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TOWN OF BROOKHAVEN  
LOCAL DEVELOPMENT CORPORATION

- - - - -x

BOARD MEETING  
HELD VIA ZOOM VIDEOCONFERENCE

- - - - -x

November 17, 2021  
9:05 a.m.

TRANSCRIPT OF PROCEEDINGS

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A P P E A R A N C E S :

**MEMBERS :**

FREDERICK C. BRAUN, III  
MARTIN G. CALLAHAN  
FELIX J. GRUCCI, JR.  
ANN-MARIE SCHEIDT  
FRANK C. TROTTA

**ALSO PRESENT :**

LISA M.G. MULLIGAN, CHIEF EXECUTIVE OFFICER  
LORI J. LaPONTE, CHIEF FINANCIAL OFFICER  
JAMES M. TULLO, DEPUTY DIRECTOR  
JOCELYN LINSE, EXECUTIVE ASSISTANT  
TERRI ALKON, ADMINISTRATIVE ASSISTANT  
AMY ILLARDO, ADMINISTRATIVE ASSISTANT  
WILLIAM F. WEIR, ESQ., NIXON PEABODY  
HOWARD R. GROSS, ESQ.,  
WEINBERG GROSS & PERGAMENT, LLP

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MR. BRAUN: It is now 9:05. It's November 17th. Board members present are Martin Callahan, Felix Grucci, Ann-Marie Scheidt, Frank Trotta, Fred Braun. A quorum is present.

Minutes of our meeting of September 15th --

MS. MULLIGAN: I'm supposed to read that thing and I don't have it. I'm sorry guys. I just remembered that I'm supposed to be doing something.

Is it in your notes from yesterday?

MR. BRAUN: Yeah.

MS. MULLIGAN: Sorry.

MR. CALLAHAN: You can wing it, Lis, come on.

MS. MULLIGAN: No, this I don't think I can wing.

MR. BRAUN: Here you go, second paragraph.

MS. MULLIGAN: Okay, awesome.

This meeting has been convened in accordance with Chapter 417 of the laws of 2021, Senate 50001, Assembly 40001 effective

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2

September 2, 2021 through January 15, 2022

3

permitting local governments to hold public

4

hearings by telephone and videoconference.

5

Okay, sorry, please carry on.

6

MR. BRAUN: Thank you.

7

Our minutes of our meeting of

8

September 15th have been sent to everyone. I

9

need a motion to accept.

10

MS. SCHEIDT: So moved.

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MR. GRUCCI: So moved.

12

MR. BRAUN: Second?

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MR. GRUCCI: Second.

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MS. SCHEIDT: Second to Felix.

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MR. GRUCCI: I was just seconding

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yours, Ann-Marie.

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MS. SCHEIDT: We got to get the

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sequence straight.

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MR. GRUCCI: I know, you're right.

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MR. BRAUN: Are there any comments,

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changes?

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(No response.)

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MR. BRAUN: Hearing none, on the vote,

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Mr. Callahan?

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MR. CALLAHAN: Yes.

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MR. BRAUN: Mr. Grucci?

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MR. GRUCCI: Yes.

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MR. BRAUN: Ms. Scheidt?

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MS. SCHEIDT: Yes.

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MR. BRAUN: Mr. Trotta?

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MR. TROTTA: Yes.

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MR. BRAUN: Mr. Braun votes yes.

9

The motion is carried.

10

Turn it over to Lori for the CFO's

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report.

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MS. LaPONTE: Good morning.

13

Included in the package, Lisa's going

14

to bring it up --

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MS. MULLIGAN: Can you see it?

16

MR. GRUCCI: Yes.

17

MS. MULLIGAN: Okay, good.

18

MS. LaPONTE: -- is the October report,

19

budget versus actual for the month and also

20

year to date.

21

I just want to mention during October

22

for the LDC, there was not much activity other

23

than just our regular recurring operating

24

expenses and some investment income. We're

25

planned -- it looks like we will be ahead of

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what we budgeted, so that's the operating

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report for the month of October.

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Is there any questions?

