

CITY COUNCIL

February 10, 2004

ROLL CALL - PRESENT:

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| | Alderman Moran | Alderman Newman |
| | Alderman Tisdahl | Alderman Jean-Baptiste |
| | Alderman Rainey | Alderman Wynne |
| A Quorum was present. | Alderman Feldman | Alderman Bernstein |

NOT PRESENT

AT ROLL CALL: Aldermen Kent

ABSENT: None

PRESIDING: Mayor Lorraine H. Morton

A SPECIAL MEETING of the City Council was called to order at 6:26 p.m. in the Council Chamber by Mayor Morton.

City Clerk Mary Morris read the call dated February 6, 2004. Pursuant to City Council Rule 16.3, I hereby call for a Special City Council meeting to be held at 6:00 p.m. Tuesday, February 10 in the City Council Chamber, 2100 Ridge Avenue, Evanston. The purpose for such meeting is the matter of Northwestern University versus the City of Evanston Case No. 00C7309 United States District Court, Northern District of Illinois Eastern Division. The call was presented to the City Clerk for action in accordance with Section 16.3 of the Rules of Proceedings of the Evanston City Council and of the Open Meetings Act of the State of Illinois.

Alderman Feldman moved that Council allow Citizen Comment. Seconded by Alderman Jean-Baptiste. Motion carried.
No nays.

Citizen Comment

Dave Ellis, 1319 Grant St., spoke about the settlement of the lawsuit brought by Northwestern University against the City. He felt it was a sad day for Evanston when it gives up its zoning authority under Home Rule to a tax exempt entity because of the costs involved to proceed to resolve this dispute at whatever level is necessary. It is a sad day when the City would come to be blackmailed by the cost involved and not keep its Home Rule and zoning authority intact. Their decision will clearly set the level by which any entity can make its own zoning policies in the future. It is a bad day for the City's democratic process and the future holds little confidence that it will maintain its ability to govern independently and represent the people who pay for the services it provides. This settlement tells citizens that its future can be bought by a lawsuit or a dollar amount. If there is a vote to settle this lawsuit that Northwestern University has brought against the City and, if the City's Home Rule and Zoning authority are for sale, Northwestern should be happy to pay \$5 million annually for services that it currently receives free. In order to be a settlement there must be a real benefit to the citizens. There appears to be no net gain and this problem may occur in the future. The City did not start this litigation. If it is to be settled, do so fairly for the citizens of Evanston. This proposal gives no relief to citizens in his opinion.

Delores Holmes, 1715 McDaniel Ave., commended the City and Northwestern University for resolving this conflict. Being a person of faith, she always favors forgiveness, especially when it will benefit the whole. She believes this settlement is in the best interests of the majority of the community and thanked each alderman for being a bigger person.

Ann Dienner, 1034 Sheridan Rd., was interested in preservation efforts and would like to see that the northeast area is not decimated by exemptions of properties; also was concerned about how this might affect the future redevelopment of the Kendall College property. If developers don't have to go through regular hoops that they encounter in historic districts, this chunk (Kendall) is in peril. Council ought to support preservation as much as they can, because it is unique. Evanston has a splendid downtown but keep the neighborhoods intact.

Alderman Feldman moved that the Council approve the Consent Decree before them with respect to the lawsuit between Northwestern University and the City of Evanston. Seconded by Jean-Baptiste.

Alderman Feldman stated there was an air of solemnity about that evening and an air of significance. The Council faced an issue they have wrestled with over a long time. He hoped those voting would discuss the consent decree, the reason for their vote and it was important that they do that.

He spoke about what that night might mean. As long as he has been on Council there has been constant tension, struggle, abrasiveness and moments of cooperation in the relationship with Northwestern University and that has been less than great. That has influenced the community; defined the way the City related to NU on some issues and was responsible, in a way, where they were that evening. On day to day issues the university and City do well together with frequent discussion, communication and action between them. But on great things they fail. He hoped if this Council approved the consent decree that they will have a moment of time when they can begin to reflect on their relationship. If not, he sees this happening again and again. Not long ago in a message to Council, the Mayor indicated that she saw an era of great benefit coming to the City if Council were able to sign the consent decree. He was skeptical of that; did not believe in eras of great benefit and did not look to NU for beneficence, philanthropy or gift. He had given up on those but had not given up on responsibility, cooperation and partnership. When he speaks of partnership he was talking about the ability of all parts of the community -- the university, City and residents to begin to take ownership of each other's problems. In the past people defended their turf and rightly so. If the community feels attacked, it becomes defensive and focuses on that. Northwestern feels it must grow to remain a first-class institution and anything in its way has been looked upon with disdain and hostility. The City, representing both, is caught in the middle. The City tries, in the same moment, to defend and enhance neighborhoods and to understand and support the aspirations of a great university to develop and grow. But development and growth must be done in such a way that preserves the integrity, cohesiveness, beauty and sanctity of neighborhoods. They have to understand that and unless that happens they will be here one, five or ten years from now with the same kind of stuff continuing. He did not mean to say that a decision made that night or a decision by the university or the community would make a difference. He knew that they have to accept those values and a working relationship where everybody accepts responsibility. If this community cannot do that, it cannot happen anywhere. They have to get out of the "stuck" attitudes they have been in for a long time. That is unproductive and antithetical to all that they stand for. The energy that is wasted trying to communicate, defend the neighborhood, defend the growth of the university and defend the right of the City to make proper legislative actions, they should not do. He saw evidence of the tiniest glimmer of what might happen when the university, community and City try to work together.

