



**CITY COUNCIL MEETING
CLOSED SESSION
ALDERMANIC LIBRARY
LORRAINE H. MORTON CIVIC CENTER
JULY 13, 2009**

PRESENT:

Aldermen Wilson
Alderman Holmes
Alderman Tendam
Alderman Grover
Alderman Rainey
Alderman Burrus
Alderman Fiske
Alderman Jean-Baptiste
Alderman Wynne

STAFF:

Robert Gustafson HR Specialist, Rolanda Russell Interim City Manager, Elke Purze Interim First Assistant Corporation Counsel, Richard Eddington Chief of Police, Martin Lyons Assistant City Manager

PRESIDING: Mayor Tisdahl

START: 9:30 p.m.

Mayor Tisdahl opened the meeting by asking for the approval of the minutes from the last meeting. Interim City Manager Rolanda Russell announced that the minutes were not ready for approval and that they along with the new set will be ready at the next Executive Session. She then stated the first item for discussion was worker's compensation.

Personnel

Mr. Robert Gustafson reported on the compensation claim of Patrick Reif Firefighter. Mr. Reif had a heart attack while on duty at a training exercise at Kendall College. He underwent bypass surgery on June 7, 2005, returned to work on light duty on September 19, 2005 and never returned to full duty. Mr. Gustafson is asking to get approval to negotiate with Mr. Reif's attorneys for 47% loss of the use of a person as a whole, which equates to \$133,449.45 so that he can settle the case and close it. Alderman Fiske asked if a Fireman has a physical examination when they come on duty, and the answer was yes they do. Then she asked if they have one every year, and the answer again was yes. Next she asked were we aware of the condition, the answer was no. In addition to the answer Mr. Gustafson said we are not privy to that information, only that they passed the physical. Alderman Tendam stated his question was answered by Mr. Gustafson's comments, but he wondered how you could get blocked arteries that quick. Mr. Gustafson then mentioned the incident with a prior Fireman who during his physical exam was instructed to stop the testing and to go to his doctor, because his results suggested some major heart problems. Alderman Holmes was concerned about how we were responsible for his condition. As Mr. Gustafson explained as long as it happens during his employment and the conditions that manifests while he is at work, then we are responsible and it is a liability. Alderman Holmes didn't understand how a physical condition becomes the responsibility of the City. Alderman Jean-Baptiste remarked that it happened on duty and when you are injured, or have some significant occurrence while you are on the job worker's comp covers whatever happens to the employee. The worker's compensation Act is very lenient and covers just about anybody on the job. You can't file a lawsuit against the City but you can apply for worker's comp. He then asked what will happen when we settle. Mr. Gustafson stated we would close out all future medical rights, and will pay whatever the two attorneys agree on then we will be able to close out the case. He also stated that in many of these claims the Firefighters and Police Officers are also eligible for life insurance, but it has to rise out of a fresh pursuit in response to an emergency. His Attorneys will try to fight the denial from the City, because he was told to act as though it was an emergency. This was not an emergency but in actuality it was a training session. So he will not be receiving insurance from the City for himself or his wife. Mr. Lyons interjected for 20 years starting at \$15,000 to \$16,000 coverage a year we are talking \$300,000 to \$400,000 that we are disputing. Alderman Jean-Baptiste asked was he denying that request. Mr. Gustafson answered yes, I am in the middle of the denial and they can appeal. Mayor Tisdahl asked, what do you need from the Council? Mr. Gustafson said approval to move forward with the offer of 47% / \$132,000. Our Attorney will negotiate with his Attorney. Alderman Rainey asked who are the Attorneys? The answer was ~~Wiedner & McAuliffe are ours, and his is Tom Duda~~ who has a number of our Fire Fighter cases. Alderman Grover motioned to authorize \$133,449.45 for the settlement of the Reif case. Alderman Rainey wanted to know, why do we pay an Attorney to argue something like this for us? If you are going to argue the case for \$122,000 that is one thing, and if the motion is not to go over \$132,000 that's another thing. She is curious why did she read the letter, the answer was it supports what Mr. Gustafson put in the memo. We use them to get as close to a settlement amount as

