

**Evanston City Council
Closed Session Minutes
Aldermanic Library
February 28, 2005**

PRESENT: Aldermen Bernstein, Tisdahl, Rainey, Feldman, Jean-Baptiste

ABSENT: Alderman Kent

NOT PRESENT AT ROLL CALL: Aldermen Newman, Wynne and Moran

STAFF: Judith Aiello, Alan Berkowsky, Julia Carroll, Herb Hill, Frank Kaminski, Vince Jones, Gavin Morgan, Bill Stafford, Judith Witt

PRESIDING: Mayor Lorraine H. Morton

START: 6:10 p.m.

Alderman Bernstein moved that Council convene into Closed Session for the purpose of discussing matters related to litigation, collective bargaining, personnel and executive session minutes pursuant to 5ILCS Section 120/2 (c) (1) (2) (11) and (21). Seconded by Alderman Rainey.

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

Minutes

Closed session minutes from February 7 and February 12, 2005 were accepted as submitted.

Personnel

City Manager Julia Carroll presented wage and benefits recommendations for the 2005-06 budget as outlined in a memo from Human Resources Director Judith Witt. She reported firefighters had ratified a proposed contract at a 3.75% wage increase for two years. (Alderman Moran was present at this time.) The net cost to the city of changes is \$229,078.

Alderman Rainey asked how many city employees live in Evanston. Her purpose was the mantra of affordable housing groups that more affordable housing is needed, because employees cannot afford to live here.

In response to Alderman Rainey Ms. Carroll plans during the first quarter to have the budget office allocate dollars to department budgets. She explained the salary increases were based upon negotiated contracts and what they expected firefighters to settle for.

Litigation

Ms. Carroll reported that she was asked to get information from Northwestern University on the status of leaseholds. Today she received information on leaseholds at 1800 Sherman so now they will be able to work with Cook County on leasehold taxes. She suggested they hold off on the 2004 tax objection and allow her more time to get this information verified rather than putting up a road block.

In response to Alderman Bernstein, Ms. Carroll said the City has the name, square footage, term, how much paid in taxes and rent of leaseholders. The numbers are close to the number Bill Stafford came up with \$540,000. She got \$541,235, so with the \$350,000 NU will pay, they will be close to the \$900,000 annual taxes. Alderman Bernstein asked if they are designating the amount of taxes and collecting, why not collect from NU. Ms. Carroll said they need to find out what happened in the sales agreement. Theoretically with a sale in mid-year there would be some credits given to one party. (Alderman Newman

was present at this time.) She does not know who is holding the money but knows the number they should be able to collect on these leaseholds and wanted the opportunity to discuss this further with NU.

Alderman Rainey did not think tax collection and leasehold taxes had anything to do with each other. She imagined the information Ms. Carroll got was the rent roll at the sale closing which has nothing to do with what the future holds. Whatever discussions the City had with NU about leaseholds are different. Vice President Sunshine said they would do what the law requires and she did not expect NU to do anything special for the City. She said they cannot make *nice* and opposed the suggestion.

Alderman Tisdahl urged they hold off pursuing tax collection. She had spoken with J. B. Pritzker who is a trustee and he offered to help on the leasehold tax.

Ms. Carroll saw sharing the leasehold information as a start toward cooperation. She noted under NU's charter, the property tax exemption NU applied for, the city won't be able to collect any property tax. If they want to separate the other issue on the TIF was fine. In conversations with Corporation Counsel Jack Siegel, he did not feel the City has a strong case. She was asking them to hold off on the tax exemption issue to make sure they get the right data. Alderman Jean-Baptiste noted the deadline to file was Wednesday or Thursday. Ms. Carroll said what they would miss out on was filing for taxes between November 19 and December 31, 2004.

Alderman Feldman wanted to know what taxes traditionally have been paid. \$965,000 annually. He asked why there was a discrepancy. \$541,000 plus \$350,000 did not equal \$965,000. Alderman Bernstein thought the difference was due to being a building for profit and a non-for-profit, off the tax rolls. Non-for-profits that lease would not pay the tax. If NU moved into half of the building, leaseholds would drop by half. Alderman Feldman did not favor stopping the objection to NU's tax exempt request.

Alderman Moran agreed with Alderman Tisdahl. Take one step at a time. He pointed out the tax objection involved less than a month and a half. To wade into the adversarial well for 40 days worth of taxes as opposed to pursuing the opportunity to advance on the leasehold tax was a poor bet.

