

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, October 17, 2005**

PRESENT: Aldermen Bernstein, Holmes, Tisdahl, Hansen, Wynne

NOT PRESENT AT

ROLL CALL: Aldermen Jean-Baptiste, Moran and Rainey

ABSENT: Alderman Wollin

STAFF: Julia Carroll, Herb Hill, Elke Purze

GUEST: Jack Siegel, Corporation Counsel

PRESIDING: Mayor Lorraine H. Morton

START: 7:00 p.m.

Alderman Wynne moved that Council convene into Closed Session for the purpose of discussing matters related to issues and litigation pursuant to 5ILCS Section 120/2 (c) (3) (4) (11) Seconded by Alderman Bernstein.

Roll call. Voting aye – Bernstein, Holmes, Tisdahl, Hansen, Wynne. Voting nay – none. Motion carried. (5-0)

Corporation Counsel Jack Siegel suggested the rules be read and a motion made to approve them in open session; said he has not given any legal opinions, but set forth rules of procedure that what is involved is the motion to dismiss. (Alderman Rainey was present at this time.)The attorneys have agreed that each side will be given 30 minutes to present their case. If Mr. Means representing Ms. Fiske wishes, he can take time out of that time for rebuttal. He noted that frequently the party that goes first asks for time from the 30 minutes for rebuttal. (Alderman Jean-Baptiste was present at this time.) During the oral argument Council members can ask questions. The basic issue on a motion to dismiss is whether the facts pleaded are sufficient to the stated cause of action. (Alderman Moran was present at this time.) They look at the issues to determine whether all the allegations are true and the moving party is entitled to prevail. It does not mean they agree with anything in the motion, simply whether the allegations and facts are sufficient to the stated cause.

Aldermen, Mr. Siegel, and 1st Assistant Corporation Counsel Herb Hill discussed the motion to dismiss. Mr. Siegel said the issue they have to decide is based only on the arguments they would hear in open session in which the allegations are assumed to be true. Attorneys for Cheryl Wollin would go first. Mr. Siegel urged them to give each side some extra time if there is extensive questioning Mr. Siegel said Council can deliberate in open or closed session or deliberate at a different time. A majority of those who hear the matter would be required to vote to dismiss.

Alderman Moran moved that Council convene into Open Session at 7:28 p.m. Seconded by Alderman Bernstein. Motion carried unanimously.

The same evening at 8:25 p.m. Alderman Bernstein moved that Council convene into Closed Session to discuss matters of litigation pursuant to 5 ILCS 120/2 (c) (11). Seconded by Alderman Tisdahl.

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

(11) Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court of administrative tribunal, or when the public body finds that an action is probable or imminent, in which case, the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

Klong vs. Officer Campbell

Mr. Hill reported this case was authorized to settle for up to \$36,000 and settled for \$31,500.

Klujewski vs. COE

Mr. Hill reported on a recent a pre-trial meeting with Judge Nudelman. During that meeting no specific numbers were mentioned. Plaintiff met separately with the judge and the judge thought that the plaintiff would settle for between \$600,000-650,000 because the drowned man was a rescuer, even though the beach was closed and there is the sympathy factor. He encouraged Mr. Hill to ask for that authority. The judge did not think the City could settle the case for \$500,000. They will have another pre-trial this coming Wednesday with the same judge. The trial is set for October 24, but it would be with another judge who would try the case. He asked for authority to increase settlement authority from \$500,000 to \$650,000 to settle the case. No facts have changed.

In response to Alderman Wynne Mr. Hill was told a trial could last two or three weeks and cost between \$30-50,000. The City has an expert witness in beach operations from Pennsylvania State. The Plaintiff will have an expert in boat operations. There are many witnesses scattered over the nation who would have to be brought in. Mr. Hill thought the case would cost \$50-75,000.

At the last meeting, Mr. Hill explained that the plaintiff went from \$1.5 million to \$750,000. Alderman Wynne suggested they give authority to \$650,000 and perhaps settled for less. She thought the risks were great.

Mr. Hill said they are duty bound to put the number the City is willing to settle for on the table on the last day before the trial. Alderman Moran thought the plaintiff would take \$600,000.

Alderman Rainey was opposed to anything over \$300,000; suggested the City needs a policy on safety and security; that the City cannot continue to take responsibility for people who drown themselves in the lake.

Alderman Moran and Mr. Hill discussed negotiation tactics. Alderman Wynne moved that Council authorize up to \$600,000 to settle the case. A majority of Council agreed.

There being no further business to come before the Council, Mayor Morton asked for a motion to adjourn and the Council so moved at 8:50 p.m.

Mary P. Morris,
City Clerk