

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, NY 10281  
October 28, 2020

Members Present

George Tsunis, Chairman (via video)  
Louis Bevilacqua, Member (via video)  
Donald Capoccia, Member (via video)  
Martha Gallo, Member (via video)  
Catherine McVay Hughes, Member (via video)  
Anthony Kendall, Member (via video)

Authority Staff in Attendance: Benjamin Jones, President and Chief Executive Officer (via video)  
Sharmila Baichu, Vice President of Human Resources (via video)  
Marie Baptiste, Deputy Treasurer (via phone)  
Anthony Buquicchio, Senior Project Manager (via phone)  
Gwen Dawson, Vice President, Real Property (via video)  
Pamela Frederick, Chief Financial Officer/Treasurer (via video)  
Abigail Goldenberg, General Counsel (via video)  
Craig Hudon, Vice President of Parks Programming (via phone)  
Susie Kim, Deputy General Counsel (via video)  
Karl Koenig, Controller (via video)  
Kevin McCabe, Chief Resilience Officer (via phone)  
Eric Munson, Chief Operating Officer (via video)  
Jahmeliah Nathan, Vice President of Administration (via video)  
Robert Nesmith, Chief Contracting Officer (via phone)  
Bruno Pomponio, Vice President of Parks Operations (via phone)  
Jason Rachnowitz, Director of Financial Reporting (via phone)  
Nicholas Sbordone, Vice President of Communications and Public Affairs  
(via video)  
Alexis Torres, Chief of Staff (via video)

Others in Attendance: Carl Weisbrod, HR&A (via video)  
Warren Ruppel, Marks Paneth (via video)

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 2:30pm.

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The first item on the agenda was the approval of the minutes of the September 30, 2020 meeting. Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**APPROVAL OF MINUTES OF THE SEPTEMBER 30, 2020 MEETING**

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on September 30, 2020 are hereby approved.

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Ms. Gallo made a motion to enter Executive Session, which was seconded by Mr. Bevilacqua, to discuss the negotiations related to the lease of real property, the publicity of which could substantially affect the value of the relevant properties. The Members entered Executive Session at 2:05pm.

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The Members exited Executive Session at 3:24pm.

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Next, there were three (3) presentations during the period of public comment, which were read by Mr. Sbordone.

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The next item on the agenda was the M/WBE Utilization Report presented by Ms. Nathan.

Ms. Nathan reported that for the month of September 2020, 28.64%, or approximately \$1 million of the Authority's total qualifying expenditures of approximately \$3.3 million was paid to MWBEs. Of this amount, 17.82% was paid to MBEs, 3.5% to MBE prime contractors, and 14.32% to MBE subcontractors. Of the total qualifying spend, less than 1% was paid to WBEs prime contractors and 10.54% to WBE subcontractors.

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The next item on the agenda was the Resiliency Update, which Mr. Jones delivered. He noted that the Authority was moving ahead on using a progressive design-build authority by both finalizing an RFP for a consulting engineer and engaging in follow-up discussions with firms that had expressed interest in the recently issued “request for expressions of interest.” He provided updates on some of the Authority’s major resiliency and sustainability projects, mainly that the South Battery Park City project has begun its “environmental impact statement” (EIS) phase; that the ballfields team is working on getting revocable consent from the City so that it can begin work on the portion of the property under City control; and that the team continues to work on a plan to achieve Zero Waste Certification. After Ms. McVay Hughes reminded all in attendance that it was a day before the eight-year anniversary of Superstorm Sandy, Mr. Jones summarized the anticipated completion dates for the Authority’s projects. He noted that the Authority anticipates completing the ballfields project before the 2021 hurricane season; the South Battery Park EIS in calendar year 2021 while also beginning the procurement for any related construction activity with a goal of having construction done within two years; and the bulk of the work for the North and West resiliency projects by 2025. He also reminded Members of the work that has already been completed: the ballfields and Pier A were restored and made more flood-resistant; streetways were made water-resistant; and mechanical and electrical vaults on the south side of Pier A Plaza were raised.

