

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, May 29, 2007**

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

ABSENT: Alderman Moran

STAFF: Judith Aiello, Julia Carroll, Herb Hill, Rolanda Russell and Jay
Terry

GUESTS: Sharon Eckersall and Sam Hoover

PRESIDING: Mayor Lorraine H. Morton

START: 10:16p.m.

Litigation

First Assistant Corporation Counsel Herb Hill reported he had a letter from Assessor Sharon Eckersall who had contacted the law office because she wants to terminate Diane Benjamin; noted that the assessor had terminated two other employees. Mayor Morton has heard over and over about problems in the assessor's office. Others noted a pattern of the assessor and deputy assessor being best friends that ended then the employee was terminated.

Mr. Hill stated that Sam Hoover, attorney for the township, was available tonight to discuss his outstanding legal bills. Alderman Bernstein noted aldermen were not notified that Mr. Hoover would be here. Mr. Hoover's bills were discussed at the Human Services Committee meeting and they were not sure he would be available at a late hour as he had just returned from California.

Mr. Hoover's \$33,000 bill was for preparation of an appeal brief. Everything has been filed and he is awaiting the plaintiff's reply brief. Oral argument remains. Mr. Hoover won on summary judgment. What is in question are filing fees and the time spent talking to him. Hoover was prepared to reduce his fees by several hundred dollars.

At this time Mr. Hoover was present. Mr. Hill said the matter goes back a year or so with the bulk of the bill for Appellate Court work. The summary judgment appeal was won. There have been attempts to get a settlement by the plaintiff. The real purpose of the meeting is for Mr. Hoover to explain his billing. There were concerns about filing fees, transportation costs and, in general, time for the brief work. Mr. Hoover has had medical issues with his family in California and returned yesterday.

CONFIDENTIAL

Mr. Hoover explained he has been on this case for five years. They started with four allegations and two were dismissed with prejudice. For the last three years they have dealt with two issues: A claim of defamation of character and a claim for retaliatory discharge. After discovery they filed a motion for summary judgment before Judge Lott who ruled in their favor. They thought that would be the end of it because the plaintiff has had several attorneys Mr. Castaneda is persistent and they have not been able to settle. However his attorney filed an appeal and they had to file an Appellate brief which he has filed and for a reply brief. He said an appellate brief is a large task. When he took this case, the fee was \$200 an hour. He has kept the same fee schedule from the beginning. Customarily charges are more on an appeal. He used a paralegal for some of the research at \$125 an hour. He did the final draft and put together the brief. Judge Lott wrote a brief memorandum of opinion. Ordinarily if the plaintiff appeals, there is a 75% chance of winning. Because of Judge Lott's opinion, the facts and law are in their favor 50/50. He does not bill for travel time. He bills for filing because he always files himself. He was happy to answer any questions.

Alderman Jean-Baptiste noted that Hoover charged for research on whistleblowers. 13 hours of work seemed like a lot of time. The preparation of the brief took 7.5 hours and the second draft was \$5,000. He suggested Hoover was working up to the budget of \$35,000 and that he should not be charging for filing at the rate he is using. Alderman Jean-Baptiste saw a pattern to some degree of abuse.

Hoover said if the case goes to oral argument, the court may issue a rule 32 and the case would be over. To prepare for an oral argument takes 10-20 hours. Hoover did a lot of research on whistleblowers. Why was he doing that in 2007? Alderman Wollin asked how much Castaneda wanted to settle. \$75,000. Hill stated early on they had authorized \$25-35,000 to settle. Castaneda's demand was always high. The plaintiff's attorney came close to malpractice. There were many variables in this case. Castaneda was not a whistleblower. The work was done by his paralegal. He went through other parts of the bill, explaining charges. Hoover said a motion for summary judgment is not as detailed as an Appellate Court brief. He felt he had given good service to Ms. Eckersall and the township.

Alderman Holmes asked when the \$25,000 was offered to settle. It was early in the process. Mr. Hill noted the township has paid a substantial amount to date. The status of the case was brought in to resolve it.

Mr. Hoover did all the work except what the paralegal did. Alderman Bernstein's concern was when he prepared for the trial, charging \$200 an hour for filing a brief was over the top.

