

MINUTES of the 47<sup>th</sup> meeting of the Board of Directors of the Toronto Waterfront Revitalization Corporation held at the Radisson Admiral Hotel - Toronto Harbourfront, 249 Queen's Quay West, Toronto, Ontario on Thursday, January 12, 2006, at 8:00 a.m., local time.

PRESENT:            Robert Fung, Chairman  
                      Bill Charnetski  
                      Murray Chusid  
                      Tony Dionisio  
                      Vivien Dzau  
                      Kevin Garland  
                      Marilyn Knox  
                      Mayor David Miller  
                      John Ronson  
                      Peter Smith  
                      Mark Wilson

ABSENT:            Ross McGregor

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 ("CEO"); Edward Dato, Chief Financial Officer; Victor Wong, V.P. Legal; Christopher Glaisek, V.P. Planning and Design; Kristin Jenkins, V.P. Public Affairs; Marisa Piattelli, V.P. Government Relations and Special Project Management; Allan Leibel, Goodmans LLP; Bruce Bodden, Karen Pitre and Ralph Davidson, Toronto Waterfront Joint Venture; David Matheson, McMillan Binch Mendelsohn LLP; and Leslie Woo, Special Assistant to the Mayor.

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 declared that a quorum of Directors was present and that notice of the meeting having been duly sent to all Directors in accordance with the Corporation's By-laws, the meeting was duly called and regularly constituted for the transaction of business.

## **1.     Approval of Minutes**

The minutes of the 45<sup>th</sup> and 46<sup>th</sup> meeting of the Board held on October 27, 2005 and November 24<sup>th</sup> respectively, were tabled, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the minutes of the 45<sup>th</sup> and 46<sup>th</sup> meeting of the Board held on October 27, 2005 and November 24, 2005 respectively were approved, subject to amendment showing Marilyn Knox present at the October 27<sup>th</sup> meeting.

## 2. Chairman's Remarks

The Chairman welcomed everyone to the first Board meeting of the new year and wished everyone the best for 2006. He also welcomed the Mayor to his first Board meeting as a Director.

He commented on the importance of 2006 to the Corporation. He advised that since 2002 the Corporation has been focused on getting the Corporation up and running, staffing, advancing the business plan, approving the business plan and the planning of the overall project focusing on two major precincts - East Bayfront and West Don Lands. He went on to say that the real work will begin in 2006 as the Corporation moves from planning to implementation. He commented that the public will begin to see the signs of construction of the great new parks and neighbourhoods with road closures and the hoarding being erected. He further commented that the Corporation will begin "walking the walk" on sustainability, district energy and intelligent communities.

The Chairman then commented on the recent media coverage with respect to the Federal Government Audit. He reiterated the commitment of the Corporation, himself and the Board members to full transparency, the highest ethics and the effective and accountable disbursement of public funds. He pointed out that the issue dealt with in the Audit Report was discussed at the public Board meeting of the Corporation held in August, 2005. He advised that later in the meeting John Ronson, former Chairman of the Audit and Finance Committee and now the Chairman of the Finance and Risk Management Committee, will address the matter. He added that the Federal Audit, reported that the Corporation was in compliance with the Contribution Agreement, indicating also that the Corporation was maturing as a start-up organization and was certainly moving in the right direction as per its mandate. He noted a number of factors indicated by the Audit, including that the Corporation is committed to a controlled environment with internal controls, board evaluations and risk management among other positive factors. He also quoted one of the conclusions in the Audit Report as follows:

"Although much work has been completed, the TWRC is still maturing as an organization. A challenge for the Corporation has been gaining an understanding and meeting the sometimes competing demands of the three levels of government, each of which has its own financial management requirements. In addition, a major focus of the Corporation has been the role of corporate governance of the TWRC and how it can best fulfill its mandate in relation to the three government funding partners."