Ms. Gallo then asked about internal staffing at the Authority in light of its resiliency and sustainability goals. Mr. Jones noted there are some vacancies in the Real Property department that currently cannot be filled as a result of the State-wide hiring freeze but that would filling these roles would help efforts. He also noted staffing need on the legal side. Finally, Mr. Jones reminded the Members that the Authority also requires City approval of its capital plans and that it has already secured initial approval towards the Authority's design and engineering efforts.

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Ms. Frederick then provided the Members with an update from the Audit Committee, which had met prior that afternoon. She noted that the Committee had reviewed and approved for posting the April financial statement that was prepared by the Authority and reviewed by Marks Paneth and also discussed the Authority's audit plan, which is set for implementation in December with the goal of having the financial statement ready for the January Board meeting and filing by the end of that month as required by the State. She also noted that the Committee had discussed several process improvements that have taken place during the pandemic and the hiring of an asset manager to help with the design and implementation of lease optimization software.

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Mr. Jones presented the next item on the agenda, which was a request to approve the Authority's FY21 operating and capital budgets and to fund its FY20 operating reserves for an additional \$10 million. He provided a summary of the budget materials provided at the meeting: revenues for FY20 were just over \$342 million and ahead of projections; operating expenses or operating budget and debt service were approximately \$113 million, which was below projections because debt service payments were lower than expected as a result of lower interest rates; and the Authority's excess revenues loan to the City is \$229 million. For FY21, he noted that the Authority projects revenues of about \$340 million, total operating expenses, debt service and operating and reserves and other \$125 million, and excess revenues of \$215 million.

He also provided the Board with a summary of accomplishment undertaken by the Authority within the last year – as well their connection to the four pillars of the Authority's strategic plan (an inclusive community, a safe and climate resilient place, a vibrant public space, and leadership for the future). Highlights included: recent rent protections at Gateway, the Sustainability Plan, new systems projects and ways of modernizing operations and enabling more remote work opportunities across all division, and contributions in public art and programming.

He then provided a summary of the FY21 Budget Plan, including a list of projects that will begin or come to completion. He highlighted continuing resiliency efforts, internal operations improvements to streamline and modernize HR and it, and preventative capital project upgrades, such as the esplanade restoration, the South End Avenue redesign, and the north grid electrical upgrade. He reiterated that FY21 receipts are budgeted at about \$340.6 million with just over half of the receipts coming from the Authority's 30 residential properties and about 45 percent come from its commercial properties. He noted that anticipated FY21 expenditures at approximately \$125.3 million and debt service close to \$71.5 million. He also reminded the Board that next year the Authority expects to satisfy its obligation under the 2010 Settlement Agreement Amendment with New York City.

Finally, he reviewed the Capital Plan, which is estimated at \$62.2 million for FY21. He noted that the Authority intends to continue with pile remediation and other infrastructure upgradesHE

closed by thanking the staff and their efforts in helping to put the budget together particularly Pam and the Finance Team. He then made a formal request for approval for the FY21 budget and the funding of the operating reserve.

Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**APPROVAL OF AUTHORITY BUDGETS FOR FISCAL YEAR ENDING OCTOBER 31, 2021 AND AMENDMENT OF FISCAL YEAR 2020 BUDGET**

BE IT RESOLVED, that the each of the capital and operating budgets of the Authority for the fiscal year ending October 31, 2021, substantially in the form presented to this meeting be, and hereby is, approved and ordered filed with the records of the Authority; and be it further

RESOLVED, that the budget of the Authority for the fiscal year ending October 31, 2020, approved at the October 29, 2019 meeting, be, and hereby is, approved to be amended by an increase not to exceed of \$2,000,000 to allow the funding of the Operating Reserve; and be it further

RESOLVED, that the President and Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, directed to file said budget and related information with all parties as required pursuant to all outstanding bond resolutions, agreements and requirements of law.

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The next item on the agenda, presented by Ms. Goldenberg, was an authorization to extend the time for a contract with a law firm that the Authority had used exclusively for a particular litigation. She explained that while the litigation has concluded, the Authority is requesting that the contract be amended to pay any outstanding invoices for work previously done.

