

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IB

Title:

Presentation of a recommendation for the Partial Release of Executive Session Minutes from the Government Operations Committee and Government Services Committee.

Presenter:

Mark Koenen, City Administrator

Meeting: City Council

Date: June 4, 2017

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

This is a request to approve the partial release of the executive session minutes as listed below. The minutes have been reviewed and approved for release by legal counsel.

Government Operations

- September 6, 2016 (Partial release, section 3)
- December 19, 2016 (Partial release, section 3)

Government Services

- March 28, 2011 (Partial release, section 2)

Attachments *(please list):*

Executive Session Minutes for Release (partial)

Recommendation/Suggested Action *(briefly explain):*

Presentation of a recommendation for the Partial Release of Executive Session Minutes from the Government Operations Committee and Government Services Committee.

Proposed Executive Session Minutes for Release - April, 2018

City Council

None

Government Operations

- September 6, 2016 (Partial release, section 3)
- December 19, 2016 (Partial release, section 3)

Government Services

- March 28, 2011 (Partial release, section 2)

Planning and Development

None

**EXECUTIVE SESSION MINUTES
CITY OF ST. CHARLES, IL
GOVERNMENT SERVICES COMMITTEE
MONDAY, MARCH 28, 2011**

Members Present: Chairman McGuirk, Aldr. Penny, Carrigan, Turner, Martin, Krieger, Bessner, Lewis

Members Absent: Aldr. Stellato, Monken

Also Present: K. Livernois, M. Koenen, R. Gallas, K. Dobbs

1. Call to Order

Mr. Koenen convened the meeting at 7:45 p.m.

2. Land Acquisition

Mr. Koenen: The second item for tonight has to do with Dunham Hunt House. We've talked about that several different times. During the last conversation we talked about how we would market the parcel. You also gave us guidance in terms of what was important in regards to the long-term life of the Dunham Hunt House, in terms of not removing it, the minimum bid price and fixing the home up. Richard Gallas and Peter Suhr have met with a local appraiser to help us get the best marketing on the land. We should list it with a realtor who knows how to market the land and put it on an MLS listing service. I'll turn it over to Richard to talk about details in terms of what we think is important in terms of the contract.

Mr. Gallas: This is no different than selling a traditional residential home with one caveat. We certainly want to get a realtor on board to assist us with that to market the property and find the people who might be interested in this particular home. We are recommending City Staff interject in the process by creating a questionnaire if you will that would ask the perspective buys a series of questions to gauge the interest you brought forward in our previous discussions. We've tried to encapsulate the Council's concerns in a questionnaire format whereby the realtor would bring any perspective buyer to us, we would sit down with them and go over the questionnaire to gauge interest and bring that back to you for your approval to proceed with the sale if it seems to make sense.

We have tried to break this into three categories. The first being what is absolutely required that we aren't going to compromise on in terms of sale? Then there is recommended information; we want to understand what their commitment to historic preservation is, how they have worked with a historic property before. Finally some desired information including references. Most importantly what we want to accomplish is to get the realtor to bring the perspective owners to us, gauge interest, collate information, bring it back to you, consistent with a minimum bid which is \$200,000.00 in this case or above, and seek your approval on that.

Mayor DeWitte: How are we avoiding the public auction process of property considered to be excess inventory?

Mr. Koenen: We have discussed this with Gorski Good. If we were not Home Rule, we would have to follow state statute requirements. But because we are Home Rule, the City Council can choose to have its own posture. In this particular case, the posture you would be allowing us to consider is that we have gone to a public advertisement through this MLS service to acquire interest. We will certainly market it in the City Newsletter and on-line so we can satisfy the public information dissemination. We are not excluding anyone, but there is a qualification for who we would consider.

When there is an award, there will be a resolution that will talk about State Statutes and how we are deviating from that because we have authority to do that within our offices since we are Home Rule.

Mayor DeWitte: Have you discussed with any realtors yet the concerns about their potentially behind "handcuffed" by this long list of wishes that the City is going to tie to any potential acquisition?

Mr. Gallas: That became the financial guarantee. They were very candid about that and said we probably will not succeed. Rather than a financial guarantee we would really seek financial information about them and their commitment to the property over time. What we would prefer to do is navigate the process, get the best information we can and let you make the choice whether it's a sincere offer or not.

Mr. Koenen: The fourth bullet point under required information not only includes financial guarantees but also financial qualifications to try to assess if they have the wherewithal to do it.

Chairman McGuirk: In your initial research, are there people out there interested in these types of properties?

Mr. Koenen: It's a very narrow market. That's why we went to the MLS service.