## 3. CEO's Report

John Campbell tabled reports and information on various matters, which included the following subjects and information and on which the following Board and Management comments and resolution were made:

- *Intergovernmental Steering Committee ("IGSC")* - A meeting was held on December 15, 2005 where three urgent issues requiring government approval were raised. These issues include enhanced authorities under operational

governance, amending the indemnity language in current Contribution Agreements (“CAs”) to allow commercially standard indemnities and the Corporation’s CA for Corporate Costs. It was a good meeting and the Committee advised that they would get back to the Corporation on the three urgent issues as soon as possible. The Corporation has received a letter from the IGSC regarding overhead expenditures and will respond accordingly.

*Board comments and Management’s responses on IGSC* - The Board questioned when the Corporation could expect answers from the IGSC on the above mentioned issues and in particular on the issue of enhanced authorities under operational governance. The importance of a resolution to this issue was reiterated in that the Corporation must have, among other things, the authority to issue letters of credit to properly meet its responsibilities as the Master Developer of WDL.

- *West Don Lands* (“WDL”) – The CA for WDL has now been approved and the CN Bridge work tendered. Demolition will commence in January and hoarding installed in the area of the berm construction and soil remediation.

At the last meeting of the WDL Developer Proposal Call Steering Committee, it was agreed that the Request for Qualifications will not be issued until rezoning is in place in order to provide potential bidders with the maximum amount of certainty on rezoning as well as issues such as district energy and sustainability.

- *East Bayfront* (“EBF”) – The EBF precinct plan was submitted to the City of Toronto’s Policy and Finance Committee for review on November 22, 2005 and it was approved subject to some amendments. The Policy and Finance Committee wanted assurances that the 24/7 project could be accommodated in the plan, and that the EBF business plan would be subject to review. Later in December, Council approved the plan subject to revisiting the lands along Lakeshore Boulevard at the time of re-zoning. If a Gardiner decision is not resolved prior to that time, then the lands fronting on Lakeshore Blvd. would not be included in the re-zoning. This stems from discussions held with Castan Developments who are unhappy with the precinct plan’s 46 metre height restriction along Lakeshore Blvd. The precinct plan has allowed for towers at the major north-south arterial road “gateways”, but Castan Developments would like additional secondary towers on their property along Lakeshore Blvd. The Corporation is engaging Fred Koetter to deal with their consultants to look at options that would allow them to develop marketable properties.
- *Don River Park* - A consultant has been selected and the Corporation has reinforced the ability and need to stay within the total construction budget
- *Interim Sports Fields* - A Request for Proposals (“RFP”) has been issued to include everything from site selection to construction supervision. Potential sites are being assessed at the present time. It is important to note that while

these fields were initially planned as “interim” fields to help bring people to the Port Lands and provide relief for city wide demand, the Environmental Assessment (“EA”) work and site/soil remediation required means that the fields will not be available until Spring, 2007.

*Board comments and Management’s responses on Interim Sports Fields* - The requirement for an EA was questioned as it was thought that the City receives an EA exemption for parks. Ralph Davidson advised that it was not an EA that was required but approval of a Risk Management Plan which could take up to one year to complete. He further advised that there was nothing that could be done to get around this requirement. The life span of the turf fields was questioned and Karen Pitre reported that turf fields last for 10 years and are moveable. She further advised that the Corporation will work with the City of Toronto to find alternative locations for the fields when the interim location is required for construction.

