

EXHIBIT B

VERBATIM TRANSCRIPT
HENDERSON CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
NB-073 EMPLOYMENT CONTRACT
MARY KAY PECK, CITY MANAGER

APRIL 14, 2009

Present:

James B. Gibson, Mayor
Jack Clark, Councilmember
Andy Hafen, Councilmember
Steve Kirk, Councilmember
Gerri Schroder, Councilmember

Staff:

Mark Calhoun, Assistant City Manager
Shauna Hughes, City Attorney
Monica Simmons, City Clerk
Ann Wilkinson, Assistant City Attorney
Stephanie Garcia-Vause, Director of Community Development
Robert Murnane, Director of Public Works
Steve Hanson, Director of Finance
Becky Dresser, Deputy City Clerk
Tedie Jackson, Minutes Clerk

1 MARK CALHOUN, ASSISTANT CITY MANAGER: Item 73
2 is the Employment Contract for Mary Kay Peck, City Manager.

3 ANN WILKINSON, ASSISTANT CITY ATTORNEY: Good
4 evening, Mayor and Council. This is Ann Wilkinson, Assistant City
5 Attorney. And before - - I'm not sure, can you hear me okay?

6 MAYOR JAMES B. GIBSON: Yes.

7 MS. WILKINSON: I can't hear myself.

8 MAYOR GIBSON: All right.

9 MS. WILKINSON: Before making a recommendation to
10 Council on this item, I would first like to provide an overview of the
11 background and some of the proposals that have been presented, as well
12 as discuss the relevant portions of Ms. Peck's employment contract.

13 To begin, I want to first note for the record that on March 11,
14 the City Attorney's Office began communicating with Mr. Kirshman
15 regarding the termination of Mary Kay Peck's employment contract and
16 her employment status. Shortly thereafter, Mr. Cooper was retained as
17 outside counsel on behalf of the City, and he has been engaged in
18 ongoing discussions with Mr. Kirshman.

19 In terms of a summary of the proposals that we have
20 received, during the past few weeks, there have been two proposals that
21 have been presented. The first one on April 1st, an intermediary verbally
22 relayed to the City Attorney's Office that Mr. Kirshman was demanding
23 \$750,000 to resolve this matter. The City Attorney's Office followed up
24 and requested that the terms of that proposal be provided in writing, but
25 nothing was received.

1 Subsequently, on Thursday, March - - excuse me.

2 Subsequently, on Thursday, April 9, Mr. Cooper and I did meet with
3 Mr. Kirshman. And at this meeting, Mr. Kirshman offered three proposals.
4 One that was regarding a resignation, one as a not-for-cause termination,
5 and then some commentary/proposal with respect to a for-cause
6 termination.

7 In outlining Mr. Kirshman's proposals as I understand them,
8 the first one regarding the resignation was for approximately \$1.2 million.
9 Shortly before Council tonight, I did provide each of you with a copy of a
10 green sheet that was actually presented to us by Mr. Kirshman. I've made
11 extra copies for the City Clerk's Office to include as supplemental back-up
12 for this agenda item.

13 With respect to this particular proposal, Mr. Kirshman - -
14 actually, I better keep a copy - - with respect to this particular resignation
15 proposal Mr. Kirshman has demanded one hundred and ninety-five
16 million, four hundred and forty-five dollars.

17 MAYOR GIBSON: It says one million, one hundred and
18 ninety-five thousand - -

19 MS. WILKINSON: I'm sorry. Yes. \$1,195,455, as identified
20 in the proposal. And along with this, he indicated that he would provide
21 the resignation of Ms. Peck if this was accepted.

22 Alternatively, he proposed that if the Council terminates
23 Ms. Peck not for cause, then he indicated he would proceed to arbitrate
24 her severance amount. And he would ask that the City continue paying
25 Ms. Peck her salary and benefits while the arbitration it pending, and then

1 will give the City dollar-for-dollar offset in the event - - or, at the conclusion
2 of the arbitration.

3 He also asked that the City consider engaging in baseball
4 arbitration, which was described to us as each party presenting its last,
5 best, and final offer and then the arbitrator would decide which offer was
6 most reasonable.

7 Finally, with respect to a for-cause termination, Mr. Kirshman
8 indicated that he would ask the arbitrator to essentially ignore the terms of
9 the employment contract and proceed to arbitrate the amount of full
10 wrongful termination charges. That is my summary of the proposals that
11 we have received.

12 With respect to outlining some applicable provisions in Mary
13 Kay's - - in Ms. Peck's contract, under paragraph 5C, the Council may
14 terminate Ms. Peck not for cause; however, if they choose to do that and
15 find a not-for-cause basis, they must give her a 30-day written notice
16 before her termination can be effective.

