

**Evanston City Council
Closed Session
Aldermanic Library
August 12, 2002**

PRESENT: Aldermen Moran, Engelman, Rainey, Feldman, Newman, Jean-Baptiste, Bernstein

NOT PRESENT AT

ROLL CALL: Aldermen Kent and Wynne

ABSENT: None

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

GUEST: Jack Siegel, Altheimer & Gray

PRESIDING: Mayor Morton

START: 5:40 p.m.

Alderman Feldman moved that City Council convene into Closed Session to discuss matters of real estate, litigation and Minutes pursuant to 5 ILCS 120/2 (c) (5)(6)(11) and (21). Seconded by Alderman Jean-Baptiste.

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

Minutes: Closed Session minutes of July 22, 2002 were accepted without change.

Alderman Newman asked if the gag order applied to minutes. They would not be when released.

Real estate sale/purchase – 1881 Oak Avenue

Assistant City Manager Judith Aiello referred to her August 8 memo in which she outlined a proposal from the attorney for Glenlake Capital Management who requested an amendment to the April 1999 redevelopment agreement with the City that would eliminate the city's right to repurchase 1881 Oak Avenue. The proposed amendment would provide, if the property is sold, that the city and developer share any profits above the developer's estimated costs of \$900,000. She explained that on completing 1880 Oak that Glenlake bought 1881 Oak in February 2000. In 2001 the City granted Glenlake an extension until 2002 to begin construction. In April 2002, Glenlake came before the EDC and asked for an additional extension citing the high office vacancy rate as the reason why an extension was warranted. The EDC voted not to grant the extension and to exercise the option to repurchase the parcel for the amount the city received. The EDC also asked the Plan Commission to review the site and determine it's best use. The Plan Commission recommended the site for office use; a second option was mixed use office/residential. The developer states that the property is valued in excess of \$3 million if developed as residential but as an office building would not generate that land value. Glenlake wants a deal and has a foundation permit, which constitutes construction. Staff recommends that the developer's request not be granted.

At this time Alderman Kent was present.

Alderman Newman expressed concern that they are land banking in the Research Park, which costs the city millions, not in cost of land, but because land is vacant taxes are not generated. The city loses during the wait and if tied up in litigation. He recommended that they get the property moving; noted that Rozak was interested in housing and there may be others. He asked how long can the attorneys tie up the City? Can the city get Glenlake out in a reasonable time and exercise the right to repurchase? Ms. Aiello stated that Glenlake has received a foundation permit and technically has met the terms and can sit for six months. She said that the Plan Commission, relating to the TIF, recommended not rushing to development and that this should be a high quality development. He agreed on high quality development but suggested they need to resolve this so as

not to lose taxes for three-four years. Alderman Newman understood Kardel took a risk and has an aggressive reputation. Alderman Moran said they are legal. Alderman Newman asked, if they don't build in six months, could they tie up the city?

First Assistant Corporation Herb Hill said they have not reviewed the particulars but did not believe they could tie the city up in court. Alderman Rainey suggested telling Glenlake that the city does not care to amend the agreement and put them on notice if they don't have drawings the city will exercise its right to repurchase. Alderman Newman wanted to be clear that at the end of six months the city has the option to repurchase. Alderman Rainey found the permit a blatant strategy to retain control of the property. Alderman Newman said if staff is correct, the city can exercise the right to repurchase for \$400,000. Ms. Aiello indicated that will be confirmed for Council. Ms. Aiello reported because they requested the lot back, which was barricaded last Saturday, but people coming to the Farmer's Market removed the barricades. She said Glenlake gave notice that they want the lot by August 18 so they can start construction August 30. The City has not removed the parking meters. Alderman Engelman asked about the need for parking. Ms. Aiello indicated the need for parking after the Sherman Avenue garage is demolished. There are other options. Alderman Engelman hoped they don't burn any bridges agreeing that they don't want to give up rights.

