

**Evanston City Council  
Closed Session Minutes  
Aldermanic Library  
Monday, July 14, 2008**

PRESENT: Aldermen Bernstein, Holmes, Moran, Tisdahl, Rainey, Hansen, Wollin, Jean-Baptiste, Wynne

STAFF: Elke Tober-Purze, Rolanda Russell, Dennis Marino

PRESIDING: Mayor Lorraine H. Morton

START: 10:30 p.m.

Mayor Morton called the meeting to order, and proceeded to ask if there were any objections to the minutes, if not we'll move on. Hearing no objections with the minutes, Alderman Bernstein spoke and said that Ann had raised her hand, and she had a question.

**Closed Session Minutes**

Alderman Rainey had a question concerning the minutes. I'll work with what's in front of me. We need page numbers on the data. I have this page and don't know what day it is or what date it is. That's July 7, so let's put some dates on this. Under litigation it says, Gregory, versus the City of Evanston a sports card case. Manheim building is "monogamy building."

Mayor Morton asked what do you want to do; do you want to erase that? Alderman Rainey said she didn't know what was said. City Clerk explained that what he was saying is that this case was like a sports card program. If you didn't have a program, you couldn't tell who the players were. That's what he was basically saying.

Alderman Tisdahl thought that everyone is new at this Mr. Greene, for close session meetings they will eventually open sometime in the future, so the minutes could be made less detailed than the minutes of like the committee meetings.

Mayor Morton said a long time ago they had talked that all the minutes are so detailed that the secretaries can't transcribe in a day. The understanding is that the aldermen want everything in there. Now, if you decide that you don't want everything, then that's okay, just tell us what you want. This goes for the Rules Committee, City Council whatever you want. Most aldermen agreed they wanted the details.

Alderman Rainey reiterated that they must have dates and page numbers as the others echoed their support. She directed her remarks to Ms. Russell to require headers and footers and absolutely no exceptions. Then it's done and you never have to do it again. Rolanda responded that she could do that.

Alderman Jean-Baptiste said that since Rodney is new to this, he thought everybody should pay attention to the minutes as closely as possible to help him to clarify some things. Mary (Morris) had mastered the thing and knew the history of stuff, so she could judge the relevance of certain things that were consistent with what we think. Now, he thought the interaction would help the Clerk understand what's going on. Sometimes we talk all at once and he has to discern (all at once) what we were all

talking about what day it is, instead of someone saying this that and the other. Then he could make some type of conclusion statement where it will be needed, but that's a judgment he'll make along the way, but we have to give some kind of feedback.

Alderman Holmes said this just needs a page number because the date is on the front page. Mayor asked the page number is for everything? Holmes replied yes that's right.

Alderman Rainey commented if it's not stapled or gets unstapled then. Discussion continued on what exactly the aldermen wanted on all documented minutes. Dates need to be on every page. Rainey said, on closed session minutes they will be released someday. People read this and will say oh look what they said on such and such date.

Mayor Morton asked if they still want all these comments and not just conclusions. They still wanted all comments.

Alderman Rainey thought it wouldn't hurt if all who had not read these minutes would read them carefully, and for Elke and her staff to take a look at them, because they are closed session and they are about lawsuits. They could be used against us and that's what she is concerned about.

Mayor Morton commented that when Mary was here, it was rare that anybody corrected her. She also stated the City Attorney gets to read them before you all do, so she can tell us about the minutes.

Alderman Bernstein called for discussion on the Personnel section of the session.

