong on everything. All
10 right? And if I'm wrong on everything, I still
11 don't see the exposure being that high. I don't
12 know what your deductible is. This is something
13 that you want to look into. If you have a \$25,000
14 deductible, obviously you don't want to go to a
15 trial that you have a chance of having that
16 deductible -- of spending your money that way
17 rather than on Town services and other things.
18 Okay? So that is something that you want to
19 consider.

20 You want to consider what does it look like
21 one day, the day after trial, after a jury
22 disagrees with me and says I think the Town
23 violated his first amendment rights. Okay? I
24 don't know if that will make the papers. Sometimes
25 it does make the papers. Is that a concern to you?

1 So those are all the -- those are the factors that
2 weigh into maybe that you don't want this case to
3 go to trial.

4 Now, with that, the other thing I want you to
5 know is that I have talked to the Florida League.
6 Just because I represent you, doesn't mean that I
7 don't talk to them. They are the ones who are
8 making decisions about money. How much money are
9 they going to put on this case? And in a cost of
10 defense, what that means is they make a very easy
11 evaluation. What they say is what does it cost to
12 get us to trial. And when you are talking about
13 two lawyers and their staff all preparing for
14 trial, it's easy to run up \$50,000 between now and
15 trial next year. I was supposed to look at that
16 for you all. I think I got answer here when trial
17 is. Do you happen to know?

18 MAYOR MacFARLANE: I think it's April 25th or
19 something like that.

20 MR. NOAH: Okay. So between now and April,
21 okay, it is easy for a lawfirm to run up \$50,000
22 when they're preparing for trial and you got two
23 lawyers that are doing it. So for them, if they
24 could put \$50,000 on this case tomorrow, they would
25 probably do it if that would settle the case. But

1 I can tell you that the insured is not Allstate and
 2 it is not State Farm. They don't just make a money
 3 decision. You all are members of the Florida
 4 Municipal Insurance Trust. They want you -- they
 5 want to make sure that when they make a decision,
 6 you all are happy with the decision that they make.
 7 And they are not going to settle -- the first thing
 8 that they're going to say to me when I say do you
 9 want to settle this case or not, they're going to
 10 say what does the Town want? You all are the Town.

11 And so that's what I think Tom and I are
 12 looking for today is hearing what I've said to you
 13 today and with -- and Tom, again, it doesn't hurt
 14 my feelings if you disagree. Judgment is judgment.
 15 So your experience is different than mine. But
 16 what would the Town -- what is the Town's
 17 preference? Can we get a consensus with what we
 18 want to tell the League about what the Town would
 19 like to do with this case?

20 COUNCILOR MILES: He doesn't get a dime.

21 MR. NOAH: Huh?

22 COUNCILOR MILES: He doesn't get a dime.

23 MR. NOAH: Doesn't get a dime.

24 COUNCILOR LANNAMAN: I have a question before
 25 I -- we go to trial, and assuming whatever -- let's

1 pretend we go to trial in April and he loses. He
2 can then appeal again and drag this on further,
3 right?

4 MR. NOAH: Yes, ma'am. Yes, absolutely.

5 MAYOR PRO TEM GALLELLI: When does something
6 like this end?

7 MR. NOAH: So it's going to end in one of two
8 ways. That appeal that you're talking about, he
9 has that as a matter of right. So we're -- if he
10 appeals -- I'm going to talk about it in a minute.
11 If he appeals, then you're looking at at least
12 another year to 18 months. It's the 11th Circuit.
13 It might be a little bit -- but I'm thinking a year
14 to 18 months. Okay?

15 And then when that court decides, now he has
16 something called a writ of certiorari which would
17 go to the United States Supreme Court. That is not
18 a right. That is a -- they choose the cases that
19 they want. And they typically choose maybe
20 7 percent or 10 percent. I don't even know what
21 percentage.

22 MR. WILKES: If that many.

23 MR. NOAH: If that many. It's a very small
24 percentage of cases that they actually accept. So
25 usually once the 11th Circuit rules, it has ruled

1 and that's the end of the case.

2 Let's talk about the chances of appeal, first
 3 of all. I do not know -- in the same way that they
 4 don't know my communications or Tom's
 5 communications on this case with you all, they
 6 don't know anything about that, okay? I don't know
 7 anything about the communications he's had with his
 8 lawyer. So what I'm about to tell you is a
 9 complete guess. All right? What I'm guessing is
 10 she is not excited about this case. She being the
 11 lawyer, sorry, Mr. McGill's lawyer, I think is
 12 probably not excited about this case. I think she
 13 originally took it -- there were a number of things
 14 going on. McGill and --

15 MAYOR MacFARLANE: Alimenti.

16 MR. NOAH: Alimenti, thank you. McGill and
 17 Alimenti filed together. They had several other
 18 grievants that seem to be witnesses that would join
 19 in on that bandwagon. And Alimenti went away.
 20 That's why we never met Alimenti. It just went
 21 away at the court stage before it went to trial.
 22 And then that case goes away. A lot of the
 23 people -- they do have their advocates. There are
 24 some witnesses that have been deposed in the case
 25 that are advocates. We feel like we have separated

1 their testimony from anything that's relevant.

2 I think that she is -- everybody can read this
 3 one day. I don't mean to say this in a rude way.
 4 I think that she's kind of over a barrel, so to
 5 speak, because I think that it's hard for her to
 6 withdraw, and I also think that she's not being
 7 paid.