possible without paying more than what we have to. Alderman Jean-Baptiste questioned whether Alderman Rainey's question was referring to the negotiation process or the representation, because they go back and forth from the Industrial Commission. Ms. Russell interjected they will try to get as close to that without going over. Alderman Fiske wanted to know was this a mandatory training session by the City of Evanston, do we have any liability for other Firefighters who come to our City to participate in training. Mr. Gustafson answered he imagines they are mandated, and whether they were mandated or not he was at the training, assigned to train and he would assume he was mandated by the shift chief or whoever coordinated the training. Also from a worker's compensation point of view we would not have any liability for those coming in from other communities, Ms. Purze interjected we have them sign waivers for general liability. Mayor Tisdahl asked if there were any other questions, then said the motion was called and seconded, all in favor. The voice vote was unanimous and the motion was passed. Ms. Russell then stated that the memo from Chief Eddington is very confidential and it will go public at some point and will become very embarrassing for the numbers that we have been reporting for a number of years have been incorrect. The employee Jerry Moran is no longer employed by the City. The Chief will come in and talk about what the employee did and talk a bit about the whole process that we are using. So that when it does become public you'll understand what happened. Mayor Tisdahl asked were we going to release this soon. Ms. Russell answered yes we have to release the corrected information. Unfortunately we have to release this now. Mayor Tisdahl suggested we release the information as quickly as possible. Ms. Russell replied that is why the Chief is here to go through and talk to you about what the employee did incorrectly and why we will be releasing the information.

Chief Eddington said in 2005 the Police Department changed computer programs, and in that change there was a computer program that had a command module. If you had read the instruction manual that went with the new computer program, it clearly identified multiple command modules that were not to be adjusted. The employee did not read the manual and began making adjustments to the command modules. As a result of that the reports that were generated under this employee's watch are all incorrect. He was an obstructionist. Many in the records division spent enormous amount of time and got it straightened it out. They assured him that the 2008 numbers were correct, and they will be the base line for the future. Alderman Rainey wanted to know if that employee was responsible for those reports. The crime statistics only answered Chief Eddington. When did the last annual report come out (Alderman Rainey), and the Chief answered yes and the report came out in 2006. Ms. Russell then informed the Council that the employee's name and all of that will be kept confidential. Alderman Rainey asked if he was suing us, and Ms. Russell answered we are working through that, and part of the settlement will be ~~he will not bring a suit, and will not make any of this public.~~ Alderman Rainey questioned whether he would receive any money, Ms. Russell answered no. She continued by saying everything has not been finalized, but they are working to get everything signed and they just wanted to bring this to you at this time. Mayor Tisdahl asked if there were any other questions, and Alderman Grover asked how long did this investigation take. Chief Eddington replied it took almost six months because this was a complex problem, and it was one of those questions of why did you do that?

Litigation

Ms. Purze Interim First Assistant Corporate Counsel began with the Chiaravalle School and mentioned the latest purchase agreement that they received in their Friday packets. She pointed their attention to the following sections of the agreement: 3.4 (Prohibition against Liens), 4.1 (Closing Date), 13.3 (Purchaser's Default After Closing). Alderman Wynne directed the attention to section 13.3.1. She informed the Council that when she met with the representatives of Chiaravalle a month ago, they discussed whatever amount they paid us in rent might be applied to their lease. She had discussed they would not go back to the old lease terms. We would have to come up with something new term for whatever the amount they have paid us would apply to. Then from there we will negotiate a new lease. The wording is not what she understood it to be and she asked if they had seen the document. Ms. Purze said they had seen the document and that she would be talking to Mr. Steve Friedland tomorrow on entering the proper wording. Alderman Wynne stated she would like to get this finished because they want to kick off their fall plan. Alderman Wynne moved that she discuss this with Elke, modify it to reflect a shorter period of time for whatever amount they may have defaulted on applies, then renegotiate the amount and term. Mayor Tisdahl asked if everyone agreed and there was no dissention. Alderman Rainey was concerned that no address for Chiaravalle shows up on any of the first fifteen pages and it should mention an address. Alderman Wilson mentioned that 1.1.4 had an address. Alderman Rainey then admitted she missed that one completely.

