

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, February 9, 2004**

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

NOT PRESENT AT
ROLL CALL: Alderman Newman, Wynne, Kent

ABSENT: None

STAFF: Judith Aiello, Maureen Barry, Roger Crum, Herb Hill, Jim Wolinski

GUESTS: Jack Siegel and Bob Markin

PRESIDING: Mayor Lorraine H. Morton

START: 5:17 p.m.

Alderman Feldman moved that the City Council convene into Closed Session to discuss matters of litigation, real estate and minutes pursuant to 5 Illinois Compiled Statutes 120/2 C (11) (5) (6) and (21). Seconded by Alderman Tisdahl.

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

Minutes:

Closed Session minutes of January 12 and January 26, 2004 were accepted without change.

Real Estate – City of Evanston vs. Adams, 1818 Dodge

Community Development Director James Wolinski said Council members received a memorandum about property at 1818 Dodge, where Mr. Adams has a rehab loan from the City for \$33,890 taken out in the late 1990s. Not long after the work was completed and the mortgage began, his wife died. Mr. Adams had large medical bills and became in arrears with the first mortgage holder, GE Capital and the City. This has been discussed several times in the past and Council gave authority to credit bid on the property. However, Gene Weiss with Starfish Corporation wishes to purchase the City's position for \$1,000 less than the City is owed which as of February 10 was \$37,904.38. Mr. Weiss is offering \$36,904.38. At this point the property is supposed to be sold the next day. Community Development and Law departments recommend that Council take this offer. It gives the City back its principal. This was a no interest loan for 20 years. Alderman Newman moved approval. Seconded by Alderman Feldman.

Alderman Moran asked if Mr. Wolinski was familiar with Starfish. No, staff has not investigated them. Alderman Moran would recommend accepting this but said there could be some issues with Starfish coming into a vulnerable situation where they can gain an advantage and may not pursue justice. He did not know whether this meant they were moving in but asked what they will get in return. Mr. Wolinski assumed that Starfish was out of the City. Alderman Rainey asked were they financial concern of some kind. Alderman Moran said they were and had come to his attention recently but not to do with this case. The situation brought to his attention was a difficult one. She wondered who they were; asked if the City was holding a deposit from Gene Weiss; how they know the sale will take place tomorrow and Gene Weiss won't renege. Mr. Wolinski stated according to attorney Ellen Szymanski the City will get an agreement signed by City Manager Roger Crum that night to Starfish by morning. Alderman Rainey was thinking the City could be left holding nothing and was hearing about a questionable reputation and practices. Even if almost right it is a problem. Alderman Moran did not know their reputation.

Alderman Newman said it was standard in real estate business not to release a lien until they have the money. The City is clouding the title if they are unable to pay and is there until there is a foreclosure. Proceeds go to the City after the first mortgage holder. Alderman Jean-Baptiste said that whatever agreement there is, is not final until they receive funds. Mr. Wolinski said that Ms. Szymanski had this agreement to protect the City from fraud. Alderman Bernstein asked Mr. Siegel if this is a property right that the City has to be bid out. Mr. Siegel responded that since the City is in the chain of title that was not necessary. The City is trying to protect its existing interest. Alderman Feldman was not aware of any kind of untoward action that could be taken. Alderman Newman said they (Starfish) would put it to the owner, make a deal and will charge a substantial amount or he will be out. Adams was going to lose the property anyway. Alderman Newman said this owner is in a terrible situation. The City is trying to get \$36,000 out of \$37,000 owed and he did not know what the bids would be.

