

1 that. We can't sit around and wait for four or five months while we get
2 more data, especially in an enterprise fund where we know that our
3 revenues are taking a hit. So it just indicated to me that this was a crisis
4 manager and that she wasn't managing with any strategy. She was more
5 reactionary than anything.

6 MAYOR GIBSON: Are there other comments?

7 COUNCILMEMBER SCHRODER: I just wanted to make a
8 comment to Ms. Peck. This is not personal for me, for you; this is
9 business. I like you as a person and we've always gotten along very well,
10 and I want you to know that this isn't personal to you. This has to do with
11 the business of the City of Henderson.

12 With that said, based on the conversations I've had with
13 staff, I feel that information was intentionally kept from us, and I believe
14 that Ms. Peck's conduct to the staff prevented the staff - - with her
15 preventing the staff from informing us of vital information has lead us to
16 this point in our financial budget right now. So I just wanted to let
17 Ms. Peck know it's not personal; this is business.

18 MAYOR GIBSON: Well, I think that no matter what we say,
19 it sure feels personal. I'm sure it does. But the - - I think that all of us
20 have a fondness for Mary Kay. That's not the issue.

21 Now, under the very contract that Mr. Kirshman referred to,
22 as I understand it - - and I try not to do any lawyering myself here - -
23 someone else will determine whether or not we evaluated Ms. Peck. My
24 view is that the evaluations occurred; it wasn't as though Ms. Peck was
25 operating in the dark about how people felt about things. Obviously, some

1 of the things that we are talking about this evening come to light since
2 people have felt free to talk about the City and their employment.

3 But under the - - under Paragraph 17 of this agreement, we - -
4 under the agreement we understand we're to take action and then the
5 follow-on language says that any claim or controversy between Peck and
6 the City of Henderson arising under or in connection with this agreement
7 shall be settled not in a public hearing, but rather by arbitration in
8 accordance with the then-current employment dispute resolution rules of the
9 American Arbitration Association and shall be the exclusive remedy for all
10 disputes including, but not limited to Peck's compensation.

11 So, as I understand this contract, our responsibility is to
12 determine what, if anything, we're going to do. And then if Ms. Peck has
13 an issue with what we do, then she has the right, under the terms of this
14 contract, to seek to have the matter arbitrated. I don't think that there is - -
15 and I believe that that really is the construction we've been provided with
16 respect to this contract.

17 So I think what we need to do now is determine where we go
18 with this and what we do. And we - - when we look at this item the way it's
19 been placed on our agenda - - I don't know that this has got it all in here.
20 Have you got your book open so that you can tell me - - you can read
21 what the items are? You can help me turn to it, can't you?

22 It says the recommended motions here are to accept a
23 written resignation of Mary Kay Peck. We do not have such. It was a
24 condition, I believe, of accepting the \$1.2 million offer that was presented
25 Thursday.

1 Authorize execution of a severance agreement and release.

2 We don't have a severance agreement. There hasn't been any
3 negotiation that would have been upon terms which would have resolved
4 matters so that there could have been a severance agreement.

5 Direct issuance of a 30-day written notice to terminate Mary
6 Kay Peck not for cause in accordance with her employment contract. As I
7 understand it, the contract is very specific, that if the termination is not for
8 cause, then there is a 30-day advance written notice and she will be paid
9 in a way that is laid out in the contract. And presumably, that gives her an
10 opportunity to review whatever it is that has been determined.

11 And four is to place Mary Kay Peck on administrative leave.
12 Now I'm not sure I understand that alternative, because it seems to me
13 that standing alone, it doesn't mean anything. That administrative leave
14 might have something to do with some other action, but just administrative
15 leave all by itself doesn't mean anything to me.

16 And then finally, terminate Mary Kay Peck for cause in
17 accordance with the terms of her employment contract.

18 So I think we're to the point now where we - - we really need
19 to determine where we are, and someone needs to try to motion here.
20 And then we'll determine where we go with that.

21 COUNCILMEMBER KIRK: Mayor, will you just - - to make
22 certain that I understand what the term "administrative leave" means?

23 MAYOR GIBSON: Ms. Wilkinson?

1 MS. WILKINSON: Yes. In drafting that agenda item, I
2 placed administrative leave option on there in the event that you voted to
3 terminate her not for cause and wanted to give her her 30-day written
4 notice, but keep her on leave with pay during that 30-day period.