8 So I tell you that to tell you this. What are
 9 the chances of appeal to the 11th Circuit? If the
 10 Town prevails, you could lose. If the Town
 11 prevails, it is quite possible that they will have
 12 a very frank discussion where the lawyer says I
 13 have fronted all of this for you, I've taken a loss
 14 on it, but I'm not going to appeal for you. If you
 15 want that, then pay me my \$40,000 or whatever an
 16 appeal costs, and I'll take your case then. And if
 17 he doesn't come up with the money, it's quite
 18 possible she could withdraw at that point. It's
 19 hard to withdraw now, but I think she could
 20 withdraw at that point.

21 MAYOR PRO TEM GALLELLI: When a case goes on
 22 this far, it's always in the same circuit court
 23 because of where we're located? Does it stay
 24 within --

25 MR. NOAH: It's district court, but yes.

1 MAYOR PRO TEM GALLELLI: I'm sorry, district
2 court. Do you get a different judge as this
3 progresses, I assume?

4 MAYOR MacFARLANE: Yeah, when you go to the
5 11th Circuit, that's a panel of three judges, and
6 they sit in Atlanta. This is federal court. So
7 it's a little bit different than the state system.
8 So you are quite correct that the trial court in
9 the state system is the circuit court. And the
10 federal courts do it backward. You're in a
11 district court, then it goes to circuit court.
12 Circuit court is Alabama, Georgia and Florida.
13 That's where they hear cases from.

14 MAYOR PRO TEM GALLELLI: Just to answer the
15 other question, no, I would not like him to get any
16 money, either.

17 MR. NOAH: Okay.

18 COUNCILOR MILES: The question I have, when I
19 open a dictionary and look at the word
20 "narcissist," I see a picture of McGill there. In
21 your estimation, will a jury do the same thing?

22 MR. NOAH: Rather than bite at the
23 narcissistic question, I'm going to change the
24 format of the question just a little bit and say I
25 think that the case comes down to McGill saying I

1 wasn't heard, to Mayor MacFarlane saying I'm happy
 2 to put him on the -- this is all I'm looking for,
 3 to get him on the -- to get his topic on the agenda
 4 or to get him a special meeting, this is what I'm
 5 looking for. I think she -- I think the
 6 credibility test between him and MacFarlane --
 7 Mayor MacFarlane, comes out Mayor MacFarlane
 8 99 percent of the time.

9 COUNCILOR MILES: Do they -- it took me about
 10 nine minutes of watching McGill -- at that time I
 11 was in the audience. I wasn't here during any of
 12 that process with McGill. But it took me about
 13 nine minutes to figure out it was five pounds in a
 14 two pound sack. Will the jury figure that out in
 15 nine minutes?

16 MR. NOAH: I tend to think that the jury will
 17 understand some of the difficulties that the Town
 18 had with McGill. I think he -- what we saw in his
 19 deposition, just as an example, this is what I
 20 think the jury will see. I think that they will
 21 see a hard question posed to McGill and McGill
 22 sidestep it and not answer it face on. I think
 23 that they will see him answer the question that he
 24 wants to answer that has not been asked.

25 I think he tends to rational -- when you ask

1 him a question, he tends to rationalize to some
2 extent on almost every -- every question that's
3 hard for him to answer.

4 Why is that important to me? It's important
5 because at closing argument it's very easy to cast
6 him in a certain light, and that light is, here's a
7 person who is not completely comfortable with the
8 bare facts. Because you know that because he won't
9 answer the facts when he's asked the facts or he
10 will go a different direction or he'll give a big
11 rationalization or he's very defensive. He's
12 uncomfortable with the facts because he knows where
13 the facts lead, and the facts lead to a verdict for
14 the Town.

15 So it's that kind of credibility assessment,
16 and I do think it's within a jury's ability to see
17 that. As I say that, Councilman, let me just point
18 out this one thing. Think about the last time that
19 you went to vote, okay? And look at the three
20 people that are in line of front of you to vote.
21 Look at the three people behind you that are going
22 to vote. That's your jury. Okay? There's no
23 other way to -- you can't get somebody who is
24 particularly sensitive to Town issues. You can't
25 get anybody who is specifically intuitive with

1 human nature. You get that type of jury pool, and
2 that's who your going to have for your jury, if
3 that makes sense. So that's who you're putting
4 your confidence in.

5 MAYOR MacFARLANE: Go ahead, George.

6 COUNCILOR LEHNING: Yeah, a few questions.
7 The experience I've had with juries are expensive,
8 unfair, and slow. So I've had facts on my side
9 numerous times and lost because you're exactly
10 right, you don't know what you're going to get.

11 Couple of questions. How much of this is
12 going to be Mayor MacFarlane and David Nebel, the
13 prior mayor? Does the prior mayor figure in any of
14 this?

15 MAYOR MacFARLANE: (Shakes head.)

16 COUNCILOR LEHNING: None?

17 MR. NOAH: He comes in in a few -- did you
18 want me to answer?

19 MAYOR MacFARLANE: Yes, please.

20 MR. NOAH: I'm sorry. He comes in in a few
21 issues. So -- and the Court cited to them. That's
22 why I will tell you about the Court seemed to think
23 that these were disputed issues of fact, and so I
24 tend to think that a jury could hear this.

25 Nebel made a statement, something to the

1 effect of I'm not going to listen to you because I
2 don't have -- it's not exactly that, but it's
3 something along those lines. I'm not going to
4 listen to you because we don't have to listen to
5 you. I'm not going to -- I'm going to postpone
6 your special meeting and not grant you special
7 meeting because I can, things like that that shows
8 a lot of discretion.

