



# Memo

Date: 7/11/2014  
To: City Council and Mayor Rogina  
From: Mark Koenen  
Re: Release of Executive Minutes

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Attached are minutes for you to review which will go before City Council Executive Session on July 21, 2014 to be approved for release.

1. Motion to approve the release of minutes of executive sessions for the following dates:

**City Council:** March 1, 2010.

**Government Operations Committee:** February 16, 2004 (partial, first paragraph), September 13, 2013, and December 16, 2013 (partial Section 2).

**Planning & Development Committee:** September 10, 2012 (partial).

**EXECUTIVE SESSION MINUTES  
CITY OF ST. CHARLES, IL  
CITY COUNCIL MEETING  
MONDAY, MARCH 1, 2010**

**Members Present:** Monken, Stellato, Carrignan, McGuirk, Turner, Martin, Krieger, Bessner, Richards, Penny,

**Members Absent:** None

**Others Present:** Mayor Donald P. DeWitte, Attorney Gorski, Brian Townsend, Rita Tungare

**1. Call to Order**

The session was convened by Mayor DeWitte at 7:12 p.m.

**2. Pending Litigation**

**Brian Townsend** explained that there are two items on the agenda this evening and that Attorney Gorski will address them both.

**Attorney Gorski** stated that the Mellvaine complaint has been filed as of Friday morning. He will notify the other attorney tomorrow morning.

**Attorney Gorski** then gave an update on the Oliver-Hoffman (OH) consent decree. **Mr. Gorski** explained that he and the other attorney have met a couple of times to discuss the subdivision of Parcels 1 and 2 into four lots. The other attorney has made a case for not subdividing the parcels because of the economy and there are no reasons to subdivide at this time. The other attorney is looking to amend the consent decree. This amended decree would state that no sale or development could occur on the lots until such time as they are subdivided to the satisfaction of the City.

Legally, this amended decree is fine, however it goes against what has been promised to residents.

**Alder. Penny** stated that she sees no way to go back on what we have said to the residents.

**Alder. McGuirk** said that the other attorneys are emphasizing costs as a reason not to subdivide but it seems like the costs would be minimal.

**Rita Tungare** mentioned that the application fee is \$1,000.

**Alder. Carrignan** stated that our time and effort versus renegeing what we promised would not be a good idea.

**Alder. Stellato** asked what the cost of subdividing the parcels would be? **Rita Tungare** responded it would be under \$5,000. In addition **Ms. Tungare** mentioned that she has received a few inquiries from residents wondering why the subdivision hasn't taken place.

**Brian Townsend** asked what happens if we reject the offer to amend the consent decree. **Attorney Gorski** responded that we first send them a letter stating that the City complied and performed, and, if they don't respond, we will take them to court to demand subdivision. **Mr. Townsend** asked if there was any risk involved with this. **Attorney Gorski** responded no.

**Alder. Penny** stated that we made a promise, we have to keep it.

**Alder. McGuirk** suggested that we split the cost with OH.

**Attorney Gorski** stated that they have acted in good faith so we could waive the fees.

**Rita Tungare** stated that this would be a good gesture.

**Alder. Carrignan** responded that we have met all obligations we don't need to waive the fees.

**Alder. McGuirk** said this would be a reasonable gesture.

**Brian Townsend** suggested a two-part process where the first step is to reject the offer and if they object further and complain about the costs, the second step would be to offer to waive the City-imposed fees.

**Attorney Gorski** mentioned he likes this suggestion.

All agreed.

### 3. Adjournment

The executive session was adjourned at 7:24 p.m.

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Mayor Donald P. DeWitte

**MINUTES – EXECUTIVE SESSION  
CITY OF ST. CHARLES, IL  
GOVERNMENT OPERATIONS COMMITTEE  
MONDAY, FEBRUARY 16, 2004**

**Members Present:** Chair. Stellato, Ald. Silkaitis, Lemke, Penny, DeWitte, McGuirk, Martin, Krieger, Richards, Grathoff

**Members Absent:** None

**Others Present:** Mayor Klinkhamer, City Attorney Tim O’Neil, Larry Maholland, Bob Hupp, Mark Koenen

The executive meeting was convened by Chair. Stellato at 7:20 p.m.

Larry Maholland gave a brief update on the First Street redevelopment project. The City Council approved the condemnation ordinance for the cleaners tonight. He talked with Dave Lencioni today, gave him an update, and told him that we would move forward with developing an alternate plan, even as we keep an ongoing dialogue with the Blue Goose. Mr. Lencioni offered to address the Council, but for now, we will plan on discussing alternative plans with Michael Schroder.

Executive Session adjourned at 7:43 p.m.

