

**Evanston City Council
Closed Session
Aldermanic Library
January 14, 2002**

PRESENT: Aldermen Newman, Jean-Baptiste, Bernstein, Moran, Rainey, Feldman

NOT PRESENT

AT ROLL CALL: Aldermen Engelman and Kent

ABSENT: Alderman Wynne

STAFF: Judith Aiello, Maureen Barry, Kathy Brenniman, Roger Crum, Mark Franz, Doug Gaynor, Herb Hill, Bill Stafford, Donna Stuckert

GUEST: Jack Siegel, Corporation Counsel

PRESIDING: Mayor Lorraine H. Morton

START: 5:43 p.m.

Alderman Newman moved that City Council convene into Closed Session to discuss matters of litigation and minutes pursuant to 5 ILCS 120/2 (c) (11) and (21). Seconded by Alderman Bernstein.

Roll Call: Voting aye – Newman, Jean-Baptiste, Bernstein, Moran, Rainey, Feldman.
Voting nay – none. Motion carried. (6-0)

Minutes

Closed session minutes of December 17, 2001 were accepted without change.

Pending Litigation – Ignacio Castenada v. Township of Evanston and Sharon Eckersall

Jack Siegel reported meeting with Attorney Goldman and Mr. Castenada several months ago. At that time it was suggested that Mr. Castenada get his old job back plus damages to his reputation. He claimed that Assessor Eckersall was holding personal property belonging to him. Mr. Siegel has no authority for a monetary settlement and advised that an effort be made to give back the personal property. He referred to the letter requesting a monetary settlement and has no information on the charges. The basic charge is that the assessor hired her son and son's friend. He does not know the facts and asked if the Town board wished to pursue this, noting that the Board of Trustees/City Council has no authority over hiring in the assessor's office. He recalled that Ms. Eckersall dismissed Gloria Harris. Ms. Harris sued and the judge dismissed the charge. Her attorney Mr. Flaxman has appealed. Mr. Siegel will file a brief in response. Did they wish him to enter into settlement with Nash's attorney? He stated the assessor can fire employees at will and this is a matter of law.

Alderman Bernstein asked if the action of the assessor is beyond scope that could she be sued as a third party? Yes. Why was Siegel involved in this? Because he is the attorney for the township/city. He thought a third party action against her might be judgement proof.

Alderman Moran's concern was about derivative liability. Mr. Siegel said that was not a concern as he read the statutes and the attorney general's opinion about separation of the town board and town. Moran was concerned about the township being drained due to Eckersall's judgements.

Alderman Engelman came into the meeting at this time.

Alderman Moran noted the opening demand is for \$65,000; questioned whether they might accept a low ball offer. Mr. Siegel said that Mr. Castenada wants his name cleared and an apology from Ms. Eckersall. Mayor Morton noted that they were once close friends. Alderman Moran thought the issue was whether the Board of Trustees is liable and if they are not and Eckersall is, she is the most exposed. He suggested helping to fund the demand if she would resign. Mayor Morton advised them to let the law work it out. Siegel's fees are paid by township responsible for funding the assessor's office.

Alderman Engelman asked if they are proposing not to indemnify the assessor? Alderman Moran proposed a low ball figure and that Eckersall resign. Siegel noted there is a resolution indemnifying city employees and elected officials. Alderman Rainey suggested that Ms. Eckersall take out her own errors/omission insurance, pay Nash off and squash the embarrassment and did not think Eckersall would resign.

Alderman Bernstein questioned if the township could get money back due to actions beyond scope. If they litigated would they find ghost payroll? Alderman Rainey asked where that is covered? They cannot tell from the audit that there was ghost payroll, but they saw checks to the son. Mr. Siegel stated there was nothing illegal about hiring. The allegation made was that she hired her son who did no work and he was hired to pay her back.

Alderman Newman saw no embarrassment to the City; has received no calls on it. He would not fund any settlement and thought there is no liability. The Harris suit was dismissed. If they don't beat the motion to dismiss, then talk settlement. Alderman Feldman urged them not to spend time on merits of what she did. They've been down this road before. Nobody has any evidence to remove her from office so why are they beating their heads? He advised to not pay anything until the attorney tells them they are stuck. They cannot produce documentation that warrants impeachment.

