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# LESSONS FROM THE WORLD TRADE CENTER FOR OPEN SPACE PLANNING GENERALLY AND BOSTON'S BIG DIG SPECIFICALLY

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**Abstract:** This paper looks to several land use planning issues at stake in both the World Trade Center redevelopment and Central Artery/Tunnel Project, offering some lessons for the future of public open space planning with respect to the influence of the press, the centrality of politics, the urgency of addressing public and private claims of land ownership, the need to engage the public, and seizing the opportunity to create new public transportation links.

## INTRODUCTION

This paper focuses on five issues raised by the World Trade Center redevelopment that have direct application to Boston's Central Artery/Tunnel Project: (1) questions of the public versus private nature of the site; (2) the role of public consultation in open-space planning; (3) the selection of, and reliance on, a master plan; (4) the use of landfill produced by site excavation; and (5) the use of the building project as an opportunity for creating new public transportation services. My central concern is for the future applicability of the New York and Boston experiences. I argue that they are not *sui generis* as many commentators have suggested; rather, these two examples offer important lessons in open-space planning writ large.

## I. THE PUBLIC VERSUS PRIVATE NATURE OF THE SITE

### A. *The World Trade Center*

In the period immediately following the end of the Second World War, it was uncertain whether New York City would remain a viable business center in the face of an increasingly globalized commercial

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realm.<sup>1</sup> The original World Trade Center project was developed in response to this concern, principally by New York Governor Nelson Rockefeller and his brother, Chase Manhattan Bank Chair David Rockefeller.<sup>2</sup> The Port of New York Authority<sup>3</sup> was brought into the World Trade Center project for two main reasons: (1) as a state agency—indeed as a bi-state agency—the Port Authority possessed bonding power—that is, it could finance the project by selling bonds;<sup>4</sup> and (2) the Port Authority had eminent domain power to condemn private lots in order to clear land for the towers and other related construction.<sup>5</sup>

The sixteen-acre parcel on which the World Trade Center complex was built was originally composed of thriving electronics shops, giving rise to the neighborhood's moniker, "Radio Row." In exercising its eminent domain power to clear this land, the Port Authority relied on the stated public purpose of "world trade."<sup>6</sup> Whether such a pur-

<sup>1</sup> See JAMES GLANZ & ERIC LIPTON, *CITY IN THE SKY: THE RISE AND FALL OF THE WORLD TRADE CENTER* 49 (2003) ("[M]ingling with the sweet smell of fruits and vegetables along the waterfront now was a whiff of fear that the preeminence of Manhattan's port could be challenged, could even come to an end if something was not done."); Carol Willis, *Introduction to THE LOWER MANHATTAN PLAN: THE 1966 VISION FOR DOWNTOWN NEW YORK* 11 (Carol Willis ed., 2002) ("This modernization answered an urgent need, for as the [1966] statistics and analysis . . . demonstrate, downtown was in danger of complete eclipse. A major problem was the exodus of corporate headquarters and jobs to midtown and beyond . . . Choked by traffic and challenged . . . by its congested physical conditions, downtown was in jeopardy.").

<sup>2</sup> The Chase Manhattan Bank completed a new headquarters building in Lower Manhattan, directly opposite the eventual World Trade Center site, in 1969. With the movement of many Wall Street firms to midtown, the bank did not wish to stand alone downtown. See Willis, *supra* note 1, at 12–13.

<sup>3</sup> At the time of the original World Trade Center development, the Port Authority was known as the Port of New York Authority. GLANZ & LIPTON, *supra* note 1, at 47. In 1972, it changed its name to Port Authority of New York and New Jersey to recognize the joint control by the two states, though nothing in its substantive governance changed at that time. See *id.* at 52.

<sup>4</sup> See, e.g., ALEXANDER GARVIN, *THE AMERICAN CITY: WHAT WORKS, WHAT DOESN'T* 361 (2d ed. 2002); GLANZ & LIPTON, *supra* note 1, at 52; PAUL GOLDBERGER, *UP FROM ZERO: POLITICS, ARCHITECTURE, AND THE REBUILDING OF NEW YORK* 22 (2004) ("[T]urning the World Trade Center over to the Port Authority . . . meant that Rockefeller did not have to carry the enormous cost of the project on his state budget.").

<sup>5</sup> See GLANZ & LIPTON, *supra* note 1, at 39 ("The easy answer was that without the Port Authority—without its power to condemn land . . . —there would be no World Trade Center . . ."). There was a third advantage to having the Port Authority oversee construction of the World Trade Center towers: the agency's ability, as a government entity, to work beyond the constraints of New York City's zoning and building codes. See GOLDBERGER, *supra* note 4, at 59.

<sup>6</sup> This stated purpose was challenged and upheld in *Courtesy Sandwich Shop, Inc. v. Port of New York Authority*, 190 N.E.2d 402, 404–05 (N.Y. 1963). The Supreme Court granted

pose would be recognized today may be addressed by the Supreme Court this term.

A mere six weeks before the September 11, 2001 attacks, the Port Authority leased all of the office space contained within the towers for ninety-nine years to Silverstein Properties, Inc., owned by New York City real estate developer Larry Silverstein.<sup>7</sup> This lease poses significant complications for the redevelopment of the World Trade Center site. By effectively granting Silverstein an ownership interest in the office space,<sup>8</sup> even while recognizing the Port Authority's ongoing ownership interest in the underlying land,<sup>9</sup> the lease requires the Port Authority to work closely with Silverstein in rebuilding the site.<sup>10</sup>

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certiorari and subsequently dismissed the action on jurisdictional grounds for lack of a "substantial federal question." *Courtesy Sandwich Shop, Inc. v. Port of N.Y. Auth.*, 375 U.S. 78 (1963). As Zygmunt Plater has observed, the issue ultimately at stake in *Courtesy Sandwich Shop* was whether "the New York Port Authority [could] use eminent domain to build an office building to be used by private corporations from all over the world." Zygmunt J.B. Plater & William Lund Norine, *Through the Looking Glass of Eminent Domain: Exploring the "Arbitrary and Capricious" Test and Substantive Rationality Review of Governmental Decisions*, 16 B.C. ENVTL. AFF. L. REV. 661, 683-84, 686-87 (1989). The U.S. Supreme Court recently heard argument in a case posing a related question—whether moving a parcel to a higher tax base is a sufficiently public use for eminent domain purposes. *Kelo v. City of New London*, 843 A.2d 500 (Conn.), *cert. granted*, 125 S.Ct. 27 (2004).

