

**TRANSCRIPT OF MEETING OF THE BOARD OF TRUSTEES OF
THE TRUST FOR CULTURAL RESOURCES OF THE CITY OF NEW YORK**

***SP* ORRICK - NEW YORK**

**Moderator: Alison Radecki
March 24, 2020
2:56 p.m. CT**

OPERATOR: This is Conference #: 179078846R

Operator: This meeting is now being recorded.

Eileen Heitzler: Hi, it's Eileen who joined, Eileen Heitzler.

Alison Radecki: Hi. It's Alison. I think we're the only ones on.

Eileen Heitzler: Yes, I was second. This is being recorded. I thought ((inaudible)) ...

Alison Radecki: It's recorded. It's being recorded.

Eileen Heitzler: Yes. Actually, when you get on it says that. You're the second person. This meeting is
being recorded.

Alison Radecki: Oh, good. Because I had to start the recording, so I didn't hear that.

Eileen Heitzler: Oh, okay.

Alison Radecki: Okay.

Eileen Heitzler: Yes. So I'll stop talking now.

Lynn B. Sagalyn): Hi. It's Lynn.

Alison Radecki: Hi. You've got Alison and Eileen from Orrick.

Eileen Heitzler: Who just joined?

Merryl Tisch: It's Merryl ...

(Crosstalk)

Carol Ann Butler: Hello. It's Carol Ann from EDC.

Eileen Heitzler: Whoever joined with – right around the same time Merryl did, I didn't catch your name.

Carol Ann Butler: Oh, it's okay ...

(Crosstalk)

Amy Chan: Amy Chan from EDC.

Carol Ann Butler: ... Carol Ann from EDC.

Susan Henshaw Jones I just got on the phone. ((Inaudible)) taking a roll call there?

Eileen Heitzler: I was just trying to catch up with who – this – the people who have joined. This is Eileen Heitzler and Alison Radecki. We're both on from Orrick. Susan, I heard you. I heard Lynn. I heard Merryl. I heard Carol Ann from EDC.

Amy Chan: You have Amy from EDC.

Alison Radecki: Amy from EDC?

Amy Chan: Yes.

Alison Radecki: Yes. So we have to wait, but we probably don't have to.

Hello.

Krishna Omolade: Hi. Hi, this is Krishna Omolade from NYCEDC.

Eileen Heitzler: Hi.

Krishna Omolade: Hi.

Dawanna Williams: Dawanna Williams, Board Member.

Alison Radecki: Hi, Dawanna.

Dawanna Williams: Hi.

Anne Adams Rabbino: This is Anne with ...

(Crosstalk)

Alison Radecki: Where is everybody? Is anybody in an office?

Female: No.

Alison Radecki: Oh, at least, ((inaudible)).

Female: We're all working from home.

Alison Radecki: Yes. Anne?

Anne Adams Rabbino: Yes.

Alison Radecki: Okay.

Eileen Heitzler: Who just joined?

Erika Mallin: Erika.

Eileen Heitzler: Hi, Erika, Dawanna.

Alison Radecki: Hi, Dawanna.

Leah Johnson: Hi. It's Leah Johnson joining.

Alison Radecki: Hi, Leah.

Eileen Heitzler: Hi, Leah.

Leah Johnson: How are you?

Eileen Heitzler: How are you?

Leah Johnson: Good. A little busy.

Female: Yes.

Eileen Heitzler: Yes. Somebody joined after Leah.

B. Seth Bryant: Seth ((inaudible)) just joined.

Female: ((Inaudible)) (Erika) or ...

Female: Great.

Eileen Heitzler: No. I've got Susan, Lynn, Merryl, Dawanna, Erika, Leah, Carol Ann, Amy, and Krishna from EDC, Anne and Seth and myself and Alison. Am I missing anybody?

Leah Johnson: No. This is Leah, I'm going to jump off ...

Alison Radecki: Do we have a quorum?

Leah Johnson: : ... I'm going to jump off and get back on, because there's a crackling on my line, so I'm going to come right back on.

Eileen Heitzler: Okay.

Ali Davis: Hi, this is Ali Davies ...

(Crosstalk)

Alison Radecki: Anne, do we have quorum?

Ali Davies: ... from City Hall.

