

LOWER MANHATTAN DEVELOPMENT CORPORATION

Meeting of the Directors

Held at the Offices of Empire State Development
633 Third Avenue, 37th Floor
New York, NY 10017

May 16, 2023

MINUTES**In Attendance****Directors:**

Holly Leicht, Chair
Alicia Glen
Joshua Kraus
Mehul Patel
Carl Rodrigues

Staff Attending:**For Lower Manhattan Development Corporation**

Daniel Ciniello, President
Stephen Konopko, Vice President, Internal Audit
Debbie Royce, Corporate Secretary

For Empire State Development

Goldie Weixel, Deputy General Counsel
Matthew Acocella, Associate Counsel
Tobi Jaiyesimi, Assistant Vice President – Real Estate and
Community Relations

Also Attending:

The Public

The meeting of the Directors of Lower Manhattan Development Corporation (“LMDC”) was called to order at 11:22 a.m. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

The Chair noted that, consistent with the policy of LMDC's parent company, public comments would be welcome on the items considered on today's agenda. The Chair also noted for the record that the public was given the opportunity to comment on Agenda items by submitting written comments on or before 12:00 p.m. Monday, May 15, 2023 to publiccomment@renewnyc.com and noted that approximately 163 comments were received. The Chair noted that, of these, 14 were original with the remainder being a form letter signed and submitted by multiple people. The Chair noted that all of the comments were provided to the Directors in advance of the meeting and were posted online to the meeting's webpage.

Before beginning with the substantive portion of the meeting the Chair asked the Directors whether anyone had any potential conflicts of interest with respect to any of the items on the proposed Agenda.

Hearing none, the Chair called for a motion to approve the Minutes of the Directors' meeting of March 14, 2023. Noting no corrections, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Approval of Minutes

RESOLVED, that the minutes of the meeting of the Corporation held on March 14, 2023, as presented to this meeting, are hereby approved and all actions taken by the Corporation's employees, officers or Directors in furtherance of the matters referred to therein are hereby ratified and approved as actions of the Corporation.

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The Chair then called on Tobi Jaiyesimi, ESD Assistant Vice President – Real Estate and Community Relations and Project Manager for World Trade Center Site 5 development project, to present the related Agenda item.

Ms. Jaiyesimi explained that the Directors were being asked to take actions related to the World Trade Center Site 5 development project (the “Project”), including (1) affirmation of amendments to the General Project Plan, (2) to override local zoning regulations; (3) authorize the disposition of real property to Empire State Development (“ESD”), which would hold title during the term of the proposed long-term ground lease to the conditionally-designated developer; (4) authorize the execution of an initial agreement regarding the vehicle screening center easement, deed and project documents, and (5) provide authorization to take related actions.

Ms. Jaiyesimi then provided background information on the history of the World Trade Center Site 5 development project. She noted that the General Project Plan (the “Plan” or “GPP”) under consideration today was originally adopted by LMDC in 2004 to provide for memorial and cultural uses, as well as commercial redevelopment of the World Trade Center following the September 11, 2001 attack.

Ms. Jaiyesimi explained that the Plan provided for five commercial towers, public open space, and a performing arts center surrounding the memorial and memorial museum. She noted the 2004 General Project Plan permitted commercial and/or a hotel use on Site 5, which is

the southernmost site of the WTC campus and the location of the former Deutsche Bank Building. She further noted that LMDC used U.S. Department of Housing and Urban Development (“HUD”) funds to acquire, remediate, and clear Site 5.

Ms. Jaiyesimi advised that in 2006, the Port Authority of New York and New Jersey (“Port Authority”) and LMDC entered into a Memorandum of Understanding (“MOU”) by which LMDC would swap 130 and 140 Liberty Street, including Site 5, with the Port Authority of New York and New Jersey (the “Port Authority”) for property the Port Authority owns at the center of the campus to enable the 9/11 Memorial and Museum, as well as the Performing Arts Center to be built within and proximate to the footprints of the former Twin Towers.

Ms. Jaiyesimi noted that in response to Manhattan Community Board 1 input, LMDC began discussions with the Port Authority about the possibility of allowing residential development at Site 5 and that LMDC and the Port Authority entered into an additional MOU to jointly issue a Request for Proposals (“RFP”) for Site 5 that would allow for as-of-right commercial development or mixed-use development, including a requirement for an affordable housing component, which would require modifications to the General Project Plan.

Ms. Jaiyesimi explained that in early 2021, after a competitive RFP process, a development team consisting of Silverstein Properties, Brookfield Properties, Dabar Development Partners, and Omni New York was conditionally designated for a mixed-use project on Site 5. She noted that in the 16-months since the conditional designation had occurred, a

Community Advisory Committee was established and ESD and LMDC staff have made numerous presentations to Community Board 1 and have met with stakeholders including the City, the 100% Affordable Housing Coalition, and local elected officials.

