

MINUTES of the 36<sup>th</sup> meeting of the Board of Directors of the Toronto Waterfront Revitalization Corporation held at the Radisson Admiral - Toronto Harbourfront, 249 Queen's Quay West, Toronto, Ontario on Thursday, January 20, 2005, at 8:00 a.m., local time.

PRESENT:                Robert Fung, Chairman  
                             Murray Chusid (by telephone)  
                             Bill Charnetski  
                             Vivien Dzau  
                             Kevin Garland  
                             Ross McGregor  
                             John Ronson  
                             Peter Smith  
                             Mark Wilson

ABSENT:                Tony Dionisio  
                             Marilyn Knox

In addition to the general public, the following persons were in attendance, unless otherwise noted, throughout the meeting or only for particular business items as noted in these minutes: John Campbell, President and Chief Executive Officer; Edward Dato, Chief Financial Officer; Pino DiMascio, Acting V.P. Planning; Kristin Jenkins, V.P. Public Affairs; Marisa Piattelli, V.P. Special Project Management, Victor Wong, V.P. Legal, David Matheson, McMillan Binch LLP; Bruce Bodden, Karen Pitre, George Dark, Toronto Waterfront Joint Venture; Katie Lyons, Goodmans LLP.

The Chairman, Robert Fung, took the chair, and with the consent of the Directors, appointed Ann Marie Landry to act as secretary of the meeting.

The Chairman reported that the notice of the meeting had been duly sent to all Directors in accordance with the Corporation's By-laws. The Chairman declared the meeting to be duly called and regularly constituted for the transaction of business.

## **1. Approval of Minutes**

The minutes of the 35<sup>th</sup> meeting of the Board held on December 2, 2004 were tabled, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the minutes of the 35<sup>th</sup> meeting of the Board held on December 2, 2004 be approved, subject to changes as noted in the meeting.

## **2. Chairman's Remarks**

The Chairman extended best wishes to the Board members for 2005 and then asked John Campbell to provide his CEO report.

### 3. CEO's Report

John Campbell tabled his report on various matters, which included the following information or subjects:

- The Corporation met with Minister Caplan and the Ontario Realty Corporation ("ORC") to discuss the West Don Lands. The Minister was very supportive of the project and discussed project issues and how to resolve them and move the project forward. He was very clear that the priority for the Province was to have the West Don Lands move as fast as possible with occupancy in these lands within the next two years. It was agreed that in order to expedite this development ORC would conduct the Site Specific Risk Assessment ("SSRA") and build the berm and the Ontario Government will fund this work until an eligible recipient agreement and a contribution agreement was in place. A memorandum of understanding will be done between the Corporation and ORC.
- The Corporation met with stakeholders in East Bayfront who were very supportive of the revised precinct plan (changes made regarding Queen's Quay width and configuration and water's edge details). The final public meeting will be held on February 3, 2005 after which the plan will be submitted to the City (approval targeted for the April Council meeting). The plan will require new zoning and it is expected that the City process will take until the fall for implementation.
- The Corporation is working on assembling a design review panel for the waterfront that will review all designs for project lands in the waterfront designated area. Draft terms of reference were tabled and discussion ensued. The Board was very supportive of this panel but requested that criteria for the design review panel must be reviewed by the Board.
- The Swedish Environmental Consulting Team has completed their draft report and the Corporation is assessing its recommendations as well as preparing a response to the report. A briefing will be provided to the Board members at the February Board meeting.

Discussion ensued throughout Mr. Campbell's presentation. The subject of empowerment for the Corporation was addressed and it was hoped that support in that direction would come from the two senior governments.

Bruce Boddan, Program Manager, tabled his report on the various projects. He stressed the importance of correct project cost estimates, cost control processes and effective risk management, which was also the emphasis of the Audit and Finance Committee which commended the Program Management Team for their diligence on appropriate processes and mechanisms put in place to ensure that project costs do not exceed the allocated funds. Mr. Boddan reported to the Board that the Program Management Team is revisiting the cost estimates for all projects funded by the Corporation and is working on developing programs to be inserted into the Corporation's processes with appropriate contingencies for cost over-runs.

He reported that a Risk Management Workshop was held in December and was attended by management and the Program Management Team. He advised that both the Mimico Park and Port Union projects are over budget due to escalation in property acquisition costs, inflation and contingency costs. He further advised that Toronto Region and Conservation Authority (“TRCA”) has been asked to look at the program again to see if anything can be done regarding price.