9 You don't like discretion like that in a first
10 amendment case. Because when you have that much
11 power in one person's hands, it suggests that they
12 are no longer only controlling content, they could
13 be controlling viewpoint as well. And the Court
14 also found that he was critical of the Town, and so
15 that is the motivator for the Town is to restrict
16 expression based on viewpoint.

17 MAYOR MacFARLANE: But will he be -- I'm
18 sorry, George, when I shook my head, I don't think
19 that Mayor Nebel would be able to attend and
20 participate as well.

21 COUNCILOR LEHNING: He had -- I mean, David
22 was very outspoken when it came to McGill and
23 that's what I worry about.

24 MAYOR MacFARLANE: Yes, I'm just talking about
25 in trial.

1 COUNCILOR LEHNING: If any of that is in
2 writing, I agree with you, he probably couldn't
3 testify.

4 MAYOR MacFARLANE: Everything is on tape.

5 MR. NOAH: Yeah, it's recorded.

6 MAYOR MacFARLANE: So we've got everything he
7 ever said, yeah, about -- during the meetings or
8 the special session.

9 COUNCILOR LEHNING: Okay, that's a worry that
10 I have. And I assume that this not being a bench
11 trial, it's a jury trial, and therefore the jury
12 will -- if they do prevail, any damages would be
13 theirs, not the judge's decision.

14 MR. NOAH: Damages would be the jury's
15 decision.

16 COUNCILOR LEHNING: Right. The judge would
17 not add anything into that.

18 MR. NOAH: That's correct. Oh, one thing, I'm
19 sorry, Council Member. The judge is the one who
20 determines attorney's -- under this statute, it has
21 an attorney fee award for the prevailing party. So
22 if he wins, not only will the League or the Town,
23 however the deductible comes out, not only will
24 they be on the hook for the compensation, but all
25 of the attorney's fees to get there. And theirs, I

1 assume, is something similar to ours.

2 COUNCILOR LEHNING: Okay.

3 COUNCILOR MILES: If we prevail, do we get
4 attorney's fees?

5 MR. NOAH: I'm just going to tell you frankly,
6 usually there's a double standard on that. And the
7 reason is, for these kinds of claims, the court
8 wants people to feel free to -- they don't want a
9 chilling effect. And so the consensus has been if
10 they give the defendant who prevails attorney's
11 fees, it could chill future litigants from bringing
12 these kinds of claims. So usually there's a double
13 standard. The Plaintiff will likely get his
14 attorney's fees if he prevails. The Town very well
15 may not get theirs if they prevail.

16 MAYOR MacFARLANE: George, were you done?

17 COUNCILOR LEHNING: No, not yet. I assume
18 that this attorney that McGill has is the same one
19 he's had all along on all these cases?

20 MR. NOAH: Yes.

21 COUNCILOR LEHNING: Thank you. The insurance
22 limit, what is our deductible --

23 MR. O'KEEFE: The deductible is --

24 COUNCILOR LEHNING: -- and what's the cap?

25 MAYOR MacFARLANE: We don't -- there isn't a

1 cap as far -- I mean, the FMIT is kind of making
2 the decision as they go during the -- where we were
3 negotiating back and forth?

4 MR. NOAH: Mediation.

5 MAYOR MacFARLANE: Mediation. Thank you very
6 much. They were there and saying how much they
7 would be willing to settle for at that time, and
8 McGill basically balked and walked. But I don't
9 know what our deductible is. I haven't heard that
10 we have one.

11 COUNCILOR LEHNING: What I'm trying to
12 discover is what is our exposure.

13 MAYOR MacFARLANE: Yep.

14 COUNCILOR LEHNING: Just the deductible?
15 There is no cap?

16 MAYOR MacFARLANE: Well, we --

17 COUNCILOR MILES: Our insurance rates will go
18 up.

19 COUNCILOR LEHNING: Well, I know that.

20 MAYOR MacFARLANE: My understanding --

21 COUNCILOR LEHNING: I'm talking about out of
22 pocket.

23 MAYOR MacFARLANE: My understanding is that
24 there may be a cap, but there isn't one set
25 officially in our contract with FMIT. As far as a

1 deductible, we have to check on that. I don't know
2 the answer.

3 COUNCILOR LEHNING: So that's another lawsuit
4 waiting to happen.

5 MAYOR MacFARLANE: Yeah, right there. Yeah.

6 COUNCILOR LEHNING: Have you had any other
7 cases similar to this go to jury? To me, this -- I
8 mean, it looks very innocuous but --

9 MR. NOAH: Every first amendment case that I
10 have had has ended up with summary judgment.

11 MAYOR PRO TEM GALLELLI: With what?

12 MR. NOAH: Summary judgment. I'm sorry,
13 summary judgment is where the Court has thrown it
14 out. And just to give you an idea, there was a
15 case it was with a utility but it was a public
16 entity, and had a meeting just like this. And I
17 told them that they had a serious overbreadth
18 problem, that I thought that they were going to
19 lose on that issue and it would go to trial, and
20 they got summary judgment in that case.

21 So this is the first time where I've seen it
22 teed up to go. But they don't usually settle
23 either. I haven't seen them settle, usually it's a
24 summary judgment issue.

25 COUNCILOR LEHNING: One of the reasons -- wait

1 a minute, I'm not through yet. The two issues, are
2 they bifurcated or are they judgment on -- one
3 judgment for both issues?