Ms. Jaiyesimi further explained that in November 2021 the Directors considered the proposed General Project Plan modifications that provided an option to build a mixed-use building with residential that included affordable housing, and the related environmental assessment. She added that, after the public hearing was held in January 2022 and the public comment period closed in mid-February, the Directors approved in April 2022 the modifications to the General Project Plan.

Ms. Jaiyesimi noted that in July 2022, the Directors approved the start of the public review process for the real estate transactions and zoning override for the proposed project. She further noted that a virtual public hearing was conducted on September 15, 2022, followed by a public comment period through October 17, 2022. Ms. Jaiyesimi explained that 19 of the 27 commenters during the hearing called for an increase in affordability, most requesting 100% affordability at the site, and that there were eight (8) supportive oral comments that highlighted the opportunity to create jobs and develop a mixed-use tower with hundreds of affordable units without direct public subsidy. She further explained that of the 18 written comments received during the comment period, 14 comments urged for increased affordability and four (4) comments provided general support for the proposed project.

Ms. Jaiyesimi noted that in response to the public comments and engagement with local elected officials and other stakeholder, the project's proposed affordability requirements have been increased from 25 percent to 30 percent, and that the proposed project would deliver a minimum 30% of the approximately 1,200 units as affordable with an average of 85 percent of area median income ("AMI"). She further noted that one-third of the affordable units or approximately 120 units will be leased at 60 percent of AMI.

Ms. Jaiyesimi explained that the proposed increase in the number of affordable units would not require public subsidy, and that the permanent affordable housing requirements would be governed by a regulatory agreement administered by the New York State's affordable housing agency, Homes and Community Renewal. She further explained that the project may potentially deliver additional affordable units if additional public funding sources were identified by April 2024.

Ms. Jaiyesimi stated that any further increase in the number of affordable units would require large amounts of public subsidy, including the specific proposals for increased affordability put forth by the Coalition for 100% Affordable 5 World Trade Center.

Ms. Jaiyesimi stated that the proposed project is a development of office space, retail, a community facility, connection to Liberty Park, and approximately 1,200 residential units, of which at least a minimum of 25 percent, or approximately 300 units, will be permanently affordable units, leased to households earning an average of 85% of AMI. She explained that the

estimated total development cost for the project is approximately \$1 billion, and that during construction, the annual base rent to the Port Authority would be \$1.345 million, and after construction the annual base rent would step up to the greater of 21 percent of cash flow before debt service or a minimum base rent of \$12.5 million with a 2 percent escalation, paid to the Port Authority. She further explained that the project would be subject to a payment in lieu of taxes, or PILOT agreement that would require tenant to make payments to the city equivalent to what real estate taxes would be if the property were not exempt from taxes, reduced by the equivalent value of an affordable housing benefit program, or 421-a.

Ms. Jaiyesimi explained that since ESD would enter into the lease with the developer, the Directors are being asked to approve the transfer of Site to ESD as well as approve granting an easement to the Port Authority for certain minor encroachments onto Site 5. She also noted that the mixed-use design guidelines were revised to enhance the community facility, and also to improve the vertical circulation to the community facility, including the pedestrian bridge to Liberty Park and the through-site connection.

Ms. Jaiyesimi explained that, with the actions before the Directors today, the Directors would affirm amendments to the General Project Plan, override local zoning regulations, authorize the site disposition, provide authorization for staff to execute the initial agreement, the vehicle screening center easement, deed, and project documents, and authorize staff to take related actions. She then concluded her remarks and asked whether the Directors had any questions.

The Chair thanked Ms. Jaiyesimi for her many years of work on the project, and then asked if the Directors had any questions.

Director Glen asked if the proposed income mix of the 30 percent affordable was consistent with the current “Affordable New York” statute. Ms. Jaiyesimi responded that her understanding was that “Affordable New York” had technically expired, but the AMI ranges of 60 percent to 110 percent mirrors one of the “Affordable New York” options, which she believed was option “G”.

Director Glen then asked whether the PILOT payments made to the City of New York under the PILOT would be based on the schedule of 421-a payments under “Affordable New York”, and that the City’s expectation of payments would be based on the abatement schedule currently encapsulated, notwithstanding that the Project’s actual affordability mix would meet the project sponsors’ particular requirements and Ms. Jaiyesimi replied that that was correct.

The Chair then asked if there were other questions or comments from the Directors, and hearing none, noted that there were members of the public in attendance who wished to provide comments, and that the meeting would proceed to hearing these comments. The Chair reminded members of the public to please keep comments to the three-minute limit.