Alderman Feldman noted a subcommittee of the Health & Human Services Committee is working with Alderman Newman on dealing with safety near NU, student behavior, street lighting, traffic, condition of buildings, enforcement of housing standards, etc. Good things are happening because everybody there feels they have an interest and the power to change things if they work together. That has to be the watchword from now on. They have too many important things to do in the community than spend time arguing with NU. If there is ever a city that has put on its plate high aspirations -- Evanston has and it will take all the energy and resources they have to solve these problems. Spending time, money, energy and resources, with internal arguments between people who should be working together, is stupid and they have done it too long. He was not blaming anyone and was saying that if they have any hope of dealing with the problems facing this community with the limited resources they have, that is one of the ways they can do it -- by all working together. He was waiting to see the community take ownership and to acknowledge that NU has the need to grow and develop and they should not oppose that. And for NU to understand that they cannot grow at the expense of others' dignity, sanctity, aspirations and property values. They have to find a way. He would talk about his reasons for supporting the consent decree. The City has been made whole and it was time.

Alderman Newman addressed the settlement noting it was difficult for all involved; was willing to answer virtually any question about it. He said as a sitting alderman he spends about 1/3 of his time on the downtown, 1/3 on the lakefront and 1/3 north on the Sheridan Road/Orrington/Sherman area. In his 13 years he thought they had accomplished a lot. He said that he and neighbors created the T1 and T2 districts about 11 years ago that has protected the neighborhood west of Sheridan Road from undesirable NU development. That zoning has never stopped NU from developing any property. What it was about, was residents on Orrington and streets adjacent to Sheridan Road did not want to wake up

to find out buildings were being built, but wanted the opportunity (in advance of NU taking out building permits) to be able to participate in a process and stand up for their neighborhood. The Family Institute on Library Place was the last building that went up before T1 and T2 was passed. It was a terrible thing for the neighborhood. It was always about creating a dialogue. When the Northeast Historic District came about, it was another initiative to ensure, if things were to happen west of Sheridan Road, both the City and neighbors could participate in the future of one of the best places to live in Evanston. It has been NU's policy to be able to develop parcels they own west of Sheridan Road and have the complete discretion to do so. That is what Mr. Sunshine proposed to City Council several years ago and was turned down. Council turned down any effort to go back to U1, which gives the university the right to do what they want on Sheridan Road. In terms of the Northeast Historic District they would not have it without the wonderful work of people in NEHDA who spent years putting the district together. It was put together independently of City Council because of their dedication to historic preservation in Evanston. Without them there would be no historic district. Without six members voting affirmatively, there would be no historic district. Each who voted for it was lobbied heavily, had a price to pay in their ward, and each had interest other than the 1st Ward. It was done because Council thought it was best for the City.