4 MR. NOAH: Both issues are going to be tried
5 at the same time in front of the same jury. They
6 are not bifurcated.

7 COUNCILOR LEHNING: So we could prevail on one
8 and lose on the other?

9 MR. NOAH: Conceivably.

10 COUNCILOR LEHNING: Or prevail on both or lose
11 both?

12 MR. NOAH: Conceivably.

13 MAYOR MacFARLANE: Would there be separate
14 judgments for each?

15 COUNCILOR LEHNING: That's what he's saying,
16 yeah.

17 MAYOR MacFARLANE: No, I meant as far as the
18 monetary potential confrontation.

19 MR. NOAH: I don't think so, Mayor. Here's
20 the way I think it will be. I think that there
21 will be what they call an interrogatory verdict
22 form. And so it will say after the jury has read
23 all of the instructions on the first amendment,
24 then they will be given a form that they have to
25 fill out when they go back to their room and

1 deliberate. And I think that what the form is
 2 going to be is do you find that the Town of
 3 Howey-In-The-Hills restricted Mr. McGill's first
 4 amendment rights with respect to not putting his
 5 topics on an agenda, yes or no? And then it will
 6 say the same thing with respect to special
 7 meetings, yes or no.

8 And then each time it will -- sorry, I didn't
 9 do this very well. Did they restrict his
 10 expression from putting -- from putting the issue
 11 on the agenda, yes or no? Let's say that they say
 12 no. It will say if you said no, go to this
 13 question. If you said yes, go to this question.
 14 Okay?

15 And so first, was his free speech restricted
 16 in this way, was his free speech restricted in this
 17 way? If you answered yes to either questions one
 18 or two, what are the damages? And I think it's
 19 going to be that simple, is what the jury verdict
 20 form is going to look like.

21 MAYOR MacFARLANE: I'm sorry, George.

22 COUNCILOR LEHNING: Two more questions. I
 23 assume we have not had any -- or you have not had
 24 any conversation with opposing attorney relative to
 25 settlement as of yet?

1 MR. NOAH: We have. And that's what Mayor
2 MacFarlane was referring to. We had a mediation
3 conference. I forgot what his last ask in the
4 mediation conference was, but it was way high. It
5 was before summary judgment and it was way high.

6 My thinking on mediation is twofold. One, I
7 told him at mediation, you are going to lose at
8 summary judgment. He has not taken a complete loss
9 on summary judgment. He still has some issues to
10 go to a trial on. I think that that puts wind in
11 people's sails. I don't think he'll be all that
12 reasonable.

13 The second think that I think about mediation,
14 though, is I do think his lawyer understands that
15 the -- what can the exposure on this case really
16 be, how much does he get out of that? Now, whether
17 she has any control over him is another issue. I
18 don't think she probably does.

19 COUNCILOR LEHNING: One last -- well, usually
20 the ones I've been associated with they settle on
21 the courthouse steps when they figure out they're
22 in trouble, and it's usually the last minute.

23 Could we put in any of his past legal
24 lawsuits, whatever, that he's got over the years?
25 He's sued people for 20 years.

1 MR. NOAH: Well, you know what it is with
2 respect to you can't introduce that for character
3 evidence. You can't introduce that for habit
4 evidence unless it is directed to demonstrate that
5 he did some particular thing that is an element of
6 the case. Not just that he's litigious. You can't
7 introduce it for that ground. Sometimes you can
8 introduce evidence like that on other grounds, but
9 I don't see that coming in in this particular case.

10 COUNCILOR LEHNING: Because he sued the police
11 force in New Jersey.

12 COUNCILOR MILES: And the township and
13 everybody.

14 COUNCILOR LEHNING: I don't know if those
15 grounds are anything like what we had.

16 MR. NOAH: They're not. We looked into those.
17 We asked him about those during deposition.

18 COUNCILOR LEHNING: That's all I have.

19 MR. NOAH: If I may, Ms. Mayor, the one
20 comment. I do -- this is in -- everybody should
21 hear this in terms of managing expectations. I
22 have had the same experience, took a case where two
23 trials that I was sure that the decision to
24 terminate was not based on gender. I don't think
25 that -- I think the jury just picked and chose who

1 they liked and who they didn't. And that was an
2 \$800,000 cost by the time you do their lost wages
3 and their front pay and attorney's fees.

4 So I do agree with you. I think the juries
5 are somewhat unpredictable. And I think that
6 managing that risk, I think that that's one of the
7 reasons why we're all here to discuss it so
8 everybody goes in with eyes wide open and knows
9 what can happen.

10 MAYOR MacFARLANE: Are you okay?

11 Okay. So he is still around, so he's still
12 conversing and having exchanges with citizens in
13 Venezia. And so I am -- I'm concerned if we settle
14 and they feel like they can come back to us to try
15 to contract from the Town or do any other
16 litigation. And I'm concerned if we don't settle
17 because of the way he can influence people. He's
18 just -- he's an influencer, right? He will sit
19 down and plead his case and not let anybody provide
20 any fact for what he's saying.

21 And so as with the trying to put things on
22 agenda, you ask over and over again where is the
23 backup, where is the information that supports
24 this, because we can't just go around allowing
25 accusations and criticism of individual citizens or

1 whoever. And you'll remember that he had a list of
2 individual citizens that were not associated with
3 the Town but lived in the Town. And he just took
4 them to task because they didn't agree with what he
5 was saying or they tried to defend some of the
6 things that were out there.

7 And so I have those, you know, it's
8 push-me/pull-you, double-edged sword, however --
9 what acronym you want to use for this. I am very
10 concerned about going to trial with him just
11 because of his actor capability and his ability to
12 sidestep and not really answer questions and really
13 tell what actually happened. And maybe his
14 perspective is so different from everybody else's
15 that he believes in what he's saying.

