

**Evanston City Council
Closed Session Minutes
Aldermanic Library
May 23, 2005**

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

PRESIDING: Mayor Lorraine H. Morton

START: 11:15 p.m.

Alderman Bernstein moved that Council convene into Closed Session to discuss matters of litigation and executive session minutes, pursuant to 5 Illinois Compiled Statutes 120/2 (c) (11) and (21). Seconded by Alderman Rainey.

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

Litigation

First Assistant Corporation Counsel Herb Hill had four cases to report on.

Thomas Hotchkiss v. COE

This is a death case relating to Patrick Hotchkiss, who crashed his motor vehicle at McCormick Blvd. and Green Bay Rd. on April 10, 2005, and noted that in the last six months there had been two deaths in that location. The police stopped this individual late at night about 12-1 a.m. and determined that he was not fit to drive his vehicle. The police contacted the family of the 20-year-old man and the father (Thomas Hotchkiss) told them to put him into a taxicab and have him go home. The cab drove about a block and a half and the police saw the young man get out. There was a verbal altercation between the cab driver and the youth. The police went to the scene and at that point he ran off. The police could not locate him. An hour later, the car crashed into the embankment at McCormick and Green Bay Rd. Police report his blood alcohol level was 1.47, which is almost twice the limit for intoxication. The family alleged that when the police stopped him, Patrick was drunk and they should have done more than they did.

Mr. Hill reported that the City's insurance company has been notified and that it's the City's defense until the first \$2 million. A disturbing fact is that the taxicab driver says persistently that the man was drunk. There was an hour's time lapse between him leaving the cab and the accident and the police do not know what Patrick did during that hour. It is a case that has some exposure for the City at this point. The Police Department's preliminary review of the incident was that the conduct of the police officers was appropriate and correct. Mr. Hill said it's a brand new case, there has been no discovery, but he wanted Council to know that it was out there.

McNally Construction v. Parliament Enterprise

Mr. Hill announced that this matter was settled recently. Parliament Enterprise, the apartment building owner of 2228-2238 Sherman and 803-809 Noyes, alleged that the construction company (McNally) caused damage to the physical structure of the building. In the City's construction contracts, there is a transfer of risk where the contractor picks up the defense of the City. The insurance companies resolved this case and the total amount paid to the property owner was \$225,000.

Prado/DeVaul v. COE

This case is a \$13 million liability against the City and is on appeal. This was a police pursuit in which the passenger in the vehicle received injuries. She received \$25,000 in medical injuries and alleged a severe brain injury and basically an incompetent future where she could not take care of herself. The case was disputed and vigorously tried. The trial went against the City and the \$24,000 damage claim resulted in an \$11 million verdict. Prior to the accident she applied for Social Security Disability and alleged a condition *prior* to the accident, which she recovered for *after* the accident, saying that the accident caused the condition. One of the key points in appeal is that the City was precluded by an interpretation of the mental health law from arguing her mental capacity--that her condition now was her condition pre-accident.

The City argued many points on appeal. The four significant points were (1) The police were not the proximate cause of this accident. The proximate cause was that the driver of the vehicle decided to flee as opposed to stop. (2) The police did not act with willful/wanton conduct during the pursuit--it was either low speed, appropriate for the conditions, and there was no reckless disregard for the safety of the community. This happened at 11:00 p.m. (3) There was a police audiotape of the pursuit--when the police called in, why they wanted to pull the person over, the duration of the pursuit and what happened. If there is an audiotape and you can hear the siren, based on how the police vehicles function, the flashing lights on the vehicle would have been on. One of the plaintiff's counterpoints was that there was no siren and neither she nor the

driver knew that it was a police car in the rear. The judge would not allow the tape in saying it was heresy. (4) The tape was authenticated. It is not heresy and it should be in evidence.

Eight weeks ago Mr. Hill had a final round of negotiations trying to resolve this case. One of the problems is that there was another passenger in the vehicle, who was much younger (age 10-11) and received substantial injuries. Her case has a legitimate exposure to the City. She had a concussion and was hospitalized for several weeks. They do not want this case raced through the court on the facts with respect to the second one. Their demand was \$9 million and the City has offered \$5 million to combine both cases as settlement. He told them this was the last chance, the money will go off the table and a new City Council would be coming in. They spoke for two-three hours and he asked them to give him a serious number and he would take it back to the Council. During this lengthy discussion, he was told that they had lost control of their client and that others were advising her. The plaintiff's attorneys spoke with her over that coming weekend and came back to Mr. Hill the following Monday to report they had no number. He reported that meant everything was off the table and the City would deal with the appeal. Last week, the plaintiff's lead attorney called wanting to know the status. Mr. Hill agreed to meet with him in Judge Kreiman's office to talk about where he is on the case. He stated that if they give him a reasonable number, he would bring it back. Did Council want to give him any guidance as to what to do?

Alderman Bernstein noted that the number (\$5 million) that was authorized for settlement was for both cases. Mr. Hill concurred and noted that there was nothing new in the case and the mental health law had not changed. He asked if Council wanted to promote more money on the table?

Alderman Rainey moved that Council not authorize any more money for settlement. Seconded by Alderman Bernstein.

Mr. Hill speculated that they might ask for \$7.4 million. Alderman Wynne stated that something less than \$5 million would be considered a reasonable demand. Finance Director Bill Stafford pointed out that a sum under \$6 million would be less than fifty cents on the dollar (of what had been budgeted--\$17 million for both cases).

Fiske v. COE et al

Mr. Hill called attention to documents the aldermen had been given relating to two separate election contest challenges involving the seat now held by Alderman Wollin (1st Ward). The first challenge alleged that 30 individuals who had technical irregularities in their voter registration. The second challenge involved 215 voters and alleged vote buying by Northwestern University, which caused these 215 people to vote and vote for a certain candidate. He reported that same petition was filed in court along with two other counts, which alleged criminal voter buying by NU and constitutional deprivation of the rights of Judith Fiske and the voters in the ward. Monetary damages are sought against the University for what happened. There is no allegation of any wrongdoing by any aldermen or by Alderman Wollin. He pointed out that it was a broad allegation that NU, for consideration, caused these students to register to vote and then vote for a certain candidate. There is no specificity to the allegations.

In Court that day, there were two motions (1) to preserve evidence by Northwestern University. Both the City and the County would automatically preserve evidence. (2) Are the students agents of the University and what role, if any, did the Associated Student Government (ASG) entity play in the election? All of this was background information.

Mr. Hill asked Council how they wished to proceed in this matter? He announced that June 2 was the deadline for the City (Election Canvassing Board) to file its motions with respect to venue and jurisdiction, June 12 would be the response and June 14 would be the hearing.

Both Mr. Siegel and Mr. Hill recommended that this matter was appropriate for the Circuit Court to hear. It is a matter of evidence with 245 students who could be subpoenaed to come in and testify. Alderman Wynne moved that they follow Corporation Counsel's advice and have the Circuit Court hear this case. Seconded by Alderman Moran.

Voice vote, motion carried.

Mayor Morton asked for a motion to adjourn. The Council so moved and the meeting was adjourned at 11:45 p.m.

Mayre Press,
Deputy City Clerk