<sup>7</sup> Ronald Smothers, *Leasing of Trade Center May Help Transit Projects, Pataki Says*, N.Y. TIMES, July 25, 2001, at B7 (discussing the World Trade Center lease). At the same time that the Port Authority leased all of the office space to Silverstein, it entered into a long-term lease with Westfield America, Inc., to operate the underground retail space located at the World Trade Center. See Charles V. Bagli, *Retail Operator at Trade Center Is Pulling Out of the Deal*, N.Y. TIMES, Sept. 16, 2003, at B1. New York Governor George Pataki celebrated the World Trade Center leases as a major victory for the Port Authority, enabling the agency to return to its core mission of transportation management by getting out of the business of real estate development. After the September 11 attacks, the Port Authority bought out Westfield's lease, gaining a degree of flexibility over the site's redevelopment. See *id.* At approximately the same time, the Port Authority repaid Silverstein's mortgage on the office space, originally held by the General Motors Assurance Corporation, thereby gaining even greater flexibility over the site's redevelopment. See Sabrina Tavernise, *Settlement in Trade Center Dispute*, N.Y. TIMES, Dec. 2, 2003, at B4.

<sup>8</sup> Long term leases, particularly when of a 99-year duration as here, create fee simple-like ownership interests, especially given understandings of the life expectancies of buildings, typically considered no more than forty to forty-five years. See MICHAEL T. MADISON ET AL., *MODERN REAL ESTATE FINANCE AND LAND TRANSFER* 2 (2d ed. 1999). Thus, as Alex Krieger noted at the Symposium, we may think we are planning for perpetuity when we undertake major urban redevelopment projects, but our plans are inevitably subject to forces of growth, change, and destruction. Alex Krieger, Remarks at the 2004 Boston College Environmental Affairs Law Review Symposium, *The Law and Planning of Public Open Spaces: Boston's Big Dig and Beyond* (Oct. 7, 2004).

<sup>9</sup> N.J. STAT. ANN. § 32:1-35.61 (2000); N.Y. UNCONSOL. LAW § 6612 (2000). The Port Authority's reversionary interest in the office space becomes possessory at the expiration of the lease term. Note that relevant New York and New Jersey laws allow the Port Author-

In late February 2004, the Port Authority, together with the Lower Manhattan Development Corporation (LMDC), announced its intention to negotiate the purchase of, or, if necessary, seek condemnation of, the Deutsche Bank site immediately to the south of the original World Trade Center parcel.<sup>11</sup> Such expansion of the site facilitates the rebuilding of the entire ten million square feet of office space obligated in Silverstein's lease.<sup>12</sup> Consistent with the original lease, Silverstein will have a long-term leasehold interest<sup>13</sup> in any office space developed on this new parcel, while the Port Authority will own the underlying land.<sup>14</sup>

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ity to transfer sites to a Port Authority subsidiary, but do not provide for outright transfer, that is, sale, to private or commercial entities. N.J. STAT. ANN. § 32:1-35.61; N.Y. UNCON-SOL. LAW § 6612.

<sup>10</sup> GOLDBERGER, *supra* note 4, at 16. At times, the Port Authority has acted with surprisingly little deference to Silverstein, as evident by his near exclusion from the master plan selection process. See discussion *infra* Part III. At other times, the Port Authority's deference to Silverstein has been notable, as was the case with its fidelity to his lease obligation to replace all of the office space lost in the event of the towers' destruction. This may well have been motivated by the widely held perception, until recently, that Silverstein was the only figure with the money to pay for the rebuilding, in light of the insurance proceeds from the loss of the towers. With Silverstein's defeat in much of the post-September 11 insurance litigation—most significantly, over whether September 11 involved one or two attacks, that is, one or two insured events—it has become increasingly clear that he will not have the funds to pay for all or even most of the office space reconstruction. See Alex Frangos, *Uncertainties Soar at Ground Zero: Freedom Tower Is Under Way, But Financing Plan Is Lacking for Rebuilding of Entire Site*, WALL ST. J., Oct. 20, 2004, at B1. Thus, the question now is whether the Port Authority will hold Silverstein to his obligation of full replacement of the office space, or whether the parties will negotiate a compromise.

<sup>11</sup> See Charles V. Bagli, *As He Visits New PATH Terminal, Governor Praises the Pace of the Rebuilding Effort*, N.Y. TIMES, Oct. 31, 2003, at B3. Former Senator George Mitchell was appointed by New York Governor George Pataki to mediate a dispute between Deutsche Bank and its insurer, Allianz Insurance, regarding coverage for damage rendered by the falling towers. Allianz maintained that the building could be restored for less than the cost of its demolition. See *id.* The resolution of this dispute was a necessary first step for the Port Authority to purchase or condemn the Deutsche Bank parcel for expansion of the World Trade Center site. See *id.*

<sup>12</sup> See David W. Dunlap, *How a Verdict Could Change the Future of Downtown*, N.Y. TIMES, May 1, 2004, at B1. The site's purchase was reported to have been completed in August 2004, but recent reports suggest otherwise. See David W. Dunlap, *Last Piece of Trade Center Puzzle May Not Be an Easy Fit*, N.Y. TIMES, Mar. 17, 2005.

<sup>13</sup> That interest would be based on the remaining balance of the 99-year lease at that time. See David W. Dunlap, *Pataki Backs New Tunnel Under the East River*, N.Y. TIMES, May 6, 2004, at B4.