16 My other thing is that he and his wife, who
17 was going through cancer treatment at that time,
18 really used that. And their move out in the middle
19 of the night because of feeling threatened and all
20 of that sort of thing, I'm concerned that that sort
21 of testimony or information going to a jury is
22 going to really influence how much an award may be.
23 You know, We felt threatened and we couldn't live
24 in our house and we had to move and we had to incur
25 all of those and I couldn't work and she couldn't

1 work and all of that, that adds up very quickly as
2 you were saying.

3 And so I am very concerned -- well, just
4 because I'll have to go, right, and I don't really
5 want to go. But I don't want him to have a dime
6 either because we fought the fight, and I feel like
7 we did it right. We really were ethical and
8 managed our actions well to be able to deal with
9 that sort of thing.

10 MAYOR PRO TEM GALLELLI: Can I add just
11 because of -- let's pretend we, quote, settle, if
12 we settle. Back to my earlier question, just
13 because you settle, is it ever over anyway?

14 MR. NOAH: Well, if you settle, this is the
15 benefit of settlement. First of all, if the case
16 is messy at all, you do avoid all of that messiness
17 and you don't have the chance for a bad verdict.
18 And settlement is finality, final.

19 MAYOR PRO TEM GALLELLI: But to follow up on
20 Mayor's comment, he could continue his thing with
21 Venezia and just fire something else. I guess he
22 could do that either way.

23 COUNCILOR LEHNING: You could get sued
24 anytime.

25 MR. NOAH: You can't -- as far as I know, you

1 can't prevent somebody from talking and expressing
2 whatever their hostility is.

3 COUNCILOR LEHNING: How many jury members are
4 there on these cases?

5 MR. NOAH: This will have six. And assuming
6 that the case is going to try over four days or
7 something like that, the Court would probably pick
8 two alternatives.

9 COUNCILOR LEHNING: Majority wins?

10 MR. NOAH: In this -- that is a great
11 question. I can't remember. I think it's --

12 COUNCILOR LEHNING: 3-3 and the judge decides?

13 MR. WILKES: Has to be unanimous.

14 MR. NOAH: I should know this but for some
15 reason I'm drawing a blank. I thought it was
16 unanimous. It's unanimous.

17 COUNCILOR LEHNING: Yeah, that's what scares
18 me. All he needs is one.

19 COUNCILOR LANNAMAN: I have a question. Oh,
20 I'm so used to going to the mic.

21 MAYOR PRO TEM GALLELLI: Is it off?

22 COUNCILOR LANNAMAN: It is. It is. I heard
23 that during mediation he balked and walked. What
24 was -- is it possible to ask what the offer was in
25 mediation that he balked and walked? Do we know

1 that amount?

2 MR. NOAH: It's a great question. And I can
3 get that number to you, but I've just forgotten.
4 For some reason I thought that his demand might
5 have been 160 or something like that.

6 MR. WILKES: I remember you telling me that he
7 started at like \$350,000.

8 MAYOR MacFARLANE: He did. 160 my
9 understanding was where we thought he was going to
10 start, but when they actually started it was over
11 \$300,000 and then, you know --

12 MR. WILKES: And you guys offered him 5,000 or
13 something like that?

14 MR. NOAH: Yeah. Well, with a message
15 probably. It was something like, we'll get serious
16 when you get serious type of deal.

17 COUNCILOR LANNAMAN: Yeah. My thought is that
18 if he's got this large number in his mind, that's
19 where he's probably stuck at, when you think about
20 the personality. And I don't feel that there
21 should be a settlement because the personality,
22 settling is not probably settling at all and may
23 open the door for all the frivolous lawsuits. I'm
24 just thinking about questions, the personality and
25 what we're dealing with in this individual.

1 MAYOR MacFARLANE: What would -- let's say we
2 are talking about settling. I know we're not, but
3 let's say. What would an appropriate --

4 COUNCILOR LANNAMAN: What would that look
5 like?

6 MAYOR MacFARLANE: -- offer be? What would
7 FMIT think was -- because, again, the grocery line,
8 right? Three people in front of you, three people
9 behind you, those are your jury.

10 MR. NOAH: Well, from the League's
11 perspective -- first of all, there's a cost of
12 defense, which they are going to have to put
13 forward. So as a minimum, they would be looking at
14 that number. I said \$50,000. Call it that. Call
15 it something around that neighborhood.

16 Then -- so that is an -- a relatively easy
17 decision for them to make because they bring
18 finality to this and it all goes away. They don't
19 have to worry about what's going to happen in front
20 of a jury.

21 As far as the actual exposure if they go
22 forward and face a trial, in addition to that
23 number that they're going to have, put whatever
24 value you put on it, \$10,000 or \$20,000, whatever
25 that number might be, it's tail wag the dog because

1 they have the attorney's fees. So the attorney's
 2 fees that he has incurred that they're going to
 3 have to pay is going to be well beyond probably
 4 what the exposure is.

5 So, you know, a large part of it is going back
 6 and forth with the League and the adjuster that you
 7 met, Levee (phonetic), he is your representative on
 8 this particular case. And he'll come to some sort
 9 of decision that will be somewhere -- he'd love to
 10 get it done for 50. I agree with what you all have
 11 said, that the personality involved, 50 probably
 12 will not do that. How much above 50 would he be
 13 willing to do? It just kind of depends on what the
 14 concern is with how much fees they have in it
 15 probably more than anything else. And the cost to
 16 get the --

17 MAYOR MacFARLANE: Just one more.

18 COUNCILOR LEHNING: Don't you think his
 19 attorney is on contingency basis?

20 MR. NOAH: I think she is. That's what I'm
 21 saying. But I think --

22 COUNCILOR LEHNING: Yeah, so she has no --
 23 we'll she's got, yeah, her --

24 MAYOR MacFARLANE: She's got luck.

25 COUNCILOR LEHNING: But she's not going to

1 want to spend money preparing for this. She's
2 going to want to negotiate at the last minute to
3 try and pull something out of it or put him on the
4 stand. That's all they have.