- *Central Waterfront Trail* - A design competition will be launched by the end of the month. There was a delay as the Corporation was focused on the EBF process in November/December.
- *Board comments and Management’s responses on the Central Waterfront Trail* - The symbolic importance of this project was noted and there was concern regarding potential delays caused by an international design competition as opposed to a local design competition. There was also concern with regard to the cost of conducting an international competition. Christopher Glaisek advised that the RFQ will be issued at the end of January, 2006 and that the schedule is achievable. He further advised that the cost for the entire process is \$200,000 and that the Corporation is insisting that the successful proponent use a local partner to ensure that local context is provided.
- *Lake Ontario Park* - The Corporation issued a RFQ for a Master Plan for Lake Ontario Park and received nine submissions. The evaluation committee reviewed the submissions and created a short list of four teams. A RFP was issued on December 21, 2005 with a submission deadline of January 26, 2006. It is anticipated that the Lake Ontario Park Master Plan will take between 12 and 18 months to complete.
- *Intelligent Community* - The first Steering Committee meeting for Intelligent Communities was held on November 29, 2005. The Corporation has secured the participation of a broad cross section of public and private sector organizations and this initial meeting was held to brief the Committee members on the concept, the intelligent community roadmap and to look at ways to move forward. The Corporation proposes to transform the Steering Committee into an incorporated consortium with cross sectoral representation to fund, implement and commercialize intelligent community pilot projects on the waterfront.

- *Branding/Marketing* - A RFQ was issued late in 2005 and three firms were short listed. A RFP will be issued to these firms in early January, 2006 and the successful proponent will be selected in February. Ross McGregor will assist in the selection process.
- *Expo 2015* – Staff who have been part of the Paris BIE visits have indicated a positive tone overall. RFP's are being issued for consultants to prepare plans for site operations, theme development strategy, corporate governance strategy and professional communications services.
- *Naturalization of the Mouth of the Don River* - The EA, lead by Toronto Region and Conservation Authority ("TRCA"), is underway. This project has suffered from underfunding due to early priority project funding not adequately reflecting the scope or timing of the project. TRCA is working diligently with the Corporation to ensure terms of reference and the EA work itself reflect a reasonable balance of alternatives but the complexity and time required necessitate a revision to the EA budget. An additional \$1.4 million will need to be allocated from the Naturalization capital budget of \$85.86 million to the EA portion of the work.
- Bruce Bodden provided the Board with a brief explanation of the EA process advising that the EA was split into two which increased the cost to \$3.2 million. Discussion ensued, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the request for an additional \$1.4 million to be allocated from the naturalization capital budget for the EA portion of the work be approved.
- *Schedule and Cost Review* - As was previously reported, problems with the overall work program continue to plague the Corporation. The Corporation is working to review all of the cost and time estimates carried forward from earlier documents to more appropriately reflect the current experiences. This review is expected to be completed for input into the Corporation's long term capital plan for the next quarter. Management was asked as to the extent that Management tracks schedules and slippages and Management responded that this is thoroughly done, and agreed to provide the Board with key particulars on such tracking, including schedules and slippages.
- *Canada Mortgage and Housing Corporation ("CMHC")* – A meeting was held with senior staff of CMHC to discuss their approach to brownfield situations. They advised that they are engaging in pilot projects for brownfield development and are the current Federal lead with TCHC Regent Park project. Presently, CMHC is concerned that the Ministry of Environment has changed their position of "approving" risk management plans to "accepting" risk management plans and they are unsure of the impact on CMHC. CMHC are looking for partners for the pilot projects and the Corporation will be asking them to consider WDL as one of these projects. They will be sitting in on discussions the Corporation is having with major lenders to familiarize themselves with the project.

- *Canadian Environmental Assessment Agency (“CEAA”)* – A meeting was held with the President and senior staff of CEAA to review progress on Federal EA’s. To date their staff has been helpful and the Corporation continues to work with them on other initiatives to further expedite the EA process. Such initiatives include new legislation to allow for specified response periods from Federal departments and Agencies, the possibility of a dedicated task force approach to waterfront EA’s and further work on templates such as the soil management strategy for small projects.

Management was asked as to the extent that Management tracks EA expenses. It was agreed that management would provide the Board with a report on the total cost of EA’s for the entire waterfront revitalization.