<sup>14</sup> See Katia Hetter, *Silverstein Scrambles for WTC Funds; Billions for Rebuilding Effort at Stake in Bid to Prove to Jury Attacks Were Separate*, NEWSDAY (N.Y.), Oct. 21, 2003, at A59. Silverstein expressed concern that acquisition of the Deutsche Bank site not expose him to greater property tax liability: "Silverstein wants assurances that his taxes won't increase because some of the 10 million square feet of office space moves off the trade center site onto city land." *Id.*

Adding to the complexity of the ownership interests at stake in the World Trade Center redevelopment are several other claims to ownership of the site. For example, New York City, led by Deputy Mayor Daniel Doctoroff's office, recently asserted ownership of the land underlying the streets that crossed the site before its late 1960s consolidation as a superblock.<sup>15</sup> The city threatened to withhold building permits for the redevelopment unless some of those streets were reopened.<sup>16</sup> The city also advocated a land swap that would have given it significant control over the site's redevelopment.<sup>17</sup> That proposal, involving a transfer of the land underlying the World Trade Center for that underlying LaGuardia and JFK airports—historically leased by the Port Authority from the city—was rejected in the fall of 2003.<sup>18</sup>

Upon rejecting the city's land swap proposal, the Port Authority agreed to make payments of \$14 to \$55 million per year in lieu of real estate taxes on the World Trade Center site.<sup>19</sup> As a government agency, the Port Authority is not obligated to pay property taxes, but, as is often done, the Port Authority undertook a commitment to make payments in lieu of taxes.<sup>20</sup>

The question of tax liability for the World Trade Center property has a fascinating history. In the 1960s, New York City joined a suit against the Port Authority seeking to stop the original World Trade Center project because of the city's concern for loss of real estate tax revenue on the site, which had previously been a thriving commercial

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<sup>15</sup> See David W. Dunlap, *Mayor's Office Seeks More Retail Space at Ground Zero*, N.Y. TIMES, Oct. 29, 2003, at B3.

<sup>16</sup> See *id.* The city has suggested that it might withhold permits for the World Trade Center redevelopment absent agreement by the Port Authority to reopen certain streets crossing the site, specifically Greenwich Street, running north-south, and Fulton Street, running east-west. See *id.* The city's push to reopen the street grid echoes its 1960s opposition to closing these streets for the towers' original construction. At that time, the city attempted to block the project by asserting its authority to issue, or withhold, permits for developments impacting the city's ownership interest in the streets. GLANZ & LIPTON, *supra* note 1, at 145–46.

<sup>17</sup> See GOLDBERGER, *supra* note 4, at 129.

<sup>18</sup> See Michael Cooper, *City Offers Longer Airport Leases for \$700 Million and More Rent*, N.Y. TIMES, Oct. 16, 2003, at A1. Cooper writes:

The agreement formally ended talks of a so-called land swap in which the city was to have traded the land under the two airports, which it owns, to the Port Authority in exchange for the World Trade Center site, which the authority owns. The city had proposed the trade to win more control over the rebuilding of the site.

*Id.*

<sup>19</sup> *Id.* The amount of the payment in lieu of taxes is to increase as the site is rebuilt. *Id.*

<sup>20</sup> See *id.*

zone paying ample taxes. This effort failed. Then, immediately following the Port Authority's entry into the lease with Silverstein, the city sued Silverstein, seeking to establish his real estate tax liability on the World Trade Center site. This action was stayed in New York Supreme Court following the September 11 attacks, and was subsequently resolved when the Port Authority agreed to significantly increase its payment in lieu of taxes.

In addition to the city's claims to the World Trade Center site, Congress recently considered—though did not vote on—a proposal to grant National Historic Landmark status to the site in light of its role in the events of September 11.<sup>21</sup> The proposal, introduced by Representatives Carolyn Maloney of Long Island and Christopher Shays of Connecticut, would have transferred title to the footprints underlying the twin towers to the federal government for historic site designation, thereby preventing private or commercial development in perpetuity.<sup>22</sup>

The mix of public and private ownership interests at stake in the World Trade Center necessarily complicates any land use planning for the site. While the particular complexities of title are unique, the practical reality of such a mix is not. Boston's Central Artery/Tunnel Project (Big Dig), like the World Trade Center site, also presents a mix of claims for control by city, state, federal, and private parties, to which I will now turn.

### B. *Comparison with the Big Dig*

The master plan for the twenty-seven acres of new surface land created by the Big Dig indicates that 75% of the land is to be used as open space, with 25% allocated for modest development, principally of a low-rise retail and residential nature.<sup>23</sup> The 75%-25% split reflects the site description stated in the project's environmental certification.<sup>24</sup> That 25%, or more, of the surface land may be used for devel-

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<sup>21</sup> World Trade Center Site Historic Study Act, H.R. 3471, 108th Cong. (2003). The bill was introduced in the House on November 6, 2003 “[t]o authorize the Secretary of the Interior to conduct a special resource study of the area at or near the footprints of the former World Trade Center towers for possible inclusion in the National Park System to commemorate the tragic events of September 11, 2001.” *Id.*

<sup>22</sup> *See id.*

<sup>23</sup> Indeed, symposium participants suggested that the open space-to-development ratio will more likely approximate 45% to 55%.

<sup>24</sup> John DeVillars, Massachusetts's former Secretary of Environmental Affairs, issued the environmental certification for the Big Dig project, requiring that 75% of the new

opment raises questions for the public versus private control of the site. One immediate question is whether the parcels earmarked for development are to be sold outrightly or leased. The Massachusetts Turnpike Authority (MTA) has indicated that the parcels will not be subject to sale to private parties, and thus will only be subject to lease.<sup>25</sup> Even so, a follow-up consideration is whether they might be subject to long-term leases, approximating ownership interests, similar to that which is at stake in the World Trade Center site.

After years of rancorous debate over proposals to create a trust to manage the newly created surface land, the Rose Fitzgerald Kennedy Greenway Conservancy was established in July 2004.<sup>26</sup> While the MTA has not divested itself of its ownership interest in the land by virtue of joining the conservancy, it has, practically speaking, been joined at the decisionmaking table by a number of credible forces that may well impact the MTA's ability to exert autonomous control over the site, thereby paralleling the Port Authority's experience with the World Trade Center site.

Staying for the moment with questions of complex claims to ownership or control of land, note that Spectacle Island—which was significantly rebuilt using land excavated by the Big Dig,<sup>27</sup> is now part of the Boston Harbor Islands National Recreation Area, supervised by

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surface land be used for “public open space,” a rule later enacted into the city's zoning law.

