

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Saturday, January 22, 2005**

PRESENT: Aldermen Bernstein, Moran, Tisdahl, Rainey and Feldman

NOT PRESENT

AT ROLL CALL: Aldermen Jean-Baptiste, Wynne and Newman

ABSENT: Alderman Kent

STAFF: Judith Aiello, Pat Casey, Julia Carroll, Herb Hill, Vincent Jones, Bill Stafford, Elke Purze

PRESIDING: Mayor Lorraine H. Morton

START: 9:17 a.m.

Alderman Feldman moved that Council convene into closed session for the purpose of discussing matters related to litigation pursuant to 5ILCS Section 120/2 (c) 11. Seconded by Alderman Rainey.

Roll call. Voting aye – Bernstein, Moran, Tisdahl, Rainey and Feldman. No nays. Motion carried – 5-0.

City Manager Julia Carroll stated the purpose of the meeting was to discuss litigation and insurance for the upcoming budget year. Mr. Hill had put together an excellent summary report. 1st Assistant Corporation Counsel Herb Hill said what they had before them was a snapshot of time to date of where the City is on litigation matters. The prime purpose is to let Council know within the next 14 months, five big cases they have been briefed on will come up for resolution. They were to look at numbers and determine how they will be resolved with monetary payments.

The first page of the report showed the cost of risk insurance premiums for this year which is an ongoing cost. Mr. Hill will bring the policy and cost to either the February 14 or 28 Council meeting. Last year the City paid \$630,295 for property, general liability and various risk insurance. He reported that the broker and property insurer told staff there would be no increase in the total for this year. On the Sherman Plaza garage the cost of steel has gone up, but they found there is no indication the property insurance would go up. Alderman Rainey asked if an increase was put into the budget. Finance Director Bill Stafford said they had budgeted \$1.9 million last year and the same this year. (Alderman Jean-Baptiste was present at this time.) Mr. Stafford asked about the deductible. Mr. Hill and Ms. Witt had met with Marsh and asked for two ranges of quotes and hoped to have those at the February meeting. (Alderman Wynne was present at this time.) That was property insurance and general liability insurance. The report's last two pages were discussed which showed money that came to the City due to damages to City property and the other was money paid out for small claims.

Mr. Hill reported that the Prado DeVaul case is on appeal. It has been two years since the judgment of \$11 million and with interest now a little over \$12 million and climbing. Judge Quinlan represents the City on the appeal. There is no understanding why this case has not been heard by the Appellate Court for 14 months. In the past month they filed permission to cite additional authorities which the court allowed. There have been two attempts to settle this case. Negotiations broke off with the City at \$4 million and the plaintiff at \$8 million. Afterwards plaintiff's lawyer called and said the \$8 million was not authorized. They believe the City's case is strong and that Judge Quinlan will make an excellent presentation to the court. There is nothing to preclude settlement negotiation now and this could settle for \$6 million or a little more. The value of settling is due to Elowina, the 9-10 year old girl who was a passenger in the car. She has none of the checkered history as the plaintiff; was healthy at the time of the accident and hospitalized for three weeks and in a coma. That case has been on stay for two years. It has been there because the plaintiff wants to have the court, in the Elowina case, adopt the findings. Liability is the same. They have a stay pending

the appeal. They are booking Elowina's case at \$4 million. That number is guesswork based upon preliminary medical costs.

The other big case is the Kahn case. The Shah case was settled. The problem is that both pre-trials have been postponed because they have been unable to get income tax information on Kahn. The strong point is Judge Nudelman who will pre-try the Kahn case and will push to settle for less than \$1.5 million. Council granted authority to go to \$750,000 and when they last negotiated the plaintiff was at \$2.6 million. There will be more momentum and the case will settle this year. Those three cases total \$18 million.

Two cases will come to trial this year. One is a death case and the other is a back injury. The death case is the drowning of George Klujewski at Lighthouse Beach. He was caught in the undertow and drowned when the beach was closed. The beach was posted "no swimming." There was summary judgment in which the City was successful. The plaintiff filed an amended complaint alleging the 911 response was insufficient. Now they allege that there were no signs posted and the beach was open. There are photos of all the signs. In response to Alderman Feldman question, Mr. Hill said the day after the drowning they took photos and there are logs in Recreation Department. The beach was in its natural state. The plaintiff realizing that, came back and alleged lifeguards said they were leaving and to come back in a half hour. The City has concrete evidence of "beach closed, no swimming."

The Hansen sledding case is similar. Hansen received \$155,000 in medical injuries due to a sledding accident in which her back was injured requiring disks to be removed, bone grafts and fused bones. The city has extensive documentation of "no trespassing" plus "sled at your own risk" and pictures of the hill. The city discharged its duty by putting up those signs. He said they have done everything they possibly can; believed both plaintiffs are not being truthful about what they saw. The Hansen case is up for the second time; was filed then withdrawn and filed again. Alderman Rainey asked if council was given any background on this case. He recalled giving Council background several years ago and said the case was just filed again. He anticipated that trial would be at the end of the fiscal year. On both cases, if the plaintiff made a reasonable demand of \$50-75,000, he would strongly recommend settlement due to the cost of litigation. Right now neither is in a posture for that.