Eileen Heitzler: Ali Davis?

Ali Davis: Yes.

Eileen Heitzler: Thank you. I believe that we do have a quorum. Leah Johnson got off to dial back in on a clearer line.

Anne Adams Rabbino: Yes. Yes. And that's our quorum.

Eileen Heitzler: Yes.

Alison Radecki: Yes.

Leah Johnson: Hi, I'm back. It's Leah.

Female: Yes.

Eileen Heitzler: Right.

Leah Johnson: Okay.

Anne Adams Rabbino: So all six of the ((inaudible)) appointees are on the call, plus Krishna and Ali. So everyone who is eligible is on the call.

Susan Henshaw Jones: Well, that's wonderful. This is what it takes to get full attendance. So, Anne, shall I call the meeting to order?

Anne Adams Rabbino: Yes.

Susan Henshaw Jones: Okay. I am doing so. And I note that there was an executive order signed by Governor Cuomo on March 12th to permit compliance with the Open Meetings Law where meeting is held by telephone with no physical place. If the public is allowed to dial into the meeting, the dial in was made – the dial in information was made public, correct?

Anne Adams Rabbino : Yes.

Susan Henshaw Jones: Okay. Is there anybody on the line who has not been already identified? I guess we have no members of the public out there. And then I think I should say that the telephone call is being recorded and will be transcribed as required by Cuomo's executive order. And, then Anne has, for me, a couple of routine things.

First, Amy Chan has just been promoted to Controller of EDC. She has been Deputy Controller for almost a year and a half. She's a great professional who's a pleasure to work with and we congratulate her.

Female: Congratulations.

Female: And ...

(Crosstalk)

Female: Congratulations.

Susan Henshaw Jones: Hello? Is Amy – Amy is on the phone.

Amy Chan: I am on the phone. Thank you, everyone.

Susan Henshaw Jones: Hooray. Okay. So congratulations.

Female: Congratulations.

Female: Congratulations.

Susan Henshaw Jones: And then Fred D'Ascoli, who was previously serving as Controller has been promoted to CFO of EDC. So his involvement with the Trust will come to an end and after a new Deputy Controller is hired. His face was a smiling face every time, so we will certainly miss him, but we wish him great success. Okay, now ...

(Crosstalk)

Amy Chan: Yes. And so the deputy – I just wanted to say until the deputy is hired business as usual as far as services provided to TCR by me, Fred, Spencer, Carol Ann, and the rest of the team.

Susan Henshaw Jones: Okay. I – did everybody hear that? Okay.

Female: Yes.

Male: Yes.

Susan Henshaw Jones: So I – so the – as you all know that is required by the public authorities Board, a law and we have to meet before March the 31st. And so I propose that we just zoom through this agenda. Most things are pro forma here and we don't really have the huge decisions that we would like to be having but, I guess, that we should look at the resolutions to attach – that are attached to the first email you received from Anne, which was on, what, March the 17th.

Anne Adams Rabbino: March 17th.

Susan Henshaw Jones: Yes. Okay. So we'll vote on all of the resolutions under the administrative and compliance section of the agenda at once – at one time. So we're going to wait for the whole thing. And first ((inaudible)) hear a report from Lynn Sagalyn, chair of the audit committee on items 12 and 13 on our agenda, which were discussed to the three o'clock meeting this afternoon of the audit committee.

Lynn Sagalyn): Okay. The audit committee met for about 40 minutes before this meeting. It was a relatively easy meeting. We really didn't have any major items that have to be discussed. We did the report from the audit from – and the audit was a clean one. So it was no issues with management.

We discussed – Amy discussed the internal control assessment and the two issues that came up that led to an amendment to our contract, to the Trust contract with EDC. And my sense of that

was they were kind of useful comments and that we now have a cleaned up – a document that reflects the reality of how we proceed.

The audit committee approved five resolutions which, as I said, will be incorporated into the resolutions to be passed by the Board, but the committee did approve and recommend that the Board approve the audit for 2019. We also, most importantly after the audit, discussed the RFP that is intended to go out April 1.

But should there be insufficient time for people, for firms to respond to it or under – having ((inaudible)) how long this uncertainty prevails, because of the virus, we may – if the Board approves giving me as chair of the audit committee, the authority with Anne and Susan to discuss whether we ((inaudible)) make a one year extension to RSM if we can't get the RFP out in time with sufficient responses to do the interviews in June.

