

**Evanston City Council  
Closed Session Minutes  
Aldermanic Library  
Monday, September 11, 2006**

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

STAFF: Judith Aiello and Herb Hill

PRESIDING: Mayor Lorraine H. Morton

START: 10:25 p.m.

Mayor Morton commented that information from Council executive sessions is becoming public. An e-mail sent by John Kennedy indicated that he understood they were in serious discussion about a new location for the Civic Center. She did not know how this happened; suggested that the Rules Committee look into it. Nobody feels secure when things are made public. It also limits what they can say. Mayor Morton emphasized that it is important to keep what is discussed in executive sessions confidential.

Assistant City Manager Aiello stated they had updates on four cases in their packets

**Proposed Settlement Kathrein vs COE**

Iain D. Johnston, Holland & Knight, in a memo, reported the proposed global settlement agreement for two cases, one in federal court and the other in state court. First Assistant Corporation Counsel Herb Hill reported the City agreed to let the garage remain, dismissal of both actions; each side bears their own fees and costs for both actions. Kathrein contacted the neighbor who does not object to the garage. The original neighbor who objected is no longer there. Alderman Rainey moved to accept the settlement. Alderman Hansen confirmed that although the garage was ordered torn down, the City agreed to let it stand. Alderman Rainey asked for the total cost of this litigation. Mr. Hill didn't have the total but said it was a lot of money. Mr. Kathrein took advantage of the City's mistake and built the garage. Hill recommended settlement because litigation would cost much more. There are problems with the federal case. Based upon that and that the neighbor does not object to the garage being there he was willing to compromise. The case in federal court is about two years old. The City made a series of mistakes. Kathrein applied for a kitchen remodeling permit while in litigation over the garage. The permit was held for five months and Kathrein and the City communicated during that time. As a result of a meeting, Jim Wolinski called Kathrein and left a message that the City does not give permits to people who are suing the City. Kathrein claims his secretary transcribed what was said. Wolinski does not deny this. Exactly what was said is unknown. Hill explained that the garage remains a non-conforming use and cannot be rebuilt. Mr. Hill asked for authorization to settle; said Kathrein favors settlement. Alderman Wynne urged that the City make sure the kitchen remodeling follows code and

passes inspections. She recited a litany of code violations by Kathrein in the 3<sup>rd</sup> ward. There were no objections to the proposed settlement.

### **Marie Oszczepinski vs COE**

Mr. Hill sent copies of photographs taken by the son of the plaintiff of the 800 block of Main Street purporting to be the condition of the parkway. One of the City's defenses is that the City had no notice of the condition. The area of the grate is close to parking meters on Main Street. The City's parking meter collector goes down that street almost once a week and testified that she would have reported it, if it was raised, as that is part of her responsibilities. To prepare for the Custer Street Fair, the Department of Forestry inspects the parkways in June. This incident occurred in September. If something needed repairing Forestry would have done it, because that is a high traffic area. The plaintiff's attorney subpoenaed people to establish notice their theory is that the tree roots were root-bound outside the earth and caused the grate to be raised. The City's experts will testify that the tree was not root-bound and the grate was level. There were no witnesses to the fall. Plaintiff's argument will be that this is a 56-year old hard working woman who speaks only Polish and has some permanent injuries from the fall making this a difficult medical case. The City took no photographs because they had no notice of this condition.

Alderman Wynne did not believe the parking meter people report dangerous conditions; noted a walk along Chicago or Main will yield six of these conditions; claimed grates pop up regularly; reports those she sees regularly and nothing is corrected.

Alderman Hansen asked if the plaintiff could lay a sufficient foundation to get the pictures into a trial. Yes, the son could testify. Alderman Hansen confirmed the injury occurred September 3, 2003. Hill explained the woman had no medical insurance and was treated some days later at Cook County Hospital. There is no question that the injury occurred on or about this date, the question is did the injury occur at this location. The son came to the scene to help his mother and a second time to take pictures but cannot remember who came with him. Alderman Rainey could show staff sinking pavers and parking meter posts that are sticking up all over. Nobody calls so she calls David Jennings. She said the fleet people drive around and are supposed to call in but don't. She thought the City might be on dangerous ground.

Mr. Hill stated the original demand was \$225,000 which was lowered to \$172,000. The case is set for trial the day of the next Council meeting. He will try to settle for between \$50-75,000.

### **Open Meetings Act Complaint**

Mr. Hill reported that Bob Atkins filed a complaint to the State's Attorneys office regarding discussions that may or may not have occurred in closed session concerning the Consent Decree. The State's Attorney sent a letter asking for various minutes. Hill included what would be sent in response to the letter in the packet. Any material submitted would remain confidential. Mr. Atkins contends that Council discussed issues regarding his appointment to the NU/Citizens Committee. Alderman Moran remembered

the real issue was if Council wanted to change the Consent Decree. Alderman Rainey confirmed if a complaint is filed, that office automatically responds to the complaint. With Council's permission Hill will release the information and keep them informed.

### **Report on land acquisition**

Mr. Hill reported that the Civic Center Committee directed that Northwestern University be contacted and asked to sell Block 7 to the City at fair market value. City Manager Carroll, Gene Sunshine and Hill met recently to discuss City's desire to buy the property. Mr. Sunshine needed time to think about it and contacted the city manager a week later and said the university had no interest in selling the land to the City. At the earlier meeting they did not say that condemnation was on the table. They persuaded Mr. Sunshine to go back and find out what the university's interest is in terms of dealing with the City.

Mr. Hill explained should the Council wish to proceed with condemnation; first they would get an appraisal. An attorney is lined up for the condemnation, and if that was the case, staff would bring an ordinance to the next Council meeting. They would negotiate an offer based on the appraised market value. Should the offer be rejected, they would proceed to condemnation.

Alderman Holmes confirmed that 1890 Maple as a Civic Center location was not possible.

Alderman Wollin reported that she met recently with Ron Nayler and Gene Sunshine to talk about what is happening in the ward. Gene Sunshine told her what Hill had reported and said if they go to eminent domain it will be ugly. He referred to some discussions during the Research Park where they swapped land. Ms. Aiello recalled that the City bought the cinema piece from NU and gave NU Parcel 7. That was the land swap. There also was a zoning change at Foster/Maple so NU could be an 11-story garage. Alderman Tisdahl noted that Sunshine was saying there was precedent for a deal.

Mayor Morton asked if they take the land by the legal process, must it be done in public? Mr. Hill stated that discussion of land acquisition to determine value is appropriate for executive session as well as discussion of condemnation. Hill asked if they should get an appraisal and then put this matter on the agenda to be discussed in public. Alderman Moran said they needed to get the appraisal, then contemplate the next step; suggested they put on their thinking caps. As soon as they file intent to proceed with condemnation that will strike a match. Alderman Moran suggested if some negotiated element or condition could be found to successfully complete a deal, they should do it. He pointed out NU has many needs and the City has needs as well, so they should think about what those are and try to come up with a formula that gets the City Parcel 7.

Mr. Hill asked Gene Sunshine asked if there was any land the university wanted and he came back a week later with nothing. There were issues about the fact that the City would acquire the land from the University for the first four or five levels and NU would keep the air rights. The manager spoke with Sunshine about that. Money is not an issue with

NU. The City offered to assist NU in getting land they were interested in. Sunshine said they want land and the right to develop it as they wish. The City cannot contract out zoning. If the City goes to condemnation it will be expensive and long. Alderman Moran urged they figure out a better way to do it. Alderman Tisdahl thought Sunshine was more interested in swapping land and in how high the Bob King project will be.

Alderman Rainey moved to get an appraisal from the most respected appraiser in the Chicago area. Seconded by Alderman Bernstein.

Alderman Moran noted that land isn't the only thing that serves NU's purposes. Ms. Aiello pointed out when they did the land swap the City wanted to engage in discussion about their long term plans but NU claimed they didn't have any.

There being no more business to come before Council, Mayor Morton asked for a motion to adjourn. The Council so moved at 11:15 p.m..

Mary P. Morris,  
City Clerk