<sup>25</sup> Fred Yalouris, Director of Architecture and Urban Design for the Massachusetts Turnpike Authority, stated at the symposium that the MTA had no intention of selling any of the land at issue to private parties. Fred Yalouris, Remarks at the 2004 Boston College Environmental Affairs Law Review Symposium, *The Law and Planning of Public Open Spaces: Boston's Big Dig and Beyond* (Oct. 7, 2004).

<sup>26</sup> Anthony Flint, *Pact Reached on Greenway Management: Turnpike Will Help Jump-Start Conservancy*, BOSTON GLOBE, July 12, 2004, at A1 (reporting that “[t]he city, the Romney administration, and the Massachusetts Turnpike Authority have agreed to establish an independent, nonprofit organization to run the Rose Kennedy Greenway, ending years of political turf battles over the parklands and development set for the footprint of the old Central Artery.”). According to IssueSource,

The deal called for the Turnpike Authority to pay for all operational and maintenance costs through 2012 and to match, dollar-for-dollar, the money raised by the conservancy (up to \$5 million). In return, the Turnpike got the right to appoint five of the 10 conservancy board members and [MTA Chairman] Amorello was granted the power to appoint the executive director. The state and the city got two appointments each and the Kennedy family got one.

IssueSource, *Issue: Rose Fitzgerald Kennedy Greenway/Surface Artery*, at <http://www.02133.org/issue.cfm?ID=50&Mode=ChronLong> (last visited Apr. 10, 2005).

<sup>27</sup> See *infra* Part IV.B.

the National Park Service.<sup>28</sup> This suggests a further parallel with the World Trade Center site and the claim for federal preservation at issue there.

### C. *Lessons Learned from the New York and Boston Experiences*

The New York and Boston examples demonstrate the necessity of clarifying questions of complex claims of site ownership and control before proceeding with any major urban planning efforts. These questions have significant implications for the autonomy of land use planning, flexibility of decisionmaking, and even practical considerations of tax liability and revenue.<sup>29</sup>

## II. THE ROLE OF PUBLIC CONSULTATION IN OPEN SPACE PLANNING

### A. *World Trade Center Redevelopment*

#### 1. Overview

New York Governor George E. Pataki established the LMDC in November 2001 to work with the Port Authority and other stakeholders in overseeing redevelopment planning for Lower Manhattan.<sup>30</sup> Approximately two-thirds of the original LMDC board was appointed by Governor Pataki, with a handful of members named by outgoing mayor Rudolph Giuliani and incoming mayor Michael Bloomberg.<sup>31</sup> John Whitehead, former chair of Goldman Sachs, was named chair of the board, a position he maintains today.<sup>32</sup>

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<sup>28</sup> Boston Harbor Islands Partnership, *Park Overview*, at [http://www.bostonislands.org/manage/manage\\_park\\_overview.html](http://www.bostonislands.org/manage/manage_park_overview.html) (last modified Dec. 23, 2004).

<sup>29</sup> For in-depth treatment of these issues, see DANIEL R. MANDELKER, *LAND USE LAW* (5th ed. 2003), and DANIEL R. MANDELKER & JOHN M. PAYNE, *PLANNING AND CONTROL OF LAND DEVELOPMENT: CASES AND MATERIALS* (5th ed. 2001).

<sup>30</sup> Press Release, Office of the Governor of New York, Governor, Mayor Name Lower Manhattan Redevelopment Corp. (Nov. 29, 2001), *available at* [http://www.state.ny.us/governor/press/year01/nov29\\_1\\_01.htm](http://www.state.ny.us/governor/press/year01/nov29_1_01.htm) (last visited Apr. 10, 2005). The LMDC was established as a subsidiary of the Empire State Development Corporation, and is chaired by Charles Gargano, who also serves as vice chair of the Port Authority. Gargano was appointed to both positions by Pataki. The current LMDC Executive Director is Kevin Rampe, likewise appointed by Pataki. The \$21 billion in federal aid earmarked by Congress for the post-September 11 recovery was channeled to the LMDC through New York State. See Charles V. Bagli, *Report Fuels Fear that City Won't Get All of Promised 9/11 Aid*, N.Y. TIMES, Oct. 6, 2003, at B1.

<sup>31</sup> See MICHAEL SORKIN, *STARTING FROM ZERO: RECONSTRUCTING DOWNTOWN NEW YORK* 53 (2003); Press Release, *supra* note 30.

<sup>32</sup> Press Release, *supra* note 30.

Among other things, the LMDC has established a series of advisory groups, composed of victims' family members, downtown business interests, downtown residents, and other interested parties.<sup>33</sup> In conjunction with these advisory groups, the LMDC has conducted a series of public hearings on various aspects of the World Trade Center redevelopment, including selection of the master plan and planner and consideration of the public memorial design.<sup>34</sup>

Among the LMDC's "principles for action" are to "[m]ake decisions based on an inclusive and open public process" and to "[a]ssist the rapid revitalization of Lower Manhattan, in a manner that does not preclude desirable future development plans."<sup>35</sup> To what extent has the LMDC abided by these principles in its planning process, and to what extent does the LMDC serve as a model for public open space planning moving forward? For that, we return to the rebuilding story.

In the spring of 2002, the LMDC commissioned the Beyer Blinder Belle architecture firm to create six alternative designs addressing the then-recognized demands for the World Trade Center site.<sup>36</sup> The designs were to account for the rebuilding of all of the office space cited in the lease; creation of a memorial, open space, one or more cultural institutions, and an expanded transit hub; and the re-opening of one or more streets transecting the site.<sup>37</sup>

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<sup>33</sup> See GOLDBERGER, *supra* note 4, at 64–65.

<sup>34</sup> See Press Release, Lower Manhattan Dev. Corp., Port Authority and Lower Manhattan Development Corporation Unveil Six Concept Plans for World Trade Center Site, Adjacent Areas and Related Transportation (July 16, 2002), <http://www.renewnyc.com/news/displaystory.asp-id=28.asp> (last visited Apr. 10, 2005).

