

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, January 24, 2005**

PRESENT: Aldermen Bernstein, Moran, Tisdahl, Rainey, Feldman and Newman

NOT PRESENT

AT ROLL CALL: Aldermen Jean-Baptiste and Wynne

ABSENT: Alderman Kent

STAFF: Judith Aiello, Arthur Alterson, Julia Carroll, Herb Hill, Vince Jones, Gavin Morgan, Bill Stafford, Jim Wolinski

GUEST: Jack Siegel, Corporation Counsel

PRESIDING: Mayor Lorraine H. Morton

START: 6:05 p.m.

Alderman Tisdahl moved that Council convene into Closed Session for the purpose of discussing matters related to litigation pursuant to 5ILCS Section 120/2 (c) (1) (11) (21). Seconded by Rainey.

Roll call. Voting aye – Bernstein, Moran, Tisdahl, Rainey, Feldman, and Newman. Voting nay – none.
Motion carried. (6-0)

Minutes:

Closed Session minutes of January 10, 2005 were accepted without change.

City Manager Julia Carroll said they would discuss potential litigation regarding 1800 Sherman Avenue. Jack Siegel and Herb Hill were the co-team on the draft of a letter, regarding requests of Council to appeal to the University. Based upon the prior closed session, 1st Assistant Corporation Counsel Herb Hill, Assistant City Manager Judy Aiello and Finance Director Bill Stafford called Jack Siegel and gave him their understanding of the objectives and wishes of the Council concerning the letter to NU. Mr. Siegel was present to go over the letter and get direction from the Council.

Mr. Siegel understood that Council wished to follow-up on his previous correspondence which was an overview, Ms. Aiello's memo and other staff input. He also had outlined possible legal avenues to pursue. Conversations with staff indicated that Council wanted something clear indicating Council was unhappy with the university's decision and to say they were sorry it had come to this and tell them possible ways to proceed. (Alderman Jean-Baptiste was present at this time.) He tried to set forth not only the immediate problems but put it in perspective as to what was once a sunny relationship that had gone sour and hope that when the historic district litigation was settled, that might smooth the way for a more cooperative approach. He believed what he had written was factual. Privileged & Confidential should be struck. The draft was addressed to the Chairman of the Board of trustees. He noted that most of their dealings have been with Mr. Sunshine. He suggested, perhaps it was best starting with President Bienen and Vice President Sunshine.

Mayor Morton recalled that Council asked him to consult a tax attorney about the leasehold tax and what legal recourse the City has. Mr. Siegel did not check on the leasehold issue. He said that historically, collection of leasehold taxes have been unsuccessful. It a matter for the assessor and Cook County who are tax collectors. Legally, any non-tax paying institution is liable for leasehold taxes so Northwestern University would be liable for them. The problem is there is no way to know how long the leases will last and no guarantee that collection will be vigorously pursued. Mr. Hill said the problem with the leasehold tax is there is nothing to put a lien on if taxes are not paid so the force of collection is weak. There are no

cases where there has been a foreclosure due to failure to pay the leasehold tax. Staff has been in contact with the county and had spoken with the proper individuals to have leasehold taxes implemented. The County will issue a pin number to the leasehold and perhaps do an evaluation. The County is not vigorous acting in collecting the tax and has nobody to collect those taxes for Evanston.

Alderman Feldman thought it was a good letter and asked if there were any teeth in the concept of litigation. Mr. Siegel said he could not be optimistic about the outcome. There are two basic legal arguments. One is the estoppel argument based on the original memorandum of understanding which was in concert with the creation of a tax increment financing district. The basis for a TIF is the perpetuation of the tax base. To the extent that properties are removed from the base, they undermine the City who issued \$31 million in GO bonds with \$27 million outstanding. Generally there is a year to 18 months before taxes become payable to pay bonds. Those who were there when the Research Park was developed know this was a joint effort by the University and the City to help the university create BIRL and the Research Park. Over the years the plan has been modified with a higher proportion of residential and commercial property. This property was in the TIF district and the whole concept of the Research Park was a joint effort and, absent that, the City would not have issued \$31 million in bonds. He thought there was some sort of equitable tribute to be paid.