He showed Exhibit A which is all the insurance litigation. When the five big cases are resolved they will be in a good position. Only three major cases are not covered by insurance. The City has had insurance for four years and the maximum exposure should any of the cases go bad is \$2 million. When they get through this difficult spell, the insurance fund should be in good shape.

Alderman Jean-Baptiste asked if there is enough to cover their exposure. Mr. Hill said, not exactly. They will never have the worry of a \$4 million or \$12 million case down the line.

Ms. Carroll asked Finance Director Bill Stafford to explain how they will pay for these liabilities. Mr. Stafford explained right now they have about \$7 million in the Insurance Fund based on a strategy adopted by Council two years ago. They went with an annual 4% increase in the levy and accumulate dollars from water/sewer funds. They are scheduled to issue \$5.5 million in bonds which will cover many cases. They have enough money to cover all cases, except the Parham case, which is \$13 million. It leaves them with \$5.3 million to put toward that case. Should they settle that case for 50 cents on the dollar, \$6.5 million there are several options. With \$5.3 million on hand, they would have to come up with an additional \$1.2 million. To accomplish that they could reduce the CIP by that amount or add more dollars from another fund. He put some options down. If the City loses that case, there is not enough to pay the \$13 million and he would have to bond for \$18 million instead of \$12 million and increase in the levy 6.39%. He was not recommending that and wanted them to know the outcomes. If they settle for \$6.5 million or close, he thought they could deal with that.

Alderman Rainey asked about the Fleetwood Jourdain case where the man dropped weights on his legs. Mr. Hill said Mr. Hicks settled for \$150,000. She went to page 441 in the budget and asked which line was the liability insurance. \$500,000 was listed. She asked the premium. Mr. Stafford said the premium is \$630,295. Ms. Carroll asked how that was put together. Mr. Casey thought one should be identified at property insurance and the other as liability insurance.

Mr. Hill showed cases the City settled during the past fiscal year. The Quadri case which settled for \$300,000 was totally unexpected. There were funds to settle it. The Insurance Fund was healthy last year. They don't hold onto cases. The number of insurance fund cases is at the lowest number they have ever had. Cases are being settled and there are safety meetings. Much of the City's litigation is due to the condition of sidewalks and streets, not to conduct by individuals. Except for reckless behavior of citizens, beyond reason, there is nothing more they can do. They have a police pursuit policy.

Alderman Bernstein and Mr. Hill discussed zero settlements and cases that were dismissed to reinstate.

Alderman Jean-Baptiste said if they take the worst case scenario in the Prado case, would it be by motion that the companion case findings would be adopted. Mr. Hill said the motion was already filed. The City requested a stay which has been granted. This will be expedited rapidly because it is the same group of attorneys for both cases. They haven't directly threatened with the second case, but he is aware it is there. If the City loses the appeal, they will file to the Supreme Court within three months and there will be activity on the second case. Alderman Wynne said if this goes another year, were they in any better off financially. Mr. Stafford stated if it goes to next year they will bond for \$8 million and will have \$2 million more from the insurance fund.

Mr. Stafford said in terms of the CIP, they can wait until Labor Day. They would start the CIP and do a reimbursement ordinance. Mr. Hill said the pre-trial on Kahn has been scheduled for the second week in February. He has booked it at \$2 million and the judge thinks it will be less than \$1.5 million which could free up other funds. Alderman Moran confirmed that Mr. Kahn had died.

Mr. Hill said these cases involve insurance fund matters. Jack Siegel handles many cases that are not insurance fund matters.

He reminded them the Prime Co case is in the background and will cost them money. It was the difference between the Infrastructure Maintenance fee which the state allowed. The fee was a broad tax and municipalities felt they could tax because they were in the right-of-way, but they were not. Around \$500,000 was collected by the City. The argument is since individuals paid this tax voluntarily and not under protest, they have forfeited their right to get the tax back.

Alderman Feldman asked about draft of a letter to NU. It was included in their packets for Monday.

Mr. Hill reported the Solazano case was going to trial January 31. The City's offer of \$1500 was not accepted. Solazano will come here from a downstate penitentiary for a five day trial which will involve six to ten police officers. He alleges that police pistol whipped him but was injured due to his irrational behavior after burglarizing two homes. He crashed through two fences and in his frenzy ran into two police cars and was subdued. He was drunk. The City believes they have a strong case.

Ms. Carroll said the other matter would be discussed Monday and gave her cell phone number 847 871-7892.

At 10:05 a.m. Alderman Moran moved that the Council convene into open session. Seconded by Alderman Wynne. Motion carried unanimously.

Mary P. Morris,
City Clerk