<sup>35</sup> Press Release, Lower Manhattan Dev. Corp., Lower Manhattan Development Corporation Announces Principles for Development and Blueprint for Renewal for World Trade Center Site (Apr. 9, 2002), <http://www.renewnyc.com/news/DisplayStory.asp-id=14.asp> (last visited Apr. 10, 2005).

<sup>36</sup> Edward Wyatt, *Design Firm Chosen to Oversee Rebuilding of Lower Manhattan*, N.Y. TIMES, May 23, 2002, at B1 ("Beyer Blinder Belle . . . was chosen yesterday as the urban planning consultant to oversee the rebuilding of Lower Manhattan.").

<sup>37</sup> See Press Release, *supra* note 34. The LMDC states that

[a]ll of the proposed options have common elements, including:

- A permanent memorial
- Public open space
- 11 million square feet of commercial office space
- A 600,000 square-foot hotel and 600,000 square feet of retail space
- A transportation hub serving New York and New Jersey
- Cultural and civic institutions
- A rebuilt St. Nicholas Greek Orthodox Church
- Residential facilities off-site

In July 2002, the LMDC hosted a “Listening to the City” event to generate feedback on the six designs.<sup>38</sup> Over 5000 members of the public with varying affiliations gathered to speak of their aspirations for the World Trade Center site, resoundingly rejecting all of the Beyer Blinder Belle proposals.<sup>39</sup> Among other things, participants showed familiarity with Jane Jacobs’s concern for preserving and promoting the life of the street.<sup>40</sup> Participants likewise echoed Jacobs’s emphasis on welcoming mixed uses, nurturing organic communities, and connecting communities to one another, whereas the original World Trade Center project had isolated Battery Park City to the west and TriBeCa to the north.<sup>41</sup>

Shortly after the July 2002 event, the LMDC announced an open competition for selection of a master plan and planner that, the agency underscored, would provide a guiding vision for the site, but not the actual building specifications.<sup>42</sup> After the field was winnowed from more than four hundred entries, Daniel Libeskind of Studio Libeskind was selected as the site’s master planner.<sup>43</sup> His winning

<sup>38</sup> See Edward Wyatt, *A Forum on Rebuilding Lower Manhattan*, N.Y. TIMES, July 20, 2002, at B4.

<sup>39</sup> See Edward Wyatt & Charles V. Bagli, *Visions of Ground Zero: The Public; Officials Re-think Building Proposal for Ground Zero*, N.Y. TIMES, July 21, 2002, at A1. Two of the universal criticisms of the Beyer Blinder Belle plans were that the six designs did not differ notably from one another, and that they were too constrained by the lease obligation to replace 10 million square feet of office space. See *id.* “[T]hey wanted bolder, more innovative designs and asked the planners to seek other ways to fulfill the lease requirements for commercial and retail space.” *Id.*

<sup>40</sup> JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

<sup>41</sup> See Edward Wyatt, *Support Builds for One Plan for Center Site*, N.Y. TIMES, Feb. 20, 2003, at B1 (“Some members of Community Board No. 1 have also said they dislike the way the sunken portion of the Libeskind plan cuts off Battery Park City from the rest of the trade center site—a complaint often voiced about the World Trade Center itself.”). See generally JACOBS, *supra* note 40.

<sup>42</sup> See Julie V. Iovine, *Ground Zero Spotlight: Architects Ambivalent*, N.Y. TIMES, Jan. 1, 2003, at E1 (“The development corporation has frequently said that the object of the competition, a master land-use plan, is not to ‘include the detailed architecture of individual structures.’ But many architects worry that the teams’ detailed models and impressively realistic video presentations will encourage the public to perceive them as concrete plans.”); Press Release, Lower Manhattan Dev. Corp., Lower Manhattan Development Corporation Announces Design Study for World Trade Center Site and Surrounding Areas (Aug. 14, 2002), <http://www.renewnyc.com/News/DisplayStory.asp?id=30.asp> (last visited Apr. 10, 2005).

<sup>43</sup> In February 2003, the master plan field was narrowed to two entrants, THINK, formed by Rafael Vinoly and other architects, and Studio Libeskind. See Edward Wyatt, *Design Chosen for Rebuilding at Ground Zero*, N.Y. TIMES, Feb. 27, 2003, at A1. Governor Pataki met privately with each of the finalists, and reportedly favored the Libeskind plan. See *id.*

plan, Memory Foundations, includes a series of office towers, the tallest and most ambitious being Freedom Tower.<sup>44</sup>

Following Libeskind's selection, the LMDC announced an open call for the site's memorial design in the fall of 2003.<sup>45</sup> The LMDC received over 5200 responses.<sup>46</sup> As part of its selection process, the memorial design committee heard testimony throughout the metropolitan region from victims' family members, as well as from the general public and other interested parties.<sup>47</sup> The victims' families were given a private viewing of the memorial design finalists and were reported to have had a significant impact on the ultimate design selection.<sup>48</sup>

With the memorial design competition underway, in April 2004 the LMDC invited cultural institutions to compete to be housed at the site.<sup>49</sup> This was a direct response to the public's criticism of the original project, from which cultural institutions had been strikingly absent. More than 110 submissions were received, with two principal art institutions—the Joyce International Dance Center and the Signature Theatre invited to join the site.<sup>50</sup>

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<sup>44</sup> See David W. Dunlap, *1,776-Foot Design Is Unveiled for World Trade Center Tower*, N.Y. TIMES, Dec. 20, 2003, at A1. Freedom Tower is intended to be the tallest building in the world. *Id.*

<sup>45</sup> *Visions for Ground Zero; What's Next*, N.Y. TIMES, Dec. 19, 2002, at B10. ("After the [master] plan is finished, the Lower Manhattan Development Corporation begins an international design competition for a memorial on the site, with the goal being selection of a design memorial by Sept. 11, 2003.")

<sup>46</sup> See David W. Dunlap, *The Ground Zero Memorial: The Competition; Presenting Several Versions of the Shape of Grief and Recollection*, N.Y. TIMES, Nov. 20, 2003, at B3.