Alderman Newman pointed out that NU has never hesitated to sue the City; sued the City in 1987 regarding the hotel taxes on the Allen Center; sued on the utility tax and the North East Historic District. NU made a public statement that they were going to pay the leasehold taxes and the only reason they gave the leaseholders list was to pass the buck to the City to collect them. NU filed for tax relief. What is the crime in the City filing an objection to that. The City has an interest to protect because this is a TIF district. He could not see why they cannot have constructive conversations with NU at the same time. A letter went out that day to residents on Orrington Avenue to keep their lights on. They are doing that in the interest of the community. He said the City has a major stake here; asked why the City was being timid about expressing an objection. The City is not doing anything wrong. While there have been lawsuits, there has been cooperation between the university and the City.

Ms. Carroll said the objection they are filing is for taxes they won't win based on NU's charter. Mr. Siegel wanted to pursue the TIF. 1st Assistant Corporation Counsel Herb Hill said filing the objection to the exemption was a boot strapping second position because the charter has been before the Supreme Court twice. That was put in, with the first position the TIF, but there is no case law. Alderman Newman noted that state statute grants authority to the City to create a TIF district which anticipates that bondholders have to be paid. Somebody will have to interpret this as there are few places that have TIF districts. He thought the objection could be mild and that somebody cannot come in and wipe out the intent of the legislature in having a TIF to redevelop blighted areas. They don't believe a non-for-profit can take away their statutory rights. NU has argued the City was trying to take away their charter rights.

Mr. Carroll said her job was to bring up new information which they did not have a week ago, and we now have a connection with the county assessor's office. Last time they talked they had no information.

Alderman Newman said the City has possessed information for years on the amount of leasehold taxes that were owed. The City is in the same position it has been in for the last 15 years. The county does nothing.

He asked the remedy if these people don't pay their leasehold taxes. Alderman Rainey said there is no remedy. He recalled they knew that when Arthur Anderson and Kraft were at BIRL.

Mr. Hill said since NU has turned over their rent roll, which they have not done in the past, the possibility is they can speak to them, and maybe, collect the taxes. The City does not know what NU will do for the City at this point. He knows the history. He thought there is a possibility of discussions with Vice President Sunshine now that they know what the taxes is that are built into the leases and how NU can work with the City to have those taxes paid. Will the lawsuit cause NU to go off in a pique? Alderman Rainey said that Vice President Sunshine went on record in the press saying he would not do what Mr. Hill was suggesting. Mr. Hill noted that Sunshine has given them information that he said he would not do before.

Alderman Jean-Baptiste asked if they can file in three days and include reliance on the TIF. Is the window to file the tax objection gone. Mr. Hill said they could do separate litigation. They are balancing 5-6 weeks of tax or the possibility of getting more cooperation from NU. Alderman Jean-Baptiste asked when they could bring action. Mr. Hill said they could bring action at anytime. When next year's taxes come they can be challenged. At risk are taxes from November 19 to December 31. Those would be challenged specifically with the TIF argument and the charter of NU. They could hold off in anticipation that NU would work with the City to get them collected.

Alderman Jean-Baptiste asked what the expectation or outcome they want. Ms. Carroll said she was trying to get NU to make the City whole during this near future period and get payment in lieu of taxes beyond that time. She was thinking about what happens beyond 2008 when the TIF ends which needs to be negotiated. She did not want to disrespect the Council's position but saw no hurry to challenge the TIF. Alderman Jean-Baptiste suggested they give the manager three months, then see if they are making any progress. If they aren't they can litigate. The manager brings a fresh perspective to the table.

Alderman Wynne shared Alderman Newman's view. She would prefer not to lose again; wanted to see the manager have the opportunity to work with NU and then pursue the TIF where they have a tolerable claim.

Alderman Bernstein said Ms. Carroll is a person of good will and the only one who does not have a history of dealing with university. His concern with not filing now for the 40 days, and they go to 2006 to file for 2005, or to litigate, there is a history of not taking any action. He thought the only possible redress is the TIF and that won't stop them from negotiating, so long as negotiating is in their best interest. He liked the fact that they were trying to get the trustees involved, because there are people of good will on the board of trustees. He reiterated they cannot predict the future, only look to the past to determine the likelihood of future activities. An agreement written in stone and signed by Judge Aspen says NU would come to the City and discuss their land needs. His concern was giving up a portion of the year that sets a precedent for the future.