Alderman Newman said if the City does nothing and walks away, they get nothing. He would not include the sentence that says the university has a right to purchase property. Alderman Newman said NU has represented to the City and other taxing bodies that they will get \$600,000 in leasehold taxes. Their track record shows the City has gotten nothing from the BIRL building. The \$600,000 is questionable and that needs to be addressed in the letter. At the time, former Alderman Nelson said not to worry, the City would get leasehold taxes from BIRL but it never happened. (Alderman Wynne was present at this time.)

Mr. Hill said that Mr. Siegel's letter had a reference to the leasehold tax which was not extensive. They could add a reference to the unsuccessful collection of the leasehold tax if Council wished. Alderman Rainey mentioned a letter that said the university would not make these taxes available which he had not seen. Alderman Rainey said that the letter said leasehold taxes are collected by the county, so it is between the leaseholder and the county, NU has nothing to with it. She thought NU could have leasehold taxes billed to them and specifically take a portion representing the tax and pay the county.

Alderman Bernstein supported a statement on leasehold, since they don't know the contractual relationship between NU and tenants and don't know if there was consideration of leasehold taxes, and if there is not, tenants will not voluntarily pay additional money. It was clear there was no lienable interest in leasehold. Mr. Siegel was aware of that and took that into account.

Mr. Siegel said another legal aspect is that he directed Arthur Alterson and Jim Wolinski not to issue any permits but conceded the City cannot keep NU out (remodeling the building) He gave two theories to litigate regarding the 1993 zoning ordinance and university districts and the role of the City in the Research Park.

Alderman Moran liked the letter but did not want to send it. He thought they were getting lost and were upset because NU bought 1800 Sherman. They aren't really talking about leasehold taxes. He thought to go into litigation based on the two theories would put them on thin ice. He saw no contractual commitment or any overriding precept that says NU could not buy that building. He said the question was how they will interface with the university on this and related issues. Will they do it before a state or federal judge. He contended if they are dissatisfied, rather than mailing this letter, that a group call them, tell NU they are mad about this purchase and why and what are they going to do in the future. How is this relationship going to be either permanently destroyed or fostered? He suggested doing anything short of that would be short sighted, expensive, unproductive and was really skipping over the major issue. What kind of relationship will the City have with NU. He asked what about the next property NU buys? Will the City sue? He would say something else rather than suing. At minimum they should pursue an open discussion with NU to see what can or cannot be accomplished. They can always litigate, but there needs to be a better way. If the idea of sending the letter is to mollify feelings in the community that this was a bad thing for the university to do, okay, but he asked them to be more real and talk with them first.

Alderman Feldman said he has heard that speech for 15-20 years; that Council has made a career of communicating the City's discomfort with NU's behavior. This is walk into a room, sit down and listen to what NU has to say. He was not averse to doing that if the City has something other than to grovel at that meeting. If they go in as equals with strength, dignity and something to put on the table that does not sell out the community, something NU is interested in or afraid of, that is a different story. Whoever goes there has to know what they have and be willing to use it. He said NU has watched every tape and read every piece written that's in the community. NU is complicit in not being able to get leasehold taxes. They have owned a building for years where their tenants have not paid leasehold taxes and never uttered a word of protest about it. He said that people are literally stealing from the community and they sit by without the slightest bit of angst. Instead of regret and without a sense of responsibility, they have done this for years.

Alderman Jean-Baptiste said it made sense to sit at the table and consider each other's interests. NU seeks to protect its interests. If the City goes to NU what is the expectation. Is it a better relationship with them and when they walk away with a better relationship does that translate into a retreat from this action. Does it translate into a stay of this pattern or that NU would decide not to leverage their power to continue to buy. He would like to see a citizen/institution monthly forum where they come together to address their issues. With the inequality of power that exists and the Council as representative of residents, NU will move to do what they have to do in their best interests and not in consideration of the City's interest. Because he comes from a different perspective in confronting power, he believes they have a responsibility to respond to their constituents. He has heard no one say that it was a good thing. People ask what they can do and people are awaiting a response. Legally NU had the right to buy this building, but not morally. The letter touches on many issues people are thinking about regarding this purchase. Even if any one is a friend of NU, nobody has constituents that say this is a good thing. What do they do about it, as protectors of citizen's interests. Minimally he recommended they send something out so people know Council responded that the purchase was not good. He was called and told NU was giving money to the City and then told they bought 1800 Sherman. He suggested they set up a process to dialogue with NU; wanted to see a better day. He thought they were in a worse position since the purchase of the building with their constituents and NU. Council has said nothing, constituents are upset and they have to respond.