Alderman Bernstein confirmed this property is one block north of the Morales property with a first mortgage of \$55,000. Alderman Bernstein suggested for \$90,000 the City could buy this property; asked its worth and condition. Mr. Wolinski said the last appraisal put the property's value in the \$170,000 range. Alderman Bernstein asked about buying it for affordable housing if there are sufficient funds in the Mayor's Housing Fund. Alderman Rainey thought that was the plan until Weiss came along. Alderman Newman asked why bid on it when they could get 99% of City funds back. Alderman Bernstein thought if the City could buy a single family home and sell it, they could bring in EHC or somebody. Alderman Jean-Baptiste noted it is a two flat. Mayor Morton asked if they had any names other than Weiss at Starfish. No. Alderman Newman did not think buying this property was a good idea; the City has many loans out. If the City had loaned \$80,000 and was going to lose \$75,000, Bernstein's idea would make sense, but the City is owed \$37,000, and will get \$36,000 back. He noted the City is not a property manager. He thought they have to do better on loans and understood the nature of the risk. If they owned a two flat they would have to collect rent. They would only do what Alderman Bernstein suggested if the City was going to take a huge loss on the property because there would be a financial incentive to hold onto the property. Alderman Rainey asked about giving it to EHC. Alderman Newman said if they do that then EHC will ask the City for money to rehab it and until they take it the City is financially liable. Alderman Jean-Baptiste said this two-flat has a \$55,000 mortgage, could be bought, turned around it and that money returned for affordable housing. 1st Assistant Corporation Counsel Herb Hill said if Starfish wants this property they will outbid the City if there is a profit motive in this. There is always a risk that they will do that. It is an economic decision. He noted nobody was asking for authority to bid above the second position. Alderman Rainey hoped that Alderman Moran was wrong but had a gut feeling he was right. She felt there was no assurance the City would get its money but they should try.

Alderman Feldman said the City should not be in the real estate speculation business. There are probably hundreds of times they could make deals and he asked rhetorically do they want to compete with real estate agents. The City is not about buying property so they can sell at a profit. Alderman Bernstein said they will have a conversation with the Housing Commission and the Task Force who for the past year have discussed ways to create affordable housing units. One is to create a community land trust. He noted they funded Mr. Davidson's development at \$175,000 for a single family house. George Gauthier or somebody might do something and they are in cheaply. If it in terrible condition with many violations and requires a lot of money to rehab that is different. He would not scoff at \$36,000, but there are lots of funds in the Mayor's Housing Fund that are not used. They give \$50,000 to developers who make a profit. Alderman Feldman said there will a lot of demand on that fund. Alderman Moran kind of liked Alderman Bernstein's idea but advised not to pursue it on this property. He said if part of affordable housing initiatives is to look at situations like this one, they should do their homework and understand what they would be getting involved in and if they bought tomorrow they could be in a troublesome situation.

Mayor Morton asked Mr. Wolinski the percentage of Evanston property that is considered low or moderate income. Mr. Wolinski responded that there are more than 10,000 housing units in the CDBG target areas. Mr. Siegel said there is a list in conjunction with recent legislation which provides for affordable housing in which communities are listed that don't have enough affordable housing (10%). Evanston is not on that list.

Alderman Wynne was present at this time.

Mr. Wolinski stated that currently the City is not equipped to take over property like this and be a landlord. When the Inclusionary Task Force meets with Council perhaps an agency can be set up to do this.

Alderman Rainey said she did not think those who favor purchasing some foreclosures mean for the City to own them and would not vote for that. One negative about this property is that it is probably inhabited by low/moderate income tenants and they don't want to displace such people. This is a different situation than the Morales. Alderman Newman said it would be fine with him that when the City has a bad loan to bring in George Gauthier at the beginning and talk with him about a strategy to keep property affordable. If he knows the property, he could make a proposal and they wouldn't be deciding the day before a sale. Alderman Bernstein agreed. Alderman Newman suggested that they could have him find more properties that are two months in arrears and try to work something out in advance.

Mayor Morton asked why Weiss offered \$1,000 less than is owed to the City. Mr. Hill said if the deal does not happen the next day, they have the issue of the sale proceeding. He understood the original recommendation was for the City to bid first and second. If for some reason this deal is not consummated, is their direction to protect the money by bidding in. Yes. The consensus was to accept the recommendation of staff to accept the Starfish offer of \$36,904.38. The original loan was \$33,840.41. Mayor Morton wanted to know more about Starfish.

Mr. Wolinski left the meeting at this time.

Litigation – Northwestern University versus City of Evanston

Mr. Siegel said he had sent out a memo; had received calls almost daily from Mr. Zweig wanting to know how the litigation could be settled. Then he began to get calls from Judge Mikva in Florida. Judge Aspen apparently was in contact with him and wanted Mikva to renew conversations with him about settling. This was before Judge Aspen issued his order as of last week. He has never seen an order like this in his years or practice. If he had to go to trial the first thing he would do is have it stricken.