Alderman Feldman saw the Council censoring itself instead of doing what it is obligated to do. NU engaged in the most aggressive act that he has seen in his 18 years on Council. The City turns around and says "don't" or "please don't" NU won't like it. He said there is difference between doing what one should do, which is to take care of the best interests of the city and a hostile act. Standing up for what is right is not a hostile act. If he was NU and he looked at the city and they did not file, he would say they were fools. He said they have to do what they have to do, establish the city's position and have the city manager do what she has done. All the City is doing is what they are supposed to do, what citizens expect which is to protest an aggressive act, which literally pulled money out of the pockets of the school districts. Whatever they can get is wonderful. He did not want to do something because NU did something, but to keep in mind what good strategy is. What has NU ever given the city that if the city does something wrong, they will stop? He urged they continue to do what they should do, file that the City objects to their actions regarding the TIF; have the city manager at the same time try to get collection on the leasehold tax; pursue whatever negotiations to make the city whole and get a payment in lieu of taxes.

Alderman Jean-Baptiste urged they fight but give the manager an opportunity in the next 90 days to pursue NU.

Alderman Tisdahl asked for a complete list of NU trustees and addresses. This will be provided.

Alderman Newman said he does not know tax law but wanted to see a real, sustained effort to collect the leasehold taxes; find ways to get NU's cooperation. He noted they signed the Consent Decree with NU and said they would have a citizen committee. Two citizens were appointed and have been asking for weeks and months to have a meeting with the university. The university's answer is they were too busy until April. He did not think that showed good faith. When the city complied with the Consent Decree they called a meeting of that committee immediately. He thought the idea of negotiating a payment in lieu of taxes was not something NU would give up, but what ought to be pursued, is the hotel tax on visitors to the Allen Center. This would not be a dollar out of NU's pockets. The City ought to negotiate with NU to collect the hotel tax which has nothing to do with the charter. NU does not want to compromise their charter in any way; don't want to set any precedents.

Alderman Jean-Baptiste said there was no precedent being established here if they don't object to the property tax. He thought they could make a commitment to try and negotiate something.

Mr. Hill said the Wagner/Mather cases were filed in separate years. That same precedent would apply here. If they get an opinion that the taxes are not in jeopardy by taking no action now for 2005, Jack Siegel should not proceed with the objection; they would try this cooperative effort and after a period of time if that fails, Jack Siegel should go ahead full bore with litigation.

Alderman Feldman said they either file an objection because it is the right thing to do and if they forego the objection it must be for a good reason. Council took a vote to file or not to file. Three voted to file. Ms. Carroll would speak to Jack Siegel the next day and call everybody after that conversation.

Prado DeVaul vs. City

Mr. Hill reported they are at \$9 million and the city is at \$5 million on settlement. He has not pursued discussion with them since. He will try to negotiate; said they don't have to be successful on all of the oral arguments. He was disappointed with the first two arguments: proximate cause and willful and wanton which were not the strongest arguments, but they finished big. The Reda (mental health issue) was successful and the audio tape was considered to be prejudicial enough to get a new trial. He will begin discussions with De Franco (plaintiff's attorney) within the week. He was looking for input from Council on what amount they want him to negotiate to. He has spoken with four or five aldermen who were there, but did not get consensus that the Reda argument was strong for the City.

Alderman Newman said he would advise the plaintiff's to seriously consider settling for \$4 million, because one justice will vote for the City, Another justice, Justice Wilson was concerned about the mental health records not coming in. Their counsel admitted the hearsay argument against the tape going in was not a good argument. He was thinking with there being \$26,000 in specials, that they have stumbled into a lottery win and whether they want to give the entire lottery win, because they get zero if the City prevails. He said this is a \$300-400,000 case. Knowing they have \$26,000 in specials and that the medical records may come in the next time around, if he were their attorney, \$4 million on the table looked better than \$300,000. He thought they should have a face-to-face negotiation noting that two justices have strong concerns about the medical records. He asked the specials on the second case. Mr. Hill said on the second case Elowina claimed the same mental problems but does not have extensive mental/medical records. Mr. Hill stated the City has offered \$5 million to settle both cases. Alderman Newman said to stay there. Mr. Hill said \$7 million and \$2 million are within the budget. He asked if he should negotiate a settlement above the \$5 million. No.

Police Report

Chief Kaminski noted for the past several years they have had a strategic plan to deal with drug activity. On Wednesday night, March 9 they will participate in Operation Triple Play with the county sheriff. He will fax the names of about 28 defendants, a cross section of gang members who are street level people. Alderman Jean-Baptiste has asked when they do these operations, have they tried to get those who bring drugs in. Chief Kaminski said after the operation, he will report back the results of these investigations and

that it affects all levels. The strategy is varied. They try to keep these people fragmented and off base; have come back with parole checks. Alderman Rainey commented on a recent drug bust behind Target.

At 7:13 p.m. Alderman Bernstein moved that the Council convene into open session and recess. Seconded by Alderman Rainey Motion carried unanimously.

Mary P. Morris,
City Clerk