Ms. Purze then gave an update on the Metropolitan Bank negotiations for settlement for ten thousands dollars, as the bank made a counter offer. Alderman Jean-Baptiste said we gave authority to go not less than ten thousand; Alderman Rainey interjected and said we authorized for not less than thirteen thousands, the bank said ten and we took the offer. Ms. Purze said they came back with ten and we did not settle. Alderman Jean-Baptiste said we said not less than thirteen, but they said ten. Ms. Purze stated the amount was on the table before. Alderman Rainey said our legal department wanted to unload this way long time ago, so let's get rid of it and consider it probably one of the biggest failures in the south end of town. Alderman Tendam suggested that we move on, and Alderman Rainey replied you have never even seen the building, and that she had been working on this for years. Alderman Tendam agreed that it was a failure. Alderman Rainey then spoke up and said no one suffered except for the 8th ward. Alderman Jean-Baptiste then said so we will sell for ten thousand, Alderman Rainey said let's sell for five thousand and what are we paying the Lawyers let's get rid of those guys. Alderman Jean-Baptiste made a motion to settle and it was seconded. A voice vote was taken and it passed unanimously.

Ms. Purze then moved onto the Diane Benjamin matter, and they will appear in court on the 15th and move for a motion for sanctions, she is afraid to settle because of possible

damage to her reputation. Between June 26th and July 6th she talked to the Lawyers and Diane Benjamin, who said their client, will dismiss the charges if she got her job back. Otherwise she will consider an offer of settlement of \$50,000 that is also negotiable. Ms. Benjamin has contacted Township Assessor Elect Bonnie Wilson, advocating her getting her job back and dropping the charges. She then talked with Ms. Bonnie Wilson and told her she did not think she would get a lot of support if she hired Ms. Benjamin. Alderman Rainey suggested they do all they can to keep this woman out of the Township offices. This woman is more dysfunctional than Sharon Eckersall, we are just asking for trouble if we allow this woman back in those offices. Alderman Jean-Baptiste stated the issue here is whether or not we can settle. Eckersall makes the decision on to settle. Ms. Purze stated that they offered \$10,000 to go along with the \$10,000 settlement offer, but Ms. Eckersall was refusing it. There are two conflicting issues here Ms. Benjamin wants her job back and Ms. Eckersall will not settle. Alderman Wilson stated there is a motion already pending that we dismiss right, Ms. Purze said correct, and on the 15th they will hear a decision on the motions for sanctions as well. He said he is willing to wait and see what happens on the 15th, because Ms. Eckersall is not going to go along with any settlement anyway. Alderman Jean-Baptiste said hopefully the decision on the 15th will place us in a better position to settle. Alderman Wynne said so let's get a report and then see how to move. Mayor Tisdahl said if all agree then we will wait. Alderman Holmes wanted to know if the Lawyers say they are flexible what kind of number they are working with the \$50,000. Ms. Purze answered she has no idea she's really pushing for her job. Alderman Jean-Baptiste said we ought to let our Lawyers know, not to send three people to argue this motion to dismiss and charge us \$300.00 / hour. Ms. Purze stated they are really treading lightly on their billing practices. Alderman Grover motioned for adjournment and seconded by Alderman Wilson with a voice vote that was unanimous. Mayor adjourned the meeting at 10:05 p.m.

Respectfully submitted,
Rodney Greene / City Clerk