

Sent Via Email

February 17, 2020

Attention: Mr. Christopher Tyrell, Clerk, Standing Committee on Public Accounts

Ms. Catherine Fife
Chair
Standing Committee on Public Accounts
99 Wellesley St. West
Room 1405, Whitney Block
Toronto, Canada, M7A 1A2

Dear Ms. Fife,

Re: Letter from Mr. George Zegarac, President and CEO, Waterfront Toronto to Ms. Fife with attachments.

I was a Board Member and the Chair of the Investment and Real Estate Committee of Waterfront Toronto in the fall of 2017. I would like to take the opportunity to address errors and incomplete information provided by Waterfront Toronto in correspondence dated January 24, 2020 with attachments. I wish to emphasize that the present esteemed CEO Mr. Zegarac was not at Waterfront Toronto in the fall of 2017, the time period in question.

As Chair of the Irec Committee at the time, I can confirm that the Irec Committee **did not negotiate the Framework Agreement**. The actual agreement was never seen by me before and was not provided to me as Chair of the Irec Committee until the Friday October 6th of the Thanksgiving weekend, 2017, merely 4 business days before the vote to approve same at the Board Meeting. As Chair of the Irec Committee I was scheduled to meet with Dentons, Waterfront Toronto legal counsel, to discuss the actual agreement only received on October 6, 2017, on October 16, 2017 but this meeting to discuss the Framework Agreement with Waterfront legal counsel was cancelled because the vote to approve the agreement was moved forward to October 16, 2017 and therefore the meeting to discuss the agreement with legal counsel was not possible. The Framework Agreement is a very complex and lengthy legal agreement and surely would require substantially more time than 4 business days to review.

As Chair of the Irec Committee, I attended the whole meeting of the Irec Committee of October 13, 2017 5 pm by telephone. I believe the other two members of the Irec Committee also attended by telephone and I believe that Mr. Diamond left the call early before the meeting was terminated. Notes from a meeting of the Irec Committee of October 13, 2017 at 5 pm, which have been provided to the Standing Committee were never seen by me before now and were not reviewed by the Irec Committee or approved as complete and are in fact woefully incomplete. The notes were never published on the WT website, and no Minutes were ever published for said meeting. The notes provided are not at all reflective of the full meeting.

The notes provided from the meeting of the Irec Committee of October 13, 2017 are not nearly complete and do not reflect the full meeting that took place. At said meeting, I, as Chair of Irec refused to move the motion to approve the Framework Agreement because of many concerns that had been brought to the attention of management and legal counsel by me and because the Framework agreement had only been in my possession for 4 business days. As now confirmed by Waterfront Toronto, as of October 13, 2017, the Framework Agreement had not yet been provided to the Board in advance of the vote on October 16, 2017. The meeting notes do not reflect the fact that there were many outstanding questions and concerns expressed by me as Chair at this meeting and in writing before this meeting.

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It is extraordinary and Waterfront Toronto confirms that the Board only received the “draft Framework Agreement” at 10 pm on Friday October 13, 2017, the Friday before the vote on the Framework Agreement on October 16, 2017.

The following statement in the attachments provided to you is incorrect and incomplete: *“it is important to note, and as the attached Quayside Chronology confirms, due diligence by the Irec Committee was ongoing for several months and the Framework Agreement was near final by October 13, 2017.”* This sentence is incorrect in that as Chair of the Irec Committee, I never saw the Framework Agreement until Friday October 6th of the Thanksgiving weekend with 4 business days to review the actual agreement before the vote. As Chair of the Irec Committee I NEVER participated in negotiations of the Framework Agreement, never met with legal counsel of “sidewalk”, never met Mr. Doctoroff and only met one representative of “sidewalk” at an informal, high level meeting of the Irec Committee, where he was introduced to the committee, but absolutely no substantive material issues were discussed and no draft Framework agreement was available. (I have no idea what this note included in the attachments means: *“September 8, 2017, Irec communication – SWL proposed summary of principal terms – (Draft 1 of the Framework Agreement) provided to Irec”*, as why would IREC receive notes “proposed from SWL”, the proponent and not from Waterfront Toronto?).

