

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, January 10, 2005**

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

ABSENT: Aldermen Feldman and Kent

NOT PRESENT Alderman Wynne

AT ROLL CALL:

STAFF: Judith Aiello, Herb Hill, Doug Gaynor, Vince Jones, Gavin Morgan, Elke Purze

PRESIDING: Mayor Lorraine H. Morton

START: 6:12 p.m.

Alderman Tisdahl moved that Council convene into Closed Session for the purpose of discussing matters related to security, risk management, litigation and closed session minutes pursuant to 5ILCS Section 120/2 (c), (8), (11), (12) and (21). Seconded by Alderman Rainey.

Roll call. Voting aye – Newman, Jean-Baptiste, Wynne, Bernstein, Moran, Tisdahl, Rainey. Voting nay – none. Motion carried. (7-0)

Minutes

Closed Session minutes of December 13, 2004 were approved without change.

Real Estate – 1800 Sherman Avenue

Interim City manager Judith Aiello distributed a status letter from Jack Siegel regarding this property. Mr. Siegel was to address the feasibility of some legal and tax issues. Staff has talked with Cook County representatives regarding taxes and will continue that research. Mr. Siegel's letter focused on the creation of the Research Park and the 1800 Sherman building which was not part of the Research Park but part of a TIF. Because it was the first building to be built within the TIF it was considered the economic engine and carried things forward until the rest of the TIF was up and running. Mr. Siegel summarized what he believes was the intent and as such, believes, that some legal action could be filed that would clarify the issues. There is nothing between NU and the City or in the Research Park documents that was specific regarding NU's role with property. Staff knew the BIRL building was going to be the university's but there was no discussion about additional buildings.

First Assistant Corporation Counsel Herb Hill stated the essence of what Mr. Siegel wrote was that NU could purchase this land and no authority from the City could prevent NU from buying land within the city. Mr. Siegel was semi-trapped by earlier opinions on land use which have said that university uses are not limited to the university district as long as what the university proposes to do is consistent with underlying zoning in the any district it is in. In 1993 the City's Zoning Ordinance was extensively revised. Based upon that revision the City's approach would be that the University's uses are limited to the university districts. An example contrary to that, was the Vineyard. An office, is an office, is an office. Why should a university office be treated differently than a private office?

The focus of his opinion deals with what the city can do with respect to the tax exempt status of NU and the tax exempt status of this property; how best can the City attempt to and eventually collect real estate taxes from this property. The tax exempt status of NU is based upon a charter and will not be changed. They will look into that. There have been two Supreme Court opinions, one in the 1890s and another in the 1900s with respect to the university's charter, a contract that no legislative body can change. Mr. Siegel's position is "estoppel." The City and NU in 1983-85 created a TIF district. The City and NU were partners in the Research Park. NU made a commitment as a member of TOPCORP and NUERP to develop downtown.

Central aspects of the TIF and the Research Park were that properties generate tax dollars. NU has made representations to the City which the City relied upon. This property will be taxable for the life of the Research Park, while not expressed, was implied in forming the master plan, the Statement of Understanding and joining TOPCORP. Based upon that, Mr. Siegel believes the City can attempt to have a declaratory judgment to interpret the history as a basis for the life of the Research Park, that the property must stay on the tax rolls until 2010 because the City relied on NU as a partner in the Research Park. That is Mr. Siegel's theory and he wishes to proceed. Before going ahead, there is always a possibility that the City could present their belief in this to NU. Council needs to decide whether to proceed with litigation and the linchpin of that litigation, probably after discussions with NU. If NU wanted to do what it said it wanted to do, all that would have to be done is to file the action, agree to the order, and the City would have payments through 2010. If NU disagrees they would have litigation.

Mr. Hill reported that proper individuals have been identified at the county to obtain all the paperwork for placement of leasehold taxes on that property. An individual at the county is assigned to deal with NU, however the City needs leases from NU to obtain leasehold taxes. When the City gets the leases, they can be taken to the county where the pin numbers are developed.

Ms. Aiello stated that part of the problem is the time delay on the lease hold taxes. One solution is legislation that would accelerate the collection of leasehold taxes. Other communities would join Evanston in that effort.

Another approach that Mr. Hill thought of was the City is a Home Rule unit of government and as such can impose taxes. He was thinking of developing a lease hold tax on lease holds in tax-exempt properties and the tax would be abated to the extent that real estate taxes were paid so it would not be double taxation. It is a theory and has not been done anywhere. There is no doubt the City can pass Home Rule taxes, but what kind of tax could they pass to trap this lost revenue. The tax does not have to be on the value of the property, and could be a percentage of the annual gross rental. It is an easy tax to identify the dollar amount, but collection is something else to work on. Relying on the statement of understanding and the concept of estoppel, Mr. Siegel could have a lawsuit ready in three weeks.