**4. Chief Financial Officer’s Report, Quarter and Nine Months Ended December 31, 2004, Cost Variance Review, Unaudited Interim Financial Statements, Funding Update, Consultant Cost Review and Procurement Update**

Edward Dato presented his financial report and tabled unaudited interim financial statements for the current quarter and nine months ended December 31, 2004. He responded to questions from the Directors and provided, among other things, current month and year to date actuals and budget and variance figures for various projects, a consultant cost review, a procurement update and an update on corporate finance related matters.

John Ronson, Chairman of the Finance and Audit Committee, spoke on such statements and reviews and advised the Board that an internal audit plan is being prepared by Price WaterhouseCoopers and that Stantec Consultants Inc. is working on the identification of risk assessment. He further advised that the internal audit plan will be reviewed by the Audit and Finance Committee and then will be taken to the Board.

Discussion ensued on controlling budgets for projects and on sound approaches being taken by management to control budgeted projects, to avoid duplication of any project assignments and to monitor and control funding for and the application of funds by eligible recipients.

Mr. Ronson addressed the extensive work of the Audit and Finance Committee and advised that minutes of the Audit and Finance Committee will be provided to the Board members.

Mr. Dato then reported on procurement matters and on permitted sole-source procurement contracts since the last Board meeting. He tabled his report thereon.

Further discussion ensued, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the unaudited financial statements for the quarter and nine months ended December 31, 2004, be approved.

Mr. Dato then reported in detail on the 2004/05 Latest Forecast, the 2005/06 Preliminary Budget and the Five Year Business Plan Update. Discussion ensued, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the 2004/05 Latest Forecast be approved.

The Board then addressed with management the importance of financial information on categories of projects and on the classifying of budget and project matters under direct control of the Corporation and under control of others (e.g. eligible recipients). Mr. Campbell then commented on the approach of conducting a feasibility study as a first phase of some projects where appropriate.

Ann Landry left the meeting and David Matheson, with the approval of the Board, then acted as secretary of the meeting.

## **5. Lake Ontario Park**

Karen Pitre presented a brief update on the Lake Ontario Park Project and then introduced George Dark to provide particulars on the Project. Some of the highlights on information and observations in respect of his presentation were as follows:

- The Park is a unique and extensive area totalling approximately 700 acres with 400 acres of wet park (the largest wet park in the Great Lakes Region), being a vast territory of interconnecting areas.
- There is a vision of a green front door of major significance in which extensive public interest is shown.
- The importance of maintaining the wet park and recreational usage on and off the water.
- The resurgence on a worldwide basis of creating and preserving such large park areas (he referred to a recent Harvard study on large parks of over 500 acres, and he referred to Chicago, Amsterdam and Perth, Australia park projects involving major environmental issues which were overcome).
- An outline of the principal players involved and their particular interests in the Park, such players include the City, Parks Canada, the Port Authority and the Corporation, with the Corporation in the forefront.
- An outline of the history of Toronto's efforts to establish such a Park.

Ms. Pitre then addressed some of the principal mechanisms in respect of the Corporation's and the other participants' approach to achieve results, and identified who owned the lands in the Park area. Among other things, she commented on:

- The Port Authority's involvement in respect of the Toronto/Rochester ferry terminal area, and the Port Authority's interest in working with the Corporation on this Project.
- Current uses of the Park area, particularly in respect of boating and boating facilities and various options which resulted in interesting discussions with users.
- An outline of steps and meetings to take place with key public agencies (seven plus Parks Canada).

A question and answer period followed, and the following additional points were noted:

- A stakeholders meeting will be held on January 27<sup>th</sup>.
- There will be a March public meeting.
- Design competition begins on April 5<sup>th</sup>.
- The Project fits within Park Canada's mandate of high standards for Parks.

Discussion concluded with different views expressed on how the design competition might be approached.