Alderman Newman said that NU hopes Council will walk away and look for people who will believe what they say. NU looks at the long-term. He thought NU thought the taxing bodies would see only the short-term and not think about the long-term. The history shows on the 1993 zoning meetings the university did not attend many meetings when the T1 and T2 districts were created. NU came to only one meeting and voiced no objections. The then vice president was intent on working within the zoning ordinance; left in 1997. There was a handshake agreement with NU that they would swap land in the Research Park and the City would get square foot for square foot. It did not happen and when it did NU wanted additional consideration so they held the City up. The handshake agreement was no good. They had agreed to put land in the Research Park on the tax rolls. The way the purchase of 1800 Sherman was presented to the community was that leasehold taxes would be paid. They also don't want to admit they have problems on campus and blame the City. They tried to expand the landfill and ran into resistance from students and faculty and so they walked away from it. NU has surface parking lots all over and has to do what the City has done, build up. They don't want to pay for parking garages, so they are telling people they have to solve their land problems. He noted that when the lawsuit was settled, a big point was to have a committee to discuss issues. A committee was set up and they tried to meet. Before anything was done in the U1 and U areas and before the university did anything about land acquisition it would be discussed. The committee is open to anyone who wants to come. NU got around the committee, technically, because 1800 is in a B district. He said NU has some friends on the Council, and if serious, they would have talked to those friends. Even the friends were not trusted. NU is looking for what they can get, which is special treatment from the City and want people to promote their agenda. It is never unproductive to talk. Alderman Rainey asked for instances where talking to them was productive. Alderman Newman said they discussed the land swap. Six years ago they talked about the football team. When Mr. Sunshine arrived at NU, Alderman Newman told him there was land available. NU has to have land where administrators can walk to the campus. There were all types of things discussed. He thought development in the Research Park was controlled by NU from 1991-96. The City waited for development to occur and lost millions in taxes when the property was off the tax rolls.

Alderman Moran asked if Alderman Newman was on the Citizen/NU committee and had he ever asked for a meeting. Alderman Newman said there was a September meeting and another one was scheduled. They discussed some zoning change on a planned development of over 25 units, and the extent that affected the U1 district. Alderman Moran asked if there were any discussion about NU buying property. Alderman Newman said the only time they meet is when the City calls for a meeting. There is a rumor that the Transportation Center is failing. They will put NU's space problems on the agenda.

Alderman Tisdahl asked if NU collects the leasehold tax and was that legal. Mr. Siegel said they don't know what the leases provide. She liked the letter and thought they should have dialogue.

Alderman Feldman remembered a productive moment was when NU changed its mind not to support former vice president Ilanfeldt and told the City that they would support other uses in the Research Park. Some Council members opposed that but it passed and opened the way for retail. Vice president Fischer did that. When Mr. Sunshine was reminded of the handshake, he smiled and said that things change. He did not care if there was an agreement. He was concerned about the view that the public should know this Council should say something about the issue of 1800 Sherman. Two people spoke about it and everybody else was silent. NU clearly heard that nobody cares.

Alderman Rainey said this was not an isolated incident. They should send the letter or something like it and open up the contact. Make the letter public and send it to President Bienen and Board of Trustees because they might not know about what is going on. On the leasehold tax, they haven't acted on the leases or reduced the triple net leases by the amount of the tax and been told to wait until they get a tax bill. She advised anybody who needs a private office now to rent there. (Mr. Siegel left the meeting at that time.)

City Manager Julia Carroll remarked there was a lot of emotion and history on this and asked the consensus of Council to take a first step by sending the letter and asked if the meeting has to be with Council members or could Mr. Siegel and herself approach them. If that was not productive, they would come back and decide on the estoppel issue.