In addition, the list of meetings provided refers to *“Sept 13, 2017 “All aspects of the proposed deal were discussed and Irec was asked for advice on negotiation process”*. This is a ridiculous statement as how can anyone discuss “all aspects” of a proposed deal when the actual legal agreement was not even provided until October 6, 2017 to the Irec Committee? Moreover, my detailed records show that the meeting was about “affordable housing” with little or no mention of “sidewalk”.

The “six Irec meetings” referenced as having taken place prior to the vote of October 16, 2017 included one phone conference call where Waterfront staff emailed that “there was not enough to discuss” as to require a meeting in person (amazingly, only one week before the actual Framework Agreement was provided). Please see the written public submission attached provided to the Ethics Committee attached for more details about the meeting dates before October 16, 2017.

Here is a copy of an email from Ann Landry, WT Secretary of Waterfront Toronto at the time:

“Hello All: As per discussion at the IREC meeting on September 19th, we would like to convene weekly phone calls to discuss the Quayside Project negotiations. I’m proposing place-holders for the next 4 weeks from 5:00 – 6:00pm on Monday, September 25th, Monday, October 2nd, Thursday, October 12th and Monday, October 16th). I will send calendar invites for all meetings and if necessary, will reschedule. Thanks very much. Ann “

It should be very obvious that meetings scheduled for 1 hour are not appropriate to discuss an agreement of such complexity and importance as the Framework Agreement. You should also note that a meeting was proposed to discuss “negotiations” for October 16, 2017, but somehow the October 16, 2017 meeting was subsequently scheduled as the vote of the Board on the Framework Agreement. Note too that the email above was framed as the “Quayside” and not anything of the scale that appeared in the Framework agreement.

There has been reference to 2 briefing meetings of the Board the week before the vote on the Framework Agreement. I recall that representatives of “sidewalk labs” were at those briefing meetings. It is not appropriate for a briefing meeting of the Board to have the proponent present.

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I have extensive records which can be made available. **The Irec Committee did not negotiate the Framework Agreement.** It could be that Management is confused with the Steering Committee where Susie Henderson was a member. The Framework Agreement was only provided to the Irec Committee on Friday October 6, 2017 of the Thanksgiving weekend with 4 business days to review before the vote on October 16, 2017. Waterfront confirmed that the Board only received the Framework Agreement at 10 pm on Friday October 13, 2017. At the Irec meeting at 5 pm of October 13, 2017, as Chair of the Irec Committee, I refused to move the motion proposed to approve the Framework Agreement because many questions remained unanswered and there was insufficient time to review the actual agreement with legal counsel. On October 16, 2017, I was unable to meet with Dentons because the vote to approve the Framework Agreement was scheduled instead. As Chair of the Irec Committee, I voted in dissent on the approval of the Framework Agreement because there were many concerns and questions outstanding and there had been very little time to review the agreement since it had only been received 4 business days before by the Irec Committee. Shortly after the vote on October 16, 2017, I provided 8 available days to continue review of the Framework Agreement with staff and legal counsel. Instead, the IREC Committee was sidelined and a new committee with 2 new Chairs was created called the Quayside Committee. For reasons unknown to me, the Investment and Real Estate Committee that I chaired was no longer involved in the Framework Agreement and later on was disbanded and the new Quayside was created and was later re named the IreQ committee.

Please do not hesitate to contact me should you require further information.

Sincerely,

Julie Di Lorenzo
Former Chair of IREC and Board Member of Waterfront Toronto

c.c. Bonnie Lysyk, Auditor General

Julie Di Lorenzo
Past Board Member
Waterfront Toronto
jdilorenzo@diamantedevelopment.com

April 29, 2019

Standing Committee on Access to Information, Privacy and Ethics
Sixth Floor, 131 Queen Street
House of Commons
Ottawa ON K1A 0A6
Canada

Attention: Michael MacPherson, Clerk of the Committee

Dear Committee Members:

Evidence on Privacy of Digital Government Services

Thank you for the invitation to speak to the Committee. I regret that I was unable to attend to appear in person at the Committee's meetings to consider this important topic because of a funeral. As a past board member of Waterfront Toronto and past chair of the Investment and Real Estate Committee (IREC), I have information and knowledge that could be helpful to the Committee. I would be pleased to attend a future meeting in the event that you have occasion to accommodate this request.

As background, I was a very honoured appointee of the Provincial Government to Waterfront Toronto and have 35 years of extensive in-depth experience in Real Estate, Investment, Development and Infrastructure. I served as President of the Greater Toronto Home Builders in 2005, and on several boards: Tarion formerly known as Ontario New Home Warranty Board, Next 36 - a Technology incubator, Ontario Science Centre, Harbourfront and St. Michael's Hospital. I'm typically asked by boards to chair Facilities Advisory and advise on major construction and development projects. I received the Business Excellence Award by the Italian Chamber of Commerce, and a Lifetime Achievement Award from BILD.

I have reviewed the testimony and evidence provided to this Committee in respect of Waterfront Toronto. In considering the transcript of the February 21, 2019 testimony by Meg Davis, Chief Development Officer at Waterfront Toronto, I noted certain inaccuracies. I provide the following details to correct those inaccuracies. These details are reflected in Waterfront Toronto's public record or otherwise in the public record, such as the City of Toronto's website.

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Ms. Davis stated that “*No one was compelled to vote in favour, and yet there was only one dissenting vote.*” This statement does not provide the whole picture of the situation at the vote at the Special Meeting of the board on October 16, 2017. When the Board met to vote on the agreement, an announcement celebrating the agreement with representatives of 3 levels of government had been scheduled for October 17, 2017 (see the AG report). In addition I expressed serious concerns from receipt of the agreement 4 business days earlier leading up to the vote on October 16. If board members express reservations on a pivotal matter, it is open to a Board Chair to not put the matter to a vote until sufficient time is provided to achieve a consensus and satisfy board reservations.

Accordingly, to suggest that there was a clear consensus at the Special Meeting is simply incorrect. I, Julie Di Lorenzo, voted in Dissent because of the lack of any reasonable time and consultation to review and assess the Framework Agreement. At the time, I was the Chair of IREC, the Committee that had the responsibility to review the agreement (furnished only 4 full business days prior to the vote). In my experience, if the lead subcommittee chair opposes a motion, that is sufficient grounds to suspend further action until the concerns at least permit a fulsome consideration of that chair’s concerns. That the Chair of the Investment and Real Estate Committee dissented on an investment and real estate project vote is extraordinary.

In addition, there were 2 Board Members absent at that same Special Meeting to vote on the Framework Agreement: the current Chair of Waterfront Toronto, Mr. Stephen Diamond and Mr. Meric Gertler who did not provide a vote by proxy.

https://www.waterfronttoronto.ca/nbe/wcm/connect/waterfront/7dd4df9f-7a2c-4277-820a-e2ebcd3148b2/Board+Item+3b+-+Draft+Minutes+of+the+October+16%2C+2017+Special+Board+Meeting.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=7dd4df9f-7a2c-4277-820a-e2ebcd3148b2) Furthermore, still another Board Member abstained. In sum, the lead subcommittee chair on the board dissented, two members were absent, and one Board Member abstained. Contrary to the Ms. Davis’ characterization of the meeting, in fact, the board vote on the motion reflected a distinct *lack* of consensus by Waterfront Toronto, which was clearly divided and uniformed over such an historic, consequential agreement and with no reasonable time to review and contemplate the impacts of said agreement. **In her evidence, Ms. Davis appears to agree that “*We probably should have done a different agreement right at the beginning*”.** Yet notwithstanding the vote in dissent by the Chair of Irec, the Framework Agreement lasted and governed the conduct of the parties and created the precedence and context and the “runway” and the document was unavailable to the public until it was superceded approximately 9 months later by the PDA.

