

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

MINUTES

Thursday, May 25, 2023

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MINUTES of the Meeting of The Port Authority of New York and New Jersey held Thursday, May 25, 2023 at 150 Greenwich Street, New York, New York and via videoconference.

PRESENT:

NEW JERSEY

Hon. Kevin J. O'Toole, Chairman
 Hon. J. Christian Bollwage
 Hon. George Helmy
 Hon. Joseph Kelley
 Hon. Kevin P. McCabe
 Hon. Michelle E. Richardson*

NEW YORK

Hon. Jeffrey H. Lynford, Vice Chairman
 Hon. Steven M. Cohen
 Hon. Gary LaBarbera
 Hon. Rossana Rosado*

Richard Cotton, Executive Director
 Amy H. Fisher, Acting General Counsel
 James E. McCoy, Secretary

James K. Allen Jr., Chief Communications Officer
 M. Rizwan Baig, Chief Engineer
 Christopher Beacham, Chief of Staff, Office of the Chief Financial Officer*
 Meredith L. Brooks, Principal Board Management Support Specialist, Office of the Secretary
 Michael Brown, Chief of Department/Deputy Superintendent of Police
 Ana Carvajalino, Director, Financial Planning*
 Edward T. Cetnar, Director, Public Safety/Superintendent of Police
 David W. Compton, Manager, Marketing
 Janet D. Cox, Chief of Staff and Special Counselor to the Executive Director*
 Jennifer S. Davis, Chief, Intergovernmental Affairs
 Alfred P. Doblin, Director, Strategic Communications, Chief Communications Office
 Diannae C. Ehler, Director, Tunnels, Bridges and Terminals Department
 Gregory W. Ehrie, Chief Security Officer
 Charles R. Everett Jr., Director, Aviation*
 Benjamin Feldman, Deputy Chief Communications Officer
 Robert E. Galvin, Chief Technology Officer
 Shannon E. Gates, Principal Board Management Support Specialist, Office of the Secretary
 John Gay, Inspector General
 Mary Lee Hannell, Chief, Human Capital
 James Heitmann, Chief Operating Officer

Kirsten Hernandez, Special Assistant to the Executive Director*
 Natasha G. Jean Philipp-Cumberbatch, Manager, Corporate Transparency, Office of the
 Secretary
 Duncan Kisia, Deputy Director, Planning and Regional Development*
 Amanda Kwan, Deputy Director, Media Relations
 Michael Lavery, Senior External Relations Client Manager, Intergovernmental Relations
 Cristina M. Lado, Director, Government and Community Affairs, New Jersey
 Brian A. Lapp, Chief Health and Safety Officer
 William Laventhal, Program Director, Executive Office
 Elizabeth M. McCarthy, Chief Financial Officer
 Terrance McKee, Police Lieutenant
 Mary K. Murphy, Director, Planning and Regional Development
 Matthew F. Murray, Senior Advisor to the Chairman
 Jessica Ortiz, Deputy Inspector General and Director of Investigations*
 Hersh K. Parekh, Director, Government and Community Affairs, New York
 Matthew Pedersen, Director, Real Estate
 Thomas Pietrykoski, Director, Corporate Communications
 Steven P. Plate, Chief, Major Capital Projects*
 Alan L. Reiss, Director, World Trade Center Construction*
 Bethann Rooney, Director, Port*
 Jessica Russ, General Manager, Board Unit, Office of the Secretary*
 Peter D. Simon, Chief of Staff to the Chairman
 Debra M. Torres, Chief Ethics and Compliance Officer
 Derek H. Utter, Chief Development Officer
 Lillian D. Valenti, Chief Procurement Officer
 Lei Pei Wang, Director, Project Management

Guest:

Thomas Holl, Senior Counsel, Authorities Unit, Office of the Governor of New Jersey

Public Commenters:

Chris Adair (Written Statement)
Conor Allerton
Murray Bodin
Carlo Casa
Vittoria Fariello
Moses Gates (Written Statement)
Jill Goodkind
Debra Greif
Mariama James (Written Statement)
Stephen Kieselowsky
Carol Lamberg (Written Statement)
Emily Leng (Written and Spoken Statement)
Taina Prado
Lucian Reynolds (Written Statement)
Aaron Sanders

Topics:

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5 World Trade Center
Safety
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The public meeting was called to order by Chairman O’Toole at 11:33 a.m. and ended at 12:24 p.m. The Board also met in executive session prior to the public session.