Upon a motion made by Mr. Bevilacqua and seconded by Ms. Gallo, the following resolution was unanimously adopted:

**AUTHORIZATION TO AMEND THE RETAINER AGREEMENT WITH SHER TREMONTE, LLP FOR LITIGATION SERVICES.**

BE IT RESOLVED, that in accordance with the materials submitted at this meeting, the President and Chief Operating Officer (the "President") of the Battery Park City Authority or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute an amendment (the "Amendment") to the retainer agreement with Sher Tremonte, LLP for litigation services, extending the termination date to November 20, 2020, retroactively effective as of December 20, 2019; and be it further

RESOLVED, that the President of the Authority or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Amendment on behalf of the Authority, subject to such changes as the officer or officers executing the Amendment shall, with the advice of counsel, approve as necessary and appropriate in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Amendment; and be it further

RESOLVED, that the President of the Authority or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other

and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The final corporate action, presented by Mr. Jones, was an authorization to amend the Site 14B Ground Lease, the location of the Museum of Jewish Heritage. He explained that the amendment would delete a section of the lease that permits the Museum to add 32,000 square feet of floor area and that the Authority would pay the Museum of \$2.9 million for surrendering those rights. He noted that the value was based on an appraisal conducted by CBRE, which discounts the value of the development rights due to the uncertainty about where or when the Authority might utilize the additional square footage. He also explained that this effort was in furtherance of fulfilling Governor Cuomo's commitment to educate New York students about the history, arts, and lessons of the Holocaust and to support the Museum and its ongoing efforts to provide exhibits and education in a number of ways and platforms to reach children. He then requested that the members to authorize the amendment and payment.

Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**AUTHORIZATION TO AMEND THE GROUND LEASE OF SITE 14B**

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President & Chief Executive Officer of the Hugh L. Carey Battery Park City Authority (the "President"), or her/his designees be, and each of them hereby is, authorized and empowered to execute an amendment to the ground lease for Site 14B for an amount payable to the Museum of Jewish Heritage of \$2,900,000; and be it further

RESOLVED, that the President or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the amendment on behalf of the Hugh L. Carey Battery Park City Authority, subject to such changes as the officer or officers shall, with the advice of counsel, approve as necessary and appropriate and in the best interests of the Authority, such approval to be conclusively evidenced by the execution and delivery of the amendment; and be it further

RESOLVED, that the President or her/his designees be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and take all such other and further actions as may be necessary, desirable or appropriate in connection with the transactions contemplated in the foregoing resolution, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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There being no further business, upon a motion made by Ms. McVay Hughes and seconded by Ms. Gallo, the Members unanimously voted to adjourn the meeting. The meeting thereupon adjourned at 4:06pm.

Respectfully submitted,

Susie Kim  
Assistant Corporate Secretary

**Public Comment**  
**October 28, 2020**

**1. Robert G. Zack, Secretary and Member of the Board of Directors, Battery Park City Homeowners Coalition:**

I am a member of the Board of Directors of the Battery Park City Homeowners Coalition, representing the 18 condominiums in Battery Park City with some 3,900 apartment units. I am also the President of the Visionaire condominium.

A decade ago, the original 11 Battery Park City condominiums faced ground rent increases based on 6% of Fair Market Value of the land under their buildings, a provision in every ground lease. The Authority and its consultants, and the Battery Park City Homeowners Coalition agreed that the 6% of fair market value rent escalation provision would destabilize families and result in lower revenues to the Authority as a result of ground rent defaults, unit owner bankruptcies, and legal costs. In 2011, after negotiations, a settlement was reached amicably to provide 30 years of stable cost increases for homeowners in those 11 condominiums and increasing revenues to the Authority. The Authority gave similar terms to another condo created by conversion in 2012.

In 2014, the 7 newer condominiums that were not parties to the 2011 settlement grew concerned as they faced ground rent increases based on the 6% of fair market value rent reset provision that will occur respectively in 2021, 2023, 2024, 2030, and, for two, in 2031. The condominiums in the 2011 agreement joined to help them achieve a similar settlement that would be beneficial to homeowners and the Authority and provide stability in our community.