Alderman Newman stated during the past three years the City has been in litigation with NU. One thing always desired by Orrington Avenue residents was to be able to know NU's plans in advance and to participate before anything is done. The consent decree institutionalizes that before the City or NU do anything in the area of T1, T2 and U1, that nothing can happen without it first being discussed. If the University has any plans for those districts, those must be discussed in public with representatives of the community and the City. They would not have that without the consent decree. One thing that was discovered during the discovery process was a plan developed in 1995 by the university for Sheridan Road that the City never saw. With this consent decree something like that cannot happen again. Citizens will be involved in this important part of the City from the beginning if NU wants to do things west of Sheridan Road. That process will be institutionalized and agreed to by both parties and go on in the foreseeable future. Last August when the settlement was voted on, those opposed to it put out information. At that time he chose not to respond; would respond now and sit down with anybody and go over the facts. To those in the 1st Ward who hear that the Northeast Historic District is being dismantled by the consent decree, they need to look at the facts. The people who use the word "dismantle" no matter how well intended, are doing a disservice to the community. He said there are 375 structures in the Northeast Historic District. By NU's count they own 62 and by the City's count 56. Out of the 375 structures, 15 will be affected by the consent decree. No zoning will be affected and is where it has always been, under the purview of the City Council. Of the 15 properties affected, 14 are owned by the university and one is privately owned, so 4% of the district is affected by the consent decree. Out of those 14 properties, six are non-contributing properties. A non-contributing property does not contribute to the historic district. Those properties are the Student Health Center, 633 Emerson; Sheil Catholic Center, 2110 Sheridan Road; Foster-Walker dormitory; the Family Institute built in 1993; Student Recreation Center- Bloomquist Gymnasium and the Transportation Center built in 1999. If NU wanted to take them down and it went to Circuit Court, the Court would say those are non-contributing. When Council approved the district, he placed responsibility for this on NU and the City, on NU for not working hard enough who sent letters and this point was not made by them and was misunderstood by Council, was that structures on the Foster-Walker block had to be included in the entire tax parcel which included structures on Sheridan Road and those non-contributing buildings. Council thought they had no discretion to take them out. That turned out to be wrong. According to attorneys, the City had the authority to take the six non-contributing structures out then and now. Of the eight remaining properties, three properties are on Colfax. What people on Colfax and Orrington must understand, no matter what they are told to the contrary, is that that 619, 625 and 629 Colfax are T1 properties. There is no university use that can be done on those properties without City approval. All permitted uses are dwelling type uses and any use that is university related is a special use that requires permission of the City. Nothing changed on those properties from 1993-1999 and nothing will change unless the City is involved. For people on Colfax and Orrington he would gladly debate with anybody that that neighborhood is fully protected. Two properties are left, one at 2010 and at 2016 Sheridan Road, which are subject to a 10-year moratorium. NU cannot touch them for ten years and after that time there will be dialogue beforehand. There is also a 20-year moratorium on doing anything with the green space that they could not have gotten without this settlement, which is important to the people who live nearby. There are three structures at 619 Emerson; one is privately owned and as the result of the consent decree NU can take down those buildings. They are restricted in the Zoning Ordinance to uses permitted in a T2 district. The only permitted use is an administration type building. They don't get dormitories, fraternities, classrooms and if they want those they have to go through Council and request a special use permit. They have a historic district, except for

four properties -- 371 out of 375.

There were many problems with this case. Nobody will want to know what NU spent to get the right to do something on those four properties but they spent a lot. If anybody thinks the City did not stand up in an extraordinary way for what they believed in, they are wrong, because the City did it for four years in such a way that people who know the City would be proud of what they did. Now they are settling and going forward. Some people thought the City would get their legal fees paid if they prevailed. He invited them to talk with people who have litigated in federal court. The only way the City could have gotten its legal fees paid, would have been if the City proved that the university had a groundless, baseless suit. The fact that Judge Aspen did not grant summary judgment on the two remaining counts would make the possibility of getting fees, even if the City prevailed, virtually impossible. There were other problems. Four elected officials did not believe in this lawsuit and would've testified. If the City had gone through with the lawsuit, the City was convinced they could have won it and so was NU. It was not an easy vote for him, but as he joins the five who voted for the historic district, he was doing it because it was right for the City and time to move on. He did not think anybody had done more research on this than NEHDA. He poured his life into the suit and believed this is the way to go. Some in the 1st Ward will not think this is the way to go and some will say they have compromised the Zoning Ordinance. He thought they had not. They have stood up for the City, looked at all the circumstances related to this suit and believe this is the best thing to do. They have made the City whole. He thanked the five people that voted for the district and stood by the district. He thought they had accomplished a lot for the City.

Alderman Wynne spoke in support of the ordinance; said that Alderman Feldman spoke eloquently on what many hope is a new day in the City's relationship with Northwestern. As Alderman Newman carefully described this settlement, they have institutionalized a committee that creates permanent dialogue between NU and the community. Many people have spoken to her that a new method needed to be created to have a partnership with NU. She was pleased about that aspect. In her seven years on the Council, she thought there were efforts to support preservation and neighborhoods against encroachment; to protect what they have in Evanston and the reason people come here and cherish. She supported the Northeast Historic District, attended all the meetings; read the voluminous materials and watched the tapes. She thought it was a critical part of the preservation aspect of Evanston. Most of the 3rd Ward is contained in the Lakeshore Historic District, so she is continually asked about the process and she defends it. She was part of the negotiating team that met with Judge Mikva over the summer and supported the settlement. Others had a different viewpoint, which she respected. She thought the package they had was important and does not dismantle the Northeast Historic District. It has been maintained to a large degree and they should move forward with the consent decree. They have heard aspects of discussion about this trial. She stated that anybody who has a lawyer that tells them they will win and win costs needs to find another lawyer. Trials are always risky. She thought the City was making a wise decision to settle this. There has been discussion about what the precedent is. She thought it was the City fights to defend its ordinances, will fight hard to within three weeks before the trial and will be made whole when they know they are right. There was no question in her mind that it was the right decision to move forward and she looked forward with hope for the potential of a new day.