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Daniel P. Stellato  
Chairman

**EXECUTIVE SESSION MINUTES  
CITY OF ST. CHARLES, IL  
GOVERNMENT OPERATIONS COMMITTEE MEETING  
TUESDAY, SEPTEMBER 3, 2013**

**Members Present:** Stellato, Silkaitis, Payleitner, Lemke, Turner, Bancroft, Martin, Krieger, Bessner, Lewis

**Absent:** None

**Others Present:** Mayor Raymond P. Rogina, Atty. John McGuirk, City Administrator Mark Koenen, Finance Director Chris Minick, and Atty. Julie M. Koerner – O’Halloran Kosoff Geitner & Cook, LLC

**1. Call to Order**

The session was convened by Mayor Rogina at 7:58 p. m.

**2. Probable or Imminent Litigation**

**Mark Koenen:** Atty. Julie Koerner has been assisting the City on this project which goes back to 2008 when there was a slip and fall in the Ambrose parking lot which is that L-shaped parking lot on the SW corner of Rts. 64 and 31 that surrounds the Grossklag Realty. The person who fell represented that there were some personal damages to him and has a variety of medical treatments since that point in time. There was a pot hole in the lot that he said he was familiar with, but was distracted that day and he mis-stepped and fell as a result of that. I will ask Julie to give us some high level key points on this situation.

**Atty. Julie Koerner:** This is the Vern Kurtis case that will be going to trial on Monday, September 9. This case has been involved in litigation since 2008 and part of the reason that it’s been continued for so long is for a number of reasons. Mr. Kurtis did not get immediate relief from a lot of his treatment. He did a lot of conservative therapy and there was also a Worker’s Comp claim that complicated things because he worked at Washington Mutual Bank on Main Street, that eventually closed, but he was a traveling bank manager and was coming from another location, and was going to the St. Charles branch and parked in the lot and was walking over. So there was Worker’s Comp that got denied, took it up on appeal, they lost, and now they are back and involved in the case. We also did an attempt to try and mediate the case with outside mediation, and at the time we had an offer of \$40K on the table and their demand at the time was \$225K. He had not undergone surgery at that point in time and a lot of the problems again was that Worker’s Comp was denying the claims and so on. Eventually he had surgery by Dr. Gregory Drake at Core Orthopedics in Elk Grove Village and has mostly complete relief of all of his symptoms and is pretty much done. We deposed Dr. Drake and have evidence of his disposition that there is no further need of treatment; so medical bills are in total of \$106K. We are having a pre-trial conference with Judge Murphy on Friday to discuss any pending motions, instruction conferences, and scheduling in general.

On Friday the Work Comp carrier is coming to the settlement conference too. Now that they have money on the hook I am hoping we will be able to get a final resolution with this. I have asked for settlement authority up to \$225K. Why so much? Again he has about \$106K in medical bills. There is obviously some contributory negligence. It is clear that Mr. Kurtis knew that the hole was there, he was aware of the hole, it had been there for two years, but that wasn't the issue of him not knowing it. The hole was certainly open and an obvious condition and we, as a municipality, have the right to rely on the fact the people will protect themselves from open and obvious conditions and we do not have to warn them about it. However, in the circumstances, I did file for summary judgment and the judge denied it. He found there was an issue in terms of this distraction exception. Because there was a greater danger to Mr. Kurtis being there were cars moving in and about in the parking lot, he then drew his attention to the greater threat to his safety and looked away from the less immediate threat which was the hole in the parking lot. That is the ruling we have to live with and we are ending up going to trial. So there is this distraction exception we have to deal with.

Regarding the hole, it was very large and the pot hole was located in the center of the L-shaped parking lot where the catch basin was at. The problem was that even though there had been a number of patches that were done to this area, that was the low point of the parking lot so that is where the water would go down to the catch basin and pull out any of the patch work, etc. and it was kind of a chronic problem. The City of St. Charles does a great job on maintaining your infrastructure. You have a very good system in terms of resurfacing and taking care of all of your public areas in a rotation; unfortunately this wasn't in the rotation time, but got fixed very shortly after this – his fall was in August and it got fixed in October. They have hired an expert who will say because we knew where the catch basin was and our repair work was insufficient, we should have gone ahead and taken care of it.