<sup>47</sup> See Press Release, Lower Manhattan Dev. Corp., LMDC and Port Authority Extend Public Outreach Campaign to All Five Boroughs and New Jersey (Aug. 19, 2002), <http://www.renewnyc.com/News/DisplayStory.asp?id=32.asp> (last visited Apr. 10, 2005).

<sup>48</sup> Press Release, Lower Manhattan Dev. Corp., The Lower Manhattan Development Corporation & Port Authority of New York & New Jersey Announce Selection of Studio Daniel Libeskind: Memory Foundations as Design Concept for World Trade Center Site (Feb. 27, 2003), <http://www.renewnyc.com/news/displaystory.asp?id=51.asp> (last visited Apr. 10, 2005).

<sup>49</sup> See Press Release, Lower Manhattan Dev. Corp., The Lower Manhattan Development Corporation Announces Number of Submissions Received from Institutions Interested in Locating or Proposing Cultural Programs on The Future World Trade Center Site, (Sept. 24, 2003), <http://www.renewnyc.com/News/DisplayStory.asp?id=81.asp> (last visited Apr. 10, 2005).

<sup>50</sup> See *id.* Two other smaller cultural institutions are likewise to be included at the World Trade Center site: The Drawing Center and the International Freedom Center. See Lower Manhattan Dev. Corp., *Cultural Institutions on the World Trade Center Site*, at <http://www.renewnyc.com/ProgramsResources/CulturalCivic.asp> (last visited Apr. 10, 2005).

## 2. Reflections on What Happened and Why It Happened that Way

As this brief history indicates, the public, both in New York and beyond, has had genuine input into, and impact on, the shape of the World Trade Center redevelopment decisionmaking and the final product itself. How has this happened, and why?

A key element throughout the process has been the influence of the New York press. Regular columns by Herbert Muschamp, David Dunlap, James Glanz, and Eric Lipton of the *New York Times*,<sup>51</sup> as well as occasional editorials,<sup>52</sup> brought significant influence to bear on the redevelopment decisionmaking process and outcomes.<sup>53</sup>

Beyond the influence of the press, discussions with key players in the redevelopment decisionmaking process suggest that promotion of the LMDC's credibility, assurance that the public would "buy into" the final product, and concern for redressing the top-down decisionmaking and closed-door management of the original World Trade Center project motivated the LMDC to engage the public as it did.

### B. Comparison with the Big Dig

#### I. Overview

The initial absence of public consultation regarding the Big Dig by the Massachusetts Turnpike Authority (MTA) led the Conservation Law Foundation to sue to compel the MTA to employ a more transparent public consultation process.<sup>54</sup> Since that time, the MTA has held a

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<sup>51</sup> See GLANZ & LIPTON, *supra* note 1; see, e.g., David W. Dunlap, *Architects' Clashing Visions Threaten to Delay World Trade Center Tower*, N.Y. TIMES, Oct. 23, 2003, at B1; Herbert Muschamp, *Critic's Notebook: Vision vs. Symbols and Politics at Ground Zero*, N.Y. TIMES, Nov. 29, 2003, at B9. All four have reported, and continue to report, on various aspects of the World Trade Center redevelopment, with Muschamp, the chief architectural critic, reporting primarily on the design element, David Dunlap and Eric Lipton reporting on city politics, and James Glanz reporting principally on the engineering of the site.

<sup>52</sup> Maureen Dowd, Editorial, *The Unbearable Lightness of Memory*, N.Y. TIMES, Nov. 30, 2003, § 4, at 9 (castigating the eight memorial finalists for failing to depict the despair wrought by September 11).

<sup>53</sup> Paul Goldberger's writings in the *New Yorker* were similarly influential. See, e.g., GOLDBERGER, *supra* note 4. Architecture critic for the *New Yorker*, Dean of the Parsons School of Design, and former *New York Times* architecture critic, Goldberger has written extensively on the World Trade Center redevelopment.

<sup>54</sup> See Peter J. Howe, *Big Dig Pact a Powerful Tool for Environmental Change*, BOSTON GLOBE, Mar. 14, 1992, § Metro, at 29. According to the Conservation Law Foundation website, in 1991, "State highway officials in Massachusetts agree[d] to implement measures to reduce air pollution, including rail and transit improvements, as part of Boston's Central

number of public forums to plan for the new surface space.<sup>55</sup> It has also provided liaisons to neighborhoods affected by the construction.<sup>56</sup>

The Boston Redevelopment Authority (BRA) has played host to an ongoing public meeting convened by the Mayor's Central Artery Task Force to discuss open space planning for the Big Dig. The Task Force serves a principally advisory role,<sup>57</sup> and the MTA continues to exert decisive control over the project.

Besides the MTA and the BRA, a mix of private individuals and interests formed the Beyond the Big Dig project to bring together business leaders, landscape architects, urban planners, academics, community advocates, and others in a series of so-called Creative Community Conversations.<sup>58</sup> These meetings allowed members of the public to exchange ideas concerning potential uses of the newly created open space.<sup>59</sup> The Beyond the Big Dig project also included a Town Forum hosted at Faneuil Hall in 2002, at which a panel of distinguished citizens presented its recommendations for the project, and heard testimony from local respondents.

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Artery project." Conservation Law Found., *CLF's Environmental Legacy*, at <http://www.clf.org/general/internal.asp?id=59> (last visited Apr. 10, 2005).

<sup>55</sup> Peter DeMarco, *Ideas for Big Dig Space Include Dog Runs, Jog Path, Cafes*, BOSTON GLOBE, Apr. 14, 2002, at A27.

<sup>56</sup> The liaisons' role is to answer questions, respond to comments and complaints, and keep the neighborhoods informed of the project's construction and design. See, e.g., Lisa Chong, *Ideas for South Bay Are Plenty*, SAMPAN (Boston), <http://www.aaca-boston.org/SampanWeb/ehtml/2004/0305/south.htm> (last updated Feb. 20, 2004).

<sup>57</sup> See Thomas C. Palmer, Jr., *Surface Artery Park Proposals Draw Fire: Task Force Calls Five Designs Uninspiring*, BOSTON GLOBE, Apr. 25, 2003, § Metro, at B7.