Mayor Morton reported meeting with President Bienen and Vice President Sunshine; asked that be included in the letter. She said no university president can act unilaterally on any big issue and must present and get approval of trustees before something can be executed. Personalities are involved due to what was said publicly about NU by some aldermen. Those cannot be erased and nobody said aldermen were wrong. Some trustees know all about this. She called Vice President Sunshine and asked that he send her another letter because neither said this was the end of negotiations. They are not getting anyplace by trying to settle this issue at this time. There may come a time when they can settle, but perhaps they were beating a dead horse.

Alderman Bernstein said there is a distinction with this action in that NU has acknowledged that their land use has tax consequences on the City's budget. He thought they have to act now. He did not think NU wanted to negotiate with the City and the only time they come to the table is when the City is in a position of strength. The lawsuit, which would have been decided in the City's favor, and they knew it, otherwise would not have come to the table. The City capitulated when NU put \$750,000 on the table. He said the City has to ask to be made whole in the short term. Then he wants to go to war, not by withholding building permits, but to talk about a fire services fee, a police services fee and about using them as a citizen without disparate treatment. The City may have to re-structure the General Fund and reduce other taxes. If NU wants to continue to take property off the tax rolls, the City needs a method by which it can be compensated. The second thing they have to do is published the letter. When he was against settling the lawsuit, he was called and spent two hours with President Bienen and it was apparent he had no clue about what Mr. Sunshine was doing. He always deferred to the trustees. There are some trustees with no knowledge. He said there is a groundswell of feeling about this purchase and they need to take advantage of this in a public relations way – people hate the immorality and arrogance of what NU did. Alderman Bernstein begged Mayor Morton the night this came out to go public and tell Northwestern University that she had helped them and loved them, but this was wrong. Alderman Bernstein suggested they must get into a position of strength; may require restructuring of the budget and they have to get into NU's pockets,

otherwise they will do the same thing again. NU's interest comes before the City's interest. It is time for the City's interest to come to the front. They pay for water like everybody else. If everybody pays for fire service, they will have to pay. With GIS they have a method to calculate square footage of buildings. Conversations won't work unless the City is in a position of strength. He has a high regard for Gene Sunshine.

Alderman Wynne said they should send the letter; thought a meeting could be helpful and it should be several Council members, Mr. Siegel and Ms. Carroll. She suggested the letter be sent to all 60 trustees, noting there are three new ones who are Evanston residents.

Alderman Newman had no problem with Ms. Carroll and Mr. Siegel meeting with NU and talking about financial matters. He recalled that NU went to court regarding the hotel tax on the Allen Center and that money would be paid only by visitors; said there is some ideological feeling about money going to the City. He noted on land issues, NU wants concessions, giveaways and the problem is it takes some time to figure out whether what NU is saying is accurate or not. It takes a while to understand what is going on. He had no concerns about discussion of financial matters. Alderman Newman said he wanted to talk to NU about increasing their police force and did not know whether it has happened.

Ms. Carroll asked if council wanted Mr. Siegel and herself to have this conversation, or as Alderman Wynne suggested, bring along some Council members. Ms. Carroll said they would send a letter. If NU did not call, she would respond. The meeting would be about the property taxes that the City is not getting, upping the ante on what they have offered and collection of leasehold taxes. She thought NU may have put out a number and may be willing to negotiate.

Mayor Morton said all of that has been said. They have tried on several occasions to get NU to make good on what they have done and NU has not done that. If they were to go to NU, rather than waiting, it may be perceived the Council has a new person on the block and they need to make sure that all of the facts are correct. Everybody has history, but they need a history of facts.

Mr. Hill referred to the Civic Center Committee and 1800 Sherman and the possibility of condemnation of that property to be used for city hall. They have spoken to some attorneys about that. He said the City has the power to condemn under the TIF and for governmental purposes. The value of the property will be as close as possible to what was paid for it. Alderman Newman did not think the 1800 Sherman option was viable. The only thing that could work would be if NU would agree to sell property behind the Hilton Hotel.

Ms. Carroll urged that the leasehold tax sentence be removed from the letter. The City's problem is enforcement which is the County's responsibility.

At 7:23 p.m. Alderman Moran moved that the Council convene into open session. Seconded by Alderman Jean-Baptiste. Motion carried unanimously.

Mary P. Morris,
City Clerk