NEW YORK STATE OF OPPORTUNITY. | Atlantic Yards Community Development Corporation

A Subsidiary of Empire State Development

ATLANTIC YARDS COMMUNITY DEVELOPMENT CORPORATION

at the New York City Offices of
Empire State Development
633 Third Avenue – 37th Floor Conference Room
New York, New York 10017

Meeting of the Directors

Tuesday

January 23, 2024 at 3:00 pm

PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the August 2, 2023 Directors' Meeting

FOR INFORMATION

2. Updates (Oral Reports)
   a. Project Construction and Overall Development
   b. EB-5 Debt and Foreclosure Auction
   c. U. S. Immigration Fund (USIF) and Foreclosure Auction
   d. New York State Urban Development Corporation d/b/a Empire State Development – Next Steps

3. Public Comments

Item 1

Atlantic Yards Community Development Corporation
Meeting of the Directors
Empire State Development
37th Floor Conference Room
633 Third Avenue
New York, NY 10017

August 2, 2023

MINUTES

In Attendance	
Directors:	Daniel Kummer, Acting Chair Anand Amin Shawn Austin Ronald Shiffman Ethel Tyus Gib Veconi Deborah Young
AYCDC Staff:	Debbie Royce - Corporate Secretary
ESD Staff:	Wilmer Cabral – Director, Community Relations Richard Dorado – Senior Counsel, Special Projects - Transportation Joy Huang – Director, Real Estate Development and Planning Joel Kolkmann – Senior Vice President, Real Estate Angel Santana – Vice President, Community Relations Arden Sokolow – Executive Vice President, Real Estate Development & Public/Private Partnership Mabelle Zhang – Project Associate, Real Estate
Also Present:	Monica Abend – NYS Attorney General Letitia James' Office Senator Jabari Brisport – NYS Senate Joshua Cohen – Greenland USA (via teleconference) Hector Garcia – Long Island Railroad (via teleconference) David Pechefsky – NYS Assemblymember Robert Carroll's Office Robair Reichenstein – NYS Metropolitan Transportation Authority Assemblymember Jo Anne Simon – NYS Assembly Robert Thuston – Roux Macy Wang – Greenland USA (via teleconference)

The meeting of the Atlantic Yards Community Development Corporation ("AYCDC") was called to order at 3:10 p.m. by Acting Chair Daniel Kummer. The Directors were reminded that the meeting was being webcast and that they had received the written materials in advance of the meeting and were free to ask questions at any time.

Acting Chair Kummer then noted that after each Agenda item is presented and comments from the Directors are received, members of the public will be allowed to provide comments. He also stated that the last item on the Agenda is "Public Comments", during which the public can speak on non-Agenda related matters.

The Acting Chair then stated that the public was given an opportunity to comment on the Agenda items by submitting their written comments by 10:00 am today and that one non-Agenda related comment was received. He then noted that the comment was provided to the Directors and the subject matter of the comment, which is more process-related, would be taken up during the public comment portion of the Agenda.

Acting Chair Kummer then asked the Directors whether anyone had any potential conflicts of interest with respect to any of the items on the Agenda. Hearing none, he then turned to the first item on the Agenda, the approval of the Minutes of the Directors' Meetings of June 7, 2022 and April 11, 2023. He noted that the Directors received the June Minutes yesterday and the April Minutes this afternoon and further noted the approval vote could be held off if any of the Directors required additional time to review.

Director Tyus made a motion to postpone the vote for three days on both sets of Minutes. To clarify, Acting Chair Kummer asked if the motion could be for the Minutes to be conditionally approved subject to the Directors having three days to submit comments and/or proposed edits. Director Tyus agreed to the motion's amendment and it was approved.

Acting Chair Kummer asked if any of the Directors had any corrections that they wanted to put on the record at this time. Hearing no response, he noted that on page 19 of the June Minutes, an edit was needed in his statement to reflect he asked staff to have a discussion that included doing whatever was necessary to preserve ESD's rights with respect to not waiving any of the remedies raised by Director Veconi. He also noted a correction to page 16 of the April Minutes to change the word "termination" to "condemnation" in his request for the status on that process.

Hearing no additional responses, the Acting Chair reiterated that both sets of Minutes were conditionally approved three days from today pending the receipt of any additional edits. He then introduced Joel Kolkmann, ESD's Senior Vice President of Real Estate.