In December 2017, our Coalition asked the Authority to revise the terms of the ground leases to remove the 6% of Fair Market Value reset provision from all ground leases for condominiums in Battery Park City. Our Coalition was granted a meeting with the Authority's CEO to discuss our three proposals: first, proposed lease terms for the 6 newer condominiums; second, the removal of the 6% of fair market value formula from all leases, including those of the 12 condominiums at the end of the 2011 settlement's 30-year term; and third, a means to address the threats raised by the ever-closer 2069 termination of all Battery Park City ground leases.

As we had a decade ago, our Coalition demonstrated that the 6% of fair market value rent reset formula would result in astronomical increases in ground rents, which would cause foreclosures, bankruptcies and a plunge in the values of condominium units that would make them unmarketable as each reset date approached. We further demonstrated the progressive damage posed by the termination of all ground leases in 2069 as market values fall and mortgage lenders refuse to extend mortgages, making apartments unmarketable – the last possible 30-year mortgage will be written in 2039. As the lease end date approaches, the value of our homes is essentially transferred to the Authority. At the end of the leases in 2069, the Authority can evict condominium owners without payment. In December 2017, we proposed a series of sound steps, fair to all parties, to avoid this pending crisis.

Since that first meeting in December 2017, the Authority has said they recognized that the 6% of fair-market-value increases are untenable, yet they have refused our Coalition's proposals to revise the ground leases on a mutually beneficial basis. We proposed stable annual ground rent increases through 2069 for all 18 condominiums, providing predictable revenues to the

Authority. We also proposed extending all condominium ground leases by 99 years to enable continued availability of mortgage financing, and we suggested developing a means to purchase the land under our buildings from the BPCA.

After years of discussions, and two formal proposals by our Coalition, we have waited nearly a year without a specific response to our proposals. The current management of the Authority and their consultants have not been willing to discuss amending the ground leases now to provide stable annual ground rent increases for all 18 condominiums through 2069, or extension of the leases beyond that date. They have instead proposed imposing regressive “flip taxes,” at an astounding rate of 8% on the first sale of a unit, and 1% thereafter, despite the fact that flip taxes were dismissed by both sides as unworkable in the 2011 negotiations.

Our Coalition therefore respectfully asks the board to consider the following 3 requests:

- i) We ask you to direct the Authority’s management and their consultants to negotiate a fair and reasonable alternative to the 6% of Fair Market Value ground rent resets for all 18 condominiums.
- ii) We ask you to direct Authority and its consultants to share the revenue assumptions that presumably underlie their proposals, which have been withheld from us, and which would enable all parties to negotiate effectively.
- iii) Finally, we ask that you direct the Authority to cease its current efforts to split the coalition by applying pressure to the most vulnerable condominium, whose 6% ground rent reset looms in 2021, a tactic that violates the cooperative spirit of the 2011 negotiations and smacks of bad faith.

In summation, we are here to ask your help to get the Authority’s management and consultants to sit down with us and negotiate seriously and in good faith. Time is of the essence. As noted, the first of our member condominiums is facing the 6% of fair market value ground rent reset in April 2021.

Thank you for your consideration and for helping us ensure the continued viability of Battery Park City as an affordable community for homeowners.

**2. Andrew Osbourne, President of the Board of Managers, River & Warren Condominium:**

My name is Andrew Osborne and I am President of the Board of Managers of River & Warren Condominium. In the spring of 2021 River & Warren will be the first of the next wave of ground rent appraisals. Anticipating such, we joined the Battery Park City Homeowner’s Coalition (“Coalition”) approximately 4 years ago alongside all other condominiums in BPC to singularly negotiate base rents through lease expiration in 2069. The benefits to both sides of negotiating all condominiums at once is clear. For the condominiums it provided an opportunity to reasonably set ongoing rents and to address the very real issue of the 2069 lease expiration. For BPCA negotiating with a single body is efficient and consistent and provided an opportunity to forward their own agenda including attempting to add new sustainability goals into the negotiation.

