

DRAFT - SUBJECT TO REVIEW AND REVISION

LOWER MANHATTAN DEVELOPMENT CORPORATION

Meeting of the Directors
Held at the Offices of the Corporation
One Liberty Plaza - 20th Floor
New York, New York 10006

October 6, 2009

MINUTES

In Attendance

Directors:

Avi Schick, Chairman
Lawrence T. Babbio, Jr. (via telephone)
Robert Douglass (via telephone)
Robert Harding (via telephone)
Caswell Holloway
Thomas Johnson (via telephone)
Kate Levin
Robert Lieber
Julie Menin (via telephone)
Kevin M. Rampe (via telephone)
John Zuccotti

Staff Attending:

For Lower Manhattan Development Corporation:

David Emil, President
Irene Chang-Cimino, General Counsel and
Corporate Secretary
Daniel A. Ciniello, Senior Vice President
Stephen Konopko, Vice President - Internal
Audit
Sayar Lonial, Director of Planning and
Development
Robert Miller, Chief Financial Officer
Andrew Wu, Deputy General Counsel
Other Staff

For the Lower Manhattan Construction Command Center:

Robert Harvey, Acting Executive Director

Counsel to the Board:

Caitlin Halligan, Weil, Gotshal & Manges

For the Empire State Development Corporation:

Peter Davidson, Executive Director

Also Present:

The Public

The Media and Press

The meeting of the Lower Manhattan Development Corporation ("LMDC") was called to order at 9:06 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.

First, Chairman Schick noted that, as has become the practice, since the Directors had received the resolutions for consideration in advance of today's meeting, he would not read the entire resolution into the record.

Chairman Schick then called for the approval of the Minutes

of the August 4, 2009 Directors' Meeting.

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 August 4, 2009, as presented to this meeting, are hereby approved and all actions taken by the Directors presented at such meeting, as set forth in such minutes, are ratified and approved as actions of the Corporation.

* * *

Chairman Schick then called for a motion to amend the Minutes of the June 11, 2009 Directors' Meeting. The Chairman noted that the Minutes would be amended to show that the term of LMDC's contract with Dewey & LeBoeuf would run through April, 2011. This fact, he noted, had not been represented in the June 11, 2009 Minutes. Upon motion duly made and seconded, the following resolution was unanimously adopted:

Amendment of Minutes of June 11, 2009 Meeting

RESOLVED, that the minutes of the meeting of the Corporation held on June 11, 2009, previously approved by the Board on August 4, 2009, are hereby amended to reflect that the term of the initial \$250,000 agreement with Dewey LeBoeuf LLP for legal services relating to 130 Liberty Street, is for a one-year period and that the amendment to such agreement for an

increase in authorized expenditures thereunder by an amount not to exceed \$750,000 is for an extended term of an additional one-year period through April 2011, and such amended minutes, as presented to this meeting, shall be filed with the records of the Corporation as the minutes of the June 11, 2009 meeting.

* * *

Chairman Schick then explained, among other things, that Dewey & LeBoeuf is representing LMDC in matters relating to disputes both current and contemplated with respect to the contract and subcontract at 130 Liberty. He further explained that a meeting has been set with the prior insurers to see if they will come closer to fulfilling their obligations.

The Chairman then suggested that a briefing be scheduled with the Directors to provide them with information regarding LMDC's claims and the strategy being recommended by counsel in that regard.

The Chairman then went on to welcome Peter Davidson, the Executive Director of the Empire State Development Corporation, to the meeting.

Next, the Chairman noted that Ms. Rapfogel from Speaker Silver's office was not in attendance at the meeting and that this was the first meeting she has missed in eight years. He

further noted that Ms. Rapfogel was aware of all that will take place at this meeting and will discuss those matters at a later date with LMDC staff.

Chairman Schick then opened the Chairman's report by addressing the recent activities of the Corporation with regard to 130 Liberty Street. He noted, in part, that a document has been issued memorializing the fact that LMDC has completed the abatement process at that location and that said document has been signed and issued by the regulators.

The Chairman went on to note that a community meeting will be held this evening at which the deconstruction plan will be discussed by the Buildings Department. It is anticipated, he further noted, that the Buildings Department will issue the permit shortly and that the deconstruction work will commence.

Next, the Chairman asked Mr. Emil to provide a report on the recent positive developments that have emerged as a result of the work of the LMDC Board of Directors.