5 MR. NOAH: Our feeling is it's not the lawyer
6 we have to convince.

7 COUNCILOR LEHNING: Oh, yeah, yeah.

8 MR. NOAH: I agree. Everybody who is familiar
9 with it, at least in my firm, agree with you. They
10 think that the lawyer is not enthusiastic about
11 presenting this case to a jury.

12 MAYOR MacFARLANE: Does it really weaken --
13 let's say we do decide to make an offer or FMIT
14 moves forward with an offer. And it's not accepted
15 and we have to go to trial anyway, how much does
16 that weaken our stance at all?

17 MR. NOAH: Zero. The only thing it does is
18 give him talking authority out in the community I
19 guess. I'm not trying to talk anybody out of
20 mediation, but you can imagine a scenario where I
21 call her up and say, you know, we would like to
22 give mediation another try. She tells that to him,
23 as she would have to, and then he says I got the
24 Town over a barrel.

25 I mean, he could go out there and chitchat

1 about anything he wants to. So that's the -- that
2 would be the only downside that I can see to the
3 Town. That's not my individual concern. My
4 individual concern was -- that's more Tom's world
5 with dealing with -- you know, with working with
6 all of you all. But with me it doesn't change the
7 merits of the case one bit. Nobody will ever hear
8 about this.

9 MAYOR MacFARLANE: Will the jury ever hear
10 that we tried to mediate?

11 MR. NOAH: (Shakes head.)

12 MAYOR MacFARLANE: Okay, thank you.

13 COUNCILOR LEHNING: Well, everything's on his
14 side right now. He has zero dollars invested in
15 this. So why should he negotiate now? I would
16 never go to him with an offer, never.

17 MR. WILKES: What he's doing, he's trying to
18 figure out, I either get nothing or I get
19 something, and what's the something I can get
20 without risking getting nothing by going to a jury?

21 Doug, can I ask a question? In these federal
22 civil rights cases like this one, is there the
23 ability to make an offer of judgment? That doesn't
24 work in the civil lawsuit, does it?

25 MR. NOAH: They have an offer of judgment

1 statute, but it's nothing like the State's. So in
2 federal court -- it's Rule 68. And what it allows
3 you to do is make an offer. But if you prevail on
4 your offer -- if you prevail and do better at trial
5 than what your offer was, all it entitles you to
6 are costs, which are kind of silly because you get
7 your costs anyway. So it really is a statute
8 without any teeth. It's not a statute, it's a
9 procedural rule. And it just doesn't have much
10 teeth in this case, Tom. It's not like our State
11 statute.

12 MR. WILKES: Just to put some input into it, I
13 don't disagree with anything that Doug has been
14 talking about, but I think that from the standpoint
15 of going to trial or not, hear what he's saying
16 about if you go to -- there's always the
17 uncertainty of what a jury's going to do, but it's
18 not entirely uncertain. You have a chance that you
19 might -- you have a better chance that you will get
20 a jury that will pay attention than you do if
21 you're going to get a wild card jury that's just
22 going to be out in the wasteland someplace.

23 But if you've got the more likely jury that's
24 going to pay attention, what Doug is saying is that
25 as between the two main witnesses, which will be

1 Matt McGill and Mayor MacFarlane, Mayor MacFarlane
2 is a better witness. And McGill is going to be
3 evasive. And on cross-examination Doug and his
4 team will keep trying to pin him down. And what
5 Doug is telling you is that during the course of
6 the questioning of McGill, we've all seen McGill.
7 He's got a slick answer for everything and every
8 question that they ask him, which is a question he
9 doesn't want to answer, he's going to have a slick
10 answer for it. And they're going to try to say
11 well, you're not answering the question. And the
12 jury is going to hear all that.

13 And then when Mayor MacFarlane gets on the
14 stand, she's going to hit every question dead on.
15 She's going to come across as very credible because
16 she is credible and we know that. But as between
17 the two, and you've seen the depositions of Matt
18 McGill versus Mayor MacFarlane, you see there's
19 night and day between credible and incredible. And
20 I think -- I like the Town's chances, unless the
21 League particularly wants to settle this. That's
22 an issue. But if the League wants to go to trial,
23 I like the Town's chances on just those two
24 witnesses because I think the trial is probably
25 going to boil down to just those two witnesses and

1 which one does the jury believe and which one do
2 they not believe.

3 MR. NOAH: Along those same lines, in response
4 to some of the questions that you raised,
5 Councilman, I think that the way I see his case
6 being presented, I see her putting him on the
7 stand, letting him say whatever he's going to say
8 and sit down. She'll have some brief opening,
9 she'll have some brief closing, but that's going to
10 be her case. I don't see them calling a lot of
11 witnesses.

12 When you see the Complaint, it's almost
13 overwhelming because it goes on for pages and pages
14 and lists, you know, tens of people in there and
15 you think, how am I ever going to get my arms
16 around this. But I tend to think it's what Tom
17 says. I think she puts him on. I think that
18 we'll -- I think we'll have a well-structured case
19 in -- not I think. Mayor, we will have an
20 excellent structured case. Nobody is going to go
21 in to trial unprepared. I can promise everybody is
22 going to be very comfortable going in to trial, if
23 we decide to do that.

