

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, July 25, 2005**

PRESENT: Aldermen Moran, Tisdahl, Rainey, Wollin, and Bernstein

STAFF: Judith Aiello, Kathleen Brenniman, Julia Carroll, Gavin Morgan, Elke Purze

GUEST: Corporation Counsel Jack Siegel

PRESIDING: Mayor Lorraine H. Morton

START: 5:20 p.m.

Alderman Bernstein moved that Council convene into Closed Session for the purpose of discussing matters related to personnel, real estate, litigation and closed session minutes pursuant to 5ILCS Section 120/2 (c) (3) (5) (6) (11) and (21). Seconded by Alderman Moran.

Roll call. Voting aye – Moran, Tisdahl, Rainey, Wollin, and Bernstein. Voting nay – none. Motion carried. (5-0)

Minutes

Closed Session minutes of June 27, 2005 were accepted without change.

Real Estate Acquisition

City Manager Julia Carroll referred to her July 22 memo which laid out the concept of the City and the United Methodist Board of Pensions co-locating in a building on Lot 7 in the Research Park. The Methodist Board of Pensions has looked for a new site to keep their headquarters here. She had a preliminary conversation about sharing a building with General Secretary Barbara Boigegrain who was interested in pursuing the concept of a joint venture if Council was interested. (Alderman Holmes was present at this time.) The Pension Board needs a decision rather quickly and if they cannot do this plan, they will take their headquarters from Evanston, a loss of 270-300 jobs. She asked Ms. Carroll to work with Staubach, the real estate broker handling the Board's relocation efforts.

Ms. Carroll explained the Board was not leaving the state and there was no implication that people would lose jobs, but the jobs would not be in Evanston if they left. Alderman Rainey opposed the concept because a public body's space is special and did not support the concept of shared space within a space. Alderman Wollin thought it was worth exploring and an exciting location close to a parking facility. There could be separate entrances and a fire wall. She agreed the Civic Center should be a special place and this also meant the Board's property could go back on the tax rolls. She thought the lot might be too large for the City on its own. Ms. Carroll said it is a concept and a lot of architectural details needed to be worked out. Alderman Bernstein liked the idea. The Board has to leave their Ridge Avenue buildings because they could not get their space needs met there and neighbors would not accept taller buildings. He preferred a separate entrance and had some problems with shared accommodations but perhaps those could be worked out. He thought it important to move quickly and move out of the Civic Center while interest rates are still low. (Aldermen Wynne and Jean-Baptiste were present at this time.) He wanted the Board to stay in Evanston. Alderman Moran thought the concept was worth exploring. This location made the most sense for a new Civic Center if they are going to build. He totally opposed the City renting space; was not averse to sharing space with the Pension Board or another organization where economies of scale could be achieved but had no idea whether the City could reach an agreement with the Pension Board. Exploring it will help them even if they don't reach an agreement because it gives Council the opportunity to go through an exercise that gives them some good ideas about what they might do if they ultimately develop that site. They need to move on this. He noted the Civic Center building is falling apart. Alderman Tisdahl would like to explore the concept; did not mind sharing but whenever sharing she wanted to know that whatever she needed would be available. Alderman Rainey asked about the real estate broker shopping the current space market in Evanston and was the City acing out somebody else who has available space for them. Ms. Carroll stated that was why they brought the brokers to this meeting who would explain their interest in this concept. Alderman Wynne confirmed that the Pension Board anticipated growing and

would need 95,000 square feet now and 125,000 square feet in the future. She favored exploring the concept, noting that everything must be carefully written. Alderman Rainey asked what would be shared. Ms. Carroll explained that the Pension Board sometimes meets on Sundays and needs only 5,000 square feet of meeting space. They possibly could share a loading dock but there had been no architectural consultation.

Mr. Siegel asked if this is a religious organization. Mr. Carroll said this group manages pensions for the United Methodist Church and the building would be used for offices; had spoken to 1st Assistant Corporation Council Herb Hill about this. Mr. Hill told Ms. Carroll that the City could own or co-operate with the board in a joint venture or the board could lease from the City under their tax exempt provision. Marty Stern also has experience with this type of arrangement.