Before turning the meeting over to Mr. Kolkmann to proceed with the Agenda, Acting Chair Kummer expressed his great appreciation for Ms. Jaiyesimi's work through the years guiding the Board from the staff perspective and keeping it informed. He stated that although she wasn't present, he wanted to thank her and wish her well in her next endeavors.

Director Veconi then requested if, before proceeding with Agenda, the other ESD staff members in attendance would introduce themselves and provide their titles. The ESD staff introduced themselves and were noted in the attendance listing of these Minutes.

Mr. Kolkmann then re-introduced himself and noted he joined ESD in April. He further noted that while he would continue to work on the Project, until a replacement for Ms. Jaiyesimi would be brought on hopefully in the near future.

Continuing on to the "Project Update" portion of the Agenda, Mr. Kolkmann stated he wanted to provide updates on B12 and B13, and Pacific Park, the open space. He also stated that representatives from the Metropolitan Transportation Authority ("MTA"); the Long Island Rail Road ("LIRR"); and the developer, Greenland USA were on the line to speak more about the platform construction and to answer any questions. The representatives were individually introduced and were noted in the attendance listing of these Minutes.

Acting Chair Kummer requested that for future meetings, the representatives attend the meeting in person rather than via teleconference. He understood that the scheduling issues and postponement of the meeting date may have caused scheduling conflicts but wanted this request noted for the record.

Mr. Kolkmann then proceeded with the Project update and stated that B12 and B13, known as 595 Dean Street, is complete having received their Temporary Certificates of

Occupancy. He further stated the buildings include 798 units, 30 percent of which, approximately 240, are affordable. He advised that the lottery for the buildings closes on August 15th, having been extended from the original date of July 31st. He further advised the lottery was available through the 595deanlottery.com website or through the City's Housing Connect portal.

Mr. Kolkmann advised that once the lottery closes, the development team anticipates those that move through the process will have move ins within approximately two months of that period. He further advised the move ins would be staggered rather than all at once.

In addition to the residential component, Mr. Kolkmann explained there was a non-residential component of these projects. He noted this included Chelsea Piers Fitness, a gym and fitness facility; and the Field House, a 2.5-acre facility for youth programming, recreation activities, sports facilities, a gymnastics center, and a heated pool. He further noted the amenities opened in June and are open to the public.

Director Shiffman inquired about the costs and who can access the facilities and Mr. Kolkmann stated he would have the developer and facilities provide the information. Acting Chair Kummer recalled that when the facilities were approved, residents would have preferential or subsidized or discounted access, with the view toward enabling the affordable units. He requested an update on that status.

Mr. Kolkmann then proceeded with an update on the nearing completion of Pacific Park, the open space associated with these buildings. He noted this is part of the open space that

will ultimately span up north to the Atlantic Avenue. Director Veconi asked if it was open to the public and Mr. Kolkmann replied that it was not yet but should be shortly pending some deliveries of equipment and materials. He noted that pending this opening, the Project would have delivered three of the approved eight acres of open space. He noted the remaining five would be developed on the platform sites on Blocks 1120 and 1121.

Director Shiffman asked would it be possible in the future not to just use the term Affordable, but to provide the range of incomes. He stated if this could be done then it could be determined if it's meeting the objectives that were the original obligations. Director Veconi noted it would be helpful to see today, for the project overall, what the affordable components can do in comparison to 2025.

Mr. Kolkmann moved to discussion of the platform and stated that Ms. Jaiyesimi last relayed that the LIRR, MTA and the Developer were working on final negotiations on terms of the platform construction. He reminded the Directors that representatives were on the line who would now provide their update on the platform status.

Robair Reichenstein, from the MTA's transit-oriented development group, introduced himself and noted they were actively involved working with Greenland in terms of managing the development agreement, which is very complicated in terms of the actual physical location of building over an active rail yard. He noted he was pleased to report that the MTA and Greenland have resolved their differences relating to the construction guarantee associated with the platform construction. He explained that MTA drafted necessary changes to the development agreement, and Greenland has responded to this legal document. He advised

MTA and Greenland are working through the comments so that in short order, Greenland's ability to start construction will be facilitated.

