

**Evanston City Council
Closed Session
Aldermanic Library
February 11, 2002**

PRESENT: Aldermen Bernstein, Kent, Moran, Feldman, Newman

NOT PRESENT

AT ROLL CALL: Aldermen Jean-Baptiste, Wynne, Rainey

ABSENT: Alderman Engelman

GUEST: Mark Smolens

STAFF: Judith Aiello, Maureen Barry, Kathleen Brenniman Roger Crum, Mark Franz, Herb Hill

PRESIDING: Mayor Lorraine H. Morton

START: 6:15 p.m.

Alderman Feldman 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 – Bernstein, Moran, Feldman, Newman. Voting nay – none.
Motion carried. (5-0)

Minutes

Closed session minutes of January 28, 2002 were accepted without change.

Litigation – Franklin/Walsh vs. City

First Assistant Corporation Counsel Hill related this case concerned the suicide of Philip Walsh in a cell block at the Evanston Police Department; asked for authority to negotiate settlement. Attorney Willis for the plaintiff has demanded \$350,000. Hill asked for authority to negotiate settlement up to \$100,000. A video camera recorded that Mr. Walsh hung in his cell for 61 minutes. Officers were to check the cellblock every 30 minutes and one officer on duty was reprimanded and the second resigned prior to discipline. He stated the deceased did not contribute materially to his family. He wanted to settle before proceeding to oral depositions.

Alderman Newman moved Council give settlement authority to \$100,000. Seconded by Alderman Moran.

Litigation - Palmer vs. City

Mr. Smolens reported that the plaintiff's attorney Pendergast had withdrawn and the other lawyer, Leonard Murray wanted two weeks. Nothing has been filed and this was on call for Thursday. This is a re-filed case with a 97 number. Alderman Moran suggested the judge be reminded that this is a 90 case.

Alderman Rainey, Community Development Director James Wolinski and Assistant Director Stan Janusz came into the meeting at this time.

121-23 Callan – Zipperstein Administrative Hearing Fine

Mr. Wolinski said this focuses on property standard issues at 121 Callan. Mr. Zipperstein has been in violation for the last 18-24 months and has been in front of an administrative hearing officer with fines assessed at \$47,500. Since a fire the building has been boarded up. Mr. Rosenthal, his attorney has proposed settlement of \$10,000 with the understanding that the property would be sold as soon as possible. Staff does not favor letting Zipperstein off. This building is next door to another boarded up building owned by the Reverend Armstrong.

Alderman Feldman asked the effect of any action on the sale? If the City demands \$47,500, will that kill the sale? The \$47,500 is classified as a lien and if this goes to court the judge may reduce the fine. Zipperstein's attorney filed a motion that his client was not given a fair trial due to a faulty tape recording. Mr. Wolinski noted Zipperstein wants to get settlement for the fire; that Zipperstein has not dealt fairly with the city in the past. He thought if they have assurances that Zipperstein would sell the building to a viable owner and get out of town, they would strongly consider the request. Alderman Feldman stated if the city takes the \$10,000 it would be quid pro quo and what would be the legal standing. If the building doesn't sell what then?

Mr. Hill suggested they could agree to an order for a time frame to sell the property. He noted that Zipperstein is in legal difficulty to sell and more than one contractor may be involved. The city's lien has a negative impact. Likelihood administrative review granting and keeping a \$47,500 fine was not good and probably would lower the fine. The Law department supports Wolinski. A new buyer is limited to obtaining a certificate of occupancy.

Alderman Newman asked is judgement prior to rule of circuit court judge? Hill said administrative review is review of the record and must be reconstructed. Supposedly the tape went off at certain points. Alderman Moran said in administrative review they work off of the record and if a transcript is fouled up they will be told to do it again. Alderman Newman suggested they need something on record. If the court is not doing a good job, they need to make the point to them when they go after an atrocious building and be willing to defend administrative adjudication. Alderman Moran stated the \$47,500 is a disincentive to a prospective buyer because somebody has to pay the \$47,500 lien.