<sup>58</sup> The Boston Globe, *Creative Community Conversations*, [http://www.boston.com/beyond\\_bigdig/conversations](http://www.boston.com/beyond_bigdig/conversations) (last visited Apr. 10, 2005).

<sup>59</sup> According to the *Boston Globe*.

More than 350 people took part in a pair of public events [sponsored by the Boston Foundation and the Boston Society of Architects], called Creative Community Conversations, about the future of the parks that will be developed above and beyond the Big Dig.

Participants shared ideas for uses of the Big Dig parkland, drawing upon memories and experiences of urban open space that works, with special emphasis on what would keep them coming back again and again.

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The ideas generated were offered as guidance for designers and decisionmakers as they plan how to use the newly created parkland.

*Id.*

## 2. Reflections on What Happened and Why It Happened that Way

Two key elements of the New York experience were altogether absent from the Big Dig project: the national security crisis represented by the September 11 attacks, and the substantial influence exerted by the World Trade Center victims' families. These elements provoked greater public engagement in New York than might otherwise have occurred, or than has happened with Boston's Big Dig project.

### C. *Lessons Learned from the New York and Boston Experiences*

Both the New York and Boston experiences highlight the challenge of engaging in genuine community-based decisionmaking in the face of significant political and economic constraints. The ongoing dominance of the Port Authority in New York and the Massachusetts Turnpike Authority in Boston is arguably out of step with the public's increasingly sophisticated understanding of land use needs and concomitant expectation for transparency of process.

Starting with the World Trade Center, despite the ongoing public engagement process there, the decisionmaking has been too politicized, too secretive, and too hurried. By "too politicized," I mean not only the rhetoric of the 1776-foot Freedom Tower and Park of Heroes, as Libeskind's open space was originally called,<sup>60</sup> but more importantly, Governor Pataki's central role in orchestrating the most significant elements of the redevelopment process.<sup>61</sup> By "too secretive," I refer to the high-level, closed-door meetings to select Libeskind as master planner and later hammer out a compromise between Libeskind and David Childs, the site planner and architect.<sup>62</sup> Finally, by "too hurried," I mean the obedience to deadlines which were insisted upon by Governor Pataki throughout the process, driven largely by his re-election concerns, and subsequently, by his goal that the Freedom Tower groundbreaking coincide with the Republican National Convention in August 2004.<sup>63</sup> It was only in response to intense public pressure that

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<sup>60</sup> Press Release, *supra* note 48; see Dunlap, *supra* note 44, at A1.

<sup>61</sup> Bagli, *supra* note 11.

<sup>62</sup> For more discussion, see *infra* Part IV.

<sup>63</sup> Dunlap, *supra* note 44, at A1 ("Governor Pataki had asked that the cornerstone for the Freedom Tower be laid by the third anniversary of the attack. Though this falls within two weeks of the Republican National Convention, Mr. Pataki said in a telephone interview that there was 'zero' connection."); Robin Pogrebin, *The Incredible Shrinking Daniel Libeskind*, N.Y. TIMES, June 20, 2004, § 2, at 1 ("Those close to the process say his loyalty was consistent: not to a particular aesthetic vision but to whoever could guarantee a ground-

Governor Pataki moved the date of the Freedom Tower groundbreaking away from the Convention to July 4, 2004, nevertheless in keeping with the politicized rhetoric characterizing redevelopment of the site.<sup>64</sup>

### III. SELECTION OF AND RELIANCE ON A MASTER PLAN

#### A. *World Trade Center Redevelopment*

##### 1. Master Planning Process Generally

As noted earlier, Libeskind's master plan was selected from more than 400 entries and a field of highly regarded finalists.<sup>65</sup> Throughout the master plan selection process, the LMDC insisted that it was not selecting the actual blueprint for the site but, rather, a "vision."<sup>66</sup> The actual blueprint, the public was told, would be left to the project architects in consultation with the relevant authorities.<sup>67</sup>

Not only did this invite potential (later realized) for substantial conflict between the master planner and the actual project architect, but there was also potential for conflict between the LMDC and the Port Authority in implementing the master plan. To their credit, the two planning agencies entered into a memorandum of understanding

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breaking in time for the opening of the Republican National Convention.""). Herbert Muschamp also reported:

If the design process were not held hostage to the fast-track timetable approved by Gov. George E. Pataki, there would be less pressure to substitute symbolic manipulation for thought. If the timetable were not tied, however coincidentally, to the Republican National Convention to be held in New York in August, there would be less temptation to mistake politics for culture.

Muschamp, *supra* note 51.

<sup>64</sup> David W. Dunlap, *Rebirth Marked by Cornerstone at Ground Zero*, N.Y. TIMES, July 5, 2004, at A1 (reporting, "In the dusty bowl of ground zero, a garnet-speckled granite cornerstone was laid yesterday for the Freedom Tower, the tallest skyscraper planned at the World Trade Center site.").

<sup>65</sup> See discussion *supra* Part II.A.1.

<sup>66</sup> See *supra* text accompanying note 42.

<sup>67</sup> See David W. Dunlap & Edward Wyatt, *Leaseholder Sees Limited Role for Libeskind at Trade Center*, N.Y. TIMES, May 30, 2003, at B3. Dunlap & Wyatt reported:

Larry A. Silverstein, the leaseholder of the World Trade Center site, said yesterday that Studio Daniel Libeskind would inspire but not actually design the office buildings he is planning there . . . .

Roland W. Betts, a director of the Lower Manhattan Development Corporation, said in an interview last week that there was "no expectation that Libeskind would design the different buildings."

*Id.*

whereby the LMDC agreed to oversee the cultural and memorial elements of the site redevelopment, while the Port Authority concentrated on the commercial office and retail space reconstruction.<sup>68</sup>

A key question for our purposes, given similar reliance on a master plan in Boston, is the extent to which Libeskind's master plan has been followed in New York, and why or why not. What we find is that there have been broad—and, I would assert, unsurprising—departures from Libeskind's master plan, both with respect to Freedom Tower and the memorial design.