#### **4. CFO Report**

Edward Dato advised that the Audit and Finance Committee has now been split into two committees, namely the Audit Committee and the Finance and Risk Management Committee. He tabled the draft minutes of the first Finance and Risk Management Committee held on Friday, November 25, 2005 and advised that John Ronson would speak to the minutes.

John Ronson, as the Chair of the Finance and Risk Management Committee, reported that the Committee met for the first time and had a full discussion regarding current issues. He advised that the minutes illustrate the Corporation’s continued focus on issues around procurement and cost control and that these issues are core to the mandate of the Finance and Risk Management Committee. He further noted that the Committee will concentrate on implementing the correct processes, transparency, value for money and governance controls in order to ensure that government and therefore public funds are spent appropriately.

The Chairman congratulated the Audit Committee and the Finance and Risk Management Committee for their work and Mr. Ronson accredited the quality of the minutes to the staff at the Corporation.

#### **5. Federal Audit**

John Ronson introduced the subject of the Federal Government Audit and gave a brief history of the Corporation and its processes. He advised that the media has left a cloud over the Corporation and offered the following comments:

- There is nothing in the report that has not already been publicly discussed at previous Board meetings and on an ongoing basis, the Audit and Finance Committee has discussed many of the issues.
- The overall conclusion of the Federal Audit was that the Corporation has spent government funds appropriately.
- Sole source contracts have been publicly disclosed numerous times to the full Board.

- The objective of insuring value for money is critical to the Board and the public.
- The Corporation is subject to five audits:
  - one annual internal audit;
  - one annual external audit;
  - any one of the three levels of government may perform an audit on the Corporation at any given time.
- Any suggestion of political shenanigans tied to the Corporation's procurement procedures is ludicrous.

Marilyn Knox, as the Chair of the Compensation Committee addressed the issue of the President and CEO's compensation package which was disclosed in a newspaper article that morning. She advised that the Corporation is a hybrid public and private sector organization and as such, the responsibilities of Management staff are extremely complex. She advised that the Compensation Committee did extensive research with a leading compensation consulting firm on current compensation policies and established competitive benchmarks using a comparative group of public and private sector organizations. She emphasized that senior staff of the Corporation have a much different role and competitive environment than public sector senior staff. She advised that the comparative group analysis has now been expanded to include reference to the Hay Group which is the organization used by the Province and the City of Toronto.

Peter Smith, also a member of the Compensation Committee, reiterated the Chair's comments and reminded the Board that the Corporation is operating to perform a public service in a commercial environment.

Board discussion ensued. It was particularly noted that the policies associated with compensation will be scrutinized by the public and that the Corporation must demonstrate prudent practices in as far as where salaries are positioned within the public, private and government agencies.

Edward Dato presented the Corporation's Internal Control and Audit Framework including the conclusions of the Federal Audit Report, the Audit Report recommendations and the Corporation's action plan as well as an analysis of sole source contracts.

Mr. Dato also provided a detailed report on the Audit Report recommendations which covered the areas of corporate costs, the internal control environment, the audit framework contribution agreements, requests for interim payments, competitive procurement and overseas travel. He noted that Management will be working on a travel policy that will reflect the approaches of the contribution agreements. He reported further on the sole source contracts mentioned in the Audit Report providing the rationale behind each contract and advised that most of these sole sources are now providing services for the Corporation as the result of a competitive RFP process.

Vivien Dzau tabled the draft minutes of an Audit Committee meeting held on January 6, 2006 at which the Federal Audit Report and the ensuing media coverage was discussed. She further reiterated that there was nothing in the Audit Report that was new to the Audit Committee.

Mayor Miller gave an outline on rationale for his becoming a Board member. He indicated that he was speaking on behalf of City Council and that Council is very concerned as the City is being asked to surrender effective control of a large part of the City owned by the City for revitalization. He further indicated that Council is more comfortable with the Mayor sitting on the Board of the Corporation for such reason and for transparency reasons and noted the importance of integrating the achievement of City's revitalization building goals and national and provincial goals in a proper way.