Mayor Morton asked the final date of the TIF and if there was one parcel at the time of the creation of the TIF? Mr. Hill said at that time there were separate parcels. NU owned one parcel and made land available to the City, only on the condition that it be used for certain purposes. The University agreed with the concept of what the land would be used for. Mr. Hill said at the time of the TIF there were separate pin numbers that were consolidated to become 1800 Sherman and since then more pin numbers assigned. Ms. Aiello recalled the land was made available for the Buck/Irvine development. After that, they started the Research Park concept and created the TIF. Then the Carley Group was going to be the master developer for the park; came and asked to build the first building. Council agreed to negotiate a land sale for 1800 to them. Mayor Morton wondered if they would be vulnerable if the land was separated differently at the time of the TIF from the present. Ms. Aiello did not think so because at the time it was used for the Farmer's Market, so a portion was vacant and a portion was NU's print shop. Mr. Siegel negotiated the sale of 1800 to the Carley Group.

Mr. Hill said they were not relying on land ownership 20 years ago but on the statement of understanding which resulted in the Research Park and the City and NU abiding by the concept of keeping property on the tax rolls. The purchase of 1800 Sherman by NU is inconsistent with that. Mr. Siegel would not say this is a sure winner, but a good interpretation to go forward. It is a viable, good faith approach. Ms. Aiello will supply the end date of the TIF.

Alderman Bernstein suggested they communicate with NU that taking this property off the tax rolls has an impact; the first time NU ever acknowledged that. NU's math is wrong. \$2.2 million is not enough. First, go to NU and tell them this is not enough; the City needs the money. He thought NU had opened the door; he was not saying they could not buy the property. They can. Morally and legally, the City supported the Research Park for years for no real benefit and a large part of those funds were generated by 1800 Sherman. This has been the economic engine for the downtown TIF 11. Give NU the opportunity to make the City whole for five years. Beyond that the City has no control.

Alderman Rainey asked if Alderman Bernstein was born yesterday. She said the concept of the development of the Research Park was that all the property was to be owned by three parties. One was the City, another NU, and somebody else. The agreement in the statement of Understanding was that NU and City would contribute their property to RPI for development. She asked if the City bought that property. No. Ms. Aiello stated that 1800 Sherman was not in the Research Park but in the TIF. Alderman Rainey understood that all property going from the City to the bigger picture was part of the statement of understanding; noted that many people in the community were shocked by this.

Alderman Newman explained that the City's loss, due to this purchase by NU, is \$5 million. NU does not understand what is going on with the TIF. TIF moneys are going to pay off money that was borrowed. Alderman Bernstein reiterated that NU has acknowledged that by taking land off the tax rolls it impacts the City and never did that before. Alderman Bernstein said that neighbors now understand the shortfall will come out of their pockets and they have to go to NU and ask them to pay \$5 million. He thought in the long run the schools would lose more than the City. He emphasized going to NU, appreciating their generous offer and asking for \$5 million.

Mr. Hill suggested they could do a set up in which NU guarantees to make the shortfall in taxes that the lease holders refuse to pay. That would give NU the incentive to make its lessees pay the taxes. 60% of the property that will be leased out. The City needs NU to help the City get the leasehold taxes. NU has not given the City the leases, so they have no mechanism to work with. The City wants NU to do that and to amend their leases.

Alderman Newman referred to a letter in the *Evanston Review* in which the writer stated Council has to act in protection of the interests of the community. First they file a lawsuit to put NU on notice. Unless they have a lawsuit to defend the City has nothing. He recalled when the Mather tried to take the Wagner off the tax rolls. The City sued them and won. NU's position is that there is a minimal effect and they have compensated the City/Schools while the actual effect is much greater. There has been a complete lack of responsibility in helping the City collect leasehold taxes. NU is presenting that they City/Schools will receive \$600,000 a year something that has never happened on a building NU owns. The best example is BIRL where from 1984 to the present, the City is out all that leasehold money. He suggested that Alderman Bernstein negotiate with NU.

Alderman Jean-Baptiste understood the City would have more leverage if they filed a lawsuit, but if there is a possibility of resolution without litigation should be explored. All believe the City should get the money but it is a question of how they go about that. He suggested the City write a letter that lays out the basis of the claim legally and in violation of the TIF agreement. Based on NU's response they would go forward. The letter can be published in the *Evanston Review*. He thought the City Manager was going to write a letter stating Council's view. A stern statement that is published would help them as a first step.

Alderman Tisdahl said she did not want to beg NU but wanted to talk with NU before initiating a lawsuit noting that taxpayers will pay for it.