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Ms. Davis says, “ *The Board was briefed and all the way along the process. They also did get two briefings on the framework agreement.*” She adds, “ *So what I will say is that the IREC, which is our investment and real estate committee had had it for weeks and has reviewed every clause, every comma, and had been helping the team negotiate. So, Irec, in fact had at least 6 IREC meetings prior to the Board meeting where the board voted, with only one dissenting vote*”. This in my opinion is incorrect. The actual Framework Agreement was not available to the Board until the weekend of October 14, 15th before the vote on the 16th. Leading up to the vote of the Framework Agreement on October 16, 2017, there was a Special Meeting of the Investment and Real Estate Committee, on Friday, October 13, 2017 at 5 pm. This meeting is not listed on Waterfront Toronto's website or its public record of board and committee meetings, but I can assure you that a meeting was held on that date. The events of that meeting are highly relevant to Waterfront Toronto's management of the Framework Agreement.

As Chair of IREC, and based on my 35 years of experience, I would say that it would have been standard and appropriate practice for such an important agreement, on an endeavor unlike anything ever done in Waterfront Toronto's history and of fundamental importance to the City, for the subcommittee chair to receive such an agreement with substantially more than 4 business days to review the actual agreement.

I received the Framework Agreement on the Thanksgiving weekend, October 9, 2017. I was told that it had been “just completed,” thereby permitting only a few days before the aforementioned Special Meeting (3 full business days, Monday being a holiday, Tuesday, Wednesday, Thursday, before a vote at the Friday October 13, 2017 5 pm Special Meeting of the IREC Committee). I advised the Board on October 16, 2017 that in fact there had not been enough time to review the actual agreement or to receive input on my numerous questions. Respectfully, even with four business days to review an agreement apparently drafted by the proponent, the capacity of “in-house” legal counsel was unsatisfactory. Expert (outside) counsel with experience with an agreement of such complexity and import was absolutely necessary, given the stakes, and had been scheduled with Waterfront Toronto outside counsel for me as Chair of Irec, (but cancelled because of the Special Meeting to vote on the agreement) for the morning of Monday October 16, 2017.

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There was also reference in testimony to your committee of up to 6 meetings of the Investment and Real Estate Committee prior to the vote of the Framework Agreement. This is misleading. I was the Chair of the Investment and Real Estate Committee and those meetings were not about the actual Framework Agreement since the actual agreement was not available until Thanksgiving long weekend 2017. The meetings of the IREC Committee prior to the Thanksgiving weekend 2017 were about various Waterfront Toronto business items such as affordable housing, high level briefings on the potential agreement, but not the Framework Agreement itself.

After the aforementioned vote on the Framework Agreement, management set up a new committee with 2 new Chairs, and called it the "Quayside Committee" The IREC committee was suddenly sidelined. It had existed long before the Framework Agreement. IREC's purpose had been to manage the Real Estate and Investment mandate of Waterfront Toronto. The new Quayside Committee with 2 new Co-Chairs was later again called the Investment and Real Estate Committee but with a Q for Quayside replacing the C and became the IreQ committee.

Naming the new committee the Quayside Committee or the IreQ Committee with Q representing Quayside, is relevant because the project was always referred to "Quayside" in the public eye. Quayside is limited to a piece of land with approximately 3 million square feet of approved zoning and the word "Quayside" is known as only that parcel of land and does not refer to larger scale. If you look up Board Materials that are publically available, the word "Quayside" is used. While on the Board, at my request, there is now a note in the Waterfront Toronto financial statements that confirms that 2.7 million s.f. of that density belongs to Waterfront Toronto. While government budgets are constrained everywhere, this note allows for transparency and accountability as this will allow the land value to be assessed by third party, Appraisal Institute of Canada-Ontario-certified Appraisers so that Waterfront Toronto should receive the appropriate market value for the lands on behalf of the 3 democratically elected stakeholder governments. I do not believe the RFP makes note of any sort of land value subsidy being provided to any proponent.