Alderman Newman suggested a game is being played with the city. Glenlake took out construction permit knowing there is no market for office space. Glenlake has demanded the city remove concrete on the lot. There is a lease agreement on the lot. They are asking the parking lot be returned in its original condition and it is in the contract to remove the concrete. Alderman Bernstein suggested, if asked, take it out, as it is part of contract. Alderman Rainey said that is part of an ongoing program. The city pays them rent each month.

Foreclosure – 1408 Brown Avenue

Community Development Director James Wolinski reported that Ira and Betty Pettius had received a rehab loan from the city for \$30,000 and the city was in the third position. Former Alderman Drummer had supported the Pettius loan. The Ocwen Federal Bank has a foreclosure sale on the property scheduled for August 16. \$405,000 is owed on a \$375,000 purchase. The bank will accept \$335,000. Beneficial Finance was owed \$47,000 and has written off the loan. The City would get about \$7,000, if Beneficial Finance releases their lien. Alderman Rainey asked when the rehab loan was made had the Pettiuses filed for bankruptcy? No. Mr. Wolinski stated at the time the city was diligent in examining their credit and they met standards. She asked if it was a title transfer and have they paid anything? It was a title transfer with amortizing interest. Alderman Jean-Baptiste thought that the city has no choice and hoped the sale goes through.

At this time Alderman Wynne was present at this time.

Alderman Rainey asked the name of the buyer? Alderman Newman asked if this money is from the revolving CD fund? Yes. He did not understand why the city is in such a rotten position; wanted to see an appraisal. Alderman Jean-Baptiste suggested the process be reviewed. Alderman Newman stated it is not fair to give loans when the city is in the 2nd or 3rd position. Mr. Wolinski explained that the city is always in a position of risk because these people cannot get financing at a bank. Alderman Newman said it is different when helping somebody out or possibly the city should not have made the loan. Mr. Wolinski will provide information. Alderman Feldman related that the City gets one of these after another and it looks as though the city loses money; wanted to see how these loans are disposed of over time. Mr. Wolinski will provide documentation. Alderman Rainey recalled in 1997 asking for an accounting of paybacks on loans and saw shocking delinquencies; did not know why the city does title transfer loans. City Manager Roger Crum stated staff will bring the history on loans and documents. Alderman Newman respected former Alderman Drummer but noted an alderman cannot ask to get somebody out of a mess. Alderman Jean-Baptiste said that staff has to look at hard numbers. Alderman Newman suggested the CD Committee be given parameters on loans.

Status of Keefe-Shea Litigation

Mr. Siegel reported meeting with the attorney to work out a deal; said that Keefe Shea is interested in doing the job and wants to rebid. Keefe Shea will get back to him with numbers. He talked to DiPaolo's attorney who is filing a petition to the Supreme Court. He will meet with both attorneys. Alderman Newman said calculations on the numbers was needed. People cannot get repairs to parkways, cubs. If they can do this at a reasonable cost do it. Time has gotten out of hand. Alderman Newman moved that Mr. Siegel be authorized to look at the numbers.

Litigation – Castenada vs. Sharon Eckersall & Evanston Township

Mr. Siegel reported that Ignacio Castenada had filed a three-count lawsuit. The first count charges wrongful discharge (Sharon Eckersall & the Township), second count charges defamation of character (Sharon Eckersall) and the third count

