

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, September 25, 2006**

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

STAFF: Julia Carroll, Doug Gaynor and Herb Hill

PRESIDING: Mayor Lorraine H. Morton

START: 11:07 p.m.

Minutes

Mayor Morton asked for any corrections to the closed session minutes of August 14 and September 11, 2006. Minutes were accepted as presented.

Marie Oszczepinski vs. COE

First Assistant Corporation Counsel Herb Hill gave an update on this litigation based upon a fall by Marie Oszczepinski at 804-808 Main Street. Council authorized settlement authority of \$50-75,000. That day there was an informal pre-trial before Judge Elrod who will recuse himself from the trial because his son is head of litigation at Holland & Knight. Jack Siegel is at the firm. There will be a more detailed pre-trial the next morning. Judge Elrod thought the case should settle for between \$75-100,000. The City does not believe that is where the case should settle. The City is at \$60,000 and the plaintiff is at \$150,000. On Friday there was an evidentiary deposition taken from the next door neighbor whose property faces the grate. She was not there the week the woman fell but testified that she did not see the grate raised and had she seen it she would have reported it. The City's meter collector was there on September 3. The fall occurred on September 4. She said had the grate been elevated, she would have reported it. She called nothing in so the grate was not up.

Mr. Hill believed they have a defense worth pursuing. The specials come to \$18,000. He hoped the evidentiary deposition on Friday will put more sense into the plaintiff. He will go through the pre-trial and will need authority, if the \$75,000 is not accepted, to go to trial. They need to win on a motion for directed verdict after the City's testimony is put in. The City's position is the City had no notice of the elevated grate. He did not think the judge shed any light on the merits of the case and was playing with numbers. The plaintiff does not speak English so interpreters for both sides will be necessary. \$75,000 is a lot of money for somebody who has been on a limited wage and he hoped the plaintiff's lawyers would settle for that. He will confirm the \$60,000 at the pre-trial and see what he gets in response and go up to \$70,000. Beyond \$75,000 he thought it was worth litigating. There is a risk. He did not think the permanent injury to her arm and arthritis would make this a \$200,000 case. Some money will be awarded or no money. He recalled at the last meeting some aldermen said it was not uncommon to see raised grates.

He explained the no notice to the City and the various people who would have reported if the grate was raised, is the thread they are going on.

Alderman Bernstein asked why they were taking evidentiary deposition. Mr. Hill stated because the neighbor was leaving town. They don't know who the judge will be.

Alderman Moran was concerned about the demand of \$150,000 and the City's limit of \$75,000 which is half of where the plaintiff is. Mr. Hill said the plaintiff's lawyer called and wanted to get more money. They are talking about what the plaintiff is willing to take, what the case is worth and what the City is willing to pay. Alderman Moran was concerned that they have several people saying at some point they would've called if the grate was up but did not see how they could get a directed verdict, because she will say she tripped over the grate. Mr. Hill thought the plaintiff demand in dollars was high and did not think a verdict would go as high as \$100,000. At most the trial would be two days and not expensive.

If Hill was at \$75,000 and the plaintiff was at \$80,000 he would want a give at \$80,000. Alderman Moran moved they authorize up to \$80,000 to settle. Seconded by Alderman Jean-Baptiste.

There being no more business to come before Council, Mayor Morton asked for a motion to adjourn. The Council so moved at 11:18 p.m.

Mary P. Morris,
City Clerk