

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, April 24, 2006**

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

ABSENT: None

STAFF: Julia Carroll and Herb Hill

PRESIDING: Mayor Lorraine H. Morton

START: 11:05 p.m.

Alderman Bernstein moved that Council convene into Closed Session for the purpose of discussing matters related to litigation and minutes pursuant to 5ILCS Section 120/2 (c) (11) and (21). Seconded by Alderman Holmes

Roll call. Voting aye –Aldermen Rainey, Hansen, Wollin, Jean-Baptiste, Wynne, Bernstein, Holmes, Moran and Tisdahl. Voting nay – none. Motion carried (9-0)

MINUTES:

Closed session minutes of March 13, 2006 and March 27, 2006 were accepted without change.

LITIGATION:

City Manager Carroll announced Council would be updated on three litigation matters.

First Assistant Corporation Counsel Herb Hill announced that Judge Zwick had ruled in favor of summary judgment for the City in the Hansen sledding case. The plaintiff argued sledding was permitted because Ms. Hansen was not stopped. The City had a large poster of the hill showing 23 signs that prohibited sledding. He will wait for 30 days for an appeal to be filed and if not, he plans to have a press conference at the Hill to stop other lawyer's from suing. He said the difference between this case and the Klujewski drowning (which the City settled) was that six people said the signs were not up. In the Hansen case she claimed she did not see the signs. Alderman Wynne asked if they have a log indicating that signs are in place and is the hill photographed daily. Mr. Hill said the Recreation Department takes photographs and keeps logs.

Kathrein vs. COE

Mr. Hill passed out an outline indicating the status of each case and why the City is in two litigations with Kathrein. The first case, in Circuit Court, shows that a permit for a garage was issued by the City that should not have been issued. The garage was substantially constructed, when the City issued a stop order. Kathrein went to the ZBA

who denied his case, then to administrative review and the City won. The remaining motion is to abate the condition which is to tear the garage down. The garage is 3-1/2 feet over the setback limit; does not encroach on the neighbor's property and is 1-1/2" from the lot line. The City has been successful to this point and he expected a ruling within the week on the City's motion to abate the condition.

Parallel to the above, Kathrein applied to the Building Department for a kitchen permit and was turned down. Why was the permit not issued? The legal position was that he was out of compliance with the Zoning Ordinance when he applied due to the garage condition and the City would not further the non-conformity. Unfortunately, a City employee told Kathrein by phone that the City does not give permits to somebody who is suing the City. The facts became hazy. Kathrein did not keep the voice message but has an affidavit from his secretary of what was said. This case is in federal court with Kathrein representing himself and alleging a conspiracy by three City attorneys who would not give him the permit.

Mr. Kathrein is not an attorney and has a history of litigiousness; was sanctioned \$54,000 recently in a federal court for frivolous litigation. Jim Murray is representing Kathrein in the state case which has cost \$57,000 to date and the federal case \$28,000. The City has filed a motion to dismiss twice. The federal case will cost a lot because Kathrein repeatedly files. They have tried to settle both cases. Mr. Hill learned that the hand doctor whose property was adjacent to Kathrein's lot had moved and there is less opposition in the neighborhood. Kathrein opened up discussion and proposed the City drop the garage case. Hill was told neighbors were not opposed to the garage. If the garage can exist they have the illegal non-conformity issue off the table, Kathrein can get his kitchen permit, have the home he wants and litigation would be dropped. Ian Johnson, who is representing the City, said that Kathrein not only wanted the litigation dropped but \$50,000 in fees for him and attorneys. Hill told him that was not acceptable and needed to bring the matter to Council.

Mr. Hill stated the federal case is more problematic. There is a question about what one of the attorneys said and how it was interpreted. He thought they would be successful in the state case. The question is will the court order demolition of the garage? That is the remedy they are looking at.

Alderman Wynne related many problems with Mr. Kathrein when he was a 3rd ward resident and wanted to make sure he is in compliance with City regulations. Mr. Hill said a trial would be costly and a settlement would be global. Mr. Hill will reject the \$50,000 demand and start lower to settle. Alderman Moran suggested not doing anything and a trial next week; urged they get it over with. .

NU/Citizen Committee – Consent Decree

In response to Mayor Morton, Mr. Hill explained that the court retained jurisdiction with the Consent Decree so that can be discussed in closed session. He wrote that the narrow language of the Consent Decree focused only on property in the T1, T2 and U1 districts currently owned by the university. Their obligation under that Consent Decree was to

report on any activity that would affect their property. To the extent that the acquisition of property does not affect existing property. NU's argument would be that 1945 Orrington was not property owned by NU at the time of the Consent Decree. Alderman Wynne did not think NU's action was in the spirit of the decree.

Alderman Wollin said that the two citizen committee members wanted her to sign a letter that the committee and NU meet in 7 days. She would not sign it because the Council must decide whether they will move forward; thought the citizen terms were separate from the Consent Decree. Alderman Moran stated that was not closed session material.

Alderman Moran asked if there is an open legal issue. Broadly speaking Mr. Hill stated that anything to do with the NU/Citizens Committee could be discussed in closed session. Purchase of property is not covered in the Consent Decree.

Alderman Bernstein did not want to continue to be involved with this committee. He understood at the time the decree was issued that the committee's purpose was to establish a communication link between the City and NU; had not read the decree carefully enough. The spirit was that this would establish a liaison on land use. It was agreed to by Judge Aspen and Abe Mikva. If it only concerns what happens to their current land holdings he thought the committee was useless and a waste of time. Alderman Jean-Baptiste asked about the neighbors. Alderman Bernstein said the neighbors were at the meeting. It seemed it did not matter who is on the committee. Alderman Bernstein wanted to go back to Judge Aspen and ask him to let the City out of their obligation.

Alderman Wollin said that Dave Schoenfeld had sent a letter to NU demanding a meeting on April 26. Alderman Jean-Baptiste supported the call for a meeting.

Alderman Moran thought the Rules Committee has reached agreement on term limits. NU rejected expansion of the committee and Council needed to decide whether they would approach Judge Aspen. Alderman Bernstein moved to ask to modify the decree with a change of language. Alderman Wynne suggested adding "to potential purchases."

There being no further business to come before Council, at 11:40 p.m., Mayor Morton asked for a motion to adjourn and the Council so moved.

Mary P. Morris,
City Clerk