



45 Washington Street | Box 123 | Brooklyn, NY 11201 | www.dumbo-dna.org

Date: June 1, 2009

To: Barbara Ditata, Inspector General for the New York City School Construction Authority (SCA)

Michael Sarner, Inspector General for Lobbying Activities

From: Gus Sheha, President, DUMBO Neighborhood Alliance (DNA)

RE: Dock St., DUMBO, Brooklyn & the SCA

Dear Barbara Ditata & Michael Sarner:

In light of many recent revelations pertaining to the proposed Dock Street development in DUMBO, the DUMBO Neighborhood Alliance (DNA), demands a thorough investigation into the activities of the SCA, the Department of Education (DOE), and Two Trees Management, its principals, lobbyists and attorneys. We strongly believe there has been ongoing collusion and improper dealings between the SCA, the DOE and a private developer – Two Trees Management – in the developer’s quest to gain zoning changes for the Dock Street site. The Dock St. project highlights lack of faith in good government. Additionally, both agencies have refused to cooperate with Freedom of Information Act (FOIA) requests, withholding documents in violation of the FOIA laws while neglecting repeated letters by members of the public for more transparency and information relating to the Dock St. project. The few documents that have been released are referred to in this letter below.

In June of 2008, Elizabeth Bergin, an executive at the SCA who also serves as Senior Director of Capital Planning, told a packed room of parents from Brooklyn Heights’ PS 8, **“Right now, in the district, we do not identify a need”** for a middle school (Brooklyn Paper, June 7, 2008). A letter signed by John White, Chief Operating Officer of the DOE, dated December 12, 2008 and addressed to PS 84 principal David Greco, states that **“...at this time, there is insufficient demand for middle school seats in your district or immediate area for a middle school component at your [elementary] school.”** PS 84 is located only approximately 3 miles from PS 8 and the proposed middle School at Dock St. Subsequent emails between the developer and the SCA which were revealed in the FOIA documents proves that there was indeed collusion and/or improper communications between the SCA and Two Trees even as the SCA and DOE claimed time and again that there was no need for a middle school in the district.

In a letter dated May 20, 2008, weeks before Ms. Bergin’s appearance in front of PS 8 parents where she maintained there is no need for a middle school, Jed Walentas, principal of Two Trees, informed Sharon Greenberger of the DOE to review Two Trees’ **“best and final offer for the Dock St. DUMBO middle school.”** Jed Walentas, a principal of Two Trees Management begins his email to the SCA stating that **“we appreciate your continued interest in working with us to develop a new public middle school as**

part of our development plans for the Dock St. DUMBO site.” This is a clear indication that the SCA and DOE have long been in communication with Two Trees despite repeated public statements by the SCA that there was “no need” for a middle school in the area. The DNA feels that these misrepresentations, particularly when focused on the needs of a neighborhood’s children, are reprehensible.

In an internal SCA email from Kenrick Ou to Sharon Greenberger and Lorraine Grillo dated November 6, 2008, Mr. Ou describes an exchange he had with Ken Fisher, attorney and Land Use counsel for Two Trees Management. The email reads as follows:

“Ken Fisher just called me. He is concerned about how we/DOE would respond to press inquiries about “Project#1” [Dock St.] since Two Trees is submitting its application formally to City Planning... The key question for him is how DOE will explain that it is proposing to fully fund a stand-alone D13 project – if so, then it raises the question of why we would not consider an alternate site than Dock St...”

It is our understanding that the SCA is obligated to vet all alternate sites, including the seven that were suggested by Councilmember Yassky and the DNA. The absence of a proper cost-benefit analysis and comparison with alternate sites highlights the lack of consideration and fiduciary obligation to the tax-paying public by the SCA. Perhaps more eye-opening is Mr. Fisher’s expression of concern as to how the SCA should respond to press reports pertaining to the proposed Dock Street development and school. This is a serious breach of the proverbial firewall that should exist between an applicant and the governmental agencies that oversee and approve a particular project.

In an email dated November 24, 2008 from Two Trees representative Laura Bailyn to Mr. Ou, Ms. Bailyn is instructing Mr. Ou on how to respond to an alternate plan to expand the current elementary school - PS 8 - to include a middle school or other alternate sites as well as how the SCA and DOE should move forward. The email reads as follows:

“THE BOTTOM LINE: The bottom line is that the BHA [Brooklyn Heights Association] will be releasing their study and campaign to put a middle school at PS 8 any day now. We strongly believe that the DOE and the SCA need to make clear to the community a) that the Dock St. site is the only site under consideration in District 13 and only because of the Two Trees donation... b) that the SCA and the DOE has told this to Councilmember Yassky and [BHA]... If this is not done, the BHA PS 8 or other alternative will gain currency...”

“NEXT STEPS.: Some upcoming opportunities to make the DOE and SCA message clear on this issue: 1) a press release... including a quote from Deputy Mayor Walcott, 2) response to press inquiries when BHA PS 8 K-8 study is released 3) by sending a rep. to participate in a community information session which we are organizing... We believe doing these things... are essential.”