There is also reference to the original RFP to consider the scope for this project. This is important and explicit language.

"3.1.9 NO GUARANTEE OF VOLUME OF WORK OR EXCLUSIVITY OF CONTRACT.

Waterfront Toronto makes no guarantee of the value or volume of work to be assigned to the successful Proponent. The agreement to be negotiated with the selected Proponent will not be an exclusive contract for the provision of the described Partner Scope and Deliverables.

Waterfront Toronto may contract with others for the goods and services the same as or similar to the Partner Scope and Deliverables or may obtain such goods and services internally."

On the evening of July 30th, 2018, after almost 3 years serving the Board of Waterfront Toronto, and the night before the vote of the PDA, I felt compelled to resign because among of other reasons, I did not feel that the language in the agreement that joint GR, such as “ *Waterfront Toronto and Sidewalk Labs will jointly communicate with government bodies at the municipal, provincial, and federal levels at regular intervals throughout the development of the MIDP,*” was at all appropriate. I concluded in my resignation letter “*We, Waterfront Toronto, controlled our narrative and our destiny and did not relinquish it to any other until now. I do not believe it was the intention of the 3 levels of government, to allow a single limited liability company to become our filter, our gatekeeper and our agent.*”.

Lastly, of great concern to me is the evidence presented to your committee suggesting that the federal, provincial and municipal governments will have the opportunity to reject or approve the forthcoming Master Innovation and Development Plan. In my opinion, this is not correct and no past and present binding legal language provides for this. The governing statute and the PDA are very explicit in removing the 3 levels of government as responsible or accountable, and in fact they are indemnified. ***“PDA 14.05 Release: No Consequential Damages***

(a) Sidewalk Labs acknowledges that the obligations and duties of Waterfront Toronto set out herein are solely and exclusively of Waterfront Toronto and no other Person including any of the Three Orders of Government, has any duty or obligation wither for or on behalf of Waterfront Toronto in connection with its obligations hereunder”.

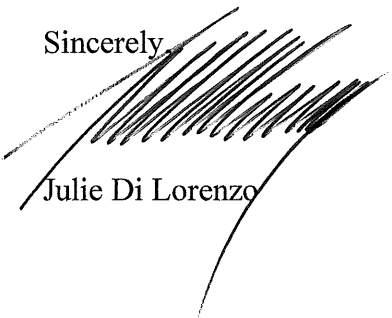
Moreover, on the City of Toronto Waterfront Toronto website, it is explicitly stated that ***“The City of Toronto is not a party to the PDA and is not an author of the MIDP”.***

Therefore, this Committee ought to determine just what role the three levels of government are playing. What executive officials in each of these governments will be involved in the anticipated review, and what exactly will be reviewed by them? Will there be a report to Council with expert counsel in attendance, prior to Waterfront Toronto making any decisions? The same questions apply to the other government leaders: will their Cabinet leads report to Cabinet or legislatures prior to Waterfront Toronto’s decision?

Although regulatory responsibility will be with various applicable levels of government, the PDA, and Act do not require any official, binding, “signature” of the MIDP by any of the 3 levels of government. To say that there will be regulatory oversight is not the same as actual, accountable review and approval by the executive and legislative branches of the democratically elected government. Waterfront Toronto’s statute and the PDA makes all that abundantly clear.

Thank you for your time. I am available to answer any questions that you may have, provide any further information that may be helpful to the Committee and provide supporting documentation.

Sincerely,



Julie Di Lorenzo