

**Evanston City Council  
Closed Session Minutes  
Aldermanic Library  
Saturday, January 6, 2007**

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

NOT PRESENT

AT ROLL CALL: Aldermen Moran and Wynne

STAFF: Judith Aiello, Julia Carroll, Herb Hill, Elke Purze

PRESIDING: Mayor Lorraine H. Morton

START: 9:00 a.m.

**Litigation and Insurance**

Assistant Corporation Counsel Elke Purze stated that every year as they begin budget deliberations all ongoing litigation is reviewed and 2007-08 projections made. Significant cases were settled in 2005-06 so the City's exposure looks better.

Staff expects a minimum increase in insurance premiums or a reduction because their exposure is less. FM Global, who insures City property, will issue a membership credit of \$33,000 because the City has been such a good customer. (At this time First Assistant Corporation Counsel Herb Hill was present.) They will look at reducing the City's property exposure by working with FM Global engineers to achieve highly protected risk status for the Civic Center, Robert Crown Center, police and fire headquarters. If this is achieved, they will see an even greater reduction in premiums. The reduction is \$84,000 and would require investment of money. Staff expects to achieve this within the next five years. (At this time Alderman Wynne was present.) In response to the Mayor Mr. Hill said there should be little impact on the General Fund unless they get a surprise court decision.

Mr. Hill reported that last year was a relatively good year with 11 cases resolved including the Hansen sledding case.

The problem last year that will affect the City in the future is the Hotchkiss case. Discovery indicated more liability for the City. Hotchkiss was stopped late at night for a driving infraction. The police officers did not follow zero tolerance and administer an alcohol test to him. On the instruction of his father, he was put in a cab and got into an altercation with the cab driver. They have on tape the driver shouting that Hotchkiss was drunk. Hotchkiss did not want to be in a cab with someone who did not speak English and ran off. The problem is the officers gave Hotchkiss back the keys to his car. Hotchkiss had been drinking at Pete Miller's and the Keg that day so they cannot proceed under the Dram Shop Act. They asked for all police records on this case. Ryan, Smolens

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and Jones know the police department. On a deposition an officer came with the second sheet of a two sheet report to the higher command that was not in the file. That sheet was a report the officer made up the chain of command advising there was talk in the station that the officers on the scene gave Hotchkiss a break on alcohol.

The case is not yet ready for trial and the budget does not contain a settlement of this case. They are notifying the insurance company. The attorney's project this case could be cost more than \$2 million. If the plaintiff's attorney, who isn't a personal injury attorney, wanted to settle for \$500,000 Hill would do so. In response to Alderman Hansen, Hotchkiss had no previous DUI's.

Alderman Rainey asked when they found out about the report, did anyone go to the police and talk to them about their responsibilities. She stated the way police are handling things in the last six months; it appears the police department does not want to get involved. Mr. Hill, Elke Purze and Dick Ryan spoke to the police Department and they are not disciplining any police officer. She was talking about getting reports only when she asked for them that are being written weeks after the incident occurred. Ms. Carroll stated she did not know there was a problem with this report. Nobody told her. The missing sheet was found out about in early November when the officer went to Ryan's office.

Mayor Morton asked that Alderman Rainey clarify how she knew that the police department does not want to get involved. Alderman Rainey gets that sense in her ward.

Whisman vs. COE. This is the woman who had had a stem cell transplant and was walking on Central Street to the football game; fell scraped her knees and chin and died within two weeks. The issue is where she fell. The husband did not see her fall and she did not identify where she fell. The husband has presented several areas within 12 sidewalk slabs where she could have fallen but cannot clearly pinpoint where the fall occurred. The City will ask for a motion to dismiss. This woman had no immune system. Theoretically this is a problem case and they will have a better idea after they file to dismiss. The case is not ready to go this year.

Perrotta vs. COE.. This individual was unloading his jet ski from the trailer at the City's boat ramp and putting it into the water when he suffered a substantial injury to his leg .He was a frequent user of the boat ramp. (Alderman Moran was present at this time.). The standard of care is willful and wanton. Plaintiff will say the hookup had a gap in it and his leg went into that gap. There has been no notice of problems with the boat ramp. This individual uses the boat ramp some 25 times a year. This is not up for any decision. There is a strong recommendation to litigate this case.

Gregory vs. COE. This family has had frequent contact with the police department. Consistent with police department practice, two juveniles, 12 and 15 years of age were arrested, handcuffed and put in the squad car. Within an hour they were released. They were arrested due to an incident in front of the movie theater. These two individuals and others were standing in the street. Officer Koch after giving several warnings then

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arrested both. The officer was white; the two juveniles are African-Americans. The allegations are that excessive force was used. This case will be tried this year. Ian Johnson, Holland & Knight, estimates a cost of \$110,000. The risk of loss is attorney's fees. The exposure is less than \$200,000. Police department cameras show the two kids joking around when they were released.. The appearance is that it was over. There are 24 counts in federal court.

Alderman Rainey noted there are consistent problems at the movie theater. Last night there were numerous melees at the Century Theater. She stated they cannot allow uncivilized behavior in the downtown. Mr. Hill stated when police officers act properly they must be defended. Alderman Rainey suggested that when police officers are intimidated by lawsuits, over time they are not doing what they need to do to control crowds.

Alderman Tisdahl moved that they reconvene into open session. The motion was seconded and carried unanimously at 9:38 a.m.

Mary P. Morris,  
City Clerk

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