Alderman Rainey noted thousands of dollars were paid for forensic science and what was found. Hoover explained that Castaneda had pornography on the office hard drive and was doing private tax preparation work as well. Was it incriminating? Castaneda accessed web sites with pornography.

CONFIDENTIAL

Mr. Hoover has done five appeals. Alderman Bernstein confirmed that Mr. Hoover has received \$50,000 to date and is asking for an additional \$33,000.

Alderman Jean-Baptiste suggested they negotiate resolution of the bill which was due January 2007. The last bill was sent on April 28 for \$33,184. Mr. Hill pointed out that if the township prevails it is over. If they don't prevail, those two counts would go to trial. Judge Lott said that Sharon Eckersall is the township assessor and entitled to terminate an employee for cause.

Alderman Bernstein asked for a written report on what the forensic science found on this case. Mr. Hoover will get that to the trustees.

Mr. Hoover thought the law favored Sharon Eckersall. He needs to be paid and they have gotten value for services. Mr. Hoover left the meeting at this time.

Mr. Hill has little information on Mr. Hoover's background. Trustees are not responsible for retention or review of his qualifications. His fee structure is okay. Hill asked for Hoover's preliminary draft which he has not produced. There are complications to this case. The case may have been won more on the willfulness of the plaintiff than the competence of the attorney. One problem was the trial file was lost and had to be recreated.

Alderman Holmes recalled that the committee discussed how Mr. Hoover was chosen. Ms. Eckersall was asked why she went to Mr. Hoover. Several friends had used him. Mr. Hill will include the briefs they have. Alderman Bernstein asked for the paralegal's brief. Alderman Jean-Baptiste suggested they negotiate the bill down and monitor Hoover's activity. Alderman Bernstein stated if the township is sued a third time (due to employee termination), he does not want to pay.

Mr. Hill stated that Ms. Eckersall came to the Law Department within the past seven days concerning the conduct of Diane Benjamin and dropped off a letter addressed to the auditor indicating criminal conduct by Ms. Benjamin. Ms. Eckersall stated Ms. Benjamin was opening mail and putting her signature (stamp) on bills that she never saw. Ms. Eckersall has been coming to the office twice a day in the absence of Ms. Benjamin. Alderman Jean-Baptiste suggested that Ms. Eckersall and Ms. Benjamin work out their differences. Ms. Eckersall said she had no idea of the checks going through. There was a check for \$1600 for Computer Bits. Mr. Hill read the letter to auditors aloud from Sharon Eckersall. Ms. Eckersall said 333 appeals were filed and she did a third of them. Alderman Bernstein asked for copies of the appeals. Mr. Hill asked Ms. Eckersall not to send the letter to the auditor. He will give a complete report on Diane Benjamin's attendance and work. There was discussion that Diane Benjamin is on medical leave. The Law Office is beginning to gather information. They don't have all the facts. In two weeks Mr. Hill will give a report.

Perrotta vs. COE

CONFIDENTIAL

Mr. Perrotta was unloading his Skidoo at the boat ramp and his leg was injured. On the motion for summary judgment the city's attorneys were successful. Mr. Perrotta may appeal.

AUDIT REVIEW FOR M/W/EBE COMPLIANCE – Arthur Hill Co.

There was an audit review to determine if the Hill Co., met the 25% goal for M/W/EBE compliance and if they did not meet it what should be the fine. The M/W/EBE Committee recommended a fine of \$180,000 which was reduced to \$129,000 by the Law Department. The Hill Company took the position that they made a good faith effort. There were a series of negotiations with their attorney, former Alderman Steve Engelman. A settlement meeting with City Manager Carroll, Alderman Jean-Baptiste, Dick Peach, Brad Yatabe present made an attempt to settle this matter. If they made reasonable good faith effort, there would be no fine. The settlement proposal resolution is a payment of \$45,000 to the Summer Youth Program in three separate payments of \$15,000 over three years. Aldermen Wollin and Rainey suggested one payment of 445,000 be made.

There being no further business to come before Council, Mayor Morton declared the meeting adjourned at 11:25 p.m.

Mary P. Morris,
City Clerk