5 COUNCILMEMBER KIRK: Thank you.

6 MAYOR GIBSON: So that's not a stand-alone provision;
7 that's as a part of the not for cause.

8 MS. WILKINSON: That's correct.

9 MAYOR GIBSON: Okay. Does that answer your question,
10 Mr. Kirk?

11 COUNCILMEMBER KIRK: It does, thank you.

12 COUNCILMEMBER CLARK: Mayor, I supported Ms. Peck
13 during her tenure as Planning Director. I thought she did a good job. I
14 supported her during her tenure as Assistant City Manager. And I thought
15 that she was the best choice for City Manager. Over time, I think it's
16 become clear that that wasn't the case.

17 And just a side note, I think the settlement offer that was
18 presented to us on Thursday clearly demonstrates a lack of understanding
19 in these tough economic times of financial issues. And I can't even
20 imagine where the number came from. But it really demonstrates a lack of
21 understanding about finance. And we simply need somebody in this
22 position that understands it.

23 I sincerely wish and I really thought that we could have
24 resolved this matter in an amicable way that was in the best interest of
25 everyone. Others have chosen to come down this path. The last thing

1 that I would have wanted to do was to hold this meeting. And the last - -
2 for sure, the last thing that I would have wanted to do is to deal with this
3 issue as I leave this Council and a really tremendous 16 years in dealing
4 with the most negative issue that I've had to deal with.

5 However, I think it's become clear that it's in no one's best
6 interest for Ms. Peck's employment to continue with the City. So I, quite
7 frankly, was going back and forth here for awhile until I heard some things
8 this evening that really affected me as much as anything that I had on my
9 own. And it really - - it really hurt my heart to hear some of the things
10 tonight. And again, I feel like we're ganging up on somebody, who for the
11 majority of 14 years, was a good, loyal employee. I think, perhaps, some
12 bad advice has led her down a path that we can't get back from.

13 But when I add it all up, for me, the most important issue is
14 the violation of our employee's rights and their confidence in us, and the
15 budget issues, that we simply cannot overlook. We went to great lengths.
16 We created a program for employees to retire. We reclassified
17 employees. We laid employees off. We thought, and our employees
18 thought, that the worse was behind us, and that we were - - we had
19 resolved this.

20 And now we've got \$7.5 million more that we have to deal
21 with in two months because we weren't informed. That places even more
22 fear on our employees in that culture of fear that I described earlier. Now
23 we may have other employees that lose their jobs, that lose their homes,
24 that lose their cars, that can't feed their children because we didn't have
25 the information that we needed to do our job.

1 I don't think we have any choice, under the circumstances,
2 and particularly under what this agreement that was proposed to us, than
3 to terminate Ms. Peck for cause in accordance with her employment
4 contract.

5 MAYOR GIBSON: So the - - as I understand it, then, you
6 are - -

7 COUNCILMEMBER CLARK: That is my motion.

8 MAYOR GIBSON: - - moving, then, to terminate for cause
9 with all that that carries with it.

10 COUNCILMEMBER CLARK: Yes.

11 NORMAN KIRSHMAN, ESQ: Mayor Gibson - -

12 MAYOR GIBSON: And that would - -

13 MR. KIRSHMAN: There is a misunderstanding and I'd like
14 to clear it up. I think it's a very important misunderstanding on the part of
15 the City Attorney's Office. And if I might have 30 seconds just to clear it
16 up.

17 MAYOR GIBSON: Mr. Kirshman, the concern I have is that - -
18 I've known you for 30-plus years and I've worked with you and I have great
19 respect for you and high regard for you. I don't want you to think differently.
20 But under the circumstances, if you have - - if you take issue with what
21 we've done or how we've done it, or under what circumstances we do it - -

22 MR. KIRSHMAN: The misunderstanding is that the
23 \$1,200,000 was a Last-Best and Final demand. It was a proposal and I
24 was inviting - - I was inviting negotiation. That's all. I just wanted that
25 understood.

1 MAYOR GIBSON: All right. Thank you. Thank you.
2 So let me just - - I just want to make this clear, because I
3 think it's important that the records articulate it. The motion comprehends
4 that in order to terminate Ms. Peck under this contract for cause, it has
5 been established in our minds - - in each of our minds - - that there has
6 been intentionally continued failure to substantially perform. And that's - -
7 so if you vote in the affirmative on this motion, then that is what you're
8 affirming. Okay? Is there any further discussion?

9 Please cast your votes. The motion carries unanimously.

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I attest that the foregoing is a true and accurate transcript of
Item NB-73 from the April 14, 2009, Henderson City Council meeting.

Tedie Jackson, Minutes Clerk