So that's the ((inaudible)) of the five resolutions concerns, the RFP for a new accounting firm, so that's my report. Does anybody on the audit committee have anything else to add to that?

Female: No.

Female: No comment?

Female: No. None.

Susan Henshaw Jones : Okay. So then Anne, will you now report on the other items listed in the agenda and resolution?

Anne Adams Rabbino: Yes. Yes. So item one is the minutes of the meeting of the Board of Trustees on July 19, 2019 which was distributed. Does anybody have any comments or suggestions to make on those minutes?

The audit committee also approved the minutes of each meeting on December 3rd 2019. So with that approval, we will post those minutes on our website as required by state law. The – there are number of items to follow on the agenda that are not materially different from year to year. So I'm going to go through those quite quickly.

Item three is the annual report which has policies and practices of the Trust. Biographical information about the members of the board and appendices with detailed information about bonds outstanding or recently redeemed, and projects that the Trust has financed.

Item four is the mission statement and performance evaluation which have not changed. Item five is the confidential survey of Board performance. Four responses were received to the anonymous survey. And Angela Santigate has re-sent the survey one more time. Please fill it out and return a PDF or return your responses to Angela if you haven't already done so.

I distributed a copy of the four – of a report with the four responses earlier this afternoon.

Female: Yes.

Anne Adams Rabbino: Number six through nine, our reports on property and policies for disposing of property, procurement guidelines and investment guidelines, all of which have not changed from prior years.

Item 10 is a report on disbursements from the escrow accounts that are managed by EDC and used to pay expenses of administering the Trust. Item 11 is a report about the bonds issued by

the Trust in 2019 with the information required by the public authorities law. Lynn has spoken about items 12 and 13.

Item 14 is a summary of financial information from the Trust's audited financial statements in the form that we're required to use by the authorities budget office for reporting. Item 15 is the code of ethics adopted by the Trust in 2006, which remains in effect.

And we're required to get the Board's ((inaudible)) ...

Female: Are other people having trouble hearing Anne?

Female: (Anne)?

Female: Yes, I can't hear anything. Hello?

Female: Yes, I know ...

(Crosstalk)

Female: Oh, I'm hearing her fine.

Female: Hello? Did somebody just joined us or did we lose Anne?

(Crosstalk)

Female: Well, I think we lost Anne.

Female: Yes, I can hear you.

Merryl Tisch: This is Merryl.

Female: Anne?

Merryl Tisch: I have a suggestion to make for Anne. Anne's voice is a little bit soft. I think she does – never comes across as strongly as she does in person, particularly when she uses a speakerphone. Perhaps we might ask her to pick up the phone.

Anne Adams Rabbino: I'm actually on – speaking into a phone without a speaker, but ...

Merryl Tisch: Okay.

Anne Adams Rabbino: ... maybe ...

Merryl Tisch: Good.

Anne Adams Rabbino: ... maybe I'll yell a little into the phone. So ...

Female: We can hear you.

Anne Adams Rabbino: Okay. So – thank you. So items – do I need to go back through anything? I would just say in summary, that all of the things I said before are about reports that are fundamentally the same as ones that the trust Board has seen and adopted in the past.

So items 18 through 22 on the list of resolutions, continue in office the people who are members of the finance committee, the audit committee, the governance committee and the officers of the Trust. So that concludes the report on the standard reports and resolutions.

I'm going to go back to item 17 for a moment, which is a restated agreement between the Trust and EDC. The previous version of this agreement was signed in 1993 and 1994. As Lynn mentioned, the new internal audit team took a close look and determined that EDC was not doing everything that it was obligated to do and – for example, not preparing quarterly financial statements.

Also, the Trust wasn't doing every single thing. Like we were not getting written authorization from the chair before EDC makes certain payment. So Bob LaPalme who's a senior lawyer at EDC and Assistant Secretary of the Trust, and Amy and I came up with a restated agreement that reflects what the parties are actually doing.

The fundamental obligations have not changed. And the agreement is now converted to a term to match the Trust's fiscal year, which is the calendar year. However, it still requires an annual renewal and this will extend the term through December 31, 2020. Are there any questions about the restated agreement between the Trust and the EDC?