Mr. Siegel stated the real question was the response to Mr. Castenada's attorney. There was discussion of the Gloria Harris case and that the assessor can hire/fire employees at will. The concern was that they could say it was retaliatory conduct because Mr. Castenada blew the whistle. Mayor Morton noted the township does not have to have an assessor. Assessor functions can be done elsewhere.

Alderman Kent came into the meeting at this time.

There was further discussion among Aldermen Newman, Moran, Bernstein and Mr. Siegel about the possible charges, letters from Mr. Castenada and the complaint of Gloria Harris suit was based on an expectation of employment until retirement, the rules of the supervisor and defamation was not involved.

Mr. Siegel will do nothing at this time.

Litigation Update

Northwestern University vs. City of Evanston

Mr. Siegel responded to the motion for summary judgement; found it a diatribe rather than legal document. The question was whether Judge Aspen will find findings of fact. He believed the City will prevail. He was disappointed in Gardner/Carlton. Much of the memorandum is about alleged animus, not equal protection under the law. Nobody admitted to animus. Former Alderman Drummer's action was emphasized as the "lone ranger." He did not find anything wrong with asking for aid. Will Judge Aspen think request issues are real evidence of institutional animus? They are assuming animas does that - negate legislative action. He noted that state colleges make contributions to their communities.

McNally Tunneling vs City of Evanston

Mr. Siegel stated they filed a motion for partial summary judgement. The contract spells out where the city is liable. Loss of profit is not recoverable. The court will decide the area where the city is liable. The City will pay \$600-700,000 if law applies, extra contractual damages are not recoverable. If prevail, it reduces the area they can recover. Mr. Siegel stated there is a motion to dismiss summary judgement on grounds they could not take one portion. Judge Aspen denied that motion.

Keefe-Shea vs. City of Evanston

Mr. Siegel reported that he filed a brief on second appeal and will argue this case again. He believes that Judge Hall has made findings of fact.

The Franklin Case

Mr. Siegel stated this is a former employee arrested for possession of cannabis that was discharged and formerly represented by Lionel Jean-Baptiste who withdrew as his attorney. The attorney took depositions from Zeltee Edwards and Judith Witt. Mr. Siegel will take depositions.

Vineyard Christian Fellowship vs. City of Evanston

Nothing to report.

Alderman Rainey was told the city is reducing fine on Zipperstein, owner of property in the 8th ward. Mr. Hill stated that Mr. Wolinski elected not to take the matter to Council. The proposal from the defendant was not in writing.

Alderman Engelman noted during the recent focus groups, questions were raised about settling some of the lawsuits and he asked if there is any reasonable way any can be settled. Mr. Siegel

stated they've made extra efforts to settle the McNally but are \$6 million apart. On Keefe-Shea, the only settlement would be to abandon the position of DePaulo, the low bidder. The question was that DePaulo thought they could get favorable bids. They would have to start over. On the Vineyard, that could be settled by letting them worship there. On the Northwestern suit, they could settle by repealing the ordinance establishing the Northeast Historic District.

Alderman Newman commented that on settling the cost would be \$7 million to McNally, abandon the low bid on Keefe-Shea, let the Vineyard take property generating taxes off the tax rolls and they would have to have public hearings on the Northwestern suit and others would appeal decisions and have a good chance of winning.

Mayor Morton asked the best estimate of costs of lawsuits. Mr. Hill will prepare a budget memo and not include the four cases. He estimated the cost at \$6.4 million on a total of 30-32 cases. Mr. Siegel stated the McNally case cost at \$400-500,000 and judgement of \$600,000; northwestern case is not monetary but attorney's fees are \$500,000. Total City exposure is \$10 million liability. There are six outstanding matters involving either death or serious injury.

Alderman Jean Baptiste advised if they are looking at \$10 million and saving \$2-5 million, they should not settle the NU case and bring the city to its knees. Mr. Hill pointed out that few cases have gone to trial. They look for reality in demands. On the big ticket tort cases, they don't get serious until six weeks before trial and take a position at that time.

Alderman Feldman moved that Council reconvene into open session and recess. Seconded by Alderman Jean-Baptiste. The Council so moved at 6:40 p.m.

Mary P. Morris,
City Clerk