24 And if I could just say one more thing. When
25 it comes to the finality of settlement, I don't

1 know if this is -- of any concern to anyone in this
2 room, but I do want you to know what the release
3 language says that will be a public record. There
4 will be a clause in there that says something along
5 the lines of the Town admits no fault in
6 connection -- or the Town admits no liability or
7 wrongdoing or anything like this. It is engaging
8 in this settlement agreement for one reason and one
9 reason only, and that is to participate with this
10 insurance carrier who has wanted to settle this
11 case.

12 It's not quite that blunt but it says
13 something -- it really -- it doesn't -- it's not
14 just a we have done nothing wrong, it's not just a
15 nonadmission clause. It's telling the public that
16 the reason why we're doing this is we're working in
17 cooperation with our insurance carrier. Insurance
18 carrier, it's really a pool arrangement but it's
19 the League. And so it is a possibility that the
20 Town could approve the League to explore informally
21 just through lawyers talking rather than a formal
22 mediation.

23 There's any number of possibilities. You all
24 could direct Mayor MacFarlane and Mr. Wilkes to
25 engage in another settlement negotiation just to

1 see where it goes, give them authority and to make
2 the best deal possible.

3 You can say we don't want any of the above.
4 We want the message to go back to the League that
5 our preference is that they not pay any money on
6 the case. The League just wants to hear from you
7 what your preferences are. I think under your
8 policies -- I don't get involved in coverage
9 disputes because I represent you, not the League.
10 So I don't get in the middle between you and the
11 League. That would be a conflict for me.

12 But I think under the policy, just from the
13 experience of doing it, is that the League probably
14 reserves the right to settle claims and settle them
15 for an amount that they think is reasonable,
16 regardless of what the Town says. But they don't
17 want to do that is what I'm telling you. I know
18 just in my conversations with them, I know what
19 motivates them. They don't want to settle a case
20 that you're going to be angry about.

21 And so if that's the message, they need to
22 hear that message. But if the message is more laid
23 back than that, then something along the lines of
24 League, you're in this business, you do it all the
25 time, you do what you think is best and we'll rely

1 on this language that says we settled because you
2 wanted to settle.

3 MAYOR PRO TEM GALLELLI: Somebody brought up
4 witnesses, talking about witnesses. So what if he
5 brings some witnesses from Venezia to defend his
6 stand or Mr. Alimenti for that matter. Does the
7 Town bring witnesses on the other side or does that
8 just get murky?

9 MR. NOAH: All those -- I'm sorry not to give
10 you a direct answer. You deserve a direct answer
11 to that. When we get closer to April, if you want
12 to have another meeting like that, I can promise
13 you I'll have that answer. But I tend to think it
14 could be -- it's possible that it's both, that it
15 could be murky and we just want to rely on cross
16 examination. My real feeling, though, is if he is
17 saying that -- I'm trying to think of what
18 witnesses are relevant to this claim. When he says
19 I wanted this topic on the agenda and that's his
20 claim, what witness could come and have anything
21 that's relevant to that particular point?

22 MAYOR MacFARLANE: Darian. Darian, the Town
23 clerk.

24 MR. NOAH: Okay. All right. I grant you
25 that. So what are we looking at, two witnesses

1 then from his perspective.

2 MAYOR MacFARLANE: So may I?

3 MAYOR PRO TEM GALLELLI: Oh, yeah, go ahead.

4 MAYOR MacFARLANE: So you talked about his
5 ability to sidestep or to -- so he also has a
6 propensity to throw things out that are not true.
7 And so once somebody hears something like that that
8 is not true, it's very hard to disprove it. And
9 we've spent a lot of money and a lot of time with
10 an ethics committee and a lot of things just
11 confirming that what he said was not true.

12 So I'm just wondering, how do you deal about
13 that? I know we're not trying this right now or
14 not preparing for trial, but that does occur as
15 well. Not only does he not answer questions, he
16 will just blatantly lie.

17 MAYOR PRO TEM GALLELLI: And if the lawyer
18 doesn't know to say objection -- you know, because
19 you may not know it's not true.

20 MR. NOAH: Well --

21 COUNCILOR LEHNING: You have other witnesses
22 testify that it's not true.

23 MR. NOAH: This may sound counterintuitive to
24 you, but you can't object to somebody lying. I
25 mean, there are rules of evidence that tells us

1 what we can object to and what we can't.

2 I'll give you the easy perspective first. We
 3 have his deposition. And this may sound
 4 counterintuitive to everybody in this room as well,
 5 but what -- I hate to say it like this, but what I
 6 live for is when somebody says something different
 7 at trial than what they said in their deposition.
 8 We invite that when they do that. That's one way.

9 There is a whole impeachment litany that we're
 10 all taught in law school, and it just makes the --
 11 if they say something that is inaccurate compared
 12 to what they said in their deposition, it just
 13 makes them look like an absolute liar. That's one
 14 thing. Again, if it's a contest between the mayor
 15 and him, we win every single time. There will be
 16 no such ability for them to do the same kind of
 17 impeachment.

18 Now with the other kinds of impeachment, the
 19 way that I can see it go, for one, we'll have the
 20 mayor saying what she did put on the agendas and
 21 why that was permitted and distinguish that from
 22 what was not on the agenda and why it was not
 23 permitted. And not even so much that it wasn't
 24 permitted. It is -- we can put this on the agenda
 25 when you can give me the backup for why this is

1 appropriate for the agenda. It's more along those
2 lines.

