

February 12, 2005

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Saturday, February 12, 2005**

PRESENT: Aldermen Tisdahl, Rainey, Newman, Jean-Baptiste, Wynne, Bernstein

ABSENT: Aldermen Feldman, and Kent

NOT PRESENT Alderman Moran
AT ROLL CALL:

STAFF: Judith Aiello, Julia Carroll, Herb Hill, Bill Stafford

PRESIDING: Mayor Lorraine H. Morton

START: 9:10 a.m.

Alderman Rainey moved that Council convene into Closed Session for the purpose of discussing matters related to litigation and Executive Session Minutes pursuant to 5ILCS Section 120/2 (c) (11) and (21). Seconded by Alderman Wynne.

Roll call. Voting aye – Tisdahl, Rainey, Newman, Jean-Baptiste, Wynne, Bernstein. Voting nay – none.
Motion carried. (6-0)

Minutes:

Closed Session minutes of January 22, 24 and 29, 2005 were accepted without change.

City Manager Julia Carroll announced Council would be updated on the tax exempt request for 1800 Sherman and they would clarify how to release the letter to Northwestern University. She understood they wanted it published in the *Evanston Review*; suggested they issue a press release which frames the information the way the City wants and the letter as well. She handed out copies of the press release that would be issued on Monday. Alderman Newman noted throughout these matters, NU has consistently issued press releases to the public. A press release from the City was good in terms of educating the people. He did not recommend putting the letter in which is direct communication.

1st Assistant Corporation Counsel Herb Hill said that Jack Siegel and Howard Zweig had communicated and the university was seeking tax exempt status from the time they have owned the property. Based upon that, Mr. Siegel asked for clarification on how aggressive they want to be and a general framework for any filing they might do on the tax exemption. They can do nothing, take moderate action or aggressively attack which was Council's direction two weeks ago.

Alderman Bernstein thought if they were not aggressive from day one they will have limited their ability to be aggressive in the future. To him it is either wrong now or NU wanted to see if the City would bite. The question is does the City think NU is entitled to a tax exemption on that property. If they believe they are not, they should file immediately. His concern was they would be estopped if they asserted their defense here. Mr. Siegel said they would be if they filed at the Department of Revenue. Alderman Bernstein asked them to remember the Vineyard and learn from their mistakes.

Alderman Newman said if they go through the administrative process, they end up in the same place. Alderman Bernstein was concerned about administrative review on the record and how in depth they would go. If they are fully vetted at the Department of Revenue and that is included in the record the Circuit Court will hear was okay. Alderman Newman thought Mr. Siegel would make the TIF district argument.

Alderman Moran asked what the basis for fighting would be. Primarily the letter. Alderman Moran asked if the Council is committing to a full panoply of litigation over this. Alderman Bernstein had previously said

February 12, 2005

they were at war and this was the first skirmish. Did they expect to fight this litigation through the Circuit Court. Alderman Bernstein's concern was that the City's letter to Bienen and NU's letter crossed so Council does not know NU's response to Siegel's letter. Subsequently NU filed the amendment so NU intends to take the property off the tax rolls. His initial hope was that Council could go to NU with the letter and tell them they misstated the amount the City would be hurt.

Alderman Moran pointed out that nobody present could be surprised that NU is applying for tax exempt status for the property; asked where they were going. He did not think by sending the letter they would litigate this to death. He was concerned about the City's ability to win this argument and that this is all tied together. Are they going to get on this band wagon for three or four years? Should they do that?

Alderman Jean-Baptiste was always for an aggressive response to the purchase of 1800 Sherman and advocated for public response. They sent the letter as the first step and agreed not to file a lawsuit. With this change he was not sure where their hooks were.