In full value in taking what his medical bills are, the major extent of his injury in terms of it being a herniated L5/S1, which caused a lot of right-sided pain, Mr. Kurtis has had constant complaints of pain over the course of the time period; and because of the denials of coverage of his insurance he had to do a number of things in terms of physical therapy, epidural injections, EMG tests, etc. over the number of years before they finally authorize the micro-discectomy which he said has relieved it. It's not all of sudden he fell and four years later he's having surgery; his complaints have been more consistent, he was getting treatment the best he could over that time frame, and Dr. Drake will not opine at the evidence disposition that the fall caused the herniation. So what they always do in terms of doctors, they say if it didn't cause it, it aggravated a pre-existing condition. L5/S1 is the most common part of the spine to have herniation and problems because it handles a lot of force of our bodies. So it's not unusual that someone in their mid-40's would have this kind of condition, but it wasn't bothering him beforehand. I've reviewed all his medical records and he had no prior complaints of pain or discomfort until he took a hard fall on an asphalt surface with a twisting mechanism onto his hip. I'm asking for \$225K and hoping to get it settled for a lot less, but I ask for as much as I think it is going to take. \$225K is where they were at before at the settlement conference when he mediated

with Mr. Piepel; so I hope we are still in the ballpark given that the Work Comp carrier is going to have to come in with money. I am hoping that if we are unsuccessful, at least I can purchase the lien for \$75K, which after all calculations have been done, gives us credit for the whole \$150K offset as to any judgment. Clearly if we go to trial, the Work Comp carrier understands that he may lose. In Illinois if the plaintiff is more than 50% (so 51% liable) he gets no recovery. This isn't a purely comparative state because a lot of states, even if the plaintiff is 90% at fault, the defendant still gets 10% of their damages, but not in Illinois. In Illinois if the plaintiff is more at fault than the defendant he gets nothing, but he's got to be more, it's not 50/50. If they cut it down the middle then we are on the hook for half of the damages. Juries are normally very cautious because they are told there are instructions that tell them that if they award a portion more than 50% at fault to the plaintiff they get nothing. So they very seldom go there unless it is very obvious. Mr. Kurtis is a reasonable plaintiff and comes across very well, he's educated, intelligent, was bank manager at Washington Mutual, and still in the business. I think he will make a very sympathetic witness. He is going to admit that he knew the hole was there.

**Ald. Silkaitis:** Reading the notes you said he has a 50/50 chance. I've been on a jury and I believe the jury is going to award the guy more than what we are going to offer him – and are we at fault? If it was there for two years we missed it.

**Mark Koenen:** We don't have any paper work that shows we ever did any work out there so if it's not written down, we can't prove that we were there. It looks like it was there for a while.

**Ald. Silkaitis:** I feel we should just plead guilty and be done with it. I don't want to fight something like this. If we didn't know about it, it is our fault.

**Julie:** There are two issues in terms of notice. We are not liable for conditions that we do not have notice. Notice can be two things. It can be actual notice or constructed notice. The problem in this case is maybe we didn't have actual but we sure did have constructed. The lot is in a City municipality that is kiddy-corner from City Hall. Police officers are patrolling it; city workers go by checking for garbage, etc., so we are going to lose on the constructed notice.

**Ald. Silkaitis:** My personal feelings are let's just settle it. I don't want to go to trial.

**Julie:** I was never defending it on a notice issue. I was defending it on an open and honest situation. I should also point out the SIR (Self Insured Retention) for the City is \$100K and our defense costs today, over five years, are \$35K. The only remaining portion of the City's SIR that is going to be used is \$65K. The remaining portion of this \$225 is going to be coming from SMNT. All I am asking for you to give me is \$65K, then I have to go back to the insurance company and say I need the rest of this \$225 to come from you.

**Ald. Lemke:** We did talk in the range of over \$100K for the surgery that we'll argue corrected it; there were other costs in terms of physical therapy, etc.; so there is really more than that. That one stands up but I would argue that at least you got to hold for any physical therapy if you find that the City constructively should have.

**Julie:** The \$100K includes all of it. It's the surgery, physical therapy, the chiropractor, epidural injections, diagnostic testing he had, and meds he took. The surgery wasn't that much – it was done on an outpatient basis.

**Ald. Bessner:** Why was his Work Comp being denied?

**Julie:** They were trying to argue that it wasn't in the course of his employment. If you get injured on your way into work, it's not within the scope of your employment because you aren't at work unless you're driving somewhere; but they failed to appreciate the fact that he was coming from another branch, going to his main branch, so they argued about whether or not that was in scope of his employment and they lost on that issue. Even though it's \$106K, in the hard medical specials, there's only some movement in terms of getting the medical provider to reduce their lien. And he was compensated already for his lost time off of work for his injury, short term disability, and vacation/sick time he used for these injuries so he is entitled to be compensated back for this.

**Atty. McGuirk:** I haven't been involved in the case. Julie's on top of it, she's seen the opponent, has seen the medical. You have to go with the recommendation. It's a tough case for the plaintiff, but if we lose it, it's some pretty bad damages.