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MR. BRAUN: The bottom line, just for

6

the record, Lori, shows what for the month of

7

October year to date?

8

MS. LaPONTE: Sure.

9

15,000 net loss for the month of

10

October and year to date, 66,000 year to date

11

loss for the month of -- for the period

12

January 1st through October 31st.

13

We compared -- and comparing that to a

14

pro rata share of the annual budget, we're

15

ahead of that, so a pro rata share of our

16

annual budget for the ten months is 87,000, so

17

if you look down below on the bottom line,

18

you'll see -- in the fourth or fifth column

19

you'll see the pro rata budget compared to our

20

share of the actual results, we're actually

21

favorable of 20 -- almost 21,000.

22

Does that answer your question, Fred?

23

MR. BRAUN: Yes, it does, thank you.

24

Any questions of Lori?

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(No response.)

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MR. BRAUN: Hearing none, motion to  
accept her report, please.

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MR. GRUCCI: Go ahead, Ann-Marie.

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MS. SCHEIDT: Second to you, Felix.

6

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MR. GRUCCI: I make a motion to accept  
the report.

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MR. BRAUN: Thank you.

9

MS. SCHEIDT: Second.

10

11

MR. BRAUN: Second Ann-Marie, thank  
you.

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MS. LaPONTE: Also, one of the items I  
want to mention is that all the payments that  
are required have been made timely as of  
October 31st and that --

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MR. BRAUN: There's a motion on the  
table.

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Mr. Callahan?

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MR. CALLAHAN: Yes.

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MR. BRAUN: Mr. Grucci?

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MR. GRUCCI: Yes.

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MR. BRAUN: Ms. Scheidt?

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MS. SCHEIDT: Yes.

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MR. BRAUN: Mr. Trotta?

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MR. TROTTA: Yes.

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MR. BRAUN: Mr. Braun votes yes.

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The motion is carried.

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Back to you, Lisa.

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MS. MULLIGAN: Can I see the agenda?

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MR. BRAUN: Yeah. It's prevailing

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wage.

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MS. MULLIGAN: Oh, prevailing wage.

9

I have nothing new to report.

10

We actually did -- New York State, I

11

think some of you participated yesterday in

12

the New York State EDC's IDA Academy -- sorry,

13

I couldn't get all those letters out -- and

14

there was a whole segment on prevailing wage

15

and you know, those of you who participated,

16

tell me if you heard something that I didn't

17

hear, but basically what I heard was there's

18

no update.

19

One of the attorneys went so far as to

20

say it is not legally possible -- as it's

21

stated now, it's not legally possible to

22

follow this law, so I don't have anything new.

23

I was hopeful that after this academy I would

24

have something new to add to update you guys

25

on prevailing wage, but it seems like we're in

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a status quo. The board has not been

3

established. Nobody at the academy yesterday

4

had any information on names that were going

5

to -- that are being floated, maybe they, you

6

know, named two people to it. So far it's

7

been -- there's been no activity that I'm

8

aware of.

9

Does anyone have anything to add?

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MS. SCHEIDT: I think the technical

11

term for this situation is that it's a real

12

hairball.

13

MS. MULLIGAN: Well, that's better than

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the technical term I was thinking of.

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MR. BRAUN: But it also is a buster,

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yes.

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MR. WEIR: Yeah.

18

The problem with the statute is okay,

19

they have not appointed the committee and the

20

Department of Labor has not issued their

21

required certificate, but yet the statute

22

takes effect on January 1st, so it really is

23

putting everybody into kind of a quandary.

24

We're urging everybody to close as many

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transactions by the end of December as they

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possibly can and to sign their construction contracts before December 31st, '22 -- '21.

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We are building into the documents provisions that the company will have to certify to the IDA and we're even doing ones now to say if they're doing everything in December, that the statute does not apply either because it's not a covered project because they entered into it before January 1st, '22 or that one third -- you know, the amount of the IDA benefits and any other public benefits they're receiving is less than 30 percent of the total construction costs, even though construction costs are not defined yet, so again, I think most people are going to check the box saying we're not covered because we did it in '21. But it is something that by statute, the project applicant is required to certify to the IDA starting January 1st. Whether or not the Section 224-a applies to their project and if it does apply, that they're in full compliance.

