

Gowanus Canal Community Advisory Group – Real Estate Committee

January 24, 2011 – DRAFT Meeting Summary

Attending: Michelle de la Uz, Josh Keller, Rita Miller, Nathan Elbogen, Lori Raphael, Katia Kelly, Abe Naparstek, Diane Buxbaum

Facilitator: Jeff Edelstein

Notetaker: Beth Bingham

Private Property Concerns

A key concern raised is that of current and future access by agencies to private property, as well as possible impacts to property surrounding the canal. Access issues have already disrupted the daily operations of some industrial owners and tenants during the testing phase by EPA, and there is concern that later phases, including staging and the cleanup itself, may create bigger problems. The Real Estate Committee would like to see the EPA inform community members of their rights, should the EPA temporarily use any private property for any part of the cleanup. The group agreed that there is a need for clarity regarding legal issues, policy issues and pragmatic issues.

Questions for Public Agencies (EPA, DEP, DEC):

- Is there a map or list of property owners and business operators adjacent to the canal that can be made available to the CAG?
- Who has the right of access?
- Under what authority is EPA, DEP, DEC or any other entity able to enter property for the purposes of drilling or testing on site or any other activities?
- Under what conditions might *eminent domain* be used in the SF cleanup?
- Is the Federal Govt. a self-insurer? If so, how would this affect a landowner who may need to file or collect on a claim in the event of accidents or damages? Does the EPA sign a waiver before entering private property?
- Can you provide information for other analogous urban sites – with high property values – that have been given Superfund designation? How does the fact that the site is the water of the canal impact the property values of the surrounding neighborhoods? Are there examples of water sites from elsewhere in the country?

Next Steps: Jeff will email a final list of questions to the committee for editing or revisions. Once approved, Jeff will email the questions to identified agencies and share the answers provided at a future meeting of the Real Estate Committee.

Information-Gathering Proposal

The Real Estate Committee discussed advancing the information-gathering proposal, intended to determine whether the SF designation may be having a negative impact on financing, insurance, or property values in the surrounding neighborhoods. Any evidence

of negative impacts is anecdotal at this stage, so the committee has agreed to develop an exercise to gain a better understanding of whether any problems exist.

The exercise will not be a thoroughly scientific study, though the methodology and questions that will be posed to professionals (realtors, lenders, appraisers, insurers, etc.) as well as to residents will be standardized. Many committee members voiced concerns regarding how other factors that are negatively impacting property – from the economic downturn, to the flood plain location – may make isolating the impact of the SF designation a difficult task. One member recommended administering the exercise every couple of years to fully track changes.

The group decided on the following refinements to the proposed survey:

- Include a separate group of questions for appraisers following the same flow as the questions for lenders and insurance agents. If the SF has negatively affected appraisals, what is the geographic area of impact?
- Develop questions for non-professionals and include property owners and community residents in the exercise.
- In order to standardize the questions and get defensible results, a broader outreach message needs to be developed and the questions will need to be audience-neutral.

The committee will need to develop the methodology, including what role committee members will play in administering the exercise and processing the results. There is no expectation that CAG members will share the contact lists of the organizations they represent, but the roles of these organizations has not yet been determined.

Additionally, several members of the committee expressed interest in identifying community members, experts or other professionals – such as the pro bono lawyer assisting SBIDC or EDC staff – willing to meet with the committee to discuss individual experiences. There was also some interest in reaching out to the community involved in the Newtown Creek SF designation.

Superfund Status and Disclosure

Though the Superfund law regulates only the defined site, the group is concerned about whether the federal action may trigger any state or local regulation of adjacent sites that may contribute to a negative perception.

- Does the SF designation result in a zoning change or trigger any other rule or regulation by the city or state?
- Is there a legal obligation to disclose SF designation in a contract of sale? Does an identified PRP have to disclose similar information? If disclosure is required, is there a determined geographic area that is impacted?

PRP Process and Settlement for Property Owners

At this phase in the SF activity, both National Grid and New York City have been identified as two primary PRPs (Potentially Responsible Parties) for the contamination of the canal. The committee members expressed a need for clarity – by both the EPA and the Mayor’s Office of Environmental Remediation (OER) – with regards to the PRP process and possible *de minimus* settlements for property owners who are not named polluters. This process could be a critical path item that may hold up the cleanup, and an important role of the CAG is to alert EPA of potential obstacles. The group is seeking a clear explanation of the mechanics of the settlement process.

Superfund Designation and the Proposed Rezoning by DCP

There was some discussion about the City’s plan to rezone the area surrounding the Gowanus Canal and whether the Superfund activities will impact the rezoning. In particular, some committee members asked whether the city could suspend the rezoning for 1-2 years while the SF cleanup plan is being worked out. Several members expressed interest in determining whether the CAG could put pressure on the city to temporarily suspend the rezoning. As the CAG has no authority to stop the rezoning, the power of the group lies in the CAG’s representation of the full surrounding community. As such, consensus by the full CAG would be critical to the ability of the group to have any influence over the City’s rezoning agenda.

Next Steps for RE Committee

- 1) Jeff will assemble agenda items for next meeting and distribute.
- 2) The committee will take the Information-gathering proposal to the next level with detailed questions.
- 3) The answers and information provided by EPA, DEP and DEC will be circulated.
- 4) Further discussion of the CAG taking a position on the rezoning is needed.
- 5) Begin to investigate the broader issue of long-term land uses.