

**MINUTES**  
**ADVISORY COMMITTEE**  
**Monday, May 5, 2008**  
**City Hall, Room 604**  
**6:30 p.m.**

Members Present: Council President Chris Wery, Council Vice-President Tom DeWane, Ald. John VanderLeest, Ald. Tom Weber, Ald. Celestine Jeffreys, Ald. Andy Nicholson

Members Excused: Ald. Jerry Wiezbiskie

Others Present: Ald. Amy Kocha, Ald. Dan Piton, Atty. Allison Swanson, Doug Daul, Scott Matejov, Members of the Media

**1. Call to order.**

The meeting was called to order at 6:30 p.m. by Council President, Chris Wery. All members were present with the exception of Ald. Wiezbiskie, who was excused.

**2. Approval of the agenda.**

Motion by Ald. DeWane, second by Ald. Nicholson to approve the agenda. Motion carried.

**3. Approval of the minutes of the March 27, 2008 Advisory Committee meeting.**

Motion made by Ald. Weber, second by Ald. DeWane to approve the minutes of the March 27, 2008 meeting of the Advisory Committee as submitted. Motion carried.

**4. Request by Ald. Vanderleest that all future contracts for redevelopment be subject to final approval by the Common Council prior to final contract approval.**

Ald. Vanderleest stated that the City needs to be more careful on redevelopment contracts and need to make sure that what is approved by Council is in fact the final agreement and there not be any additional changes. He said this would require that the city vote on the final document and there would not be an opportunity for changes after Council votes on the contract. He stated that this can be forwarded to the City Attorney's office to understand the Council's wishes on this matter, adding that this is a policy change on how we handle future contracts for redevelopment. He needs direction from Atty. Swanson on whether an ordinance would be needed.

Atty. Swanson said an ordinance is not needed and said contracts have been brought to Council in the past. She stated that this would slow down the process sometimes from 30 to approximately 60 days. Comments made from Ald.

Vanderleest and Ald. DeWane that after what happened with the Younkers deal, they want to be certain that the city is going to decrease the likelihood of future liability, lawsuits or confusion and wants to make sure that the city is on firm legal ground relative to contract or language standpoint. They stated that they are not concerned with slowing down the process and said staff may need to bring contracts to Council sooner.

Ald. Weber inquired what is the standard municipal protocol for the process of term sheets being turned into contracts? Are contracts approved on the basis of the term sheet, adding that if this is the case, he said we may want to consider not being too reactionary. He would like to know how this will affect the process and said if Council reviews entire contracts, that will be a lot of paper and could extend the Council meetings beyond the wee hours of the morning. Atty. Swanson responded that she has not researched this but believes that there is a little of both and said we are a little different in terms of what our debate is in terms of the first term sheet would possibly get changed or modified in the process, you almost have to do a term sheet then a contract and the contract would have to come back two different times as opposed to be able to do that in one meeting. She said there are too many devilish details once you get into the longer body of the contract and said the city's process is getting a sense from Council if they agree on the larger parameters such as financing and what the project looks like. Ald. Weber said he would be in favor of having a process that nails down a time such as contracts have to be reviewed against the term sheet and those issues are addressed in there by Council or some department. He stated that if Council receives a contract in their packet on Saturday or Monday, they will not have time to absorb and discuss the contract on Tuesday. He stated that he cannot support the motion as it is.

Motion made by Ald. DeWane, second by Ald. Vanderleest that all future contracts for redevelopment be subject to final approval by the Common Council prior to final contract approval.

Chairman Wery inquired how difficult would it be when the term sheet is presented, to have a summary of the final contract. Atty. Swanson responded that it would involve a lot more work, adding that 30-60 days and at that point they're getting a survey of the property and talking about different easements that need to be created. She stated that everybody has unique situations that come up such as environmental liability issues and trying to say is that going to be covered in the TIF or having to go back and ask for some sort of change. The developer is trying to get their plans and architectural drawings in place and are looking for early starts on putting in their foundations. Question arose whether this motion will extend to every contract, such as RDA acquiring property? Ald. Vanderleest responded that his intention is to have this apply to major redevelopment projects that the city has to approve, again stating this would decrease the likelihood of changes or additions being made after Council approves the contract. Ald. Weber said just because the documents are going to be sent to the Council in advance of signature, it doesn't change the possibility that when they are printed out for the final time that something isn't a little bit different or changed, or the dates are changed or whatever. He realizes that this

is the intent. He stated that municipal law is an expertise area that he doesn't expect city staff to have in all cases. He suggested that when Council is dealing with these types of issues with this type of risk, or an obligation or investment by the municipality, outsource and have a contract attorney review the final document and an accountant review the financials. He believes we put too much expectation on city staff at times and expect them to know everything.

Ald. Kocha stated that there are so many terms in contracts and many times the parties have no disagreement with at all, but said once people who aren't used to reading contracts get contracts in their hands, it is really going to slow up the process enormously. She added that people are going to start taking issue with things that aren't at issue between the parties but they don't understand that some of the terms are standard and common. She believes this is asking a lot of the Council people to absorb all contract terms and to know the questions to ask. She agrees that this is well intended, but maybe some more discussion about how to best avoid what has happened would be a better route to go. In response to a question by Ald. Nicholson about what Ald. Kocha would recommend, she responded that at the time, perhaps more questions may have needed to be asked about the definition of certain terms and said at times, people are afraid of being embarrassed to ask questions if they don't fully understand the information being presented. She said there is no easy answer adding that she believed they did a pretty good job outlining the terms.

Chairman Wery suggested perhaps a referral to the City's legal department to review and bring back options to tweak the process and bring it back. Ald. Vanderleest said he would be in favor of such a referral. He added that he believes that the City Attorney needs to make a judgment when outside counsel should be called in and added that this is a function of the Council and how we handle these contracts.

Motion made by Ald. Weber, second by Ald. Jeffreys to refer this item to the City Attorney's office to accomplish the intent of Ald. Vanderleest's request and to bring this back to the Advisory Committee.

Ald. DeWane said he supports the first motion. He stated that he's hearing Council is worried about what staff might think and what extra work staff will have. He said he would like to see more in writing and doesn't care how much paper he gets and said they can call city staff with questions. He said we might need to put more pressure on our staff to get things done sooner and proper. He is against this motion. Ald. Piton asked if Council now can approve a term sheet and ask for the contract to come back? Atty. Swanson responded that generally our term sheets have a provision that contracts should be drawn up in accordance with the termsheet and authorize the Mayor and Clerk to sign, so that could be a term that could be amended and request the contract to come back with some modification for review. Ald. Piton wondered if this is leaving it up to the Council at the time that we're looking at an agreement clause and we want to take a second look at the contract. Ald. Jeffreys stated that because of some things that happen between the time of the term sheet and the time of the contract that perhaps maybe Council needs to see contracts more often, adding

that this has been a fruitful discussion. She indicated she would like to hear from Harry Maier, Chair of the RDA on these suggestions. She believes there are good suggestions to accomplish Ald. Vanderleest's goal.

A vote was taken on the motion. Motion carried with Ald. DeWane voting "nay".

**5. Request by Ald. Wery for Advisory Committee to review the Younkers report (by Bob Langan).**

**The Committee may convene in closed session pursuant to Sections 19.85(1)(g), Wis. Stats., to confer with legal council with respect to litigation in which it is or is likely to become involved; pursuant to Sections 19.85(1)(f), Wis. Stats., to consider financial, medical, social or personal histories of specific persons which if discuss in public would likely have a substantial adverse effect upon the reputation of the person referred to in such histories or data; pursuant to Sections 19.85(1)(c), Wis. Stats., to consider employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercise responsibility. The Committee may thereafter reconvene in open session pursuant to Section 19.85(2), Wis. Stats., to report the results of the closed session and consider the balance of the agenda.**

**6. Request by Ald. Nicholson to send the Younkers report (by Bob Langan) to the state DOJ for review.**

Motion made by Ald. DeWane, second by Ald. Vanderleest to discuss items 5 & 6 together. Motion carried.

