

Gilsenan, Michael

To: Schiano, Frank
Cc: Avaltroni, Robert; Sturcken, Charles
Subject: RE: Meeting with Counsel for Independence Plaza on October 3

Frank,

I spoke to Bob regarding the request made to EPA from the attorney of the potential Independence Plaza buyer. Their attorney is asking DEP to become involved in an issue that is not related to the clean up program. The contract is the contract and, as you suggested, would require modifications that are problematic. Also, DEP should not become involved in the purchase of private property between private citizens. The issues this attorney wants to speak about are not issues related to the clean up program and fall outside of our decision-making level.

This is an EPA-run program with DEP acting as the procurement agency. EPA's attorneys need to contact this attorney to work out the details regarding the access agreement. They should not be referring it to DEP as a contract issue. If an Independence Plaza attorney calls, I will refer him to EPA and to you as a last resort. Thanks,

Mike

-----Original Message-----

From: Schiano, Frank
Sent: Wednesday, October 09, 2002 9:44 AM
To: Gilsenan, Michael; Sturcken, Charles
Cc: Avaltroni, Robert
Subject: RE: Meeting with Counsel for Independence Plaza on October 3

I spoke to Bob about this on Monday. They have three issues, two of which would involve DEP giving them assurances concerning the removal of liens and violations, which I don't think we want to get involved with and the third would require the contracts be modified to require the contractors to remove liens which sounds problematic giving the fact that they are already unhappy. Beverly indicated that this attorney felt he had to speak to someone on a decision making level at DEP such as a Deputy Commissioner. Bob indicated that he had no problem speaking to him but was unavailable Monday and Tuesday therefore they should be referred to Mike. Also he thought that either he or Mike should discuss the various issues concerning Independence Plaza with Kathy Callahan before speaking to this attorney.

-----Original Message-----

From: Gilsenan, Michael
Sent: Tuesday, October 08, 2002 5:45 PM
To: Schiano, Frank; Sturcken, Charles
Cc: Avaltroni, Robert
Subject: FW: Meeting with Counsel for Independence Plaza on October 3

Frank-Epa public affairs called me this afternoon re. attached e-mail. I informed them that the attorney should be speaking to someone from our legal dept. Charlie-Mary Mears said, "that the Tri-Becca Tribune called her office regarding this issue". Also be aware that the carpet issue is one in which Epa has to come to grips with. Our position was articulated to Kathy Callahan at a meeting last Thurs.

-----Original Message-----

From: Kolenberg, Beverly@epamail.epa.gov
[mailto:Kolenberg.Beverly@epamail.epa.gov]
Sent: Tuesday, October 08, 2002 2:42 PM
To: michaelgi@dep.nyc.gov
Subject: Meeting with Counsel for Independence Plaza on October 3

Dore LaPosta suggested that I forward this message to you and that I give Richard Leland, Esq, of Kramer Levin your phone number. He wants to raise IPN's issues, noted in paragraphs 3 and 4 below, with a manager at DEP to see if you can modify City's agreement with the contractors. Kathy Callahan was not able to reach you by phone yesterday to discuss the issues raised by IPN's counsel. I believe that Frank Schiano discussed this with you.

----- Forwarded by Beverly Kolenberg/R2/USEPA/US on 10/08/02 02:31 PM -----

Beverly
Kolenberg

10/03/02 05:59
PM

To: Kathy Callahan/R2/USEPA/US@EPA, Dore
LaPosta/R2/USEPA/US@EPA, Michael Brescio/R2/USEPA/US@EPA,
Arlene Anderson/R2/USEPA/US@EPA
cc: Thomas Lieber/R2/USEPA/US@EPA, Paul
Simon/R2/USEPA/US@EPA
Subject: Meeting with Counsel for Independence Plaza on
October 3

Tom Lieber and I met with the following representatives of Independence North: Ezra Goodman, counsel for real estate and contracts issues, Richard Leland, counsel for environmental issues and his associate Toni Ferrucci, and Debbie Dolan, Manager from Hudson River Management IPN's management company to discuss the issues that they believe remain to be resolved.

We were informed that a contract for sale for the IPN property has been signed by Duane Street Associates, the owner with an unnamed buyer. For that reason, among others, counsel want to insure that no liens or violations are placed on the buildings as a result of the work that will be performed by the cleaning and monitoring contractors.

At the conclusion of the meeting counsel said that they would like to bring their contract concerns to someone at a high level at NYCDEP to advocate for the proposed contract language they want. In sum, Goodman suggested that the language in the city contract provide that any lien on the property filed by a subcontractor or materialman be satisfied within 30 days by the contractor. As to liens on the property filed by the contractor on the property, he would like the City to discharge the lien within 30 days or failing to do so, pay the legal expenses of the property owner if the matter is litigated.

For violations that are filed by the City or other agency on the property due to the activities of the contractors, they were seeking to get violations removed promptly and indemnification for their expenses.

They wanted to formally incorporate the information in the fact sheets by reference into the consent to access forms, and we said the language in the consent forms could be changed.

Ms. Dolan requested information about the facade inspection made by the City three weeks ago, and after the meeting Mike told me that he would get that information to her.

The attorneys recognize that the residents want the cleanup, and the IPN owner is "between a rock and a hard place." Finally, I told them that the issue of what would be done about carpet removal in the common areas at IPN was as yet undetermined by the City.