At this time Ms. Carroll introduced Eric Kunkel, a principal of Staubach and Barbara Boige grain, General Secretary of the Board of Pensions. Mr. Kunkel introduced Mike Sessa, a principal of Staubach. Marty Stern and Max Rubin also were present. Mr. Kunkel said they were retained to begin a strategic study and determine the board's options. Their current sites have too much space and cannot be rebuilt. About 300 parking spaces are needed. The General Board needs to own the property in order to take advantage of tax abatements. They looked at existing buildings to buy in Evanston and other suburbs and have three or four alternatives in the immediate North Shore area including O'Hare.

Ms. Boige grain reported the Pension Board will celebrate its 100th anniversary in three years; noted that United Methodism is rooted in Evanston with John Evans, founder of Northwestern University. Evanston is considered a historical site of Methodism in the United States and so they are loath to leave and have all agencies move out. Garrett Theological Seminary will stay. They love being in Evanston and how Evanston carries out its civic and cultural challenges differently than other cities do. She said this marriage has not always been smooth because of the issue of tax exempt property and that Evanston does not necessarily want more tax exempt organizations. When they found their current sites could not work for them they thought they could not re-locate here. They have looked at other suburbs but have continued discussions. Ms. Carroll has come on board and they want to continue to explore. Their staff would be thrilled if they could stay here. They were happy to be in discussion and to answer questions. Ms. Boige grain, Mr. Kunkel, Mr. Sessa, Mr. Rubin and Mr. Stern left the meeting at this time.

Election contest - Personnel

Alderman Wollin questioned whether this matter was appropriate for a closed session because the City is not a party to the suit. Mr. Siegel said the City is a party. Under the Open Meetings Act, one section allows for an adjudicatory hearing, which this is, and another is personnel, to consider the appointment or removal for appointed and elected officials. Alderman Wollin left the meeting at this time.

In response to Alderman Moran, Mr. Siegel said he was acting on behalf of the City Council as the lawyer for the City and was not advising them on the merits of the case. The City is not involved in the Circuit Court after Judge Bertucci handled the motion to dismiss the first count. The second and third two counts are alleged denials of civil rights which are Constitutional issues. The City Clerk and Canvassing Board were named defendants. Northwestern was a defendant in the Circuit Court case along with the Canvassing Board, City Clerk and County Clerk and is the only remaining defendant. NU has filed a notice to remove which has not been acted upon. Mr. Siegel said this is an election contest and Judge Bertucci ruled the City Council is the sole judge of the election pursuant to the Illinois Municipal Code. The Council acts sort of as judge and jury. He would not tell them how to rule in this matter; is available to give whatever legal advice that he can give. He noted that Mr. Means had filed forms of subpoena and has had discussions with Rick Artwick, NU counsel, who provided him with a brief which he had not read. Mr. Artwick's position is that NU is not subject to subpoena. Mr. Means thinks to the contrary. Mr. Siegel has asked Mr. Means for whatever authority he has because, if he had to make a ruling on that, it would be after Council decides whether to go ahead with a motion to dismiss. If Council asks him whether subpoenas and depositions are permissible he wants both lawyers for each side to address the issues. Assistant Corporation Counsel Elke Purze has worked preliminarily on some of these issues. He will look at the memorandum if it gets to that point and if asked would give his opinion, but does not know what it will be.

Mr. Siegel said the first order of business should be consideration of the motion to dismiss. After the election contest was filed with the City, Mr. Smith and Mr. Engelman on behalf of Alderman Wollin filed a motion to dismiss. One