Hearing none, I'm going to move right on to the directors and officers insurance for the Trust. Many insurers are not interested in issuing policies of this type for entities like the Trust and in the – quite some time ago, the Trust's efforts to get this coverage were unsuccessful. However, EDC's insurance broker has recently identified a carrier who has a strong Best rating that will issue a policy with a limit of \$3 million for a period of 12 months.

The total premium and related costs are a little bit less than \$9,000. It's a claims-made policy so it will need to be renewed annually for coverage to continue. This carrier will defend the Trust and its directors and officers if we are sued with lawyers selected by the carrier and the legal fees that they pay their lawyers are quite modest.

However, the legal fees do not count against the limit of liability. All of the cultural institutions that benefit from the Trust's activities have entered into an indemnification agreement with the Trust that requires the institutions to defend and indemnify the Trust and its directors and officers.

The concern has always been that if a borrower defaults on bonds, the borrower may also default on the indemnification obligation. In that case, we and Orrick do not believe that the Trust or its directors and officers would have any liability to bondholders, but we are likely to be sued in that and would need to defend ourselves in order to have the action dismissed.

Now that this insurance is available at a modest cost, which would be divided among all of the institutions that have outstanding bonds, we recommend purchasing the insurance.

Susan Henshaw Jones: Is there any discussion? Does anybody disagree? There is a dead silence, somebody ...

(Crosstalk)

Female: It sounds good. It sounds good.

Female: Yes, okay.

Susan Henshaw Jones: I feel if it's now available to us, we should we should avail ourselves of this and we should ask Anne what it does not cover and just give – and just approve this. So, Anne, will you tell us anything about what it does not cover or what it does cover, that's more – that's simpler.

Anne Adams Rabbino: It covers the actions of the Trust undertaken generally. I mean, yes, there are limitations on what's not covered by it but we – we've reviewed the exclusions from coverage with

EDC's in-house insurance expert, Crystal Adams, and the exclusions did not limit the coverage in a way that would prevent us from making the kinds of claims that we are concerned about. That is, where we're sued on defaulted bonds.

We don't have it, we wouldn't have any coverage claims based on claims by employees of the trust. But the Trust has no employees, so we're not concerned about that exclusion.

Susan Henshaw Jones: Does anybody wish a further discussion of this before a motion to acquire this insurance is made?

Female: It sounds like a great idea, actually.

Susan Henshaw Jones: Okay, so ...

Anne Adams Rabbino: And then, Susan, the last two things are – relate to the contract – the (RFP) for audit services and the possible extension which Lynn has already described.

Susan Henshaw Jones: Okay.

Anne Adams Rabbino: So that brings us to the end of the resolutions on compliance and administrative matters.

Susan Henshaw Jones: So that's good, so can we – should we have a resolution at this moment?

Anne Adams Rabbino: I think so.

Female: Okay.

Susan Henshaw Jones: Do I hear a motion?

Female: So moved.

Female: So moved.

Female: Second.

Female: Second.

Female: Third?

Susan Henshaw Jones: Is there anyone in opposition? So it's agreed. So then the next is the item concerning Lincoln Center for the Performing Arts. And Leah, this is the part that ...

Leah Johnson: Yes, ((inaudible)) to jump off or something?

Susan Henshaw Jones: I think so.

Leah Johnson: Okay. So can you ping me when you want me to come back on the call?

Anne Adams Rabbino: Yes.

Leah Johnson: Okay. Thanks, Anne.

Anne Adams Rabbino: Thanks, Leah.

Susan Henshaw Jones: So I think Alison Radecki was going to explain this resolution.

Alison Radecki: Sure. So as most of you are aware, Lincoln Center was moving forward. They were trying to move forward with a transaction with the Trust to redeem their Series 2008 A bonds ((inaudible)) bonds. Those bonds are currently held directly by Bank of America in a flexible interest rate mode and that that interest rate mode period ends in June – on June 10th of this year and the bonds would be subject to mandatory tender at that time.

Since there have been so much – there's been so much going on in the market and the conditions have been volatile, Lincoln Center doesn't know what exactly their form of financing is going to take so they're exploring the option to extend the mandatory tender date on the bonds or to convert those bonds to another interest rate period.