Alderman Bernstein said this has been the toughest decision for him and he would vote for this because it is something they must do. His mind and heart were in different places and he tried to rationalize that this decision was of his mind and not of his heart. He knew those who voted for this district did so with the best interests of the City at heart. There was no attempt to coerce or make NU come to its knees financially. One difficulty was the "fair share" issue that was parallel to the passage of the historic district, which was unfortunate. It gave people the sense that those two issues were joined and they were not. The frustration he had was that in the last three years this has become bigger than the Northeast Historic District and has been an issue of "who governs Evanston." As an old litigator who has a case about which he feels strongly, he wanted to go forward and to take the adversary to the mat and win. That was his heart talking. His head tells him that the City is in a position of strength. He had talked with people at NU and believed that going forward together they could accomplish things in Evanston that could not be accomplished individually. He said that the next day he would deliver a jar of honey, the intent being to begin a new relationship (for the benefit of the City) that includes NU. Northwestern is one of many partners with the City. He has agonized over this decision. If he was omniscient there would never be a problem and has left this dais on many occasions not knowing whether he made the right choice. He thought he was making the right choice that evening. His constituents sent him to Council not to exercise his ego but his best judgment. Given all the facts presented in the lawsuit from the choice of the jurist who will hear this case, to the method by which the judge will try this case, to things said in the media about those who will be called to testify on

behalf of this suit, it occurred to him that even if the City won at the trial stage, it would not be over. The Appellate Court would be ongoing. As a lawyer, he thought the City would have prevailed because they did nothing wrong and have every ability to do what they did. They will continue to do that. In terms of precedent setting, a lot of money changed hands. Another aspect of his intellectual decision is that they are here now in the budget process where they are faced again with raising taxes. Throughout this lawsuit there has been no clamoring to either settle or go to trial. There are people who feel that NU can do more for the City and he counts himself among them. People have talked to him about how expensive it is to live here. With his vote, he is telling NU that they are in this together. On many occasions he has said that he would like NU to be like Joe Levy. Mr. Levy was honored the prior evening; had businesses here that brought in a lot of sales tax revenue, employed residents and gave of his money for the welfare of the community. He continues to give of his time, often at the Levy Center. He called upon NU and other non-profit institutions here, if they have the ability to contribute that they use it. He said Evanston is unique in that it tries to be all things to all of the people, which is why he brought his family here. He wanted his children to grow up knowing people less fortunate than they; to be thankful that they had something others did not have and a responsibility to reach out to others. That to him is Evanston, Illinois, like no other place in the world. He thought it incumbent to citizens such as NU, Evanston Hospital and St. Francis Hospital to the extent they can, to reach out to help the City maintain the kind of Evanston that brought them here. As a litigator he did not want to lose and had a feeling that entering into a consent decree to settle a lawsuit is a loss, but the loss is overwhelmed by the benefit of being made whole. The City is getting what is equivalent to attorney's fees and a bit more, which can go into the General Fund. He did not think a precedent was created because there are few deep pockets that can go to the extent this lawsuit has cost in anguish and manpower hours. He was convinced after listening to people who know the area far better than he that there will be preservation with a small "p" meaning development west of Sheridan Road will still be controlled by this agreement. The pleasure drive that is Sheridan Road will be maintained. He would vote for the settlement on behalf of his constituents.

Roll call. Voting aye – Kent, Moran, Tisdahl, Rainey, Feldman, Newman, Jean-Baptiste, Wynne, Bernstein. Voting nay – none. Motion carried. (9-0).

Mayor Morton thanked the Council for coming to grips with this decision in such a courageous way. Some of them have taken a risk for their futures to make this decision. This has hung over their heads since the year 2000 and was a source of concern to citizens. She has always wanted this settled. To those not present at her recent the State of the City address, that was the text of her statement to the community, to do what aldermen have said that night – that they work together for the City is made up of 8.6 square miles and everything and everybody in it, including for-profits, non-profits, City-owned land and streets, whatever is within those boundaries, is the responsibility of the people on this Council. She thanked them personally for their decision and was happy that it was made. She stated that this is a new day and felt that something good would come out of this in the future. She thought those who spoke that evening had indicated a desire to work with NU with a new thrust, to let the dead past be buried, to begin anew to walk together and make decisions without suspicion undergerding actions they might take but in trust that together they can make this the best city in all aspects and a model for other cities on how a city and university can work together. She thanked each alderman.

There being no further business to come before Council, Mayor Morton asked for a motion to adjourn. The Council so moved at 7:25 p.m.

Mary P. Morris,
City Clerk

A videotape recording of this meeting has been made part of the permanent record and is available in the City Clerk's office.