Alderman Wynne agreed with Alderman Jean-Baptiste that they send a letter with a 30-day offer. Alderman Newman stated losses to the City need to be explained to NU. Mayor Morton said what is owed the City is dependent on the date the TIF ends and that NU will pay the 2005 taxes in the spring. Alderman Jean-Baptiste thought the number could be worked out. Alderman Wynne wanted to follow up on Mr. Hill's suggestion and recommended that be worked on. She thought eventually NU could thwart the City by filling the building with their offices. There are many leasehold taxes not being paid in the City and there was no reason not to move forward on a parallel track. Mr. Hill said they are doing research on taxes and hoping by the next Council meeting to have more information. Mayor Morton clarified the tax Mr. Hill suggested would apply to any non-profit organization. Alderman Wynne noted that one is an immediate issue—at the end of the TIF the City falls off the cliff. The City needs to put something in place to capture revenue. Mr. Hill said the idea was so simple that they are trying to see what is wrong with it. Alderman Newman said that eventually the lease hold taxes they would collect would be for the schools. Mr. Hill

noted any leasehold taxes paid would be abated, so there would not be double taxation. Mr. Hill said they are studying varying approaches.

Alderman Moran said there is more work to be done with NU in relation to their contribution to the City and School districts. He saw no purpose in labeling an effort on behalf of the City/School Districts to make little progress with respect to what they said they would commit to over this three year period. He had grave doubts about the lawsuit; had not read Mr. Siegel's letter. He thought they have a real problem if people are serious about suing NU over this. He suspected there were serious holes in the theory and did not want to spend fees and costs on more "circuses and balloons" as Al McGuire would say between the City and the University. He saw real problems with Mr. Hill's theory and predicted they would soon hear from John Stroger and others about his theory on what can be done under Home Rule. He suspected it would be pre-empted. He recommended they meet with the university. If the letter says anything other than the City wants to meet with NU and resolve differences, it is destined for rejection. According to the premise, the City files a lawsuit and finishes it so the next Council may or may not be happy with the result. He suggested they try to negotiate because the door has been opened. The fact they made this offer means NU is willing to acknowledge a loss to the City and School districts. If NU concedes there is a loss, give what has been lost.

Alderman Bernstein asked all to reflect back when the City tried to negotiate an agreement with NU on the lawsuit. On the first round some were willing to settle for no money. At the time he spoke about what NU might do in the future was based on what they did in the past. NU never did this before; never gave a penny. He was not going to rush into a lawsuit that is "iffy" because the City cannot afford it. In the short term, they have to say thanks for the offer, but NU, your math is wrong. It has been acknowledged to be a problem to the City and not to the school districts for the next five years. The schools had no expectations of anything, while the City had an expectation of \$5 million. Ask them to double their entree and give to the City. If they want to take property off the tax rolls the City cannot stop them. He did not care whether they write a letter or send somebody to negotiate but they have to get across the idea that the City appreciates the overture; knew it was done for P.R. purposes. It showed the pro NU people what NU is like.

Alderman Tisdahl suggested they not tell NU not to give to the schools. Alderman Bernstein said in the short term school districts are getting a windfall. Alderman Tisdahl strongly disagreed with not giving money to the school districts; said Council would be viewed as idiotic if they urged no money for the school districts.

Alderman Newman said they did not denigrate the City's legal rights when the City negotiated with NU. He said this is a lawsuit where the City is protecting the City's rights and its \$5 million. The alternative is nothing. If they spend \$50,000 on a 20% chance to get \$5 million is a good investment. The purpose of the committee that was part of the settlement with NU was to discuss land acquisition. NU did not act in good faith there and did not consider the impact of this purchase on the TIF district and the City. He referred to the Mather case where they went to tax court and got \$300-400,000 in taxes in perpetuity. He argued that sometimes they have to spend money; agreed they should write and talk to NU. NU has taken something that everybody will have to pay for. NU has not hesitated to sue the City when it was in their interest and is not blown away by having to litigate on their own behalf.

There was consensus to send a letter. Mr. Hill would speak with Mr. Siegel and have the letter ready for the Friday packet.

Township Litigation

The Council met with Mr. Hoover, attorney for Sharon Eckersall, Township Assessor, who was instructed to try and settle. Mr. Hoover offered \$5,000 to settle and awaits a response on the offer. The maximum settlement trustees authorized is \$25,000.

Quadri vs. City

Mr. Hill said the Council authorized \$300,000 to settle this case. The federal litigation is resolved. Attorney's Burns and Bobb who represented the police officers are not satisfied with their compensation. Herb Hill was also named in the lawsuit. The City has asked them to send hours/fee schedules. Any time

they put in to collect legal fees is not the responsibility of the City. These attorneys believe the City has an obligation to pay. Within four weeks they should have a smaller number.