### Personnel

Interim City Manager Rolanda B. Russell had only one item to talk about and it is the Wolfgang Puck debacle. On July 2 the Mayor requested an investigation as to why staff approved the occupancy of 1701 Maple. Look at all of the details behind the owner's contact with the Mayor. Dennis Marino, Jeff (Murphy) and she went out and looked at the property. Jeff was correct in not giving an "okay" in terms of the electrical. In your packet there is a letter marked "C1" and this went to Jim Wolinski. It essentially said, as noted in the inspection report, certain area above the T-bared ceilings do not have the required access and working space for sectional code registered in Evanston. The City of Evanston accepts no liability for this condition, liability rests with Wolfgang Puck. We looked at it and it did not meet code, the access to the electrical was 20 feet in the ceiling. You would have to find a ladder, climb up and have to know which panel to remove to turn off the electrical. The other access was also in the ceiling and you had to pull down a ladder and find it. For a restaurant to be operating in that kind of condition was unacceptable. We talked to Jim Wolinski and he didn't recall this incident, everyone (except Jeff) who was associated with this are no longer City employees. There is nothing we can do in terms of personnel. I did have a talk with Mr. Dee and at first he requested the same sort of letter we gave to Wolfgang. I asked him if we were willing to give him something like this letter, would he be willing to take the liability. One injury or one death would supersede this. He has since made all the repairs and the property now meets code in terms of electrical HVAC. She told him she would consult with Council concerning reimbursement of \$25,000 for exterior sidewalk repair items that were eligible. He sent a list the items he had to do on the outside, so when we looked at the entire issue, he would have spent \$100,000 for HVAC and electrical repairs for a restaurant that should have been completed.

Alderman Rainey commented that she didn't see that it was the City's job to turn over a completed restaurant to him. He had a negotiation with another party.

Ms. Russell stated the real issue was our codes. Alderman Rainey asked how they knew when that was. The City Manager then stated that Jeff did say that it was correct, but he refused to sign an occupancy permit. If you look at the papers, if any of this had become public, because of the theater next to it, the huge liability would have been detrimental to us. So we didn't want any of this cause panic that we allowed this to happen, also other businesses could start to question whether it was in code. It was just an ugly unfortunate incident. Again all the employees are gone and records were also missing when we started looking through to find out what other items had not been done. "That's strange" was the comment of many aldermen.

Alderman Tisdahl stated the City goofed and it cost them money, she thought they should take a small payment and felt the sidewalk plan was good. Alderman Rainey asked didn't he have an obligation?

Alderman Moran noted some of these people are gone but he was not sure that meant they should not find out what happened here. He read through this stuff and it was frightening to the max. When he read the statement that the City of Evanston would not accept any liability; that is straight. He couldn't believe, refused to believe that our (property) standards people could ever think that. So he thought what's wrong with this picture? Then he read there were no records. He saw the whole thing about you can't get a screening, but you've got to have records. He stated this wasn't the 1900s, this is 2000 so there's got to be records. If there aren't records we should find out why there aren't and what the heck went on. He agreed it's a sensitive issue, but it's one we should get to the bottom of, he smelled a rat here. He didn't know if this was misfeasance, it might have been. He reiterated that he read through all that stuff and said "Woo, woo, woo." If there is stuff like that and you have no explanation. Then there is no trail, it's like someone killed it, then what happened?

Ms. Russell responded there were certain pieces of information they would find. For example the food establishment, which is F2, not only was it not signed, but if you look at the back it said see page 2 for corrections and there was no page 2. So pieces of files were unavailable. The Mayor interrupted the vigorous conversation among the aldermen and called on Alderman Bernstein.

Alderman Bernstein said at the very best this is gross negligence, at the very best. His sense was, he would not cast any aspersions on anyone, but this can't happen. Now the best thing that happened is there were no incidents, because if there were we would be in big trouble OK. With respect to coming up to the plate and helping them to build-out their space, no the codes change. It may well be a code we missed but they aren't going to benefit from that. They were just lucky that nothing happened and didn't kill 4,000 people in the theater. He didn't see any reason why they should come up to the plate and pay anything. This is a cost to do business for the developer and for the tenants. He felt this was very frustrating. It's not our responsibility. It's probably something for the lawyer, we just can't go backwards. Yes, we should find out what happened.

Alderman Hansen wanted some clarification concerning the only remaining person involved. Could he not remember what transpired and what about his signature on the document? Ms. Russell said he did remember, his signature was just for the kitchen and he refused to sign for the electrical in the building.