Mr. Emil noted that Sayar Lonial will provide a Power Point presentation to accompany this report. Mr. Emil opened by noting that there was a groundbreaking in August in the East

River Esplanade. He further noted that there are a number of spaces leading down to the waterfront that are now gradually coming to fruition including the site known as the Imagination Playground.

Mr. Emil then cited other accomplishments including the opening of Poets House at Battery Park City.

The Chairman then asked Director Johnson to provide the Audit and Finance Report.

Director Johnson noted that the Committee reviewed budget reports for LMDC and LMCCC for the first quarter of the fiscal year which ended June 30th. He stated that those reports indicated that expenditures were below budgeted levels.

Director Johnson further noted that the Committee met to review the purpose, cost justification and the availability of funds for the one financial item being presented for consideration today and that the Committee recommends that the item be considered for approval by the Board.

Finally, Director Johnson noted that the Committee met with the Internal Auditor and that there was nothing of merit to

report on with regard to that meeting.

The Chairman then asked the Directors to authorize LMDC to amend its contract with Regional Scaffolding & Hoisting Co. for scaffolding and related services.

The Chairman explained, in part, that there were two components to the contract. One component, he noted is to cover insurance costs related to the scaffolding and the other is for the scaffolding rental itself.

The Chairman further explained that LMDC always looks to control costs at every possible opportunity. This is one of those instances, however, wherein it is necessary for the Corporation to advance funds even though it is anticipated that LMDC will ultimately get these funds back either from prior insurers or from its contract with Bovis.

Following his full detailed presentation, the Chairman called for questions or comments. Director Douglass asked if LMDC has a current estimate as to when the deconstruction will be completed.

The Chairman noted that LMDC does not believe that it will

take to the end of the contract term - December 31, 2010 - to complete the deconstruction. However, LMDC believed it to be in the best interest of the community to extend the term to that date in order to cover any unforeseen hold-ups in any part of the process.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Amend Contract with Regional Scaffolding & Hoisting Co., Inc. and Safeway Environmental Corp., a New York Joint Venture

RESOLVED, that the Corporation is hereby authorized to amend its agreement with Regional Scaffolding & Hoisting Co., Inc. and Safeway Environmental Corp., to increase the authorized expenditures thereunder by an additional \$2,098,415 to an amount not to exceed \$21,008,213 in the aggregate, and to extend the term of such agreement through December 31, 2010, as described in the materials presented to this meeting; and be it

FURTHER RESOLVED, that the expenditures approved hereby shall be allocated from recovery of funds through pending indemnity and insurance claims and through funds included in Partial Action Plan 7 and Partial Action Plan S-2 and that the Corporation shall seek recovery of these funds through indemnity or insurance claims to the extent possible; and be it

FURTHER RESOLVED, that the proper officers of the Corporation are hereby authorized to take any such action and to execute such instruments as may be necessary or appropriate to effect the foregoing.

* * *

Next, Ms. Chang-Cimino presented a request to the Board to approve several actions related to the environmental review of the East River Waterfront Access Project at the Catherine, Rutgers and Montgomery Slips.

Following a detailed presentation of the specifics of this request, the Chairman called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Authorization to Serve as Lead Agency Under National Environmental Policy Act and State Environmental Quality Review Act for East River Waterfront Access Project at Catherine, Rutgers and Montgomery Slips; Approval of Environmental Assessment and Environmental Determinations; Approval of Programmatic Agreement Prepared Under the National Historic Preservation Act; Authorization to Take Other Related Actions

RESOLVED, that the Corporation shall serve as lead agency for the environmental review of the East River Waterfront Access Project at Catherine, Rutgers and Montgomery Slips ("Project") pursuant to the National Environmental Policy Act ("NEPA") and the New York State Environmental Quality Review Act ("SEQRA"), which review has been coordinated with other necessary reviews pursuant to the Coastal Zone Management Act, National Historic Preservation Act, State Historic Preservation Act, and other applicable laws and regulations; and be it

FURTHER RESOLVED, that, on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby approves the Environmental Assessment ("EA") for the Project in the form submitted at this meeting and finds that the EA meets the requirements of NEPA, SEQRA, the Coastal Zone Management Act, National Historic Preservation Act, State

Historic Preservation Act, and other applicable laws and regulations; and be it

FURTHER RESOLVED, that, on the basis of the EA, including its appendices, the Corporation hereby determines that the Project will not, either individually or cumulatively, have a significant impact on the quality of the human environment or a significant adverse environmental impact; and, accordingly, that no environmental impact statement is required for the Project under NEPA or SEQRA; and authorizes the President of the Corporation or his designee(s) to issue for public comment a Finding of No Significant Impact under NEPA and to issue a Negative Declaration under SEQRA; and be it