Chairman Wery expressed appreciation to Mr. Langan for putting in the work in compiling the report and said he hopes Mr. Langan is doing well. Ald. DeWane wished to discuss these items in open session. Ald. Jeffreys agreed, but asked members to be cognizant of items relating to employment, promotion, or compensation, etc. Discussion on how the committee wanted to review the report, since Mr. Langan is not present to answer questions regarding his report. Ald. Vanderleest stated that he feels the entire matter should be forwarded to the State Dept. of Justice for review and if they are not interested, it should be sent to the U.S. Attorney's office. He questioned various items in Mr. Langan's report, asking if they were answered truthfully, stating that the taxpayers deserve to know what happened and what went wrong, adding that there are a number of issues and questions. Ald. Vanderleest stated that he voted against this agreement at the time and said they were told that there was a verbal agreement with Mr. Jeter and he asked then Mayor Paul Jadin to get that in writing but said that wasn't done. He said now the City is liable to pay millions of dollars and he's hoping that part of that liability can be reduced. He stated that the city should continue to appeal and explore options to help reduce their liability. Regardless, he stated that we need to find out what went wrong; what information was given to the Council that was not correct; was the city given bad legal advice? He believes the outcome would have been different if the information presented to Council was false or lies. Ald. Vanderleest stated that the facts need to be reviewed by an agency outside of the city and said Bob Langan was a former Police Chief and said we need investigators asking people questions on the

record and said people would have to tell the truth. He stated that he is not in favor of finding fault, but needs to learn the truth; we're talking about \$9.5 million.

Motion made by Ald. Vanderleest, second by Ald. DeWane to send the entire Younkers matter, including Bob Langan's report and all related documents to the State Department of Justice and to the U.S. Attorneys Office for review.

Chairman Wery said the reason he brought this item here is as we all know, this has been a huge cloud hanging over us and many people don't remember things since this was a long time ago. He said he wanted this to come to a committee and not just received and placed on file. He said Mr. Langan did his part gathering information and presenting it to Council. Was there an intention to mislead the Council; was the scope of the delegated authority exceeded? Or was it an unfortunate case of serious miscommunication and downplaying of risk combined with a bad business deal? He said everyone he has talked to and himself included, would feel comfortable in having someone else look at it. If they say "there's nothing there", then he'll accept that.

Ald. DeWane feels Mr. Langan did a thorough investigation, but a soft investigation, adding that he was too close to both mayors. He feels the right questions were asked but didn't put on pressure during his questioning and said people just pointed fingers at everybody else. He believes the questions should be asked from someone not from within who is geared more toward this type of investigation and he believes people's memory will recover quickly. He supports Ald. Vanderleest's motion. Chairman Wery stated that he in no way wants to reflect poorly on the person who put the report together and he doesn't want to assume illegal activity on anyone's part. Ald. Weber said he is not necessarily opposed to sending the report to the DOJ, but asked what exactly we are asking these agencies to do? He said if we do find that someone intentionally changed some verbiage in the term sheet, that doesn't necessarily nullify the contract or to impugn or give relief in any fashion, adding that this is not in the realm of these agencies, but a judicial decision? Atty. Swanson responded said he is correct and said there are issues of realm of authority with ratification of the contract by the Council and a separate issue of criminal liability, if any is found. Ald. Weber again questioned what we are asking DOJ to do; perform a criminal investigation/ find out who changed the document? He said we don't want to embarrass ourselves as a city just going on a witch hunt.

Ald. DeWane said we're looking for the DOJ to tell us if there was any illegal activity by Mayor Jadin or by any member of his staff. He said once we find that person(s) if they have any illegal wrongdoing, we, as a City Council could do a civil lawsuit and try to recoup money from whatever part of the staff through the city's insurance or wherever we can. Atty. Swanson said they have looked at the city's insurance time and again throughout this case since 2004 and said the insurance does not apply if someone did something illegal, adding that there is a ratification issue and also a timing issue. Ald. DeWane inquired if there is personal insurance that would apply if an employee was found guilty. Atty. Swanson said the person would have to be acting outside of the scope of their job and she doesn't believe they could overcome that barrier.