Alderman Wollin wanted to know if they have the Certificates of Occupancy, were they issued appropriately for everything else in the Hill project. She wanted a record of all the electrical inspections of the theaters. She wanted to know that all of it was done appropriately. They knew that

portions of that building were not done accordingly to code. They needed to track it down--that's the City's responsibility. There are thousands of people moving in and out all the time.

Alderman Holmes said they need to take into consideration that there are enough inspectors or staff to do all that needs to be done. The Health Department goes out and have licenses when businesses change hands, but they do not inspect everything. In August, when they started talking about licenses and certificates for all businesses, maybe if we get more staff there will be a monitoring system that will take care of some of this. She guessed they didn't have one in the past. They should have some way to track all businesses for compliancy to the City Codes.

Alderman Jean-Baptiste noted that part of the problem is the complacency with the staff we have in place. There's no system that insists on accountability percolating up. The inspectors are sent to check something out and they have the responsibility to do so. He wasn't sure if they have a check-off system to make sure that happens. So if they become friends with the developer, have no accountability and let things go by. So Dennis, when you take a look at all of that, you need to know what has been inspected, what needs to be inspected, what they found and whether or not the ordinance has been issued. Giving \$25,000 that Rolanda suggested would be worthwhile to make the contribution in the 10<sup>th</sup> district. I believe there are two different issues here.

Mayor Morton wanted to tell what she knew about the situation. The owner of the new restaurant contacted her and said the cost of the ceiling and the other would be \$50,000. She understood when people go into purchase a piece of property and assumed, because it was in the ceiling, nobody would ever think that Wolfgang-Puck would be in a place that would not have received proper licenses. He owner said this was an additional cost for him and \$100,000 that he did not have in the original plan. She had talked to Jeff too, he remembered the situation and the lady he gave his papers and she always went along with him. But this time, her comment to him was everything is working alright now so everything is okay.

Alderman Moran asked who "she" was. Carolyn Brzezinski was the answer from three aldermen.

Mayor Morton asked whose name is supposed to be the signature on the final occupancy permit. They never got it. Alderman Moran said the question is who is supposed to sign. It's the building official in that community--head of the Building Division. During that time it would've been Jim. We have it structured now that Jill Chambers, in the Building Division, will have that privilege. Irregardless somebody should be signing and checking.

Mayor Morton asked will it mean that all the permits go to one person who signs all forms before he gives the occupancy permit. So he will have all the papers from the electrician, the plumber whomever? Well, where are all of the papers?

Alderman Wynne asked, being the devil's advocate, you reached out to Jim and what did he say. He said he didn't remember (aldermen). She was looking at this letter to him dated 11/2/2000, it was very brief, but it brought to his attention that they're not up to code. Then it had a cursory statement "The City of Evanston accepts no liability for the condition." I don't think that a person would write this if they did not have a conversation with someone.

Alderman Bernstein thought that Melissa's statement was absolutely correct. They have to do the inspection or hire it privately if they don't have the people. They're talking about unbelievable liability. They were lucky, because the combustible materials above that open space with the Rhythm

Room. The City owes no duty to any subsequent purchaser in this restaurant as far as he was concerned. As to the outside repairs, it's something they would have probably done anyway.

Alderman Jean-Baptiste directed the discussion to the City Manager for her statements. Ms. Russell said regarding the amount we would like to reimburse for exterior streetscape. When this owner came in he paid the normal cost for any upgrade, redecorating they did all of that. The additional \$100,000 they had to pay for code items and you would expect a restaurant that was recently vacated would know they will have to do a couple thousand in renovations. But the code items (especially since they were our fault), we said you don't have any choice you have to make the additional code repairs. The owner said they may not be able to go forward with this restaurant opening as they had not anticipated a total of \$300,000. They said we must code, the electrical and the HVAC. If the City really wanted Bravo to open, she thought that was a legitimate way to make that happen.

Alderman Bernstein said they are not doing this for Bravo; they're doing it for our street. So why would he (owner) do our street, why is it his responsibility to upgrade the exterior of his restaurant?