Alderman Rainey asked if they misunderstand the original filing or was it for the entire year. Mr. Hill did not think it was misunderstood. NU put in their ownership tactics for the full year and may have changed their position after conversing with Mr. Siegel. Alderman Rainey was not sure of any success they would have in the long run after the TIF expires. However up until that time they should fight it. On the other hand they could file simultaneously on the leasehold taxes and do some groundbreaking work regarding the legislature and the county because it is a blatant violation of every lease. There have to be other communities that have this problem.

Mr. Hill said the City is a member of the Illinois Municipal League. He would put that issue on the agenda for the Home Rule Committee at the next meeting so that other counties than Cook County could be involved. He will report back in several months

Alderman Tisdahl thought it was a good idea to let their legislators know, which will be done.

Alderman Newman had read the tax exemption application and found it vague. He urged Council not to be intimidated by scare tactics about the cost of a lawsuit. The first lawsuit with NU was expensive because they took many depositions. No depositions are involved here. They have litigated tax matters successfully with the Mather Foundation. If they think it will cost \$25-30,000, the City has \$1 million annually at stake. At the last meeting Mr. Siegel was asked to clarify if the City has a good claim. There are no legal cases. He noted the City has statutory rights and is doing a TIF district. The whole concept of a TIF district is destroyed if a non-for-profit institution can come in and buy property during the life of a TIF. They have relied on the increment to pay off bonds, which is a significant argument. If the legal counsel comes back and says it is ridiculous to file, they shouldn't file. The timetable to file is 30-35 days. He suggested they have a fiduciary duty to file because they have an important point to make. There are not a lot of municipalities that have leaseholds. He suggested they speak with Mr. Siegel about what he feels this case would cost. This may be a first impression case regarding the TIF statute. He thought they should litigate if counsel recommends it, otherwise, they walk away. There is something going on. NU bought a large commercial building in a TIF district they helped create. The fact that NU was urging the formation of a TIF district shows a lack of good faith on their part. He said it also gives their (City) negotiators a better opportunity to resolve this. This is not a good case for NU. To the extent the City keeps it alive, publicly, the more leverage they have. Mayor Morton understood that they want to get back to Mr. Siegel. City Manager Carroll clarified that Council wants to fight the tax exemption and for Mr. Siegel to move forward.

Update on Prado DeVaul

Mr. Hill reported the oral argument was in good shape on Tuesday and that he had a productive meeting with Judge Quinlan. They believe the panel will be Burke, Wolfson, Rotolo but not Hall. He opened the door to discussion of settlement. As of that time the City owes \$13 million plus \$52,000 a month. He told plaintiff that \$6.850 million was unacceptable. He wanted to put a package on the table which would resolve Elowina and this case. Elowina is booked at \$4 million in the reserves. Plaintiff raised the demand to \$7 million. Their first response to Elowina was \$3 million and Hill responded with a couple of hundred

February 12, 2005

thousand dollars and would talk with them. There are two or three approaches to this case. Judge Horhane who is the appellate representative will not be on the case. Alderman Moran confirmed that the same attorneys have both cases. Horhane's compensation is based on settling the case rather than an outcome from the court. Mr. Hill asked for some parameters; recalled that \$6 million to settle was not acceptable to a majority of the Council. He thought a package would be good. The problem with Elowina is he does not have her medicals. She had a concussion at the time of the accident; has the same psychologist as her cousin and his diagnosis was the same as for Prado. Elowina is a slow student. The other person has mental health problems. He wanted to proceed on a package. He reported that Elowina was arrested three months ago for stealing Betty Palmer's car. Alderman Rainey asked if the Appellate Court could reduce the award. Yes they can. Mr. Hill asked for direction. Various suggestions were put forth. Alderman Newman asked if they have the ability to handle \$5 million. Mr. Stafford said the City has \$5.3 million and \$4 million for Elowina. Alderman Newman suggested offering \$4 million and give authority to go to \$5 million. \$5 million to get them to both go away. No objections were raised to that number.

At 6:57 p.m. Alderman Rainey moved that the Council convene into open session. Seconded by Tisdahl. Motion carried unanimously.

Mary P. Morris,
City Clerk