The public comment portion then began with approximately 21 total individuals providing comments on the Project. They included community members and residents of Lower

Manhattan, elected officials or their staff, including representatives from the offices of State Senator Brian Kavanaugh, New York City Council Member Christopher Marte, Tammy Meltzer the Chair of Community Board 1, Vittoria Fariello, a Democratic District Leader in Lower Manhattan, as well as representatives from organizations and other stakeholders expressing their views on the Project, including the Coalition for 100% Affordable at World Trade Center Site 5. Many of the speakers noted the resiliency of the Lower Manhattan community after 9/11 and expressed concerns over affordability at the Project and requested that the Project be 100% affordable, especially as the Project is being built on symbolically important publicly-owned land, and to accommodate more residents of Lower Manhattan who have long been committed to the neighborhood but are being priced out of affordable housing. Several speakers requested that the Project be paused until more funding sources were identified. Comments supporting the Project were provided by representatives from the Downtown Alliance, the New York Building Congress, Education Alliance, and the Citizens Housing and Planning Counsel. These comments highlighted the Project's economic benefits, job creation, and commitment to permanent affordable housing.

After all speakers completed their remarks, the Chair thanked them for providing comments and feedback and noted again that LMDC had received 163 written comments that were provided to the Directors and posted online. The Chair then asked if the Directors had any further questions.

Director Rodrigues asked if vouchers were identified for the Project, could they be applied here and Ms. Jaiyesimi explained that, yes, the materials are providing for a time period through

April 2024 to increase the affordability, so if vouchers or other government finding sources were identified, the affordability could be increased further.

Chair Leicht noted that she, along with Ms. Jaiyesimi and others at Empire State Development, had participated in numerous conversations with the U.S. Department of Housing and Urban Development and the City of New York about vouchers, and that a special allocation would have to be approved by the U.S. Congress to put vouchers to this Project, as all of the vouchers for New York City go through the New York City Housing Authority (“NYCHA”) and the New York City Department of Housing Preservation and Development. She further noted that NYCHA has a 17,750-person waiting list for vouchers, so to have a special allocation of vouchers would require an act of Congress.

Hearing no further questions or comments from the Directors, upon motion duly made and seconded, the following Resolution was unanimously adopted:

New York City (New York County) – 5 World Trade Center; World Trade Center Memorial and Cultural Program Land Use Improvement and Civic Project – Affirmation of Amendment to Modified General Project Plan; Override of Local Zoning Regulations; Authorization to Dispose of Real Property; Authorization to Execute Initial Agreement, VSC Easement, Deed and Project Documents; and Authorization to Take Related Actions.

RESOLVED, that, on the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation relating to the World Trade Center Memorial and Cultural Program Land Use Improvement and Civic Project (the “MGPP”), and pursuant to Section 16 of the New York State Urban Development Corporation Act (the “UDC Act”), after due consideration of (i) all oral and written comments received at the September 15, 2022 Public Hearing and during the public comment period thereafter (“Public Comment”), (ii) the UDC Act findings made at the November 17, 2021 and July 19, 2022 meetings, and (iii) applicable law, the Corporation does hereby affirm the Revised Amendment to the MGPP

as presented to this meeting, a copy of which Revised Amendment is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that, on the basis of the Materials, the Corporation hereby finds, pursuant to Section 16(3) of the Act, that it is not feasible or practicable for the Proposed Project described in the Materials to comply with all local zoning regulations and, accordingly, the Corporation hereby overrides the local zoning regulations as and to the extent described in the Revised Amendment for the specified purposes of the Proposed Project; and be it further

RESOLVED, that, on the basis of the Materials, the Corporation hereby finds it is necessary and convenient for the Corporation to dispose of the Development Site by fee transfer to ESD, for its immediate or future use in furtherance of its corporate purposes in connection with the Proposed Project, subject to the rights of The Port Authority of New York and New Jersey as described in the Materials; and be it further

RESOLVED, that based on the Materials and Public Comment, the Corporation hereby authorizes execution of the Initial Agreement, VSC Easement, Deed and Project Documents, as described in the Materials, together with such changes therein as any officer of the Corporation may deem appropriate, in such officer's sole discretion, and hereby finds that the same are in conformity with the MGPP, as amended; and be it further

RESOLVED, that completion of the actions contemplated hereby remain expressly contingent upon: (1) execution and delivery of the Memorial Lease by PANYNJ to LMDC's designee; and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chair and President of the Corporation or their respective designee(s), acting singly, be, and each of them hereby is, authorized and directed in the name and on behalf of the Corporation to execute and deliver any and all documents and to take any and all actions necessary or proper, in their respective sole discretion, as may be necessary or appropriate to effectuate the Proposed Project and the foregoing resolutions.

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There being no further business, the meeting was adjourned at 12:23 p.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary