

MUNICIPAL LAW

BY JEFFREY D. FRIEDLANDER

Representing the City in Economic Transactions

Previous Municipal Law columns have focused principally on issues relating to the statutory framework within which the Law Department operates and helps to shape, and litigation affecting the public.

But the city's recent execution of a long-term lease for both Kennedy and LaGuardia airports and a cruise terminal in the Reed Hook section of Brooklyn, and the city council's approval of the Hudson Yards project, brings into sharp focus the Law Department's significant, although often unseen, role as business and transactional counsel to the city on a host of complex and challenging economic development projects.

The Law Department's economic development division, which, along with the Office of the Deputy Mayor for Economic Development and Rebuilding, the New York City Economic Development Corporation and other divisions of the Law Department, helps give form to undertakings that enormously benefit the city's economy and infrastructure. With an annual capital budget exceeding \$10 billion from all sources, ownership of many key pieces of real estate, and an active and sophisticated private sector to serve as a partner, the city is engaged in a host of complex and challenging transactions of an order of magnitude seldom found elsewhere.

Economic Development Division

The economic development division of the Law Department provides in-house transactional legal expertise to city policy makers. Although it is relatively small (14 attorneys), its members are primarily seasoned attorneys with significant real estate and corporate experience and an invaluable reservoir of institutional memory that can be brought to bear in furthering the city's economic development efforts.

The division's efforts are often directed at securing direct revenues for the city. One prime example is the recently completed airports lease transaction with the Port Authority, which increased the revenues the city receives from the Port Authority in addition to securing a role for the city in working with the Port Authority to assure world class service at the airports.

Frequently, the deals in which the division is involved are intended to strengthen the city's economy by increasing jobs and expanding the tax base. This often may require working to improve areas that are underutilized (such as Hudson Yards in Manhattan's far west side), depressed by gradual technological or economic change (the inactive "Highline" rail in Chelsea) or by long-standing economic and social inequities (parts of Harlem and the Bronx). The division is also heavily involved in efforts to revive lower Manhattan following the World Trade Center catastrophe.

Sometimes, strengthening the city's economy requires focusing on businesses that are of particular



economic importance to the city. During the Koch and Dinkins administrations, much attention was focused on Wall Street "back office" space and the division represented the city in negotiating leases and tax incentives for financial firms in Brooklyn and Lower Manhattan. During the Dinkins and Giuliani administrations, division attorneys took the legal lead on various efforts to maintain the stock and commodities exchanges in the city.

More recently, during the Giuliani and Bloomberg administrations, the division has worked on large-scale projects intended to provide or enhance cultural facilities (such as the proposed redevelop-

ment of Lincoln Center, the recently expanded Museum of Modern Art and the new Jazz at Lincoln Center facility), which are a major engine of economic growth for the city. To ensure that the public gets the benefit of the contribution of public funds and to satisfy stringent municipal finance requirements, the division, working with the city's Office of Management and Budget and bond counsel, has developed protocols that allow for city participation in the funding of cultural facilities for the benefit of New Yorkers and visitors.

The division has demonstrated the capacity to respond to changes in city development needs and policies as each mayoral administration develops its particular views of effective public policy and undertakes efforts to secure the city's financial strength. For example, among its many economic development initiatives, the present administration has focused on the economic value of the city's brand and marketing the city's intellectual property. To this end, under the direction of City Hall, division attorneys have helped to set up a city's Marketing Development Corporation (NYC Marketing) and, as counsel to that corporation, negotiated and drafted the city's joint marketing agreements with Snapple which will provide needed financial support for athletic programs in the city's public schools.

Goals of Division Attorneys

Division attorneys are usually brought in at the early stages of a transaction to help structure it from the start. The most important activities of division attorneys in the initial phase is the drafting and negotiating of term sheets or memoranda of understanding, outlining the basic terms of the transactions. After the preliminary documentation is completed, division attorneys negotiate and draft the ground leases, contracts of sale or funding agreements that are at the heart of the deal. Frequently, they will also work with concerned agencies on ancillary documentation, such as restrictive declarations for city planning, that may be required as part of the city approval process to insure that the project is developed as contemplated and that the city gets the benefits it bargained for. Division attorneys also coordinate the legal issues for the client agency. Since they are engaged in the transaction early on, and have a broad view of the project

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as a whole, they take the lead role in spotting legal issues and potential pitfalls. Division attorneys see their projects through to closing, preparing all of the necessary closing documents, obtaining final sign-offs and smoothing the last-minute wrinkles that invariably arise just as the parties are set to close. After closing, the attorney will be the point person for legal issues that arise in the administration of the lease or contract and frequently will be asked to work on amendments or additional aspects of the transaction.