A lot of people are concerned that if

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they do sign construction contracts in

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January, that the Department of Labor could

4

give them stop orders, stop work orders, till

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they can prove compliance.

6

The other thing I'm hearing is a lot of

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lenders will not approve projects come January

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unless they have certainty as to whether or

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not this is going to apply because they don't

10

want to approve a construction budget and a

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construction agreement and then find out all

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construction costs are going up 30 to

13

40 percent and that it wasn't budgeted, so I

14

think come January, unless you're by statute

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an excluded project such as affordable

16

housing, we may see things grind to a halt for

17

a couple of months in the first quarter of

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'22.

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MR. BRAUN: Bill, should we be amending

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our application at this point to have a box or

21

a couple of lines for other amendments, other

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benefits the company may have received?

23

MR. WEIR: Yes, that's right and we're

24

going to probably put something in the

25

application for that and also, say that they

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acknowledge that they will have to certify to

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the IDA as required by the statute under

4

penalty of perjury whether or not the

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prevailing wage policies apply to their

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project and if they do, that they're in

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compliance or will be in compliance. So we

8

will have to amend the application.

9

But it's going to be, you know . . .

10

you know, that a couple of IDA's said oh, you

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know, we've already made our budget this year,

12

can we push some of these transactions to next

13

year and it would help that year's budget and

14

I said you know what, if you push to the next

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year, they may never close and you're better

16

off having money in the bank today to pay next

17

year's -- next fiscal year's expenses because

18

you may go several months without revenue, so

19

at least you'll have -- I'd rather have

20

revenue -- money in the bank -- I'm sure Lori

21

would agree -- money in the bank to pay next

22

year's expenses than worry about meeting

23

budget for next year because whether or not

24

you meet budget is not as important as you

25

have the cash to fund operations, so . . .

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MR. BRAUN: Bill, should the application be amended ASAP for any projects --

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MR. WEIR: It should be amended starting now, yeah.

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MR. BRAUN: Okay.

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MS. MULLIGAN: Bill, are you putting together edits for that?

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MR. WEIR: Yeah, we'll give you some edits for that and I'll also circulate today some revised -- we've created a new section 8.13 in the lease agreement, it's already in port development and we will start -- we will be using that on all projects going forward as well as until the Department of Labor comes up with a certificate, we created our own, you know, for what it's worth.

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Partly, I don't think the State is focused on the statute, you know. You know, certainly Governor Cuomo didn't, he had other things to worry about and Governor Hochul is trying to pick up, you know, running the State in midyear and she has also I think other things to focus on, but it's going to leave a

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lot of projects in limbo and I don't think

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even by executive order she can, you know, a

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statute that says it's effective on this date,

5

she has the power to say oh, we're going to

6

postpone this effective date.

7

Howard, do you have any thought on what

8

the governor could do to that?

9

(No response.)

10

MR. WEIR: You're on mute, Howard.

11

MR. GROSS: Yeah, no, I unmuted.

12

No, I agree with you, Bill.

13

I interpreted there was only two ways

14

you could defer the effective date of that, of

15

the statute, which was the legislature to act

16

or if I recall, if there was a board, the

17

board could defer the effective date

18

effectively.

19

MR. WEIR: I don't think the statute

20

says that.

21

MR. GROSS: I don't know that it

22

matters, it's academics since there's no

23

board, but that was my recollection that if

24

they have a -- there's a provision that allows

25

them to essentially defer the effective date.

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Bill, if you get a chance, I don't mean to bore everybody, but 224-c, number seven, that's the way I read that.

3

4

5

MS. MULLIGAN: How many people are on the board or will be, do we know?

6

7

MS. SCHEIDT: The lawyer yesterday said she thought it was something like 13 or 15.

8

9

MR. GROSS: Thirteen.

10

11

MS. SCHEIDT: And nobody wants to touch this with a 20-foot pole apparently.