Kahn vs. City

Mr. Hill reported a pretrial was set for the next day but due to the plaintiff not having all the papers that was postponed.

Turf Care vs. City

Mr. Hill reported that the City has been in litigation for the past five years with Turf Care a contracting firm that did projects in the City in 1999 in various parks. Eventually because of those projects, Turf Care was rejected as a responsible bidder on a contract in 2001 or 2003. The litigation concerned the quality of work done in the parks. Turf Care sued the City for retaining funds. The matter has been resolved. The City will pay Turf Care for work done that was withheld. There is about \$15,000 of work to be done on the project to correct some of their mistakes and to complete it. That work would be paid for 50/50 by the City and Turf Care. The City is holding \$7,500 of Turf Care's money on that work. The City Council found Turf Care not a responsible bidder. This order will give Turf Care the ability after 4-1/2 years to perform limited work such as landscaping, landscaping maintenance, site preparation, tree clearing, tree, shrub and flower planting, fencing and maintenance. It does not involve work that they did not do in a satisfactory manner. Turf Care has agreed to these terms.

Solazano vs. City

Mr. Hill explained that Solazano's trial will be the end of the month. The demand is \$175,000. He is a burglar caught by police and served a three year sentence for the burglaries. He got out of jail burglarized again and is in jail currently. He has a defense attorney in the federal court. The police did nothing wrong. The attorney contacted the City to try and settle and the City offered \$1,500 to settle.

Potential litigation – Sledding Hill

Alderman Rainey asked that the hill either be shut down or supervised because people are out of control there. In one afternoon there were four injuries. When people are out of control there is total chaos. There was discussion of the conditions at the hill. Alderman Wynne suggested a sign "sled at your own risk" similar to beach signs. Mr. Hill said people are sledding down the back and sides. Regarding legal liability, the City is in the strongest legal posture because the hill is closed and people are on notice that sledding there is dangerous. The City should not lose in litigation but could still be sued. Alderman Rainey said this situation is terrifying; suggested the City have somebody there or shut it down. Alderman Wynne advised setting up a snow fence. The snow fence is torn down. Alderman Newman suggested they have a park person out there. Mayor Morton suggested the hill be terraced so they cannot sled down it.

Parks/Forestry and Recreation Director Doug Gaynor described people using the hill, sledding and skiing all over the place. Staff discussed having somebody there from 7:00 a.m. to midnight and clear it at 11:00 p.m. The Park ranger clears the park at 11:00 and announces that unless people leave, they will be locked in. People walk in and use the park well after 11:00 p.m. None of the injured people were residents.

Mr. Hill stated that the police chief suggested reducing the number of people by enforcing the parking ban. Alderman Bernstein suggested they build a toboggan slide, similar to Cook County. Mr. Gaynor said they could make it into a sledding/toboggan facility. Alderman Rainey noted the hill used to be that. Mr. Gaynor said they need staff to deal with sledding/tobogganing and it is difficult to retain staff or have them on call. He thought they needed four people. Alderman Rainey recalled when the hill was used and it was highly supervised. When it did not snow, snow was made. There were bumper stickers that said "ski Evanston."

Alderman Wynne said the middle slope is very steep and is not safe for skiing or sledding. She thought supervising the hill would be better. Alderman Newman said if it is communicated that this is a ski hill, they have to make it safe.

Ms. Aiello said there are many options so in the short run and asked what did Council want to do. Legally everything is covered. Do they want to go beyond and save people from injury? Mr. Gaynor said in the immediate situation the left and right hills are okay for sledding, but not the middle hill. Gaynor will have a

ranger there if Council desires and will limit parking. Mayor Morton asked if Council wanted a policy that the ski hill be fixed. Mr. Hill said the park ranger can monitor and prevent people from going down the center hill and the back. Ms. Aiello noted the snow fencing needs to be mended and bales of hay put out. Ms. Aiello confirmed that they would put in additional snow fencing on the center hill, have the ranger there to keep people off the center and back and police will backup the ranger. There will be temporary no parking on the back.

Ms. Aiello informed Council that the CTA Traffic Manager notified police that a control panel at Lee Street EL and the tracks were positioned to cause the northbound and southbound trains to collide. Due to alert engineers on the trains who saw the track switch the trains were stopped. They don't believe it was anything other than vandals. The chief learned from the CTA there was a similar situation near O'Hare but the guy who did it was caught. Chief Kaminski has contacted the Department of Homeland Security because of two incidents in one week.

At 7:27 p.m. Alderman Rainey moved that the Council convene into open session and recess. Seconded by Jean-Baptiste. Motion carried unanimously.

Mary P. Morris,
City Clerk