Airports Transaction

The recently completed airports transaction is the culmination of years of negotiation between the city and the Port Authority, in which the division played a major role along with outside counsel. Under the new agreement, the minimum rent to be paid to the city was raised from \$3.5 million to \$93.5 million annually, and lump-sum payments totaling nearly \$800 million were made at closing. The lease term was extended from 2015 to 2050, and the city and Port Authority established an Airport Board to resolve and coordinate future capital and operational issues at the airports. The experience of the division — and lawyers in the Commercial and Real Estate Litigation Division who represented the city in a complex multiyear arbitration against the Port Authority — provided invaluable institutional memory to support these groundbreaking negotiations, particularly in the details of airport financial practices and operations, and in resolving other longstanding issues between the parties.

Most of the division's other efforts are intended to provide the infrastructure and environment to facilitate private activity that will increase the City's tax base and general financial health rather than providing a direct revenue stream. One such matter — the large and complex Hudson Yards Far West Side redevelopment project — is being handled by the Division, in conjunction with the Municipal Finance and other divisions of the Law Department, including the Environmental Law Division which is litigating a challenge to the adequacy of the environmental impact statement prepared for the project. The Hudson Yards area, bounded by West 28th Street to the south, Seventh and Eighth avenues on the east, West 43rd Street to the north and the Hudson River on the west, encompasses 33 acres of below grade railroad tracks, and has remained relatively unchanged for the past 80 years. This project would transform this underutilized area into a dynamic urban center,

permitting development and a mix of uses, including commercial and office uses, open space, convention center expansion and residential growth. If all goes according to plan, by 2025, 70,000 people will live and work in the Hudson Yards and almost \$2 billion in additional taxes to the city and the state will be generated each year.

The division is also playing a pivotal role in the proposed conversion of the Highline Rail Viaduct to public space under a federal "rails-to-trails" program. The Highline is an inactive rail line traversing the far West Side of Manhattan from Gansevoort Street to 34th Street that was originally used in bringing produce and goods to Manhattan. The city is seeking to convert the structure to public use pursuant to a "Certificate of Interim Trail Use" (CITU) under the federal rails-to-trails program. This would transform the rail corridor into an exciting public amenity. After near-

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ly three years of discussions, the railroad and property owners that had originally approached the city to demolish the Highline reached an agreement to support the issuance of a CITU. The division (along with the department's Contracts and Real Estate Division) participated in the drafting of the agreements worked with the Department of City Planning in preparation of the rezoning that will accompany the conversion of the Highline to public use and has provided legal assistance in preparing grant agreements, licenses and consultant contracts.

Red Hook Section

Just two weeks ago, at the conclusion of another of the division's projects, the mayor and governor jointly announced the lease for a cruise ship terminal in the Red Hook section of Brooklyn, to be constructed this year. The cruise ship industry is a major contributor to tourism in New York City, and that in turn is an increasingly dominant factor in the city's economic growth. The industry's ability to expand in the city has been inhibited by the limited availability of terminals at which to dock its ships. The division recently represented the New York City Economic Development Corp. in its

negotiations with the Port Authority to lease Piers 11 and 12 within the Red Hook Container Terminal in Brooklyn. EDC will construct a new terminal facility for cruise ships at the piers, thereby substantially enlarging this important business sector.

Jazz at Lincoln Center

A new addition to the city's cultural scene is the recently opened Jazz at Lincoln Center facility. Division attorneys represented the City in the development of this new cultural center, the first permanent home for jazz music in New York City. As a condition to the conveyance of title to the old coliseum site at Columbus Circle, the city required the designated developer to provide Jazz at Lincoln Center with a separate condominium unit in the new development. Division attorneys drafted a restrictive covenant that was recorded against the entire development, reserving the condominium for Jazz at Lincoln Center and imposing other obligations on the developer regarding the adjacent streetscape; reviewed the condominium documents to protect the city's interests; negotiated and drafted a funding agreement with Jazz at Lincoln Center to pay for a portion of the fit out of the facility; drafted another restrictive covenant, which was recorded against Jazz at Lincoln Center's facility dedicating the facility as a venue for the performing arts and educational and cultural programs; and negotiated a subordination agreement with Jazz at Lincoln Center's lender in which the lender subordinated its mortgage to the restrictive covenant.

Conclusion

I have discussed in detail a few important projects in which the economic development division has provided transaction counsel to the city. There are of course many more deals, recently completed or pending, in which the division has assisted in the Bloomberg administration's efforts to promote economic development in all five boroughs of the city. These include the transformation of the Bronx Terminal Market into a retail shopping center; the development of a master plan for the Lower Manhattan East River waterfront; the creation of a new cultural center in downtown Brooklyn anchored by the Brooklyn Academy of Music; preservation of the Audubon Ballroom in upper Manhattan as the Malcolm X Memorial; construction of a new home for the Alvin Ailey Dance Company in Midtown Manhattan; construction of a public school and other amenities on the site of the Queensboro Hall garage; and the development of a retail center in Charleston, Staten Island.