Ald. Vanderleest said we can't accuse people without a full investigation from an outside party. He said his goal is to make sure this is reviewed by a higher level and we owe that to the taxpayers and he feels the U.S. Attorney's Office would be able to determine the facts and would get people to tell the truth or they would be obstructing justice. He stated that he would be willing to discuss the case further in closed session. Ald. Wery said he spent many hours on the telephone the past couple of days with the DOJ and the League of Municipalities, who offered some advice: either you allege a crime, file it with the DA and go after it, commission a second investigation if you don't trust your investigation or get a third party to review it and give you their opinion. He said the people at the DOJ that he talked with said they would look at it with the questions are: was there intention to mislead; did someone overstep their authority? He stated that they may look at it and just hand it back. Ald. Weber clarified that he never named a name, accused anybody or pointed a finger or asked anyone to do that before we refer this to the DOJ, and wanted to make this clear. He simply asked what we're asking the DOJ to do. He said one thing that bothered him about the intent that there was apparently a news conference called suggesting the city refer this to the DOJ, when Council had not even seen the report. He said a red flag went up relative to the intent and said if the intent is political with the absolute intent of being political, his vote would be "no", even though maybe the ultimate right thing to do is to have DOJ look at it.

Ald. Nicholson responded that the intent was not political and said when Ald. Zima sent his communication to have the Mayor's Office investigate this, he never dreamed that the Mayor would hire an individual to conduct the investigation who had worked with Paul Jadin. He stated that it should have been an outside authority right off the bat. He indicated that he called Mayor Schmitt and asked what was the intentions of this report? He said the Mayor responded to wait for Bob Langan's report and recommendations. Ald. Nicholson stated that Mr. Langan is not an attorney and has been a policeman all his life. He stated that a policeman's job is to find the facts, put it in a report and hand it off to the DA's office, who will determine what crime has been committed. He stated that he felt the Federal Government or the State should have handled this from the start; should have subpoenaed everyone, and interviewed every person who signed the document and all the aldermen at that time and staff. He said he wanted a fair investigation through an agency that does not have any ties to the city and said we owe this to the citizens because this could be a \$9 million mistake and Mr. Langan could not find out who wrote the term sheet or changed the agreement. He feels we should never have started at the level we did and said he wants answers and said this is not political. For the record, he said he has not accused anybody of any wrongdoing and said "this is not a witch hunt".

Ald. Vanderleest said he was on the Council at the time this agreement was approved and said he felt uncomfortable with this matter from the beginning and he challenged it and voted against it along with Ald. Zima and Ald. Nicholson. He said it passed with a 9-3 vote and he was troubled by it and was criticized for voting against it. He said at this point he does believe there was illegal activity or false statements and believes this should be investigated further to learn the

facts. Ald. Jeffreys stated that she thought they were going to review the document before jumping to item 6. She said the DOJ gets involved with federal issues, municipal issues and malfeasance in municipalities, adding that she's not seeing the federal interest here; not hearing criminal activity of malfeasance and if these issues are there, she'd like to hear them. She doesn't see the DOJ having an interest in this report. Ald. Weber stated that there was an inference that only Council members at that time can be upset and concerned by this issue. He said they don't have to have been there and been on the Council at the time to be concerned about the processes that were used.

Motion made by Ald. Vanderleest to convene in closed session (read the closed session language) second by Ald. Weber. Motion unanimously carried.

Ald. DeWane stated that he would like the closed session to be informational and get back to open session.

Committee returned to open session and Ald. Vanderleest amended his motion to read: motion to send the entire Younkens matter including Bob Langan's report and all related documents to the U.S. Attorney's Office for review.

Discussion ensued regarding what materials and documents would be sent and the comment that "the entire Younkens Matter" should be deleted from the motion since the agenda item relates to Mr. Langan's report. Ald. Nicholson said a quick overview should be given along with the report, and the U.S. Attorney's Office can request any additional documents. Further comment was to send whatever documents Mr. Langan was provided by the City Attorney's Office and the Mayor's Office.