Aldr. Carrignan: In the upcoming budget, we have a line that says "real estate". What are we looking to get out of this property?

Mr. Koenen: We are hoping to get at least \$200,000.00.

Aldr. Carrignan: Is that after all our costs?

Mr. Koenen: That would be plus our expenses.

Aldr. Carrignan: We say proceed forward.

No further discussion.

No matters were of voting interest. Discussions were for information purposes only.

3. Adjournment

Executive Session was adjourned in Council Chamber at 8:05 p.m.

Tracey Conti, Deputy City Clerk

**EXECUTIVE SESSION MINUTES
CITY OF ST. CHARLES, IL
GOVERNMENT OPERATIONS COMMITTEE MEETING
TUESDAY, SEPTEMBER 6, 2016**

Members Present: Stellato, Silkaitis, Payleitner, Lemke, Turner, Bancroft, Krieger, Gaugel, Bessner

Absent: Lewis

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

1. Call to Order

The session was convened by Mayor Rogina at 8:15 p.m.

3. Probable or Imminent Litigation – Woods of Fox Glen – Douglas Hancock Tree Matter

Mark: This next is the Hancock matter as it relates to trees that were cut down in the Woods of Fox Glen subdivision. The last time we had this conversation was very early this spring. The genesis of the conversation is that Mr. Hancock admitted he was cutting trees down and has been doing it for a number of years, and admits he's doing it for the improvement of the environment. It's the right environmental decision from his perspective. We've been working with him, both John, Peter, Chris Adesso. I bring it here tonight because we have not reported as of recent and I think the frustration level is perhaps higher. We got the opportunity to march forward with a civil case, however, I understand that Kane County is not willing to take this one on, but there's a civil court way to handle this and that's through adjudication process that we have in our organization. If we want to get this to conclusion and force the issue, there's a cap on what we can impose on terms of a fine for destruction of public property; which is really what this is all about. This isn't on how do we restore it although we went down that path for 3-4 months thinking we could buy some cooperation and we're not getting that; so we're going back to he's destroyed public property and he owes us some cash. The adjudication has a cap on that which is \$50K.

Atty. McGuirk: We've had a number of meetings with Mr. Hancock. He is an authority in this area so he doesn't see, other than the fact that he now realizes he's on somebody else's property, he doesn't see this as destruction but sees it more that he is making it better. He's making it back to the old prairie. We had a discussion and at one point we were talking about him paying us \$20K. That's roughly the cost according to Graft of the replacement trees, although these values are all over the place in terms of what a tree is worth?

We discussed the possibility of the State's Attorney looking into this. The Chief did go to the State's Attorney and they're not interested in pursuing the case and they have discretion as to what they take and who they don't take. We have the option of going through adjudication as Mark mentioned which is your normal code violation: trespass, criminal damage to property, whatever the code revisions would be on that; or we can bring a law suit against him. There is an anti-tree cutting statute that actually provides for treble damages which is three times the

stumpage value. He does seem to want to resolve it but he can't pull his wallet out. He at one time said he was willing to pay the \$20K which was the value that Graft put on it.

Ald. Lewis: Did he stop that behavior once he found out that he cut down city trees or did he still continue?

Atty. McGuirk: He's been doing it for 25 years.

Peter Suhr: I believe he finally stopped.

Ald. Lemke: Nobody called him on it.

Ald. Silkaitis: Did he know it was city property?

Mark: He hasn't really acknowledged that he was on anyone's property, he was improving the environment.

Atty. McGuirk: There were equestrian trails back there and before the City owned the property the Wayne folks would ride their horses back there and he's in those circles, so he kind of saw it as more of open land. Not that it gives him any rights but his view is I made this better.

Ald. Silkaitis: My view is he has not made it better; he's trespassed onto City's property. If we don't nip it now, we're going to end up with another McIlvaine case going on for 30 years. I say we file a lawsuit and see what he does.

Mayor Rogina: I have a copy of his letter and he's as arrogant as one can get. Why is the State's Attorney not taking the treble case? I know they have discretion but he's cutting down trees on our property? I don't get it. Please explain it to me.

Atty. McGuirk: I don't know. The Chief is the one who took this through those channels. In general, property cases are not their norm. They're used to people getting shot up which is more serious in their mind than property damage.

Mayor Rogina: But they did take the case where those kids busted into the Park District office and vandalize it. They took that case on and while I don't think this rises to the same level, but going and cutting trees down. This guy is not a kid, he's a mature adult.

Atty. McGuirk: This guy actually did some work for the Forest Preserve on some project and worked cooperatively on that project. He brings that up repeatedly.

