

**Evanston City Council
Closed Session
Aldermanic Library
June 10, 2002**

PRESENT: Aldermen Jean-Baptiste, Moran, Engelman, Rainey, Newman

NOT PRESENT AT ROLL CALL: Aldermen Wynne and Kent

ABSENT: Aldermen Bernstein and Feldman

STAFF: Judith Aiello, Maureen Barry, Kathleen Brenniman, Pat Casey, Roger Crum, Mark Franz, Herb Hill, Stan Janusz, Michael Perry, Ellen Szymanski

GUEST: Rick Jones, Ryan, Smolens & Jones

PRESIDING: Mayor Morton

START: 6:04 p.m.

Alderman Engelman moved that City Council convene into Closed Session to discuss matters of litigation, real estate and minutes pursuant to 5 ILCS 120/2 (c) (11) (5) (6) and (21). Seconded by Alderman Jean-Baptiste. Roll call: Voting aye – Jean-Baptiste, Wynne, Moran, Engelman, Rainey, Newman. Voting nay – none. Motion carried. (6-0)

Minutes: Closed Session minutes of April 22, May 20 and June 3, 2002 were accepted without change.

Litigation updates

Prado DeVaul (Parham) vs City of Evanston

1st Assistant Corporation Counsel Herb Hill reported that Judge Levine had not allowed the psychiatric record or audiotape to be admitted as evidence; ruled the audiotape was hearsay even though it was authenticated. That day there were closing arguments and the plaintiff asked for \$11 million. There was \$26,000 in medical expenses and \$10,000 in rehabilitation fees. The balance was for pain/suffering, future care and loss of career as a journalist. The case goes to the jury Tuesday morning. Demand prior to the trial was for \$900,000 and non-negotiable. The good news is there is a strong basis to be successful on appeal. He said the audiotape shows the brief chase was 12 blocks.

Rick Jones reported the judge kept out evidence the city wanted in. Judge Leonard Levine is 79 years old with six months to retirement and would stare at the plaintiff to get them to object. City Manager Roger Crum reported attending one session and heard the judge tell the city attorneys they could not ask question.

Mr. Hill noted on the positive side that Dr. Schulman testified the plaintiff has a compensation psychosis. Her cognitive disabilities were displayed nine-months after the accident. Normally these would have been evident soon after the accident. She was tested and found to be untruthful. He said the base line for the jury is the plaintiff wanted to be a journalist and this accident ruined her life. She testified that she was an "A" student when she had a 1.0 grade average; said she had to give up soccer, when actually she dropped out of school

Mr. Hill reported when Mr. Ryan closed he brought up the matter of credibility. The judge said they would have to find for one or the other and could not argue credibility. Mr. Hill stated this was frustrating, The plaintiff believed they were in the winner's circle. Ryan has faith in juries; noted there is nothing to support the \$10.5 million. He reported that the city's expert did not testify as well as expected. The witness was well prepared but confused some

facts and gave some incorrect answers; that Tracy Parham's car struck another car on the street. The expert said the police would have seen it. Mr. Hill stated that the judge's rulings were wrong and a wrong verdict can be appealed.

Alderman Newman inquired about the plaintiff's explanation for being in the car when she had never met the driver before. The answer was they were going out to get school supplies. There is evidence they were going to get drugs. Alderman Rainey pointed out the car was driven without consent of the owner and asked how will the trial conclude. Mr. Jones stated the jury's finding must be unanimous; that Tracy Parham may be wrong, but the city was more at fault than he. The plaintiff wants a verdict without Tracy Parham for pursuing. Mr. Hill discussed the various splits assigning liability and noted if it is a 50/50 split the city would pay all. It depended on how they allocate responsibility. Tracy Parham testified, attended the trial daily and was represented by Mr. Royce, a criminal defense attorney. Alderman Jean-Baptiste asked about the city's cross-examination. Mr. Jones said every third question was objected to. Alderman Newman asked about offers of proof. Mr. Jones said they went outside the jury.

Northwestern University vs. City of Evanston

Mr. Hill reported that oral argument for summary judgement was made in Federal Court on Wednesday. Assistant Corporation Counsel Kathleen Brenniman reported that she had spoken with Jack Siegel twice and the judge said if he was forced to rule, there would be a winner and a loser and neither would be happy with the outcome; suggested that the parties get together to pursue a settlement. Alderman Rainey who was present reported that the judge made it clear that he was ready to make a decision and it appeared the decision was in the city's favor.

Alderman Kent was present at this time.

Alderman Rainey reported when the judge encouraged the get together, NU's lawyer stood up and said they were way beyond that. Jack Siegel looked bad with bandages on his face. The City lawyer looked great. NU's lawyer was embarrassing; was stunned and did not accept the verdict and move on. They have a month, July 3 for the parties to report to the Court whether they are prepared to attempt a settlement.

Alderman Rainey had questions about negotiations for settlement with NU. Vice President Sunshine has contacted City Manager Crum saying they were ready to meet. Alderman Newman stated that NU wants a national historic district; the two aldermen who voted in favor of the NE Historic District will be back and they should not be negotiating in the meantime. Judge Aspen should have ruled before when they were at \$100-200,000. At this time the city would be bidding against itself. He emphasized that all nine alderman must be available. He noted that the city had a public process on the NE Historic District. If NU has a settlement proposal they should forward it to Council. Alderman Jean-Baptiste urged that they wait until other aldermen are here, then decide how to proceed with negotiation. He thought the City still has an overwhelming case and a better time to negotiate would be after summary judgement. Alderman Rainey commented that they could have gotten a ruling but Jack Siegel objected. Alderman Engelman said he wasn't as paranoid as some others; still believed they have a decision to make; said apparently Alderman Newman was willing to negotiate, if willing to take a position. Alderman Newman said he was not sure what side Alderman Engelman was on. Alderman Engelman stated they would not be there except that Alderman Newman opened his mouth. When Alderman Jean-Baptiste reiterated they allow the absent aldermen to join, Alderman Rainey thought it might be too late. The parties must report by July 3 to Judge Aspen.

Alderman Wynne was not clear on what judge Aspen said to the parties. Ms. Brenniman stated what the judge was looking for is - are the parties willing to discuss settlement of this. Alderman Wynne questioned the NU attorney saying they were way beyond that (discussion). She thought that Jack Siegel had fumbled. Alderman Rainey stated the other lawyer, Mr. Markham argued the case. Alderman Wynne wanted to hear the ruling, which was, if both parties wanted to settle. Alderman Moran responded to Alderman Rainey's question about who said they have to meet with Council. They have no direction to negotiate. Mr. Crum asked when Council wishes Mr. Markham and Mr. Siegel to come? There was discussion about Council delaying a decision about negotiation until all were present. It was unanimously decided to defer the decision until the next meeting.

Alderman Newman said that Alderman Engelman's comments were false and that he was passing blame publicly.

121-23 Callan – Eddie Zipperstein Administrative Hearing Lien

Assistant Director, Housing Rehab & Property Standards Stan Janusz, reported that Mr. Rosenthal, attorney for Eddie Zipperstein again requested that a payment of \$10,000 be made to satisfy the \$47,500 lien as a result of

administrative adjudication. The fire-damaged property is under contract with Mr. Gregg Grief for \$410,000. Alderman Rainey suggested that they reject and that they to go to the wall on this matter. She said in appealing the fine, when the city inspected this building since the fire, they found six unopened cans of lighter fluid in the basement plus two bicycles; if there was not a contract to sell, it would have burned down. Alderman Moran recalled that the sale was contingent on reduction of the fine. His concern was to avoid possibility of a Circuit Court decision to invalidate the \$47,500 lien and did not want to lose leverage. He asked if any penalties have been knocked out in the court? Assistant Corporation Counsel Szymanski said that \$100-200 for parking infractions have been reduced to a small amount.

Mr. Hill recalled they had spoken about this in February and may not prevail on an appeal. Zipperstein's attorney attacked the record claiming the audio transcript was not complete. Ms. Szymanski has spoken with Rosenthal, and if Council is willing to negotiate they will come up a bit. Alderman Moran thought Rosenthal was behind the eight ball and they could get \$15-20,000. Alderman Rainey pointed out that Zipperstein will get in excess of \$150,000 of what he paid for this property plus fire proceeds. Six families were displaced. She suggested \$25,000 to settle; noted the building had 176 violations. Alderman Jean-Baptiste noted the closing date is July 18, 2002 and they are ready to go with no contingency. He asked when the judge would rule on the motion? Ms. Szymanski said she had to file a response to the appeal. Alderman Moran thought leverage comes before the closing and if they wait until after the closing they will lose. There was discussion among Aldermen Jean-Baptiste, and Newman about what has been filed. Mr. Janusz stated the city had filed a recorded notice and Zipperstein must post 1-1/2 times the amount of the lien if they close without satisfying the lien.

Alderman Jean-Baptiste asked what happened to the record? The allegation was that the audio recorder was turned off several times so the transcript is incomplete. Ms. Szymanski stated there might be some truth to that. Alderman Newman suggested they clear up that point to see if it affects the appeal; was not in favor of settling for \$10,000. Alderman Jean-Baptiste suggested they negotiate to get \$25,000; don't have urgency to do something and as it gets nearer to closing the offer may be accepted. Alderman Newman said on the merit of appeal if they aren't clear on the facts they need to be clear as to what is on the tape. Mr. Crum understood that they are giving authority to counter offer for \$25,000. Alderman Rainey wanted to see a copy of the appeal and timetable. The appeal will be provided. Alderman Engelman commented that Rosenthal will think the counter offer is to negotiate.

1813 Lyons, Gloria Jackson – Rehab Case #006-75

Mr. Janusz reported a second request from Econ Housing Group (Neil Davidson) that the City forgive a \$22,154 rehab loan on this property. Davidson wants to buy the property, demolish the building and build new affordable housing similar to housing he is building at 1816 Darrow. He asked that either the lien be released or deferred and passed on to a buyer. Mr. Janusz explained that Mrs. Jackson's son did the rehab work without permits and the building needs to be demolished. Alderman Newman would deny the request. Alderman Rainey wanted HOME funds used to demolish the building. Alderman Jean-Baptiste noted they were focused on the city retainer and don't lose anything if they delay. They could negotiate if demolished and he has a buyer. Alderman Kent pointed out passing this on to buyers means it won't be affordable housing; wanted to see Evanston people get jobs. If they don't do something, they have a hazard in the community. As Neil Davidson works his way through the 5th ward they will find other similar properties. Alderman Rainey did not feel good about forgiving the rehab loan and unsure of the cost. Mr. Janusz explained the original document was with Gloria Jackson and was not done through the trust so there are questions about the document. Council had rejected the original request advising to try and obtain the property at a foreclosure sale. The sale date is three-four months out. Alderman Kent stated that Mr. Davidson is working; more time is needed for discussion and other ways to handle this. Alderman Rainey did not understand the pro forma and acquisition costs. She suggested asking Davidson to assume the loan and pay the city back. Alderman Newman noted that the reason for long-term loans is to get the money back for other loans. This item was held and staff will talk with Neil Davidson.

At 8:08 p.m. Alderman Jean-Baptiste moved to convene into open session. Seconded by Alderman Rainey. Motion carried unanimously. There being no further business to come before Council, the meeting was adjourned.

Mary P. Morris,
City Clerk