After further discussion, Ald. Vanderleest amended his motion to read: motion to send the Langan Younkens Investigation Report dated 5/2/2008, and the same related material that was provided to the Council with the investigation report, to the U.S. Attorney's Office for review. Ald. DeWane seconded the motion. Motion carried.

**7. Discussion and possible action on city council debate parameters, specifically enforceable time limits and number of times allowed to address a motion.**

Ald. Nicholson asked to be excused at this time.

Chairman Wery said when he was elected Council President, this item came up with several different people.

Ald. Jeffreys said they had discussed at a previous Advisory Committee parliamentary procedure which is speaking two times to a motion and if you wish to speak a third time, you get permission. She said there are also rules about how long people can speak, she believes 10 minutes for two times, for a total of 20 minutes. She said if Lincoln can deliver the Gettysburg Address in under 3 minutes and set the course of the Civil War, Council can get their business done in 20 minutes. She feels at Committee, it's o.k. to have it more free flowing

because that is where the work should be done, having a give and take like we did tonight, adding that at Council “we should be there getting our business done and not flapping our jaws”.

Chairman Wery read from Robert’s Rules of Order that under time limit in most instances debate is restricted to 10 minutes per speaker to help insure that everyone is given a chance to speak and that the meeting is not intermidibly long. Discussion ensued with various suggestions including allowing each speaker a time limit of 3-4 minutes twice to a motion and allowing three 3-5 minute speaking opportunities. Other comments/suggestions included having the Mayor gaveling down Council members who speak indefinitely or having the city clerk remind the speaker of the time limit, with the exception of a member of the public speaking in discussion with a member of the Council, who could be allowed to speak longer. Ald. Piton commented that the rules are suspended when the public speaks and said his preference would be three 3’s or 5’s and would like to see some type of mechanical enforcement. Ald. Kocha agreed that the time should be shortened and that would send a message to the Council members and to the Mayor. She concurs with going three 3-5 minute time periods. She stated that Council could vote to extend the time if someone feels they need an extension on the time, summing up by saying that speaking twice to an issue should be sufficient and would force Council members to focus on what they have to say. Ald. Weber feels it will help all members to be concise if a time restriction is put in place and enforced.

Motion by Ald. Weber, second by Ald. Jeffreys to limit debate at City Council meetings to two times for 3 minutes each time to a motion, and to ask permission to speak longer each time or to speak a third time for 3 minutes.

Ald. DeWane stated that 3 minutes isn’t nearly enough and said the Mayor needs to take control of the meetings and be more responsive. He commented that this is a witch hunt for one member of the Council. Ald. Vanderleest doesn’t agree with the 3 minute time limit but said an 8-10 minute concept should be enforced. He said certain debate requires longer time and latitude, adding that he would not support going beyond 8-10 minutes. Ald. Kocha said the 3 minute rule could be suspended for free flowing debate. Further discussion included comments that this is not aimed at only one Council member and Council needs to organize their thoughts and speak within the time limit, and the Mayor knows what parliamentary procedure is and gavels down the public but not the aldermen. Ald. Jeffreys would agree to an 8 minute time limit. Ald. Wery stated that he is in favor of limiting the time otherwise we encourage rambling, he is in favor of a 5 minute limit. Ald. Piton suggested speaking twice for 5 minutes and asking to speak a third time with a 2/3 vote and said rambling is disrespectful to everyone. He asked to add a unanimous consent provision included with the motion. After brief discussion on unanimous consent with Atty. Swanson clarifying the use of this provision, Ald. Weber amended his motion to allow members to speak two times for 5 minutes and a third time for 5 minutes, upon request and to add the unanimous consent provision to the debate.

After further brief discussion, Ald. Weber amended his motion to request amending Section 2.06(10), Green Bay Municipal Code, to allow each Council member to speak to a motion two times, 5 minutes each time, and may request to speak a third time for 5 minutes if approved by a 2/3 vote, and to add a unanimous consent provision to the debate to extend the amount of time on the first or second time they speak. A vote was taken on the motion. Motion carried with a 3-2 vote.

There being no further business, motion made by Ald. Vanderleest, second by Ald. DeWane to adjourn the meeting. Motion carried.