Ald. Bancroft: So strategically if its brought as more of a criminal manner, that's a quicker process to get to our result, but then you got to force the result presumably.

Atty. McGuirk: You would anyway in a civil matter too.

Ald. Bancroft: It seems it would get his attention more if he had to hire a lawyer and come in here and start talking about crime.

Ald. Turner: Why don't we just go to the adjudication hearing and threaten him with the lawsuit if he doesn't come forward?

Ald. Bancroft: I agree - \$20K is the number?

All: \$50K!

Mark: \$50K is the maximum that we can assess it.

Mayor Rogina: So in adjudication, if there's a levy of \$50K, we're in no position to incarcerate under adjudication; so it's still kind of quasi-civil that you have to go after the money?

Ald. Lemke: You could file a lien.

Mark: I would suggest that we have the Graft pre-report which you all saw a while ago. I would suggest that is what we ask for the cost to be and use the Graft pre-report as our backbone for why we're asking for that value of money.

Att. McGuirk: It was something like 94 trees?

Peter: It was 90 trees for \$21K. If you added all the citations up, it's just shy of \$100K.

Ald. Lewis: How long have we owned the property?

Mark: It came about as a result of the Woods of Fox Glen subdivision which approved in 1990.

Ald. Lewis: So 25 years. We've owned the property the whole time he's being doing this.

Mark: So to circle on direction from staff, we would probably have a last conference with Mr. Hancock and then advise him with no conclusion that we're going to advance it to adjudication and explain that process to him. He will get a notice to appear with an explanation of what it is for. He would come to the hearing process and we would present our case and ask for the hearing officer to rule accordingly to take correct action.

Ald. Gaugel: I'm confused on the dollar amount. You said \$21K and yet we were just talking about \$50K. So what amount would that be?

Mark: The maximum that we can assess at adjudication is \$50K, but the basis for the Graft lawsuit was \$21K.

Peter: The \$21K was simply for the replacement of the 98 trees. So if you take the cost of the tree times 98 you get to about \$21K. That was the guidance that we received at the last executive session was to try to go and receive that dollar amount. Depending on how you interpret the ordinance if you were to fine for each tree that was knocked down at \$750 per tree times 98, that's \$73,500 right there. So do we interpret the ordinance that each tree is worth

\$750 or not. That's the difference of the cost. That's just the fines, no labor. The \$21K is the cost of the labor to install.

Atty. McGuirk: What is the adjudication officer's name?

Mark: I don't recall. We usually run this through Building Code Enforcement who are the ones that handle this.

Ald. Lewis: How do we answer the question that it took us 25 years to find out about this? How do we answer that and once we start that do we have an exit strategy or are we just going to keep going on and on?

Mark: We followed up on this pursuant to notification and it was some property owners who actually called Public Works or Police Department which was last January. That's what started this process. Before that we did not have an awareness of this activity taking place. The second question, what's our exit strategy? I think we're developing our strategy right now on how we're going to conclude this matter and we need to get in front of the adjudicator to get a decision. Either he pays or we file a lawsuit to come up with the cash. I don't have a timeline for that one.

Ald. Gaugel: When you step in front of the adjudication process, are you asking for a dollar amount or is it strictly up to the adjudicator to determine what that amount is?

Mark: It's really up to the adjudicator to make the final decision, but in this case this is a very unique matter, I think we would offer him some guidance at that point.

Ald. Gaugel: That's my question, we have \$100K per the ordinance, \$21K from Graft, we got \$50K which is the max; so what do we present as our backup?

Mark: We want to first use the Graft report as the basis for replanting trees and installing them. Secondly we make the argument about what the total amount is under the code which goes to the larger value. We acknowledge the \$50K cap and one of the numbers is what have we spent in person power to date including Atty. McGuirk's fees on processing where we are today? That's our real goal and maybe that gets us to \$50K and that's what we present as the base line for our request. We have to have a reason for why we're asking for what we are doing. We'll develop a reasonable cost and come back and report accordingly.

4. Adjournment

This executive session was adjourned at 9:07 p.m.

**EXECUTIVE SESSION MINUTES
CITY OF ST. CHARLES, IL
GOVERNMENT OPERATIONS COMMITTEE MEETING
MONDAY, DECEMBER 19, 2016**

Members Present: Ald. Silkaitis, Payleitner, Lemke, Turner, Bancroft, Krieger, Gaugel, Bessner, and Lewis

Absent: Stellato

Others Present: Mayor Raymond P. Rogina, Atty. McGuirk, City Administrator Mark Koenen, Rita Tungare, Chris Minick, Atty. Phil Luetkehans

1. Call to Order

The session was convened by Mayor Rogina at 8:40 p.m.