of the grounds raised was that the allegations were not definite enough. Mr. Means then filed an amended contest which under practices is permissible. He spoke with Mr. Smith about that to see if he would respond because Mr. Means had filed a memorandum in support of his original petition in opposition to the motion to dismiss. Mr. Smith said he would file a motion to dismiss the amended complaint by July 29 and assumed Mr. Means would follow up with a response. He wanted to have briefs within in a short time from both sides and then Council would hear oral arguments. He recommended Council consider the motion to dismiss only after the lawyers have filed their briefs and made their arguments. If the motion is granted that ends the process. If the motion is to deny to dismiss, they would go to depositions and discovery. He explained what usually happens is they would have a hearing officer; noted the amended petition has 200 names on it and did not know how many he would get and whether Council wanted to listen to this for weeks. Generally hearing officers take evidence or take evidence with a transcript and recommendations. Council makes that decision if they decide to go forward. He said there are unique issues with this matter. Cook County keeps all the ballots in a warehouse and the practice has been that each side sends a representative to look at them. But this was not dependent upon an accurate count of ballots. Mr. Means has suggested this election was "tainted" by "purchased votes" and made allegations that certain people were not residents of a precinct.

Alderman Bernstein asked if Council went beyond the motion to dismiss, could the City get reimbursed costs from the prevailing party. Mr. Siegel was not aware of any reimbursement; said this is an expensive proposition even on the motion to dismiss because they will have to get transcripts and briefs. He spoke with both sides about the having a hearing officer on the motion to dismiss but they did not agree.

Alderman Holmes found it confusing that they go back to 2001 for documentation. Mr. Siegel said was that a fishing expedition; explained the issue that would have to be decided should this go forward is the scope of discovery. Normally in administrative hearings discovery is permissible under a law that governs state agencies. The discovery must be reasonably related to the objective sought. It is customary for lawyers to ask for everything. If they get to that point Council will have to determine if the power to depose or subpoena lies with the City Council in these proceedings and that was why he was seeking answers from the lawyers. He spoke to Mr. Artwick who told him if this goes forward he thought he could reach an accommodation with Mr. Means.

Alderman Moran said assuming they go forward and the City Council sits in judgment on the motion to dismiss, will Mr. Siegel examine grounds for possible dismissal of the petition, even if those grounds are not raised? Mr. Siegel asked whether Council wishes him to advise them and give his opinion after hearing the arguments as to whether or not the petition states the case. Alderman Moran wanted him to do that because he has been in court rooms where motions to dismiss were never filed and were granted by the judge, since they had read a pleading, saw a fatal error and did not care to wait for someone to make a move. He keeps reading the petition and asking himself, do the charges in the petition, even if proven, amount to election fraud? He saw some potential issues. Mr. Siegel will advise after he receives the briefs. There are two basic issues. Assuming they go ahead with the hearing, the burden is upon Judy Fiske to prove the allegations. The second issue, even if proven, does that prove the election was fraudulent. He has not found any cases like this and neither has Elke Purze.

Alderman Wynne asked what happens to the case in federal court if Council dismisses the case. Mr. Siegel said it would go forward based on civil rights. The federal case is only for damages for violation of Lindwall's and Fiske's Constitutional rights. The federal judge cannot remove Alderman Wollin and put Judy Fiske into office. However they don't know whether a federal judge will take the case.

Mr. Siegel said they have started setting up some simple rules that will be applicable to the hearing on the motion and any subsequent hearings if there are any. The burden is on the objector. Testimony shall be under oath and recorded. A decision will have to be made regarding scope of discovery; whether a hearing officer can be appointed and if the consent of both parties is necessary. Mr. Siegel said the motion to dismiss won't take a lot of time. They will get a briefing schedule first. Jeff Smith will file his motion to dismiss the amended election contest petition at the end of this week. He will ask Mr. Means to file his response and Jeff Smith to file his response as quickly as possible. He saw early September for a hearing at a special City Council meeting. In a court the moving party would go first, the responding party would reply and the moving party would then reply. Alderman Bernstein asked if they could require court reporters. Mr. Siegel said they would put that in and split the cost. If they decide on a hearing officer they would require the parties to split the cost. Alderman Moran asked him to define when it is acceptable to be meeting with Mr. Siegel in Closed Session and Open Session. Mr. Siegel said the Open Meetings Act covers that.

The hearing must be public. However deliberations can be in closed session. The Council's decision is final and must be made in public.

Mayor Morton asked for a motion to convene into open session and recess. At 6:28 p.m., Alderman Bernstein so moved. Seconded by Alderman Moran. Motion carried unanimously.

Mary P. Morris,
City Clerk