He noted government concerns as a result of the Federal Audit Report regarding sole source contracts and compensation issues and requested that a "value for money" audit be conducted. He further suggested that a "value for money" audit would reinforce the public's trust in the Corporation and confirm that funds have been spent wisely.

Board members agreed that a "value for money" audit was a good idea but that the Corporation must find the most cost effective and efficient way to do this with the Governments on side.

The Chairman noted that he had no doubt about the values, transparency and accountability of the Corporation and that Management and staff are concerned and shocked at the negative media coverage. He noted that the Corporation is stretched extraordinarily thin as far as staffing is concerned and is under immense public scrutiny and pressure to get things done. He further noted that the Corporation must not let this negative media coverage stop the Corporation from appropriately moving forward and implementing the plans for revitalization, getting shovels in the ground and building up the intellectual community and that the Corporation would be judged by what is accomplished.

Vivien Dzau asked that the Board allow the Audit Committee to consider the scope of a "value for money" audit. Discussion ensued, and **ON MOTION** duly made, seconded and carried, it was **RESOLVED** that the Audit Committee will consult with internal and external Auditors as well as the three levels of Government and will report back to the Board at the next Board meeting with a progress report on a plan to implement a "value for money" audit. It was further noted that the objective of this plan will be to ensure there is value for money, that appropriate policies and procedures are in place and that public funds are spent in a responsible and prudent fashion, and that the Audit Committee will advise the Board how it is to be done and not if it is to be done.

## **6. West Don Lands Update**

Marisa Piattelli gave an update on the WDL, highlighting the following points and issues:

- At the last Developer Proposal Call Steering Committee meeting held on January 9, 2006, it was agreed by the Committee to postpone the release date



of the Request for Qualifications (“RFQ”) until the zoning is in place, the “H” has been lifted and the Risk Assessment Plan has been approved.

- The Ministry of Environment (“MOE”) must approve the Risk Assessment Plan prior to the “H” being lifted.
- The Risk Assessment Plan will be submitted to the MOE in April, 2006 and approval of the plan will most likely only be at the end of August, 2006.
- The RFQ could be issued in September followed by a Request for Proposals (“RFP”) in October with a developer chosen in early November.
- Site Plan work can then begin and will take approximately two months to complete a plan to be submitted for approval in early 2007. If the Plan is approved immediately the schedule still must allow for Ontario Municipal Board (“OMB”) appeals which could take 30 to 60 days to complete.
- The earliest construction date would be May or June of 2007.
- A construction starting date of May or June, 2007 means that there will only be 1 years’ worth of construction on the berm, town houses complete, and only building frames will be in place by the original targeted construction completion date of December 2007.
- The Ministry of Public Infrastructure and Renewal (“MPIR”) has been informed of this recent delay.
- The Corporation is working with City staff on timelines to ensure that everyone is working within the same time frames.
- A critical issue for the project is that of a master indemnification agreement which will provide a solution to the issue of cross-indemnification of government agencies for access and other requirements as part of the WDL implementation. The master indemnification agreement will ensure one process which will unify liability issues for governments. The Province of Ontario has taken the lead role in seeking acceptable class-based indemnity language which would resolve this issue. In the interim, the City of Toronto and the Province of Ontario have concluded a licensing agreement which allows Ontario Realty Corporation (“ORC”) to drill on City property in the WDL (roads and parks) for the purpose of developing a risk assessed approach to these properties.

The Board questioned why the Corporation is waiting for the zoning to be in place prior to issuing the RFP for the WDL developer. John Campbell reported that given the list of demands the Corporation was placing on developers (i.e. LEED gold) the Corporation wanted to remove as much risk as possible from the developer and leave them with only market and construction risk. He further reported that the RFP would not be credible if the Corporation could not guarantee zoning or the lifting of the “H” (holding designation).