**Ald. Martin:** I go along with that.

**Mayor Rogina:** It's a negligence case, but I'm curious as to why I didn't hear court immunity?

**Julie:** This is municipal property and the Tort Immunity Act applies wherein 3102 says we have to have due care, precaution, and reasonable maintenance for our property.

**Mayor Rogina:** City liability is only for our action or willful and wanted as opposed to ordinary?

**Julie:** That is not for regular property. Willful and wanted only applies to recreational property and if anyone falls into jail, we are absolutely immune from that. Your regular property, sidewalks are not willful and wanted – it's just pure negligence.

**Mayor Rogina:** It's a pure negligence suit and Tort Immunity doesn't even apply at all. Just a battle of who is more negligent?

**Julie:** The Tort Immunity Act comes into play with 3102-a and b and talks about we are liable under negligent standards as long as we have actual constructed notice. The Tort

Immunity Act just codifies the common law. It's the same standard for any land owner with a few exceptions.

**Ald. Bancroft:** Who actually gets the authority to settle – you?

**Julie:** Yes me.

**Mark:** We have received a recommendation from Julie and Chris and I have considered it and felt like it was reasonable. We are buying ourselves out from going to trial and paying more.

**Julie:** The cost for going to trial up to next week will only be another \$12K - \$15K. All the defense costs are going to be within the SIR; so all we're going to do if we go to trial and lose will eat a little more of the SIR.

**Ald. Lemke:** So in summary if we do what you recommend which is allow a little over \$200K latitude; there could still be a settlement for less?

**Julie:** Yes, that is my goal. I only ask for as much as I think it will take so that I don't have to come back and ask for more. So I try to get more and my goal is within the area of \$175K - \$200K.

**Ald. Lemke:** Previously we had entertained a claim in the range of \$200K before. So what we're doing is we know he had lost arguably for \$100K in medical bills, etc. and lost time; we'll argue that perhaps there is some middle ground that prevents us from going to trial and we'll give you the ability to go up to the prior claim?

**Julie:** Correct.

**Mayor Rogina:** What about his medical insurance?

**Julie:** They get reimbursed. They have a lien against it and it'll get paid.

**Mark:** Are we in support to allow Julie up to \$225K in this?

**All:** Agreed.

#### 4. Adjournment

The executive session was adjourned at 8:09 p.m.

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Tina Nilles, Deputy City Clerk

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Nancy Garrison, City Clerk

**EXECUTIVE SESSION MINUTES  
CITY OF ST. CHARLES, IL  
GOVERNMENT OPERATIONS COMMITTEE MEETING  
MONDAY, DECEMBER 16, 2013**

**Members Present:** Stellato, Silkaitis, Payleitner, Lemke, Turner, Bancroft, Martin, Krieger, Bessner, Lewis

**Absent:** None

**Others Present:** Mayor Raymond P. Rogina, Atty. John McGuirk, City Administrator Mark Koenen, Peter Suhr

**1. Call to Order**

The session was convened by Mayor Rogina at 8:37 p. m.

**2. Land Acquisition**

**Mark Koenen:** Peter is here tonight to give you an update on the land acquisition of 1627 Riverside Avenue.

**Peter:** At the December 2 meeting the committee authorized staff to attend the Sheriff Sale with bidding authority to \$80K. The judgment amount was \$234K and the opening bid was \$245K. No further action is necessary.

**3. Adjournment**

The executive session was adjourned at 8:57 p.m.

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Tina Nilles, Deputy City Clerk

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Nancy Garrison, City Clerk

**MINUTES – EXECUTIVE SESSION  
CITY OF ST. CHARLES, IL  
PLANNING AND DEVELOPMENT COMMITTEE  
MONDAY, SEPTEMBER 10, 2012 7:35 P.M.**

**1. CALL TO ORDER**

The session was convened by Chairman Carrigan at 7:35 P.M.

**2. ROLL CALL**

**Members Present:** Stellato, Monken, Payleitner, Turner, Carrigan, Rogina, Martin, Krieger, Bessner, Lewis, Mayor DeWitte

**Members Absent:** None

Mr. Townsend said that Joe Salas called in regard to the Dunham Hunt House and he was looking to convert it into an annex of the Hotel Baker as a bread and breakfast type of arrangement with meeting rooms on the first floor and guest rooms up above. He said Joe was in today to talk about another business proposition for the downtown and at the end he said he has done some rough estimates and he is interested but his preliminary assessment is there is no way he can pay \$199,000 on the building. Mr. Townsend told him to go ahead and make an offer and the City will consider it. Mr. Salas said we may hear from him in as little as 24 hours.

Motion made and seconded to adjourn.

The meeting adjourned at 8:50 p.m.