Director Veconi asked for confirmation that the mentioned agreements address all issues between MTA and Greenland with respect to platform construction, with nothing outstanding that hasn't already reached a substantive agreement. Mr. Reichenstein replied that although the agreement has not yet been entered into and there are details to get through, they do have agreement on all the issues. He further replied that Greenland has security that it will post.

Director Veconi asked if Greenland has obtained the necessary bond to satisfy the terms of this agreement and Mr. Reichenstein responded Greenland has agreed to provide the bond but it was not yet in MTA's possession.

Acting Chair Kummer recalled from the last meeting that the delay was characterized as a delay in issuing permits and asked if this agreement is going to have within it the necessary permits or is that a separate process and Mr. Reichenstein responded that was a separate process but they have agreed on the means and methods of construction so the permits should be forthcoming.

Director Shiffman asked if there was an approximate start date and what period of time would it take to construct the platform and Mr. Reichenstein responded that MTA cannot respond to that question and deferred to Greenland's representatives to respond.

Macy Wang, from Greenland, responded that the platform construction's duration would be roughly 36 months and laid out the construction timing plan.

Director Tyus asked when the 36 months would start. Ms. Wang replied that there are two factors regarding the construction start, noting one being the document modification that is in process and the other being that there is no affordable housing subsidy in place as in prior years, so Greenland is evaluating how to proceed.

Mr. Kolkmann advised that at the last Directors' meeting, Ms. Jaiyesimi mentioned that in the Fall the Corporation would work on an engagement process to talk through what the remaining future looks like for platform sites. He updated that a solicitation has been released for an engagement consultant. He noted responses were received last week and the idea would be to have the selected consultant attend the next meeting sometime in September to discuss what that process would look like and to get some feedback.

In terms of timeline for starting, Mr. Kolkmann stated it was important to conduct the public conversations about affordability and other important pieces of the project before moving ahead with constructing. He also stated in terms of the scope of the engagement process itself, it would be about a four-month process with up to four meetings. He noted it was currently open-ended while feedback is obtained on how the meetings are structured.

Director Veconi requested that the Directors be provided with a copy of the RFP that was issued for the facilitator and Mr. Kolkmann and Ms. Sokolow advised they would check with the Procurement Team.

In response to a clarification comment by Director Tyus, Acting Chair Kummer requested that Mr. Kolkmann draw through the connection between the engagement process and the question of the platform construction commencement and whether any part of that could be done while the engagement occurs. He also noted the issue of a subsidy program being available and how that would relate to the process.

Director Shiffman stated it's also the issue of the units of affordable housing that have to be delivered and whether that has been negotiated away. Mr. Kolkmann responded that has not been negotiated away and the project documents haven't changed. He further replied that it was reiterated to the developer that rights under the project documents are being retained.

Director Veconi stated to Acting Chair Kummer' s point, he believed it would be helpful to take a step back to understand what the general strategy is at this point. He stated it was good to talk about community engagement, but it would have to include an explanation of what is expected to happen now.

Director Veconi further stated that with respect to a continuing concern about the lack of a subsidy for affordable housing is if the construction of affordable housing is on hold pending an authorization of a new subsidy, or is the developer prepared to make good on the liquidated damages that are part of the agreement. He noted the liquidated damages come due in less than two years and it doesn't appear there would be any potential for apartments to be ready in the two-year timeframe. Mr. Kolkmann advised that a subsidy is not anticipated.

Director Veconi reiterated his question of whether the developer was prepared to make good on the liquidated damages for delays beyond May 2025. He noted this was an important question to answer to provide credibility to the public for what is planned in the future.

Senator Brisport noted that that he understood the developer wanted a 421-A abatement or some other form of subsidy in order to move forward. He requested that they provide some type of publicly available financials to prove that the project is not financially viable and not have it based solely on their word. Directors Veconi and Tyus echoed the request for the documentation. Ms. Sokolow stated that might predate Mr. Kolkmann's involvement but that it is not hard to see that the rental residential development without a tax exemption is a challenge and is something being grappled with on all developers.

Acting Chair Kummer asked the developers representatives if they wanted to address this issue in a preliminary way today. Joshua Cohen from Greenland stated that like all developers, Greenland is trying to work through the schedules of how and what is built given the landscape of the lack of tax abatements. He stated he hopes with ESD's public engagement there would be a clearer picture of the timing and what will be built.