He called Judge Mikva when he got the order who laughed and told him "now you know what a federal judge can do." There was discussion about \$500,000 offered for lighting. Alderman Bernstein politely turned it down. It was not offered to Council. It was a meeting as a gentleman he was willing to do. He told Judge Mikva it was turned down and the City was not interested. He said there had been discussions among some of them in the past, that if anything was ever settled here, that the City wanted attorney's fees paid which were close to \$700,000. Judge Mikva said if they are willing to go to \$500,000 they ought to be willing to go up \$200,000. He checked and said it was worth pursuing. The next time Howard Zweig called, Siegel asked his position on reimbursing the City for attorney's fees if they would reconsider the proposal. He said they could not reimburse attorney's fees, so Siegel said there was nothing to talk about. He and Mr. Markin were working on going to trial. Howard Zweig then got Tom Cline, NU's in-house attorney on the phone and repeated what Mikva had suggested. Apparently Mikva had talked to Sunshine, he surmised. Tom Cline said if they did not have to designate it as attorney's fees they could talk and it was something they would pursue. He did not recall who he had talked to but had thought to most Council members. The issue of paragraph 10 in the Consent Decree came up. The paragraph is about a joint press conference and press release and an agreement that no statements would be made inconsistent with that paragraph. Siegel felt from the beginning that he did not want to muzzle anybody, and did not see how they could ever get a compatible press release. He called Mikva back and said they had this conversation but paragraph 10 had to go. He said it was silly to try to muzzle legislators, and the way this was going, they will never agree. (At this time Alderman Kent was present.) Siegel had conversations that morning with Howard Zweig. He read him the memo said they were not going to have any individuals talking to anybody. He did not want to fall into that trap; was going to send the memo out to everybody so if there is interest, suggested a meeting Saturday morning. At that time he said fine and would let him know. Siegel sent the memo, and Mikva called him on Saturday and told him if his people were willing they had a deal. He called Howard Zweig that morning and asked to talk to Tom Cline, not Zweig. Mr. Siegel talked to Tom Cline that morning who asked to let him know what Council decided and gave him three phone numbers. He told him there was no meeting on Saturday; there were problems of giving notice and the nature of the item to be put on the agenda in the call for the special meeting. He dictated as bland a statement as possible. He was there and

said he would not sign any consent decree unless they told him to and wanted to eliminate paragraph 10. He also would not sign until a check is handed to him or if a wire transfer, a confirmation that it has been received. Cline and the University are sensitive that it not be said in any consent decree that NU is paying the city's legal fees. Mr. Siegel said that he could not control this and people may see through this. He was willing to say that NU has made a contribution to help Evanston. If they get back to him with this blackmail business the whole deal is off. He asked Council what they thought.

Alderman Feldman asked during these many conversations did NU say they would contribute \$700,000 to the City. Yes. It was okay with Alderman Feldman that this be called a contribution, not that NU gave a contribution to help the City out. Mr. Siegel would never tell them what to say, but the less said about it the better and agreed with Alderman Feldman.

Mayor Morton asked if he was suggesting no press conference and no joint press release. Yes, Because Mr. Siegel did not want to fight over the paragraphing. Mr. Markin said this was up the first time before Council, there were suggestions on the press release and they ran into problems then. Both said they would never agree. Mayor Morton understood NU was offering this along with the agreement that they want out so would they accept this as a press release. Both Siegel and Markin said no release and no conference. Mr. Siegel said if Council was willing to do this, somebody should make a motion to approve the consent decree in accordance with the decision made at the closed session, at the special meeting the next evening. Alderman Wynne asked if NU had agreed to remove paragraph 10. Siegel told them no deal with it. Mr. Markin said they would know before the special meeting. Siegel will call Tom Cline but would not divulge what was said in Closed Session.