As part the Coalition, we have attempted to negotiate for over 3 years with no acceptable resolution and with the BPCA subsequently attempting to delink any conversations around 2069 and a lease extension or indeed a BPCA facilitated purchase. This appears counter to all



we have heard publicly from BPCA about the 2069 issue and that they are acutely focused on it. We assumed that conversations with the Coalition would be the most practical way of discussing the next phase of BPC with its singular voice and representation of approximately 3900 households.

Over the last few years our Board has increasingly been asked by potential buyers and unit owners as to the potential direction of our ground rent in 2021. To date we have made people aware of the prior settlement from 2011/2012 for 12 buildings in hopes that that the methodology and tone of precedent of approximately 3% annual growth would be consistent. To reiterate River & Warren appreciates the need for reasonable and enduring revenues for the BPCA.

The current dated offer from BPCA will be destructive to both stability and values particularly with the falling rental market under extreme pressure and owners selling and moving out of the city due to Covid 19. This value destruction is particularly frustrating to River & Warren in that through our efforts we are leading BPC's and New York City's charge towards greater sustainability through the adoption of both solar and wind power and other measures and see this as specific value creation for BPC.

Furthermore in recent months attempts have been made to deal directly with River & Warren in an inappropriate attempt to separate us from the Coalition.

To date no response has been received on the Coalition's counter proposal and no indication of how it can be practically implemented. In offering an excessive transaction fee or flip tax the BPCA is potentially accelerating this flight to sales prior to its potential introduction. The only reasonable consequence of this will be the rapid destruction of values at River & Warren and across all condominiums within BPC. We believe this situation needs to be addressed urgently and not hang over for another 12-36 months.

From my personal prior experience leading and producing revenue projections for the BPCA for 3 separate bond financings and presenting those findings to Rating Agencies, I would respectfully counsel that this may have a hugely negative impact on Assessed Values and PILOT as capital and rental values decrease. With condominium base rent a smaller part of overall revenues to BPCA but overall residential PILOT a much larger one the inter-relation and potential impact to long term BPCA revenues is clear.

The Board of Managers respectfully ask the Board of BPCA to re-engage with the Coalition, advocate for a meeting in very short order and challenge BPCA to find and adopt a methodology that would be acceptable to unit owners across BPC. Such a methodology should follow all precedents to date and provide reasonable and appropriate revenues.

We further ask the Board to recognize the incrementally impending threat of the 2069 lease expiration and create a strategic direction to address this issue within this negotiation if only confirm that condominiums will be provided with a 'right to renew' albeit with economics to be determined at a later date within a defined period of time.

### 3. **Michael Waldorf, President of the Board, Riverhouse Condominium:**

I am the board president of the Riverhouse Condominium, which is located at 2 River Terrace and is party to a ground lease with the Battery Park City Authority. Our condominium is joined with others that are also subject to ground leases in an umbrella organization called the Battery Park City Homeowners Coalition (BPCHC), which has been attempting to renegotiate the ground leases with management of the BPCA to avoid what we believe are economic terms that are unsustainable in the long term.

While I will leave comments on the process and substance of such negotiations to Robert Zack of the BPCHC, I wanted to convey to the BPCA the impact of the current economic environment on the neighborhood and how it affects ground lease renegotiations. The COVID-19 pandemic has devastated the New York City economy and the incomes of many of our unit owners and residents, and this has brought into even clearer focus the economic consequences of the BPCA's failure to engage with the condominiums on ground leases. With the revelation that more jobs than ever are not location-specific and the advantages of physical proximity to New York City office buildings eroded, the value proposition of city residency has suffered as we see in lower lease rents and lower sale prices for Battery Park City residential real estate. This will erode PILOT (Payment In Lieu of Tax) which is based on imputed rental income, and in parallel this will erode the residual value of the BPCA's interest in the ground leases.

A residential community that is sustainable in the long-term is and should be one of the BPCA's highest priorities. Unless it fixes the ground leases, that sustainability is threatened, and we urge the BPCA to ask its management to engage with the BPCHC expeditiously. The first reset under the current ground leases is coming up next year, it is much better for all parties involved with the BPCA to engage with the residential buildings as a group, that group has been formed and is prepared to engage, and there is no time to waste on this important matter.