3 So we put her on to attest to those things.
4 And I also see -- you know, these pinpoint cites
5 that we have to the record, if he says something
6 like, oh, you know, I wanted to talk about Chief So
7 and So and about what a criminal that guy was, and
8 he wants to say something like that, we have the
9 recordings where we can push a button and have the
10 jury listen. We can do this during
11 cross-examination. No sooner does he get done
12 saying that than we can pick up all of the
13 different places in the Town commission meetings
14 where he said exactly what he didn't get to put on
15 the agenda. So who cares, he got a chance to say
16 it anyway.

17 So I mean, I appreciate the concern. I mean,
18 you're absolutely right. There may be new things
19 that come out of his mouth. We try to object to
20 those because, I mean, for one, the lie has to be
21 relevant to some issue that we're actually
22 litigating, if it's not, now we do have a grounds
23 for objection, okay?

24 And it's very hard to unring the bell, Mayor.
25 You can ask the Court for help. You can ask the

1 Court to give the jury instruction, please
2 disregard what he says, it has nothing to do with
3 this case. There's different mechanisms to try to
4 help with that. But at the end of the day, you got
5 somebody's who's going to get up there and say
6 whatever they're going to say, it is hard to
7 control. It's hard for anybody to constantly fact
8 check like that. That will be difficult.

9 MAYOR MacFARLANE: My final concern is Mayor
10 Nebel and his comments during that. So that's a
11 concern. He was very forthright in his opinions
12 and he didn't mince words.

13 MR. NOAH: And we have to acknowledge that the
14 jury won't like some of those statements that were
15 made and -- yeah. Regardless of what the merits
16 are, there are statements that we all have to
17 acknowledge. There were statements made that a
18 jury very well may not like that elected officials
19 make. So we live with that.

20 COUNCILOR LEHNING: I think my recommendation
21 would be back to the Florida Municipal Insurance
22 Trust would be -- personally, I recommend no
23 settlement discussions and we would review this
24 again in another -- we got, what, nine months until
25 April? Unless there's something that's going to

1 happen in the next four months that we need to do
2 decide now.

3 MAYOR MacFARLANE: Preparation, cost for
4 preparation. Isn't that what we're looking at?

5 MR. NOAH: Yeah, we'll be preparing this whole
6 time, as you know.

7 MAYOR MacFARLANE: I think that would be
8 the --

9 COUNCILOR LEHNING: My recommendation would be
10 that no settlement discussions at this time. Let
11 them bring it to us if they want to have a
12 settlement discussion, but -- and review it again
13 in four months.

14 MR. NOAH: Talking about preparation, I mean,
15 we don't wait until the eve of trial to start
16 preparing so, you know, a lot of this sort of
17 thing -- you all have raised good questions today
18 that I need to go back and look at and see how
19 we're going to deal with and so forth.

20 COUNCILOR LANNAMAN: What say you?

21 MAYOR MacFARLANE: Box his ears.

22 MR. WILKES: Well, I'm one of your lawyers and
23 not you. I think if I was sitting in the Town
24 Council seat, I'd say just as long as the League
25 doesn't object, let's go to trial and beat him.

1 COUNCILOR LANNAMAN: I agree. That's what I'm
2 thinking. Not anything against you, Noah. It's
3 just that I'm in agreement with going to trial, not
4 giving an offer. I think that this trial will
5 possibly be a wear down, and maybe we can close it
6 out by April 2025.

7 Sorry, Madam Mayor, I know you don't want to
8 do it all over again, but you're credible and, you
9 know --

10 MAYOR MacFARLANE: No, we have to deal with
11 what's appropriate for the Town and what the Town
12 needs, and I don't want them to have or us to have
13 to go through this over and over and over again.
14 So I will defer to the wisdom of the Council. I
15 think that's what.

16 MAYOR PRO TEM GALLELLI: Yeah, trial.

17 MR. NOAH: I got it. And as we're preparing,
18 if the facts change or anything like that, we'll
19 just reconvene a meeting or if they --

20 COUNCILOR MILES: I said it all in one
21 sentence. Not one dime. As a matter of fact, let
22 me say not one copper penny to him.

23 COUNCILOR LEHNING: You'll accept a check,
24 though, right? We'll accept their money, though.

25 COUNCILOR MILES: We'll accept their money.

1 He caused, in my estimation -- and I've worked for
2 government --

3 MAYOR MacFARLANE: Should we close the session
4 before we go --

5 COUNCILOR MILES: -- caused a tremendous harm
6 to this Town when he was in, and he's nothing
7 better than a common thief.

8 MAYOR PRO TEM GALLELLI: We're going to close
9 the meeting.

10 MAYOR MacFARLANE: Do we have any other
11 comments?

12 COUNCILOR MILES: He is.

13 MAYOR MacFARLANE: I know, but we're going
14 to --

15 COUNCILOR MILES: I know. I want to make sure
16 you get that on the record.

17 MR. WILKES: Yeah, let's make sure everybody
18 has said what they want to say, because I don't
19 want to close the session and have the discussion
20 continue. We need to stop the discussion about the
21 case once we close the session.

22 MAYOR MacFARLANE: Anybody else? Okay. So
23 I'm going to terminate this closed session. That
24 sounds very final, doesn't it, like I should gavel
25 it.

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MR. WILKES: The time is 3:24. Open the public meeting?

MAYOR MacFARLANE: Yeah, open the public meeting. Do you want to unlock the back door for us, Sean?

MR. O'KEEFE: Sure.

(The meeting concluded at 3:25 p.m.)

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REPORTER'S CERTIFICATE

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, Shawna R. Stimson, RPR, FPR-C, certify that I was authorized to and did stenographically report the foregoing meeting and that the transcript is a true and complete record of my stenographic notes.

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

Dated this 8th day August of 2024.



SHAWNA R. STIMSON, RPR, FPR-C
COURT REPORTER