Alderman Newman asked about paragraph 12. He was concerned when he read paragraph 3 in conjunction with paragraph 12. He went to the line, "this court retains jurisdiction for the purpose of enforcing this Consent Decree." He was concerned that NU may take it upon themselves, that the City's Zoning Ordinance that affects any of these properties, there's a possibility that Judge Aspen will grab on. In paragraph 3 in order to comply with it, if the City does anything related to zoning, parking, congestion, noise, siting or appearance they are obligated under this decree to discuss that matter. His concern was that matters discussed at that committee, if unresolved, would be resolved by the judge which he did not want to happen. He wanted to make sure they are clear. Mr. Siegel did not see a problem. The disputes relate only to the substance of the Consent Decree. Alderman Newman said if NU has a dispute with the City in T1 and T2 properties and are not able to resolve them, he thought this could be drafted tighter. Alderman Newman said his opinion in the Summary Judgment was to go beyond the law. He did not want the Judge to imply that he would resolve all disputes between Evanston and NU. He wants it back in the state courts where it belongs. Mr. Siegel agreed. Mr. Siegel said that paragraph 3 says they will meet if they have problems. Alderman Moran said in paragraph 3 it says "there will be a committee who will meet and make good faith efforts to resolve issues." Paragraph 12 says "disputes will be submitted under the Consent Decree if the committee has met and made a good faith effort in addressing those issues." He said there would not be a resolution. Alderman Bernstein read the second sentence of paragraph 12: "If the parties are unable to reach agreement, the issue may be submitted by either Party to the Court of resolution." Mr. Siegel noted that is an issue of the Consent Decree. Alderman Moran said under the Consent Decree, action taken and none of what he was talking about was covered. Alderman Newman said that was a reasonable interpretation. He was concerned about an aggressive judge who wants to be the savior of NU and has an affiliation with NU which was a problem with this lawsuit. Mr. Siegel stated Judge Aspen is not on NU's faculty. Alderman Moran pointed out that there is no way that Judge Aspen would want to be an arbiter of disputes. Alderman Newman said he has to deal with disputes that are brought by NU and the City and it must be as clear as possible that he is not resolving all disputes in paragraph 3 and his jurisdiction is limited to preservation issues of excluded properties. That is the only thing that is covered according to Mr. Siegel. Alderman Bernstein said a portion of the Consent Decree, is that the City meet with NU, but all zoning ...He read from paragraph 3. "Such issues shall include, but not be limited to, zoning, congestion, parking, noise, siting and appearance. This committee shall also meet, as necessary, and as early as practicable, as part of a good faith effort to resolve issues between the parties that may arise from time to time which relate to matters the City may be contemplating that would impact the University's current T1 and T2 District properties and the University's current U1 District properties, such as binding appearance review and parking issues." He said when they discussed this, he spoke about "favored nation status." In effect NU

is getting something nobody else has. His concern when this is related which contemplates discussing in good faith whatever the City proposes to do with any NU properties and cannot reach resolution, then, the consent decree is included. Alderman Moran said that was not a reasonable reading of the two paragraphs. Alderman Moran said the decree does not say that every issue that ever arises between the City and NU.

Alderman Jean-Baptiste said they have differences in interpretation of these paragraphs. Mr. Siegel was saying this is limited. He asked if anybody had any suggestion for a sentence that could clarify. Mr. Markin suggested looking at paragraph 12 and remove the second sentence: "If the parties are unable to reach agreement, the issue may be submitted by either Party to the Court for resolution." The last sentence which is standard in a consent decree is: "Jurisdiction is retained by this Court for the purpose of enforcing this Consent Decree." He said parties are still obligated to try and resolve things in good faith. Alderman Newman thought that change was good and that paragraph 3 was needed. It needs to be made explicit that if the parties are unable to resolve an issue, that issue is beyond the Consent Decree. Alderman Rainey said it should clarify the issues on which is no agreement beyond the consent decree. Alderman Newman said unresolved issues in paragraph 3 are not enforced by Judge Aspen.

Alderman Bernstein said he was thinking about settling since NU is willing to make the City whole financially. But at the same time, he did not know if he wanted to give NU the ability to compel the City to negotiate. He said this long ago that the City was creating a special category for NU. He knows the agreement says they have to talk about all the properties that NU owns. He has no problem with that but in the consent decree he wants to limit any dispute in clear language, but this is only to facilitate an ongoing relationship with the university. It is not to give them a second shot at zoning. He did not think they were entitled to that through this lawsuit.

Mr. Siegel stated the language was clear. The consent decree requires them to set up this committee, the idea being that over the years there have been efforts. He recalled that Alderman Feldman met with NU, then NU insisted the meetings be private. This committee is open to the public and this was trying to promote what the City Council tried to do unsuccessfully several years ago. Mr. Markin recalled in discovery, they found out about a 1995 plan that NU had for west of Sheridan Road which was never shared with anybody and that NU admitted they never shared it with anybody. This was designed to bring things out in the open.

Alderman Feldman said during negotiations which brought about the consent decree a value was held for a long time. It was to try and find a mechanism to force NU to discuss their plans and the impact of those plans on the surrounding community. That's what the City wanted NU to do -- to discuss and resolve issues so that people in the neighborhood would not feel they were being pushed around and not paid attention to. It did not mean this committee would make decisions for the City and would not compel Council to do anything. It would be helpful to Council to know that issues had been worked out and it was possible that issues worked out could be antithetical to Council. He could not tell how much authority that this committee has. Alderman Moran stated the committee has no binding authority. Mr. Siegel said it says what they (committee) are supposed to do.

Alderman Jean-Baptiste said that it states the court retains jurisdiction in paragraph 12 for the purpose of enforcing the consent decree. They could add in parenthesis the reiteration they needed to make as to what they understand the court has jurisdiction over, say, excluded properties. Alderman Moran added included properties. Alderman Jean-Baptiste said if there is discomfort, some see the ambiguity and others don't. He suggested they add as relates to excluded properties.

Alderman Newman spoke about how he viewed the legal ramifications of paragraph 3. Say the City wanted to change zoning in T2 and make it more restrictive. If the Council never brings that proposal to this committee, he believed the university could go to Judge Aspen and say the City was obligated to bring a zoning or parking matter to this committee to discuss and did not do it. He thought it would stop the City from passing an ordinance if they did not comply. Alderman Newman said the parties are under an obligation before anything is done on parking and zoning to go to this committee and have them meet. After the committee meets options are open and this applies to NU too. If the City tried to pass something without going to the committee, Alderman Moran said then the City has violated the Consent Decree.

Alderman Newman stated the City cannot pass a change in zoning or parking without going through this committee. 1st Assistant Corporation Counsel Herb Hill suggested why not exclude paragraph 3 from number 12 dispute. Alderman Moran pointed out then they are giving up something that is beneficial to both parties. Mr. Hill would eliminate paragraph 3 from the dispute section of paragraph 12. They still have an effective paragraph but they don't have to go to court to argue whether it is satisfied. There was disagreement about this suggestion. Alderman Tisdahl suggested they send all on the committee e-mails -- everything on zoning. Drown them with information.

Mr. Siegel said the genesis of this paragraph was the desire to have a continuing dialogue between the City and NU about anything NU would be do about their properties and the neighbors. He regarded it as a committee meeting which does not bind anybody. Alderman Wynne sat through those discussions and she knew that was the purpose. She posed, say NU does not want to meet. Alderman Moran said under paragraph 12 they would have to come to a meeting. Alderman Feldman said if NU does not come to a meeting nothing will happen. They will go to a meeting and say they disagree but that is not what they want. What they want is for people to go eagerly to a meeting to try and resolve issues with the community, the City and NU to get along better but it requires willingness of the parties, not parties who are dragged by a consent decree into meetings. Dialogue must take place in open meetings with good faith.

Mayor Morton asked how community was defined. Mr. Siegel thought the ward alderman appointed the neighbors. Mr. Siegel said they could say, "The jurisdiction is retained by this court for the purpose of enforcing this consent decree, except with respect to meetings pursuant to paragraph 3." Alderman Newman supported paragraph 3 and said they would live with this for 30-50 years through subsequent federal judges and needed to get it right. If they don't get it right they are done because Judge Aspen will decide whatever he wants in terms of construing this. The City's only remedy is to go to the 7th Circuit Court which will be expensive and a waste of time. He wanted it clear that the judge who wanted to interject himself will not have that authority. In paragraph 3, if disputes are unresolved, that is not considered a dispute for him to get involved in. He was not trying to gum up the works. Alderman Newman suggested that unresolved disputes related to parking, noise, zoning, siting and appearance not be decided by a federal judge.