FURTHER RESOLVED, that, if the Corporation does not receive comments that raise substantial new environmental issues requiring changes to the Environmental Assessment or environmental determinations, the President of the Corporation is hereby authorized, in the name and on behalf of the Corporation, to complete any certifications required to finalize such findings and to request a release of funds from the U.S. Department of Housing and Urban Development for the Project; and be it

FURTHER RESOLVED, that on the basis of the materials presented at this meeting, copies of which are hereby ordered filed with the records of the Corporation, the Corporation hereby approves the proposed programmatic agreement that will govern the investigation and resolution of any possible effects on archeological historic resources in the project area pursuant to Section 106 of the National Historic Preservation Act; and be it

FURTHER RESOLVED, that the President of the Corporation or his designee(s) is hereby authorized and directed, in the name and on behalf of the Corporation, to finalize, execute and deliver any and all documents and to take all related actions as he may in his sole discretion consider necessary or appropriate to effectuate the foregoing resolutions.

* * *

Director Lieber then addressed the meeting noting that he wanted to clarify his intention with regard to comments made at

the last Directors' meeting regarding LMDC's funds. Specifically, he wants the Board to have the benefit of understanding exactly what the reconciliation of the capital and operating budget of the LMDC is.

Director Lieber further stated that he would like greater transparency so that all of the Board members understand a full reconciliation, on an ongoing basis, of exactly what money was committed, where it has been spent and what remains to be spent. He added that it would be very helpful to understand, as the project moves forward, how much money LMDC has left and where it's spent.

Director Lieber added that he would like to understand what the general administrative and other expenses are so the Directors can have a full picture of exactly where the Corporation stands. To this end, he added that he would like this done at every Board meeting.

Director Lieber suggested that this could be presented in Executive Session if this is, in fact, confidential information.

Director Lieber added that he would like the information to be categorized and not just data, but actual information so that the Directors can see by sector where the money is going and what it is used for.

Director Lieber reiterated his position for clarity's sake that he wants a full accounting at every Board meeting of exactly what has been spent through the whole two billion dollars. Additionally, he noted, that he would like an accounting with regards to the status of the utility agreements as this will allow the Directors to get a clearer picture of exactly where LMDC stands and what the opportunities are.

Chairman Schick responded positively to Mr. Lieber's requests. He then noted that LMDC staff has held several meetings with EDC staff to provide them with an understanding as well as to get from them an understanding of what's expected with regard to the \$400 to \$500 million of City projects that have been allocated and not yet spent.

Chairman Schick went on to state that there is transparency in that LMDC files quarterly reports with HUD on this issue and

those reports are put on LMDC's website. This information can be disseminated in whatever form is favorable to the Directors.

Mr. Emil stated that that will be done by the next Board meeting. Director Lieber stated that he wants the information on a regular basis and that he expected at least some of the information at this Board meeting. He added, however, that the Minutes did not adequately reflect that that was his expectation. He believes that it is now clear what he expects.

Director Lieber then addressed issues with regard to the Port Authority's anticipated actions with regard to the Performing Arts Center ("PAC") site.

Among other things, Director Lieber expressed concern that there is consideration being given to potentially moving the PAC to an alternate location. He expressed his belief that it is critical that the original location be maintained and asked what LMDC management is doing to ensure that this will happen, particularly given the impending Port Authority construction schedule.

Mr. Emil stated that LMDC management wholeheartedly agrees with Director Lieber's position and that LMDC must do everything necessary to ensure that site 1 is preserved as a site.

Mr. Emil further stated that he has directed staff to make sure that whatever the Port Authority requires in terms of commitment of funding be provided. He added that no further Board action is required at this point to fund the engineering and the costs associated with the project.

A brief discussion was had with regard to the approximately \$55 million that had been set aside for the Performing Arts Center and the work to be performed in order to ensure that the funds will be available to the Port Authority if needed and in a timely fashion.

Chairman Schick then noted that in order to save on costs and as approved at the March Directors' meeting, LMDC has given up space on the 29th floor and LMCCC has moved to the 20th floor. This, he noted, will lead to a substantial savings. He thanked Dan Ciniello and other staff members for their work in making this move as seamless as possible.

Director Lieber commended LMDC for its efforts in this regard.

There being no further business, the meeting was adjourned at 9:38 a.m.

Respectfully submitted,

Eileen McEvoy
Assistant Secretary