

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Saturday, February 2, 2008**

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

ABSENT: Mayor Morton

NOT PRESENT AT
ROLL CALL: Aldermen Moran and Wynne

STAFF: Judith Aiello, Julia Carroll, Joellen Daley, Herb Hill, Elke Tober-
Purze, Rolanda Russell

PRESIDING: Mayor pro tem Holmes

START: 9:07 a.m.

Litigation and Insurance

First Assistant Corporation Counsel Herb Hill and Assistant Corporation Counsel Elke Purze gave overviews to Council on litigation for 2007-08 and 2008-09 and a report of insurance costs. Human Resources Director Joellen Daley provided a report on worker compensation cases.

During FY2007-08, 18 litigation matters were successfully resolved. Five general tort liability cases were settled in the amount of \$167,216. 13 cases were resolved in the City's favor. Two cases are significant. The Williams/Brown fire ambulance case has an exposure in excess of \$250,000. The City was successful on summary judgment and plaintiff appealed. The Appellate Court affirmed summary judgment in December 2007. (Alderman Wynne was present at this time.) The effects of the Hansen summary judgment victory should be noted. Signs were redone at the lakefront and James Park sled hill have resulted in no new claims. The Perrotta case (boat launch ramp) was successful on summary judgment with no appeal.

During 2007-08 the total number of litigated cases continued downward. The emphasis on aggressive motion practice and arbitration has resulted in much litigation being resolved without indemnification expenditures.

There are no claims so far this year. The number of active claims is between 300-325 about the same.

Ms. Purze reported on projected insurance premium and cases going to litigation. Total insurance costs for 2007-08 were \$698,262 and for 2008-09 \$747,140.

During 2007-08, the Law Department began the defense of the city in employment discrimination cases filed with the Illinois Department of Human Rights. There are five matters. They revolve around people who work here or did work at the City about medical problems. (At this time Alderman Moran was present.)

She reported staff anticipates an approximate \$66,000 savings in excess liability insurance due to provision of a complete layer of coverage rather than the two tiers of excess liability insurance currently in effect. FM Global has been the City's property insurance carrier for 20 years. In 2008 FM Global will give a membership credit to its clients. The City will receive \$58,224 credit based upon 20 consecutive years with FM Global that will be applied to the City's renewal date March 1, 2008.

Ms. Purze reviewed Exhibit C, cases that are going to trial. Channella Graham vs. COE, resulted in a hung jury. No date for retrial; status hearing was set for February.

Gregory vs. COE had 14 counts dismissed and 10 counts remain. Alderman Moran urged that the city not settle. Ian Johnson is the attorney and a trial will cost \$70,000. There is a lot of discovery. It is a 23 count complaint. Alderman Moran urged filing a fees petition. Alderman Bernstein asked why they agreed to drop counts. Mr. Hill explained that the number of officers charged was reduced. At discovery certain officers were not involved but it does not change the thrust of the case. They cannot settle. To defend case costs money. It will be tried in four months. There was no misconduct by Evanston police officers.

Elizabeth Gutstein vs. COE is represented by Frances Murphy. She fell and fractured her arm at the elbow; teaches at ETHS. There was no notice of defect. City does not owe a duty to users of alleys. There are \$60,000 in medical and \$4,500 in lost wages. The judge ruled against the city on summary judgment. This will go to trial.

Patrick Hotchkiss vs. COE. This is a wrongful death from 2005. Mr. Hotchkiss was under psychiatric care since 2004. Information was obtained from cell phone records. Before the crash, police observed him and did not smell alcohol. An autopsy showed blood alcohol at 1.66 and cocaine. An hour and a half after the stop he drank and got loaded. He admitted to drinking a beer. He asked to go home and was put in a cab; made a racial remark to the cab driver and fled. The cab driver said he was drunk. The City is required to notify the secretary of state if they don't take someone back to station. He had a past history of psychiatric problems, liquor and cocaine use. Experts say that this man is a chronic alcoholic. He committed suicide. Alderman Rainey asked why he was pulled over by police. He had no sticker and did an improper lane change.

Andrzej Plichta vs. COE. Officer Champion made a left turn. This man has head aches, hematoma. He was involved in a prior incident and hit by car in Chicago. He has post traumatic stress from Poland in 2000; attends classes on a student visa.

John Sharp vs. COE. Represented by Mr. Hartigan. He was crossing the street and officer collided with his leg resulting in damage to his knee. He was a football player at U of I; refused treatment at the scene. He has \$46,000 in medical and the demand is \$330,000.

Whisman vs. COE. Plaintiff is represented by D. Nemeroff. Motion is set for hearing. They want to depose the tree trimmer. The husband cannot say when Ms. Whisman fell. They were walking to/from a NU/Ohio game. Due to her compromised immune system, she got Sepsis and died.

Mr. Hill stated that Council will be kept up to date. The most significant case is the Hotchkiss case. Ryan and Jones are handling the Gregory case. They intend to file for summary judgment. On Sharp, a parking enforcement officer is not a law enforcement officer.

Joellen Daley – Worker’s Compensation

Ms. Daley reported there were 36 open worker’s comp cases in litigation. She wants to roll out the red carpet for employees injured at work. She will designate somebody with a more aggressive approach. Staff is looking at the attorney they are using to see if they can bring in another. A new third party administrator is needed. She reported there was a labor/management meeting with the Fire Department and believes they can improve things. Aldermen Rainey raised questions about Daniel Kwiecinski and Peter Hanchar, and why their cases have not been settled.

Ms. Daley works closely with legal and has a model to settle these cases quickly. Mr. Hill stated during the last two months they have worked with HR and they will come before the City Council for a new Third Party Administrator. Within HR specialists will handle these. During the next 18 months most cases will be wrapped up.

Ms. Carroll stated the City needs to get cases resolved. Ms. Daley stated they will work for resolution rather than settlement, work with employees and help them get back to work. Alderman Rainey noted those on the list who have received benefits. Ms. Daley stated the City is not disputing their claims. Alderman Rainey confirmed that none exceeded the deductible and were paid.

The Third Party Administrator is a realignment. For the last six months there has been a change in representation. The scope of TPA will come to City Council.

Township litigation

Mr. Hill reported on Wednesday he received a ruling on the Eckersall/Castaneda case which is set for trial. They are back to a two count complaint. Castaneda sued on basis of accusations of ghost payrolls and being slandered. The township is not using attorney Hoover.

Alderman Hansen noted \$1 million liability and reduction of street paving as a way to offset it. Mr. Hill recalled that three years ago the city faced a \$22 million liability. They have \$2 million self insurance. Hotchkiss, Hanchar and Dyer cases are making law,

whether accumulated events or one event. They have money to settle and don't settle anything above \$25,000 without City Council approval.

Alderman Rainey urged that \$65,000 for settlement township expenditures be paid and get out. Hill will provide an update. Alderman Bernstein stated they are obligated to defend the Township Assessor.

There being no further business to come before Council, Mayor Morton declared the meeting adjourned at 10:02 a.m.

Mary P. Morris,
City Clerk