Report on Prior Meeting’s Minutes

Copies of the Minutes of the meeting of April 27, 2023 were delivered in electronic form to the Governors of New York and New Jersey on April 28, 2023. The time for action by the Governors of New York and New Jersey expired at midnight on May 15, 2023.

Chairman’s Report

The Chairman advised that as part of the Port Authority’s public speakers’ program, several written statements were received and provided to the Commissioners and other relevant staff prior to today’s Board Meeting. The written statements will also be filed with the transcripts of today’s meetings on the Port Authority’s website.

WORLD TRADE CENTER – DEVELOPMENT OF SOUTHERN SITE (“SITE 5”)

Following the destruction of the World Trade Center towers in 2001, a coalition of federal, state and city agencies joined with the Port Authority to plan the redevelopment of the World Trade Center site (WTC Site). It was determined that the WTC Site would continue to serve commercial purposes, including redevelopment and operation of office towers by private parties, but would also commemorate the events of 9/11 by adding several public uses, including the National September 11 Memorial and Museum at the World Trade Center, The World Trade Center Performing Arts Center d/b/a The Performing Arts Center at the World Trade Center and a redeveloped St. Nicholas Greek Orthodox Church. The public use portions of the WTC Site were placed under the direction of Lower Manhattan Development Corporation (LMDC), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (ESD). In 2006, a Memorandum of Understanding was entered into among the Port Authority, LMDC and the National September 11 Memorial and Museum at the World Trade Center, under which the Port Authority agreed to transfer certain property interests at the WTC Site for the public uses and in exchange, LMDC agreed to transfer to the Port Authority for commercial development, real property interests it had obtained over the former Deutsche Bank office tower at 130 and 140 Liberty Street to the immediate south of the original Trade Center site (Site 5).

In 2019, ESD, LMDC and the Port Authority (Sponsors) entered into a Memorandum of Understanding related to the development of Site 5. The parties agreed to conduct a Request for Proposals for the development of Site 5 (RFP), and to allow proposals to be made which included residential use as well as office space (Multi-Use Building). LMDC later agreed that if the highest and best use of the site was for a Multi-Use Building, it would transfer Site 5 to ESD, allowing ESD to lease it to the selected property developer and remit the rental income to the Port Authority in recognition of its property rights to Site 5 (Transaction). It was anticipated by the Sponsors that any Multi-Use Building would also include permanently affordable residential units, under standards established by The City of New York (City) which are further described in the authorization of the Transaction by the LMDC Board of Directors on May 16, 2023.

In February 2021, the Board approved exclusive negotiations with a consortium of private developers doing business as 5WTC LLC (Developer) based upon the terms set out in Developer’s proposal which was submitted pursuant to the RFP and which proposed (i) a Multi-Use Building for Site 5, (ii) having a term of 99 years with (iii) rentals to the Port Authority of a minimum of \$12.5 million escalating at 2 percent per year commencing at completion of construction. The Developer is composed of affiliates of Silverstein Properties, Inc., Brookfield Properties, Omni New York LLC and Dabar Development Partners (the latter two companies having experience in affordable housing development). The Multi-Use Building proposal was for an approximately 1.345-million-square-foot facility with office, retail, community space and residential units, including permanently affordable units, to be memorialized in a restrictive declaration to be filed with City land records. The affordable units would be enabled through a property tax abatement to the Developer from the City. At such time, the Board was presented with the relevant economic terms of the proposers, including those of the Developer, and accepted and approved those terms in authorizing the exclusive negotiations with the Developer. Those terms have not meaningfully changed, other than based on action taken by LMDC on May 16, 2023 and ESD on May 22, 2023, to wit, (1) the required minimum of affordable units in the Multi-Use Building has been increased to 30 percent and (2) the eligibility for such units is as follows, from the materials presented to the LMDC Board of Directors on March 16, 2023:

Except as provided in footnote 1, a minimum of 30% of the residential units (such residential units, collectively, the “Affordable Component”) will be leased to households earning an income at or below an average of 85% area median income (“AMI”), provided that (x) at least 10% of the residential units within the Project shall be leased to households earning an income at or below 60% AMI, and (y) at least an additional 10% of the residential units within the Project shall be leased to households earning an income at or below 85% AMI, and (z) none of the units comprising the Affordable Component shall be leased to households earning an income above 110% AMI (collectively, the “Affordability Requirements”).¹ Subject to the availability of public funding by April 15, 2024, the Project may deliver additional affordable housing units. The Affordable Component will be regulated by the New York State Division of Housing and Community Renewal (“HCR”) and Developer will be required to enter into a regulatory agreement (the “Affordable Housing Regulatory Agreement”) with the New York State Housing Finance Agency. Once the Residential Component is built, the Affordability Requirements will be permanent.

Since 2021, the following events have occurred in connection with the Transaction: (i) the Sponsors have agreed with the Developer on the terms of a lease (Lease), which will be placed in escrow until financial closing and which embodies the economic proposal initially made by the Developer; (ii) the General Project Plan approved by LMDC in 2007 has been amended by LMDC and ESD (and approved by their respective Boards) to allow for the Multi-Use Building at the WTC Site and for adoption of design guidelines for the Multi-Use Building in lieu of City zoning requirements; and (iii) the Lease and related documents have been approved by the LMDC and ESD boards on May 16, 2023 and May 22, 2023, respectively.

Following final approval of the Transaction by the New York State Public Authorities Control Board and certain other state entities (Final Approval Date), the Developer and the Sponsors would enter into an Initial Agreement (Interim Agreement) permitting it to proceed to develop the project for a period up to 21 months from the Final Approval Date (Escrow Period, during which time it will fully design the Multi-Use Building (subject to approval by the Sponsors in accordance with the GPP design guidelines), arrange with a builder for its construction, and finance the project, anticipated to be effectuated through the encumbrance of the Site 5 leasehold. If at the end of the Escrow Period, these tasks have not been completed, the Developer has the right to extend Escrow Period for 6 months upon deposit of additional escrowed amounts. At the end of Escrow Period (whether or not extended) if the Developer is not ready to proceed, the Transaction will terminate and the escrowed funds will be forfeited, to be shared among the Sponsors. If the Developer proceeds, the Multi-Use Building will be subject to the Lease and must reach substantial completion within 5 years.

¹ At the written request, received by June 15, 2023, of the New York State Senator and Assembly Member representing the district(s) in which the Proposed Project is located, the Affordability Requirements may revert to the terms adopted by the Directors at the July 19, 2022 meeting, such that 25% of the residential units (such residential units, collectively, the “Original Affordable Component”) would be leased to households earning an income at or below an average of 50% AMI, provided that (x) at least 10% of the residential units within the Proposed Project would be leased to households earning an income at or below 40% AMI, (y) at least an additional 10% of the residential units within the Proposed Project would be leased to households earning an income at or below 60% AMI, and (z) none of the units comprising the Original Affordable Component would be permitted to be leased to households earning an income above 80% AMI.

The Port Authority is also now entering into a Lease Administration and Revenue Agreement (Administrative Agreement) pursuant to which the Port Authority will have certain consent rights in connection with ESD's exercise of its lessor rights under the Lease. To the extent that rental revenues paid to the Port Authority exceed a certain threshold, on a present value basis, revenues would be shared by the Port Authority with LMDC or the City, as its successor. Following the Lease termination, the real property interests would revert to the Port Authority.

It was recommended that the Board reaffirm its 2021 approval of the Transaction as embodied in the Developer's proposal (with the changes described above) and approve consummation of the Transaction in accordance therewith to enable development of a first-class multi-use property to meet the needs of the lower Manhattan community, with a significant affordable housing component.