Ms. Russell informed the aldermen that there are exterior costs he would incur. They will ask him to pay for those first and reimburse him up to \$25,000. After a lengthy discussion about the exterior repairs, Alderman Rainey interjected a question of concern.

Alderman Rainey what is the nature of this document? It says that you (Bravo) should contact inspectors during pre-opening for final sign-off only if you have occupancy approval. Here we have fire, electrical, structural, plumbing, HVAC and health. What meaning does that have, none?

The City Manager stated, from her understanding, this is for the kitchen area only. The rest of the restaurant had to also meet all of the codes. Their sign-off here was just for the kitchen area.

Alderman Rainey remembered they all were invited for the grand opening for Wolfgang Puck somewhere around this time. Before she and her daughter arrived, she received a call informing her that the opening was cancelled. Everything about the event had been halted. So was anything involved with permitting during that? They just didn't have a Certificate of Occupancy.

Alderman Jean-Baptiste stated they can't answer all the questions tonight, but to reiterate what Steve has said, when an entity purchases a home or business, in the contract there are a number of days for an inspection. Unless the term was "as is" subsequent purchases--you have no obligation to do anything for them. He thought this spoke to what system they needed to put into place to ensure they are in order. They needed to bring closure to this eventually, don't they?

Alderman Rainey suggested to contact the writer of the letter and ask what were the circumstances surrounding the writing of that letter?

Alderman Wynne commented that whether or not they pay this man is irrelevant. Let the other lawyers in here deal with that. What she cared about is whether she'll go back to that theater with her children again. What else doesn't meet code? What is the plan to find out what else is wrong in that building?

Jean-Baptiste reminded the Council of the elite force that came together when the garage collapsed, which also gave recommendations to go forward. Maybe they should get them to do the same for this situation, so in seven days they will have something on the table.

Ms. Russell told the Council the information it has right now is what staff could put together in this timeline. The investigation will continue in terms of talking to anyone they can find and get a better handle (confidentially) on this to figure out what happened. They will also work with staff to see if there were any other code violations, which there might be. They are especially sensitive to the theater and so will continue to investigate. After an extensive discussion it was stated that Council should also go through the theater, too.

### **Real Estate**

Interim Community Development Director Dennis Marino had one item on real estate. The first meeting in June, he came to the executive session to talk about the 700 block of Chicago Avenue; this is where AMLI Residential wants to build a planned development primarily residential. They had an appraisal done for \$525,000 and the City's appraiser felt that it was \$900,000. Steve Ross gave a draft contract for \$900,000. Exhibit D of that contract says, the seller (that's the City) agrees to apply an amount for the following public improvements to be constructed in coordination with construction of purchaser's intended use (alley works/Chicago Ave works, CDBG to be considered). His recommendation was to strike this to stay in the loop. These are the kinds of things that come up when talking about the planned development process in terms of public improvements, public benefits, and immediately adjacent site improvements the City asked for. Any number placed in this blank would water down the City's \$900,000, so he guessed they want that deleted from the contract. This is to be considered as a Planned Development item in August by the Planning Commission and notice was placed in the newspaper with the intention to sell.

### **Litigation**

Attorney Elke Purze commented that the Gregory trial would start tomorrow. The good news is they have sent pretrial rulings and evidences issued in our favor, the City has been dropped as a defendant, Mr. Foutris has agreed to certain stipulations also in our favor. The parents have been dropped as plaintiffs, so it is just Brad and Shaquill against the one police officer (the Caucasian). The three African-American officers also have been dropped. The three claims against Officer Cook are equal protection, discrimination, false arrest, no probable cause, the state claim for false imprisonment and they dropped the battery charge. He has agreed to use willful and lawful standards. We boxed them in really well and it's going to be a short trial. She'll keep them informed.

### **Worker's Comp.**

She has three resolution claims. Council read the claims and agreed. There is one thing you asked for last time for an update, and she put together a report and will pass it out.

Mayor Morton stated they have completed the agenda and declared the meeting adjourned at 11:15 pm.

Respectfully submitted,  
Rodney Greene, City Clerk