Mr. Siegel, Mr. Markin, Aldermen Moran, Newman, Bernstein, Feldman, Rainey, Wynne and Jean-Baptiste discussed and suggested language for paragraphs 3 and 12, and their meaning under the consent decree.

Mr. Markin suggested they add at the end of paragraph 3 the following language: "Nothing in this paragraph shall require the committee to reach agreement on the issues discussed." All agreed to eliminate sentence two in paragraph 12 and to eliminate Paragraph 10.

Alderman Kent asked for clarification on the sentence at the top of page four. "The committee shall meet on a regular basis, or as needed, in meetings open to the public;" He wanted clarification on "as needed." Some said it would not be needed. Alderman Moran said if they say regularly, that has to be defined. He said that NU and neighbors have needed to meet for a long time and by the time they meet the neighbors they are in crises. Alderman Moran thought the term "as needed" related to having a meeting. Alderman Feldman pointed out in the middle of the paragraph it says: "This committee shall also meet, as necessary, and as early as practicable, as part of a good faith effort to resolve issues." Alderman Feldman asked if there were concerns about having the meetings open and convenient to the public. It was pointed out they would have to agree on that.

Alderman Newman asked about release of minutes and was concerned about releasing them while Judge Aspen has the case due to comments about him. Mr. Siegel said 18-months under the statute, then the tape can be destroyed. Mr. Siegel said minutes have to be reviewed every six months and hoped they are.

Mr. Siegel confirmed they agreed on the language changes and would not sign the consent decree until he or Mr. Crum have the check in hand. Alderman Bernstein asked actual legal costs for this case. Mr. Hill recalled that number included projected costs so it is under \$700,000.

Alderman Rainey found voting for this one of the most difficult things for her because she supports historic preservation. She and others felt by accepting the settlement and almost three quarters of a million dollars that the City has been made whole to some extent financially. Given the original recommendation of the three who negotiated a settlement and having been convinced that it is a good settlement, and the way the judge is ruling on the way the trial is to be conducted, there has always been uncertainty. If they were to win they would not recoup their fees. Based on those facts, she moved they accept the settlement. Seconded by Alderman Wynne.

Mayor Morton asked for a voice vote. Motion carried unanimously.

Mayor Morton asked how to handle this in open session. Mr. Siegel said that any member of Council could make a motion to approve the consent decree. Alderman Rainey thought they would have to allow citizen comment. Alderman Newman said citizens could speak that evening. Mayor Morton said the agenda had been distributed with nothing about citizen comment. Mr. Siegel stated when they call a special meeting, only the item under consideration is listed and it was up to Council what they wanted to do about citizens speaking.

Mr. Siegel said the suggested changes would be made to the consent decree and distributed to Council the next evening. The \$700,000 contribution is not mentioned in the consent decree. Alderman Newman said the public has a right to comment and the rest of them have an obligation to mention the \$700,000. The community needs to know this offer is different from the original settlement. Mr. Siegel suggested they say that NU has made a voluntary contribution to the City of \$700,000 and noted that apparently everybody knows about it. There was discussion of how to handle the situation. Mr. Siegel stated the motion should be to approve the consent decree. Alderman Rainey noted after a motion is made, discussion takes place and suggested that Alderman Feldman as senior alderman make the motion

Alderman Newman said he sees that NU is paying the City's fees. Mayor Morton said in Mr. Siegel's memo there was no designation for these fees. Alderman Newman noted after 30 years NU made a donation to the City of \$700,000 which is equivalent to the City's legal fees and if they had gone to trial and won could not have gotten them paid. Mayor Morton asked what that would do to the new relationship with NU. Alderman Jean-Baptiste thought it unrealistic to muzzle people and that hopefully they will have meetings and can agree not to blast anybody and stay within a framework. Alderman Newman said each alderman has his/her way of conducting business. Alderman Rainey said those who have done a turnaround are in a vulnerable position because Alderman Bernstein convinced them to change their minds. Alderman Bernstein said it was the thing to do.

There being no further business, at 7:14 p.m., Alderman Rainey moved that they reconvene into open session and recess. Seconded by Alderman Wynne. Motion carried. No nays.

Mary P. Morris,
City Clerk