invasion of privacy (Sharon Eckersall). The thrust of this suit is an allegation that Ms. Eckersall hired her son and paid him, when someone else did the work. The payment was approved on the bills list. Mr. Siegel saw a possible conflict and asked for authority to recommend that Ms. Eckersall get her own lawyer on the second and third counts. He thought he could get rid of count one. Mayor Morton noted not hiring her son was no different than staff who hire their children at the city. Alderman Rainey pointed out the allegation is that her son was paid for time that he did not work. Mr. Crum stated the authority was based on legal principle. Mr. Siegel said his legal obligation is to defend the township but that does not mean he has to defend when there is a conflict. Alderman Newman suggested adopting the NWMC policy on when city will pay legal fees. Mr. Siegel was not suggesting that Ms. Eckersall did anything wrong. Alderman Rainey commented that the township will pay an attorney but it won't be Mr. Siegel. Mr. Siegel added that they would need to approve the attorney she hires. Alderman Rainey commented that every time they discuss the assessor they are told they have no oversight authority. Mr. Siegel stated that trustees have no control over the assessor's employees. Alderman Rainey questioned the extent of their financial obligations? Mr. Siegel stated that state statute says fund the office. There was brief discussion about coterminous townships being abolished. Alderman Newman asked where funds come from to pay attorneys? The Township.

Litigation – NU vs. City of Evanston

Mr. Siegel reported on the mediation. After NU made its proposal, Judge Mikva asked Mr. Siegel if he knew about the Drummer proposal? He explained that former Alderman Drummer's proposal was not authorized by Council. Judge Mikva went back to NU, then came up with NU's proposal, which they brought to Council. It was beyond what he was able to mediate. He will call NU and Judge Mikva tomorrow. Judge Aspen wants this settled in the worst way. He said that NU's presentation was not fair and mediation was not effective here. The city entered mediation to accommodate the judge.

Mr. Siegel said the presentation made reference to exhibits (second page of Mr. Crum's memo) which they did not see. The request was that the city apply for rezoning. That was faxed to Howard Zweig. He did not think the city was prepared to demolish the zoning ordinance. Both Mr. Siegel and Mr. Crum do not recommend this. He had hoped that Judge Mikva would come up with a solution; had no clue on how to settle. Mr. Siegel said the first suggestion by attorney Campbell was to set up a mechanism to dialogue. He said the city was pleased to talk and suggested they dismiss the lawsuit. He was not surprised or disappointed, was reporting. Bob Markin sat in with Mr. Siegel.

Alderman Feldman asked if Judge Mikva knew what this is about. Mr. Siegel thought he did not understand zoning but understood the legal issues. Mr. Siegel said that Judge Mikva did not endorse this, wanted to have a proposal to take back. Alderman Jean-Baptiste was not sure what a legislative body has to do to settle. Mr. Siegel said that NU's proposal on the legislative process was to go jointly before the Plan Commission as was done with Foster/Maple. Alderman Feldman pointed out that would mean that Council agrees to reverse its position as a result of all the processes they went through for a fire truck. They would be selling willingness to be complicit in that type of situation. Alderman Feldman suggested that Mr. Siegel go back, discuss dropping the suit and the city would drop its claim for fees. Alderman Newman suggested if NU wants the city to be a co-applicant to the Plan Commission, that they be a co-sponsor with the city to the state on their charter. He knows many, who for money, would like to have a special use; mentioned the Bears at Dyche Stadium; that each ward is vulnerable to big property owners who want to auction off zoning and developers who pay big dollars. Neighbors cannot hear what NU has proposed which is the ultimate in selling the city down the river. NU is in last place in the lawsuit. Alderman Rainey suggested asking for summary judgement. Mr. Siegel stated they knew this was nonsense going in and the city is under a gag order. There was further discussion among Aldermen Moran, Newman, Rainey and Mr. Crum about zoning. Mr. Crum noted the judge was watching – animus is on the table.

Mr. Siegel will report that he has met with Council and the proposal was not appropriate. If they want to continue a dialogue they can do that when the suit is over. Alderman Jean-Baptiste reiterated that the legislative process couldn't accommodate them. Alderman Newman rejected selling zoning. Alderman Bernstein was perturbed by process. His sense was that they may have to win in appellate court but cannot dignify this offer; have the judge rule and he will rule against us. Mr. Siegel noted the judge wants this settled and urged them not to blame Judge Mikva.

At 6:55 p.m. Alderman Bernstein moved to convene into open session and recess. Seconded by Alderman Rainey. Motion carried unanimously.

Mary P. Morris,
City Clerk