Alderman Rainey asked the current situation of the building sale? Mr. Hill said the lien will tie up the sale of the property; noted with settlement of \$10,000 and the \$37,500 difference they can take the position that \$10,000 is more money in Zipperstein's pocket. He noted judges at the 2nd district have taken actions opposite to the city's interest. Hill thought it would take 6-8 months to get a decision and they probably would not get \$47,500. Alderman Bernstein noted the contracts on the property are in litigation. Mr. Hill stated they have not worked out details; are not

releasing the lien until sale is lined up and will use an escrow type closing. Mr. Hill stated they filed a transcript then will go before the court. Alderman Rainey stated the reason the judge went out to the site was when he started to hear the case, the inspector got up and told the violations. The judge consolidated many violations and went down the list and asked if they were done. Zipperstein said yes and the inspector said no so the judge went to see building. Alderman Rainey had a call from a buyer who wanted to see the building. The building burned the night before the first appeal in the circuit court. Except for the top floor, nothing else burned. She reported the building is in deplorable condition. She noted residents on Clyde report a new tranquility now that both buildings are boarded up. She said the person who called her has a lengthy relationship with Zipperstein and asked what if he sells to Lou Wolfe. The insurance company is mortified. Zipperstein will make money from the fire. She suggested if the City considers settling to do so for not less than half the \$47,500. Her concern was sustaining administrative adjudication.

Alderman Moran explained the rationale for the hearing officer penalty was per diem for time of outstanding violations. He said there are many statutory penalty schemes. Major experience shows when cases are brought for enforcement they don't pay to full extent of statute. He predicted this will get bounced. At 2nd district court they will look at the \$47,500 and at the penalty of \$500 a day and he was confident it would be reduced significantly. He suggested they adhere to reduced penalty of say \$20,000 or reconciling sale with lien and go with \$10,000. On defending the system, if they insist the person pay \$47,500, knowing he won't do that they might be doing more damage. No judge will accept it if it doesn't fit parameters.

Alderman Jean-Baptiste suggested they enter into an agreed order that if sold within 45-60 days to settle for \$10,000 and if not the \$47,500 would be reinstated. Going the other direction meant no real incentive to sell. If in litigation with potential buyers there is no pressure to go forward. His concern was as Moran's that administrative review will be thrown out.

Mr. Hill stated the transcript described the site visit and there were problems with the tape. Alderman Jean-Baptiste noted Zipperstein's lawyer would make the most of that. There has been a fire and other changes. They run the risk of a judge throwing it out.

Mr. Wolinski recounted his negotiation with attorney Rosenthal on settlement. Wolinski wanted half, Rosenthal responded with \$15,000 offer and once put in writing, claimed his client did not authorize that, and was willing to settle for \$10,000.

Alderman Newman suggested the amount of money collected does not matter. To get the guy at this point means tying up inspectors. He asked to think about the 86 police calls and what this does to folks on Clyde. The 2nd district court does not have compassion for Evanston housing problems. The City needs to educate them on why \$47,500 is important and worth making an aggressive effort. If there is less money he would be happy but it was about making a point.

Alderman Moran asked if they were more interested in punishing the guy or moving the property? Alderman Newman wanted to know more about status of the mortgage. Alderman Jean-Baptiste noted if the goal is to make point to judges he supported the status litigation. Alderman Bernstein thought the property could not be sold in 45 days. Alderman Rainey stated

Zipperstein had a deal and was fighting with the first guy. The second buyer is an acquaintance. and she speculated they would do a quit claim. Mr. Hill pointed out this building won't be open for habitation until every code violation is corrected. Whoever buys it has to get it up to standards. Alderman Bernstein said if credibility of two witnesses could be reassured he wanted status of the sale; said they need more information and could not believe a judge would fine \$47,500. Alderman Moran suggested they go forward with the Hill/Wolinski proposal and get rid of the trouble spot because there is much they cannot control. Alderman Rainey wanted to know about the transcript and where the breaks were. Mr. Hill said the two arguments are authority of hearing officers and general nature of violations. The lack of truth telling by Zipperstein shocked his attorney. On the tape his attorney was at the building, looked up and said where is the ceiling? Mr. Hill will come back in two weeks on this matter.

Alderman Jean-Baptiste moved that Council reconvene into open session and recess. Seconded by Alderman Bernstein. The Council so moved at 7:04 p.m.

Mary P. Morris,
City Clerk