12

13

MR. GROSS: They're supposed to be appointed by the governor.

14

15

MS. SCHEIDT: Who would want to be in that hot seat?

16

17

MR. WEIR: Well, if you work for -- if you work for a labor union, you'd love to be in that hot seat.

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MS. MULLIGAN: Yeah.

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MR. GRUCCI: Got two questions, if I could.

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The first question is do you think that with all of the confusion around the

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legislation, that there will be a rewrite of the legislation and my second question is if

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we issue benefits to a contractor and they

3

certify that they're meeting the prevailing

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wage provision of the law and down the road

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they don't meet the provision of the law, is

6

it our responsibility to claw back the

7

benefits that were given to them?

8

MR. WEIR: No. What it would be is the

9

Department of Labor can come in, do a stop

10

work order and then require them to go back

11

retroactively and pay prevailing wages to

12

everybody who worked there.

13

MR. GROSS: Bill, do you think, though,

14

the fact that they didn't comply with the

15

provision of our agreement that requires them

16

to do so, if we wanted to, we could declare a

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default?

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MR. WEIR: We could probably declare a

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default if we wanted to.

20

MR. GROSS: Yeah.

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MR. GRUCCI: This is going to have a

22

real chilling effect on construction in the

23

State of New York.

24

MR. WEIR: I think you're -- you know,

25

unless you're doing something like a true

1

2 affordable housing project that's excluded,  
3 you will see -- first the unions who pushed  
4 this are going to see they're not going to be  
5 getting a lot of work come springtime.

6 MR. GRUCCI: If a contractor is  
7 building a project in phases and each phase  
8 doesn't meet the 30 percent requirement, are  
9 they exempted from the prevailing wage?

10 MR. WEIR: I can't give you an answer  
11 to that, Felix, without really looking at more  
12 detailed facts, but like say something like  
13 Ronk Hub, which is already subject to  
14 prevailing wage, but if Ronk Hub were doing  
15 phase two and they're signing the construction  
16 contract for phase two in say March or phase  
17 three in March, it could be covered, it would  
18 not impact the other sections we've already  
19 done.

20 I mean the other issue, too, is the  
21 biggest question is definition of construction  
22 costs because, you know, if all you looked at  
23 as narrowly is the hard costs, then the  
24 benefits may be higher, but if you count all  
25 the softs cost, including engineering,

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architectural fees, environmental fees,

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financing fees, all those kind of things to

4

increase the total construction costs, you

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know, if they filed a lien law as to what is

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construction costs and what's not, you might

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be able to get some -- the irony is you want

8

to increase your construction costs if you're

9

going to be over five million so that the

10

amount of benefits is less likely to be

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30 percent.

12

MR. BRAUN: And we know the cost of

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materials is up significantly since COVID, so

14

you got that going for you, too.

15

MR. WEIR: Yeah.

16

MR. BRAUN: All right.

17

Does anybody else have anything else to

18

bring up for the Local Development

19

Corporation?

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(No response.)

21

MR. BRAUN: I'll entertain a motion to

22

adjourn that meeting.

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MR. TROTTA: Motion.

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MR. BRAUN: Second?

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MR. CALLAHAN: Second.

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MS. MULLIGAN: Marty seconded.

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MR. BRAUN: Motion on the floor.

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On the vote, Mr. Callahan?

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MR. CALLAHAN: Yes.

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MR. BRAUN: Mr. Grucci?

7

MR. GRUCCI: Yes.

8

MR. BRAUN: Ms. Scheidt?

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MS. SCHEIDT: Yes.

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MR. BRAUN: Mr. Trotta?

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MR. TROTTA: Yes.

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MR. BRAUN: Mr. Braun votes yes.

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Motion carries.

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Our meeting is closed.

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MS. MULLIGAN: Thank you.

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(Time noted: 9:22 a.m.)

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19

20

I, JOANN O'LOUGHLIN, a Notary Public

21

for and within the State of New York, do hereby

22

certify that the above is a correct transcription

23

of my stenographic notes.

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JOANN O'LOUGHLIN