## 7. District Energy Update

Edward Dato provided the Board with a progress report highlighting the following:

- An updated financial model is completed.
- The Corporation has consulted with stakeholders/potential partners.
- The Corporation is finalizing an interim servicing plan for District 3.
- The final CA proposal will be submitted by the end of January, 2006.
- A RFP for initial design to be released in February, 2006.
- The Corporation is refining the offset of green building cost vs. savings to builder from District Energy (“DE”).
- The Corporation is continuing to investigate potential DE partners (TCHC).
- The Corporation will pursue the Ontario Power Authority (“OPA”) RFP for an electricity supply contract.
- The Corporation will engage a system operator (such as Enwave) through an RFP process.
- The Corporation will engage a team to design and construct (through an RFP process)

He provided a financial summary for district energy and provided an update on co-generation highlighting the following:

- The Corporation will design its system so that co-gen capability can be incorporated as soon as possible.
- The OPA has a mandate to initiate development of sustainable generation capacity.
- The Corporation has made a representation to the OPA, and has received favourable initial feedback.
- OPA will release a RFP in March, 2006 and award contracts in the fall of 2006 for CHP projects in Ontario
- OPA requires a \$10,000 deposit by March 24, 2006 to register a proponent in the RFP.
- OPA requires proponents to have secure project funding to move forward in the RFP process.

- Initial review of OPA RFP indicates that timing and nature of the Corporation's project meets the general requirements.

## 8. Environmental Issues

Victor Wong tabled a detailed update and advised that as previously reported the Corporation was proceeding with enquiries regarding blanket environmental insurance using the East Bayfront as a "case study". As was previously reported, it is suggested that the Corporation evaluate its approach to managing environmental risks on an ongoing basis. He advised that in certain instances, insurance may prove to be prudent but at the present time, two shortfalls have been identified which make the use of "blanket insurance" inadvisable.

He reported that blanket insurance would involve obtaining insurance for all of the public agencies and orders of government against all environmental risks and that such insurance, if obtained, would be obtained on a precinct by precinct basis. He reported that such insurance would provide a broader coverage than is necessary; and unduly restrict the policy holders from accessing proceeds of insurance.

He advised that East Bayfront was used as an example, and that due to the nature of the contamination, the groundwater flow characteristics and the landownership patterns, that third party liability insurance may be unnecessary. He advised that most of the publicly owned land is adjacent to the waterfront and contaminant migration onto lands owned by third parties is unlikely. He further advised that obtaining blanket insurance, which includes third party liability coverage for off-site migration of contaminants, would result in undue costs for an insurance product that is unlikely to provide benefits to the policy holders.

Mr. Wong advised that the insurance industry generally does not permit joint policy holders to obtain proceeds of the insurance by suing each other and therefore claims by joint policy holders are "excluded" from coverage. He advised that claims by third parties for damages relating to environmental impacts stem primarily from adjacent landowners, who might claim that the contaminants on one site "migrated" onto their site. He advised that if the adjacent landowner is a named insured (i.e. a joint policy owner), any claim by that adjacent owner would be excluded from coverage. He further advised that when the landownership pattern was examined, it was evident that the public agencies and governments own large tracts of land which include many parcels and if they are all named insureds, then there would be virtually no access to insurance proceeds for third party claims. He advised that there may be instances where the landownership pattern is such that there could be potential claims from private landowners whose lands are adjacent to publicly owned lands and in these instances, environmental insurance could be considered.

He reported that as a result of the above mentioned findings, the Corporation is of the opinion that blanket environmental insurance is not an effective means of addressing environmental issues and recommends that insurance products be considered as part of a strategy to manage environmental risks on a project by project basis.

He further reported that as an alternative, the Corporation is exploring a form of "self insurance" in which the three shareholders agree to "reserve" a certain amount of government funding to address environmental claims should they arise and top this up with

excess liability umbrella coverage. He advised that this may be a more appropriate and cost effective approach.

**9. 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