Early in the development of the WTC Site, the Port Authority entered into a leasehold for Site 5 with its special purpose subsidiary. In connection with the Transaction, this lease will be terminated and have no further force and effect.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Helmy, Kelley, LaBarbera, Lynford, McCabe, O'Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority and its related entities that own interests with respect to the World Trade Center site, to enter into the Interim Agreement and the Administrative Agreement (as those terms are defined in the report to the Board), including a commitment to make effective the appended lease for the development, construction, financing and operation of an approximately 1.345-million-square-foot multi-use building, which will include residential rental units as well as office, community, and retail space, to be located at the 130-140 Liberty Street parcels (Site 5), at the World Trade Center, and any other documents, certificates, agreements or other evidences of the transaction as he believes are necessary or desirable to effectuate the purposes described in the report to the Board, in each case, with any amendments or supplements thereto as are consistent herewith and may be necessary or desirable in the future, all substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to terminate that certain agreement entered into in 2006 in contemplation of the development of Site 5 between the Port Authority and a subsidiary and following such termination, the terminated lease would have no further force or effect; and it is further

RESOLVED, that the form of all contracts, agreements and documents in connection with the foregoing shall be subject to the approval of the General Counsel or her authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by the General Counsel or her authorized representative.

NEW JERSEY MARINE TERMINALS – REHABILITATION OF FIRE PROTECTION SYSTEMS – PROJECT AUTHORIZATION

It was recommended that the Board authorize a project to rehabilitate existing fire protection systems in Port Authority-maintained Buildings 111, 255, 260, 263 and 301 at Port Newark and Building 51 at Port Jersey-Port Authority Marine Terminal (Port Jersey), at an estimated total project cost of \$41.5 million.

The Port Authority assumed responsibility for Port Newark in 1948, opened the Elizabeth Port Authority Marine Terminal in 1962, and acquired Port Jersey in phases between 2008 and 2014. Collectively, these facilities are known as the New Jersey Marine Terminals (NJMT).

At its meeting of July 25, 2019, the Board authorized planning and preliminary design work for the development of a project to rehabilitate Port Authority-maintained building fire protection systems at the NJMT. As a result of the planning and preliminary design work, staff recommended the rehabilitation of the fire protection systems in five Port Authority-maintained buildings at Port Newark and one building at Port Jersey.

The proposed project would include final design and construction necessary to rehabilitate the existing fire protection systems in the six buildings. Construction would include: (1) replacement of existing sprinkler piping, sprinkler heads, pumps, and valves, where required; (2) replacement of fire alarm manual pull-stations, detectors, switches, and alarms that are affected by the sprinkler system replacement work; (3) installation of fire alarm control panels, as needed, horns and strobe devices; (4) upgrades to service valves, backflow preventers and appurtenances; and (5) restoration of interior finishes impacted by construction.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Helmy, Kelley, LaBarbera, Lynford, McCabe, O'Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

RESOLVED, that a project to rehabilitate existing fire protection systems in Buildings 111, 255, 260, 263 and 301 at Port Newark and Building 51 at Port Jersey-Port Authority Marine Terminal, at an estimated total project cost of \$41.5 million, be and it hereby is authorized; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take action with respect to contracts for professional, technical, and advisory services, construction contracts, and such other contracts and agreements as may be necessary to effectuate the foregoing project, pursuant to authority granted in the By-Laws or other resolution adopted by the Board; and it is further

RESOLVED, that the form of all contracts, agreements and other documents in connection with the foregoing project shall be subject to the approval of General Counsel or her authorized representative; and the terms of such contracts, agreements and other documents shall be subject to review by General Counsel or her authorized representative.

CONFIDENTIAL ITEM

The Board approved a matter in executive session, which shall not be made available for public inspection until such time as litigation related to this matter has concluded.

CONFIDENTIAL ITEM

The Board approved a matter in executive session, which shall not be made available for public inspection until such time as litigation related to this matter has concluded.

CONFIDENTIAL ITEM

The Board approved a matter in executive session, which shall not be made available for public inspection until such actions have been completed.

Whereupon, the meeting was adjourned.

Secretary