

**Evanston City Council  
Closed Session Minutes  
Aldermanic Library  
Monday, August 15, 2005**

PRESENT: Aldermen Tisdahl, Rainey, Hansen, Wollin, Jean-Baptiste, Bernstein, Holmes, Moran  
 ABSENT: Alderman Wynne  
 STAFF: Judith Aiello, Alan Berkowsky, Julia Carroll, Doug Gaynor, Herb Hill  
 PRESIDING: Mayor Lorraine H. Morton  
 START: 11:55 p.m.

Alderman Bernstein moved that Council convene into Closed Session for the purpose of discussing matters related to personnel, real estate, litigation, settlement of claims, and closed session minutes pursuant to SILCS Section 120/2 (c) (3) (5) (6) (11) (12) and (21). Seconded by Alderman Jean-Baptiste.

Roll call. Voting aye – Tisdahl, Rainey, Hansen, Wollin, Jean-Baptiste, Bernstein, Holmes and Moran.  
 Voting nay – none. Motion carried. (8-0)

**Minutes**

Closed Session minutes of July 25, 2005 were accepted without change.

**Pending Litigation - James Park**

City Manager Carroll explained that staff was asked to come back with recommendations after a discussion involving a sledding accident at James Park. Parks/Forestry & Recreation Director Doug Gaynor and 1st Assistant Corporation Counsel Herb Hill worked on this because of liability and toxic issues (what is buried there). An August 12, 2005 memorandum from Mr. Gaynor presented options for future development. \$12,000 is requested to hire a private security company on an “as needed basis” to keep people off the center hill, side hills and the back hill. This is recommended because they don’t have the staff to do it. (There were 17 snow days last year.) Allowing sledding on the two smaller hills is recommended. Options for the future will be presented to the Capital Improvement Program later this year.

Mr. Hill reported there are 22 signs that state “no sledding.” on the hill and surrounding it. The signs are there because as a property owner the City puts people on notice that the large center hill is not intended for or permitted for sledding. That puts the standard of care on the City for willful and wanton conduct, a standard the City is secure with. The way the plaintiff will move around that standard is to say they have noticed the hill is being used and the City does not intervene to stop that use. That brings the standard down to ordinary negligence. However, regarding land and trespassers on land, the duty regarding an obvious danger (the hill) is to provide notice which the City provides. On a legal basis the theory should hold and the City should be successful in litigation on the main big hill.

The City has litigation now where people say they did not see the posted signs. Ms. Hansen received substantial injuries with medical bills of \$300,000. That case will go to trial because on summary judgment there was a dispute about whether there were signs. There have been four lawsuits involving the hill in the last seven years. Mr. Hill described several of the cases. During the past 10 years there have been 49 ambulance calls to remove injured people in James Park during the snow season. There is litigation expense because if the City doesn’t win at summary judgment, they have to go to trial. Another problem with the hill is that it is posted and there is an absolute disregard for authority.

From a safety risk management perspective, he would prefer none of the hills be used for sledding. Most of the people involved in ambulance runs are not Evanston residents. Once they start operations on the smaller hills, the City loses its defense. When they welcome people to the hill they have to do it right. Efforts to keep people off have not worked. There is also an environmental concern. Staff has spoken with experts

who have indicated a need for extensive soil borings to see what is there. They know there are white goods such as old refrigerators buried there. However, the City may not be obligated to clean it up.

In response to Alderman Moran Ms. Carroll said they were talking about how to limit their liability. The staff recommendation is to have contract services to manage the hill and look for money to fund that. Alderman Jean-Baptiste moved approval of the concept. Seconded by Alderman Moran. Alderman Moran suggested that the contract be handled at the A&PW Committee.

#### **Litigation – Township**

Mr. Hill received a bill for \$1,433 from Mr. Hoover which is \$1,000 less than the check the Human Services Committee is holding. A motion for summary judgment was received and Elk Purze went down for the pre trial. Mr. Hoover said his billing is mixed up and would revise it. Mr. Hill will report back.

#### **Report - Firefighter arrested for alleged child pornography**

Mr. Hill had spoken to the U.S. Attorney about this. Alderman Rainey asked how the City is responding. Mr. Hill said the firefighter is in custody. A hearing is scheduled for 11:00 a.m. on Wednesday. The City is cooperating with the U.S. Attorney's office. Hill has the computer hard drives that were in the fire station that the firefighter had access to and will turn them over Wednesday to the U.S. Attorney's office who will take them to a forensic laboratory. The man admitted that he used his laptop where they found 100 pornographic pictures. From that laptop he contacted an undercover F.B.I. agent who posed as a teen age girl. Hill spoke with the U.S. Attorney about what conditions could be put on this 26-year veteran of the Fire Department when he is released.

Ms. Carroll said a statement was released that says the City is cooperating with the U.S. Attorney's office. The man is on a medical leave which he requested a week ago. When he comes off medical leave the City will deal with him. Alderman Moran asked what the man's status is and would he be released on bond. The bond is \$3 million. Mr. Hill said there is a special Firefighter Disciplinary Act, which requires hearings and notice regarding investigations if the discipline is greater than three days. Referring to the Franklin case, he explained that the City cannot question a person about the basis for criminal charges without granting immunity. The attorneys and F.B.I. believe this man operated from his personal equipment.

#### **Litigation Expense**

Alderman Rainey asked about bills from Holland-Knight on the Michael Kathrein and Kathrein & Zaytseva cases on the bills list. Mr. Hill explained the history of both cases; said efforts have been made to settle. Jim Murray is the attorney for the Michael Kathrein case and the second Kathrein case is pro se.

#### **Hearing Date for Fiske/Wollin litigation**

Mr. Hill has given the motion to dismiss to Council; expected Mr. Mean's response within two weeks, a reply to the response, and then they would have the hearing. He suggested they give a half hour to each side and a ten minute reply at the hearing. Monday, October 17<sup>th</sup> at 7:00 p.m. was selected as the date to hear the motion to dismiss the petition.

There being no further business to come before the Council, Mayor Morton asked Council for a motion to adjourn and the council did so at 12:35 a.m.

Mary P. Morris,  
City Clerk