“Message: “... we think it is essential that a senior representative from DOE come to testify and be prepared to make a strong and definitive statement and respond unequivocally to questions regarding budget and alternate school sites.”

It is clear that this type of communication, where an outside developer with a vested interest in the outcome of the process in question instructs a city agency how to conduct its business and to ensure that any competition is squashed, is unconscionable. These communiqués raise serious questions as to the dubious dealings of the SCA and a private developer’s undue influence over what is inherently supposed to be a public process.

At a public hearing, conducted on May 21, 2009 by the Chair of the Zoning and Franchises Sub-Committee Councilmember Tony Avella, SCA Vice President Ross Holden's disturbing lack of transparency and inability to answer questions by other subcommittee members further highlights the suspicions of neighborhood leaders, Councilmember David Yassky and other good government organizations across New York City.

Councilmember Eric Gioia questioned Ross Holden over a December 8, 2008 email sent from Lorraine Grillo to Kenrick Ou that seems to indicate that the agency was only humoring Councilmember David Yassky – an outspoken opponent of the proposed Dock Street development – when he had suggested an alternate site for a public school at 205 Water St. The email from Grillo to Ou stated **“Now I know that if we don't do the Walentas project that we don't really want to do anything else over there, but I think we have to follow up on this just so we can say that the Walentas project is such a good deal,”** Councilman Gioia forcefully commented on this email, stating “I have to say, this is the most disturbing document or email that I have seen in my eight years in Council...This is not how government is supposed to work.”

In an email dated December 17, 2008, Jed Walentas informed Sharon Greenberger of the SCA about the responses that the SCA should give at the public hearing at the Community Board 2 Dock Street Hearing. The email reads as follows:

“Please confirm we are on the same page in terms of the issues and responses for tonight's presentation.

(1) **Q: How much savings to the SCA does the developer's contribution represent?**

A. We estimate that the developer's contribution of a core and shell at this location represents an approximate \$50 million dollar savings to the SCA

(2) **Q: Isn't this [is] an abdication of the DOE's responsibility to provide schools for our children?**

A. It is the administration's policy to promote responsible development that addresses a number of community needs, including the creation of new public school facilities.

(3) **Q: What does the \$43 million dollar figure in the SCA's capital plan represent?**

A. This is the cost of the interior fit out for the Dock St. school facility.

(4) **Q: If we vote against Dock St. will the SCA allocate that \$43 million to another school site in the neighborhood?**

A. The money in the capital plan is for Dock St. Whether upon an amendment to the capital plan it might be made available for another site, I can not say. However, there will not be additional funds available and the funds in the budget are not enough to build a school at any other location without an equivalent developer contribution.

(5) **Q: Have you considered other locations for this new public middle school?**

A. We have carefully considered each alternative location that was presented to us by Councilmember Yassky and none of those have been feasible sites. [If appropriate:

list proposed alternative sites that have been rejected, including making PS 8 a K-8 and putting the school in the House of Detention on Atlantic Avenue.] This process has been going on for two years and we have made the determination that the Dock St. DUMBO site is the appropriate location for the school, due to the significant economic contribution being offered by the developer and the characteristics of the site and location – including: 45,000 SF. on one level, entrance of school sole use on Dock St., ability to create perimeter classrooms, and a double height gymnasium space, and proximity to and use of Brooklyn Bridge Park.

(6) Q: Why can't you make PS 8 K-8?

A: [It will be critically important to make clear that this is not an option and provide reasons why not.]

This exchange, initiated by Two Trees, essentially instructing the SCA on how to respond to public inquiries regarding the various facets of the Dock St. project, is completely inappropriate and possibly criminal in nature. DNA has always been concerned about the credibility of the school site selection process with regards to the proposed Dock Street development. We believe that the above FOIA documents validate this notion and reveal that a lack of transparency and protocol rendered this entire process flawed.

Our findings are based partially on the small number of documents that have been released by the SCA and the DOE. We believe that more inappropriate behavior and possible criminal activity by the SCA, DOE and Two Trees Management will be revealed should all documents requested be released. In violation of FOIA, both agencies have refused repeated requests to release ALL documents relating to the proposed Dock Street development in order to “run out the clock” on the ULURP process currently underway (the full City Council vote on Dock St will occur before June 16th).

In summary, the DNA is calling on the DOI to initiate an inquiry into the actions of the SCA, the DOE, Two Trees Management, its principals, lobbyists and attorneys in reference to violations, including possible collusion, conflict of interest and potential criminal actions in the matter of the proposed Dock Street development in DUMBO. The behavior of those individuals and agencies involved constitute a serious breach of the public trust and a lack of fiduciary responsibility of a city agency towards the taxpayers of New York City. We urge the DOI and Mayor Bloomberg to place a high priority on this complaint as it highlights lack of faith in good government.

Sincerely,

Gus Sheha
President
DUMBO Neighborhood Alliance (DNA)