Senator Brisport asked if the developer was losing money on the project without the tax abatement or if it was just not making enough money as they would like. Assemblymember

Simon added that she wanted it to be clear that the project has not had the 421-A exemption for quite some time, so it is not the lack of an abatement that has a lot to do with the current ability to build.

Ms. Sokolow stated that community engagement was an important part of this conversation in terms of figuring out the next phase with the Board and other stakeholders.

Director Shiffman stated the Governor utilized a mechanism for one development project that provides unique advantages already in place for Atlantic Yards. He stated he didn't think public engagement was needed to fine tune the current project. He further stated that the developer's financial commitments should not be modified on a new form of community engagement.

Director Veconi stated one of his concerns with respect to the community engagement piece is that it will appear that there is an expectation of a delay in the project, and he didn't want to create that expectation. He reiterated that the project has firm deadlines and has remedies in place when the deadlines aren't met which are needed to deliver housing, especially affordable housing, to the people of the City of New York. He again reiterated his question to the developer on whether they were prepared to pay the liquidated damages. He

stated that was important to know to determine if community engagement could be done or if a different discussion had to take place.

Acting Chair Kummer stated he didn't think those on the phone could be expected to answer that question directly today, but that the question should be taken very seriously under advisement.

Director Tyus advised that the Council Member for the area has been involved in extensive community engagement and has been working on this, so information is available to this project to utilize and doesn't need to recreate what's been done already.

Assemblymember Simon stated the project has failed to deliver for a very long time with issues that pre-exist the 421-A issue and that is a concern. She stated it's also a concern that there are remedies that have been agreed to in the contract that are not being sought for non-performance. She stated that some assurance needed to be given that the project could be built. She also noted that the remedies were meant to go to a trust to support affordable housing and to support those displaced from the site and that every day that goes by has the cost of the housing AMI going up making is less and less affordable for those that will be able to access it. She reiterated that the requested information needs to be provided now because

there is no time to waste. She noted that Council Member Crystal Hudson's office is involved in the community engagement right now.

Ms. Sokolow advised that the idea of conducting community engagement was not an attempt by ESD to distract or delay the project and that it was born of a desire to raise these issues being discussed here today and in conversations with stakeholders, to determine ways to move forward.

Acting Chair Kummer stated that the representatives of the developer on the phone should not interpret the discussions today to in any way to suspend any deadlines or penalties or previously agreed deadlines. Assemblymember Simon stated that people have engaged an awful lot and they need a reason to believe that something will happen.

Director Veconi stated he was concerned it might be interpreted that things are being waived because of discussion had around the Urban Room being shifted to Site 5 without penalties being sought and he didn't want that to be interpreted as having anything to do with the remainder of the project. He noted he was okay with staying the course and working through things with the current developer as long as the current financials for the project could be provided and understood. He noted one of Reinvent Albany's recent recommendations for

reform at ESD was to be able to make public the financial projections for projects that are underwritten.

Director Tyus reiterated her request that the report by Council Member Hudson be reviewed and asked for Assemblymember Simon's assistance to drive this project forward at this point.

Director Veconi made a motion to request ESD to prepare an analysis of the cost of completion of the project, including any liquidated damages that would be owed due to the delay, and make that available to the Directors and to the public for review. Following discussion on the delivery date, it was agreed that the motion would request an October delivery date.

Finishing up with the "Project Update" section of the Agenda, Acting Chair Kummer addressed the non-Agenda public comment received which was posted and provided to the Directors and read it into the record. After discussion on the timing of distribution of Minutes being improved, it was also noted that agendas could be developed further to provide for additional information.

Acting Chair Kummer reiterated that public comments could be provided in writing by deadlines but that members of the public were also invited to attend in person to provide comments as well and noted there were no additional comments to be provided.

Director Tyus then reiterated her request that the report sponsored by Council Member Hudson's office be reviewed. Acting Chair Kummer asked if the point of receiving the report would be to inform our process or that it is substantively valuable, and Director Tyus replied it could be both.

Director Veconi requested that holding the Directors' Meetings in Brooklyn be revisited and Ms. Royce asked for anyone who had suggested sites to please provide her with contact information. Senator Brisport stated he thought the Shirley Chisolm State Office Building could be used and would provide contact and Director Veconi mentioned the public library as a possible site.

Hearing no further business, the meeting was adjourned at 4:28 p.m.

Respectfully submitted,

Debbie Royce
Corporate Secretary