17 If she is terminated not for cause, based on our reading of
18 the contract, Ms. Peck would be entitled to a severance amount for the
19 balance of her contract, which we have calculated to be 18 months. For
20 that 18 months, that's approximately \$337,500.00 in salary. And she
21 would receive 100 percent of her accrued sick leave, which is
22 \$155,000.00 - - approximately and 100 percent of her vacation leave,
23 which is approximately \$42,000. That's the not-for-cause calculation
24 under the contract provision.

25

1 With respect to a for-cause calculation, under paragraph six
2 of her employment contract, Council may terminate her employment for
3 cause at any time and without prior notice. The for cause is specifically
4 defined in and set forth in paragraph six of her contract. It outlines various
5 facts that would - - it would - - circumstances that would mean for cause
6 has been met.

7 In particular, I believe that subsection - - paragraph six,
8 subsection four, provides that if you find there's been intentional and
9 continued failure to substantially perform her duties, then she has - - then
10 you have a basis for terminating her for cause. Our calculation under this
11 for-cause termination would be - - would entitle Ms. Peck to her vacation
12 leave, which I outlined before. That's approximately \$40,000.00,
13 \$42,000.00, and a portion of her accrued sick leave based on City policy,
14 which, as I read today, would entitle her to 75 percent of her currently
15 accrued sick leave hours for roughly a cost of \$116,552.00.

16 Finally, I just would like to note paragraph 17 of the
17 employment contract identifies that the exclusive remedy regarding the
18 controversy or conflicts pertaining to this contract is to pursue arbitration.
19 We're here tonight for Council to take its action, whatever that may be,
20 with respect to her employment status. In the event there is a conflict or
21 controversy, then her counsel can proceed to exercise that paragraph
22 under her contract.

23 With that, Council, I would recommend that - - the City
24 Attorney's Office would recommend that you not accept the proposal

1 offered by Mr. Kirshman and that instead you proceed to take action as
2 permitted by the contract.

3 MAYOR GIBSON: Thank you. I want to - - before we get
4 into a broader discussion, I want to talk just for a moment about this
5 concept of evaluation. The - - because there is an explanation. And I
6 think that there is more to this than what has been announced here this
7 evening and in the press release that Mr. Kirshman provided the media.

8 Prior to the time when we would have done the evaluation - -
9 I don't remember the months because I don't have them readily available
10 to me, although I'm sure we could piece it together - - I met with Ms. Peck
11 and had a conversation with her about her performance. I also indicated
12 to her that I was aware that there were concerns that had been expressed
13 by other members of the Council. I had not spoken to all of them, but I
14 had had occasion to overhear conversation. And I recommended that it
15 was critical that she make the rounds and sit down individually on a one-
16 on-one basis, have face-to-face discussion with each member of the
17 Council. That actually occurred.

18 Following those meetings, I came to the conclusion that if we
19 were to conduct a public hearing, an evaluation in a meeting like this in full
20 view of the public, that the consequences could be dire. And I informed
21 Ms. Peck that I was concerned about having such a meeting. I had no - -
22 we had no interest in - - or, I had no interest in seeing her reputation
23 impaired and having any problems in the future. So I thought it best and I
24 advised her to that extent. My recollection of the conversation was that
25 she agreed with me.

1 I encouraged her to circle back to the members of the
2 Council with whom she had done evaluations and to make certain that she
3 addressed over and over in whatever degree was required by members of
4 the Council the concerns that had been raised. Some of those concerns
5 had very serious - - carried with them serious implication. That's the
6 advice that I gave her.

7 Over time, I met with her and we had occasion to talk in
8 general, in specifics, and about things that I recommended that she
9 consider. My belief was that she was arranging meetings with other
10 members of the Council. I believe that she did hold some of those
11 meetings.

12 Within the last couple of months, I became concerned that
13 the evaluation and the conduct that had been the subject of commentary
14 needed to be addressed further, so I encouraged further discussion with
15 members of the Council. And my understanding as of, I don't know, about
16 a month ago or maybe a little longer, was that all but one of the members
17 of Council had been - - had had an opportunity to sit down and review
18 Ms. Peck's performance.

19 I received an email from one of the members of the Council
20 requesting that the item of her evaluation be placed on the agenda a
21 month ago. I forwarded the request to our City Clerk and I notified
22 Ms. Peck of the request. That is the history of the process by which we
23 got to where we were one month ago when this item, or a similar item,
24 was last on the agenda.

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