3. Pending Litigation and Property Acquisition

Mark: This topic deals with Mr. Hancock and some trees related to what he has done in Woods of Fox Glen subdivision. This is under pending litigation and this is to let you know what happened at the Adjudication Hearing this past Thursday evening. The Police Department along with Public Works did a presentation in front of Mr. Ramos, our Hearing Officer, to talk about the damage in that particular neighborhood. Mr. Hancock was there with his legal counsel. Mr. Ramos did admit this was a little bit out of context to what he normally deals with in adjudication which are more related to speeding and parking tickets. He took everything under advisement as well as a series of exhibits to review over the holidays. He will report back either before or on the next Adjudication Hearing in January. We're suspended for the time being in what his response will be. The new piece of information I would like to ask you to consider is in the context of Mr. Hancock and his attorney's potential delay tactic or opportunity for settlement that they threw out the idea under land acquisition that this property which is known as parcel B would be transferred from the City of St. Charles to either Mr. Hancock directly or to the DuPage Wayne Conservatory. Before we even went down that track, Atty. McGuirk was quick to remind them that these are two separate issues that are not related and that we should deal with adjudication of the violations that were written for with regards to the trees and if there was land acquisition or transfer conversation, it should be separate and distinct and we'll deal with them as two issues.

That brings us to this land acquisition for tonight's conversation. Before we spend any time getting an appraisal or dealing with any property related issues that are in zoning or land use, perhaps the homeowner association has something to say. Let's get in front of all of you and ask are you even interested in exploring that alternative or are we happy with what we have right now. I should point out that this land is generally landlocked. There is no direct public access for this piece of ground. It's 28 acres and it's really green open space that didn't make sense to develop for the Woods of Fox Glen

subdivision. It creates a wonderful nature open space in our community of which the Wayne Hunt Club has used since the 30's for their hunts.

Ald. Krieger: The Wayne Hunt Club hasn't used that in many years. They stay up off of Dunham Road for their fox hunts. Also I would be concerned that perhaps Mr. Hancock might think he can develop the land using access from his land and third what about the residents of Fox Glen and citizens of St. Charles who might like to wander in the woods?

Mark: Right now there isn't direct access to this parcel of land. You can't get to it. Secondly there is an ordinance on file that does not permit access, it's called trespassing if you go on that property, and that was set up in the 80's or 90's which was a response to those people who were fishing in the pond there and weren't from the neighborhood. There are equestrian trails that were platted with the easement of Woods of Fox Glen which allows horse related purposes on these trails and Mr. Hancock pointed out that they use those trails today for the hunts.

Ald. Lewis: Do we carry the liability if someone gets hurt on their horse on that property?

Mark: It's city-owned property and am sure it would be seen as an opportunity for reimbursement. To my knowledge we've never had a case of that happening.

Atty. McGuirk: I don't think the property had a lot of activity until Mr. Hancock was discovered and there was also a building out there for a period of time – a tree house which has been taken down since. We sort of discovered that we owned this property and it doesn't have a lot utility out there for city residents.

Mark: It probably has value for being open green space in the community and if you live in that neighborhood they probably see it as having value.

Peter Suhr: There is a retention pond on that property. There is 28 acres to the property.

Ald. Lewis: It's the size of the Shodeen property – that's a big piece of property.

Ald. Gaugel: What about the folks of Woods of Fox Glen; they have no affection for Mr. Hancock. They expressed that rather clearly to me. They use the property to walk their dogs and stroll through and wanted to make sure they had that use. So in terms of a sale, if we were to consider which I don't think we would, at least not to Mr. Hancock; if we were interested in that – we should post it and let the Woods of Fox Glen decide. They would never let it happen. They would find some way to out-bid him. It's not something I think we should be interested in selling but I think we should restrict the riding clubs going out there and post what is the appropriate use and somehow monitor that. There is a liability issue and could be seen as an opportunist if someone went out there and got hurt. Let's get the adjudication done. He needs to replace those trees.

Mark: We brought this to you because we thought you wouldn't probably have an interest to transfer but wanted to confirm and this gives a very clear answer to give back to Mr. Hancock.

Ald. Silkaitis: I see no purpose or benefit to selling it but as was mention let's settle one thing first. Don't even discuss with him until this first issue is settled and then we can tell him no.

Ald. Turner: I want to keep it.

All: Consensus is to keep it.

4. Adjournment

This executive session was adjourned at 9:09 p.m.

Tracey Conti, Deputy City Clerk