So we drafted a resolution basically permitting any member of the Trust and the secretary or the assistant secretary to take any action necessary to amend the current documents that are outstanding to either extend this – the flexible interest rate period and the mandatory tender date or to allow Lincoln Center to convert the bonds to another interest rate.

And so that's the gist of what the resolution before you today is getting that. Does anybody have any questions?

Susan Henshaw Jones: Nothing. Anne?

Anne Adams Rabbino: The only thing I would add is that the reasons for adopting this resolution today is so that if all that is happening for Lincoln Center is this extension, essentially of what it has today. The idea that we would need to convene an entire board meeting to authorize that seems a little much. So this gives flexibility to Lincoln Center for this limited purpose.

If market conditions change and they are doing something more than what Alison has just described, this simple extension, then there would have to be a Trust Board meeting to authorize anything more than this.

Erika Mallin: It's Erika. Not knowing – so who's really driving that train, Bank of America, and then we – then, I mean ((inaudible)) my opinion is to support whatever we need to do, but – to give any extension or conversion, but in terms of a process, we just would need to okay Lincoln Center's transaction with Bank of America.

Anne Adams Rabbino: Yes. So the – we haven't heard in the last 10 days or so from the finance team at Lincoln Center, what is – where they are in their plans. I mean, it's very – it's completely clear that the issuance of refunding bonds and the termination of the interest rate swaps that Lincoln Center is a party cannot proceed in the present market.

So – but they have this mandatory tender date in June of this year. So they told us that they had begun discussions with Bank of America about either a three-month extension or a 12-month extension and that BofA's initial response had been very helpful to Lincoln Center. And – but their desire continued to be to move forward with the refunding and fixing the rate on the bonds on the – this amount outstanding on the 2008 A bonds, which is approximately \$150 million.

Susan Henshaw Jones: Got it. Okay. Do I hear a motion to approve this resolution? Hello?

Female: Hello.

Female: Yes.

Female: Yes.

(Crosstalk)

Susan Henshaw Jones: Yes. Okay. Okay. And is it seconded?

Female: Second.

Male: Second.

Susan Henshaw Jones: Thank you. And therefore, it is – is there any dissent? So therefore it's approved. Do you want to click Leah back on or do you have anything else in this ...

Anne Adams Rabbino: I just sent her an email. Okay.

Female: That she should dial back in.

Susan Henshaw Jones: Okay. What else is on our agenda?

Anne Adams Rabbino: Well, the last thing to do is to talk about the impact of Covid19 on – so in-person meetings are definitely preferable in many ways, but the statute and the bylaws do allow telephone meetings. And if there's a matter that requires more discussion, at least for the time being, we would expect to meet on the telephone.

Leah Johnson: Hi. Leah is back.

Anne Adams Rabbino: Hi, Leah.

Susan Henshaw Jones: Hi, Leah. I mean, this is what we're being asked and forced to do. So it's possible to meet on the phone, so this is something that everyone agrees to, is that – am I correct?

Anne Adams Rabbino: I think I've reported this and emailed to all of you, but I would just say now that the Metropolitan Opera's plan to issue new money bonds on hold. There – it's not possible for them to issue in this market until they're able to reopen and recover or figure out a way forward with the financial losses that they're suffering currently.

And we've all had quite a stunning lesson in how quickly markets can change. So if there is a window when the market is favorable for a transaction, there will be a lot of pressure to move forward before the window closes.

Susan Henshaw Jones: Anne, is there any further business on our agenda?

Anne Adams Rabbino: No. There's not. So, I guess, we could ask if anyone has any other questions that they'd like to discuss at this time.

Susan Henshaw Jones: Are there any such question, anything for discussion? So I think that means that we are all wrapped up with these formalities and I for one would just ask everybody to stay safe and do everything they can to comply with the rules and good god, let's get out of this thing. So that's my hope for the end of this meeting.

Female: Thank you so much for ...

(Crosstalk)

Female: Thank you.

Female: Thanks, again.

Female: We agree. Thank you.

Female: Be well and be safe, everyone.

Female: Yes.

Female: Thank you.

(Crosstalk)

Female: Okay.

Female: Yes.

Female: Bye-bye.

Female: ((Inaudible)), goodbye.

END