## **6. Western Beaches Watercourse**

Ms. Pitre provided an update on the Western Beaches Watercourse being created for the 2006 International Dragon Boat Championships. Some highlights of her outline were as follows:

- A feasibility study is completed for the new multi-sport watercourse.
- The contribution agreement for the Watercourse is signed.
- The environmental assessment is underway, and involves a very aggressive schedule.
- Dimensions: a 650 metre course, width, 135 metres, uniform 3 metres depth.
- The Watercourse is a tremendous complement for the Marilyn Bell Park and creates an opportunity to improve the Marilyn Bell Park.
- Currently the Watercourse is being funded by the Federal and Provincial Governments, with the City funding pending.
- There is major work in dismantling the existing break wall which is in poor condition.
- There is an advisory committee made up of Ontario Place, the Port Authority, the three Governments and the Dragon Boat Association.
- Testing of the course will take place in June, 2006, with the Championships in August, 2006.
- There are minimum wind issues.

A question and answer period followed. The members of the Board expressed the view that this Project, being very important to the public, must involve every effort possible to get the job done well in time for the Championships.

## 7. Environmental Issues

Victor Wong and Catherine Lyons (Goodmans) made a joint presentation on environmental liability and managing environmental risk for the Corporation, officers and directors. Ms. Lyons gave an overview of the law on environmental liability and managing risk and Victor Wong set out specific Due Diligence/Risk Management techniques which the Corporation has been following. Ms. Lyons gave a power point presentation of her written material included in the Board package, some highlights of which included the following:

- A corporation, its officers and directors can be exposed to environmental liability if:
  - (i) They allowed or permitted a contaminant to be discharged, or
  - (ii) They had knowledge or ought to have had knowledge of a contaminant.
- If the Corporation/officer/directors could have prevented the discharge, then it may be found that they “allowed or permitted” the discharge.
- Exposure can be reduced by proving that all reasonable care was exercised to prevent a discharge.
- Impacted Property must be managed by either “Clean up” to meet certain standards or “Risk Assessment” (Record of Site Condition).
- Two strands of liability: Statutory or Common Law
- Statutory Liability is under the Environmental Protection Act, The Ontario Water Resources Act, The Fisheries Act.
- Common Law Liability is when Corporations, officers and directors are sued for discharging a contaminant into the lands of others.
- The Corporation can manage environmental liability by a combination of exercising due diligence techniques, insurance and allocating risk in commercial transactions.

Victor Wong outlined a list of due diligence/risk management techniques which the Corporation has adopted, namely:

- Environmental reporting is an agenda item at Board meetings; establishing at the Board level a procedure for evaluating the environmental conditions of any property proposed for acquisition and mandating that this procedure must be followed in the acquisition of any property;
- Created a repository of environmental information which will be regularly updated;
- Retained environmental experts to establish “best practice” procedures and ensure that all staff and consultants follow these procedures. Presently our

environmental team includes Marshall, Macklin Monaghan, CH2M Hill, The Lonsdale Group (Karen Pitre), the law firms of Goodmans (Allen Leibel, Catherine Lyons) and Borden Ladner Gervais (Stephen Waqué);

- Ensure that an officer or consultant has been given the responsibility for reviewing all environmental reports and providing recommendations with respect to those reports to the Board. The Vice-President, Legal in consultation with TWRC's outside environmental consultant has been given this task.
- Allocated risk in commercial transactions to the other parties to the extent possible. See Section 3(b) of Goodmans paper;
- Considering whether Pollution Legal Liability, Cleanup Cost Cap Insurance, Contractors Pollution Liability and Owner Controlled Pollution Liability are appropriate and cost-effective with respect to certain acquisitions.
- Directors & Officers environmental insurance. The Corporation will provide updated insurance particulars at the next board meeting.

A question and answer period followed the presentation. Issues of limited protection, due diligence and Record of Site Condition practices were discussed

Victor Wong also presented to the Board various land ownership or control options available to the Corporation as it, remediates, develops and transfers Waterfront Lands to public or private users. Mr. Campbell noted that environmental issues alone will not drive the business model for the Corporation. The starting point will be a business plan. Various questions were raised on different types of exposures depending upon the particular interests of the Corporation in a particular property.

Further discussion ensued, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the Corporation adopt an environmental risk management program based substantially on principles and management practices outlined in the presentations by Ms. Lyons and Mr. Wong.

## 8. Adjournment of the Meeting

There being no further business other than matters to be considered in-camera, the Chairman indicated that in-camera matters involving land assembly and advice from legal counsel were then to be considered. He indicated to members of the public present that it was now in order for them to depart from the meeting. Members of public then left the meeting. The meeting then continued as an in-camera meeting.

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Chairman

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Secretary of the Meeting

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Succeeding Secretary of the Meeting