## 2. Freedom Tower

The planning of Freedom Tower, the most ambitious building anticipated for the World Trade Center redevelopment, exploded into a very public struggle for control between Libeskind and David Childs, Silverstein's personal architect. Spilling onto the pages of the *New York Times* and elsewhere,<sup>69</sup> the conflict became so fetid that Governor Pataki mediated a highly publicized compromise, whereby Childs was recognized as the design architect for Freedom Tower, and Libeskind the collaborating architect.<sup>70</sup>

Thereafter, the LMDC announced a revised master plan,<sup>71</sup> with final plans for Freedom Tower departing significantly from Libeskind's original vision, from matters of size and placement on the parcel, to issues of the shape and torque of the building. While Libeskind anticipated a tower directly echoing the Statue of Liberty in its twisting, turn-

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<sup>68</sup> LOWER MANHATTAN DEV. CORP., WORLD TRADE CENTER MEMORIAL AND CULTURAL PROGRAM GENERAL PROJECT PLAN: PROPOSED AMENDMENTS DECEMBER 16, 2004, at 1 (2004), at [http://www.renewnyc.com/content/pdfs/WTC\\_GPP\\_Site\\_Plan\\_Amendments\\_Dec\\_2004.pdf](http://www.renewnyc.com/content/pdfs/WTC_GPP_Site_Plan_Amendments_Dec_2004.pdf).

<sup>69</sup> See, e.g., Dunlap, *supra* note 51. ("Only 10 months before groundbreaking is expected to take place for the Freedom Tower at the World Trade Center site, the master planner of the site and the architect for the tower's developer, who are supposed to be collaborating, have reached an impasse on how the skyscraper should look."); Pogrebin, *supra* note 63 ("The wrestling for control of the Freedom Tower became daily fodder for the news media for several weeks running.").

<sup>70</sup> See Dunlap, *supra* note 44. Since that time, Silverstein announced the hiring of three more star architects to work with Childs and Libeskind in developing the remaining office space at the World Trade Center site. In October 2003, the *New York Times* reported Silverstein's hiring of Sir Norman Foster of London, Jean Nouvel of Paris, and Fumihiko Maki of Tokyo, further complicating, and possibly limiting, Libeskind's role as master planner. David W. Dunlap, *The Roster of Ground Zero Architects Grows*, N.Y. TIMES, Oct. 1, 2003, at B4.

<sup>71</sup> See generally Lower Manhattan Dev. Corp., *Partial Action Plans*, at [http://www.renewnyc.com/FundingInitiatives/partialact\\_plans.asp](http://www.renewnyc.com/FundingInitiatives/partialact_plans.asp) (last visited Apr. 10, 2005).

ing manner,<sup>72</sup> Childs's tower slopes directly upward and is capped by a series of complex radio towers and wind-power-generating cables.<sup>73</sup>

### 3. Memorial Design

Not only did the design of Freedom Tower depart significantly from Libeskind's master plan, but so did the winning design for the memorial, to be located on the site of the original towers' footprints.<sup>74</sup> Michael Arad's design, entitled, "Reflecting Absence," and supplemented by the work of landscape designer Peter Walker, is fundamentally different from Libeskind's proposal, which, among other things, did not anticipate depression of the memorial below ground level.<sup>75</sup>

#### B. *Comparison with the Big Dig*

In the early 1990s, the MTA announced its first master plan for the Big Dig site.<sup>76</sup> That was supplemented in 2000–01 by a parcel-by-parcel master plan for the twenty-seven acres of new open space.<sup>77</sup> Teams were selected to design the final parcels in 2002–03, to be completed by 2005.<sup>78</sup> Thus, the Big Dig, like the World Trade Center redevelopment, has seen two master plans.

One of the elements called for by the more recent Big Dig master plan is a "Garden Under Glass," the pet project of the Massachusetts Horticultural Society. To what extent does this Garden play a role parallel to that of the memorial at the World Trade Center site? While not a memorial, and while the Big Dig site does not have the tragic history of the World Trade Center, the Garden Under Glass is the

<sup>72</sup> See Marvin Trachtenberg, *A New Vision for Ground Zero Beyond Mainstream Modernism*, N.Y. TIMES, Feb. 23, 2003, § 2, at 54 ("[T]he particular shape of Mr. Libeskind's spire repeats the lines of Liberty's upraised arm and torch; in fact, the silhouette of the entire tower seems to retrace in the sky the contours of the entire statue.").

<sup>73</sup> Childs intends Freedom Tower to be a leader in "green" architecture, planning for a significant percentage of the building's power to be generated by the wind cables at the top. See Dunlap, *supra* note 44.

<sup>74</sup> See GOLDBERGER, *supra* note 4, at 225.

<sup>75</sup> See Pogrebin, *supra* note 63 ("In January 2004, Mr. Libeskind's plan was further eroded with the selection of a memorial design. Mr. Arad's plan called for the memorial to be brought level with the surrounding terrain. Mr. Libeskind's hallmark, the memorial pit, was now to be flat.").

<sup>76</sup> See Mass. Tpk. Auth., *Project Schedule and Timeline*, at <http://www.masspike.com/bigdig/updates/timeline.html> (last visited Apr. 10, 2005).

<sup>77</sup> See Boston Globe, *The History of the Downtown Corridor*, at [http://www.boston.com/beyond\\_bigdig/timeline/](http://www.boston.com/beyond_bigdig/timeline/) (last visited Apr. 10, 2005).

<sup>78</sup> See *id.*

most self-consciously “public art” element of the Big Dig, and in that way parallels the World Trade Center memorial.

In stark contrast, however, to Reflecting Absence’s design selection following a public competition involving more than 5200 entries,<sup>79</sup> the proposed Garden Under Glass was not chosen through a competition, either open or closed. Rather, it was the only idea—and the only design—proffered by the Massachusetts Horticultural Society for that site.<sup>80</sup> It has generated significant detractors in part because of this fact.<sup>81</sup>

### C. *Lessons Learned from the New York and Boston Experiences*

Some have criticized the master plan competition for the World Trade Center redevelopment as flawed in its overweening control by Governor Pataki; still others have complained that the memorial competition sacrificed quality and dramatic effect in the interest of democracy.<sup>82</sup> Directly in tension with advocacy of a transparent public engagement process, some have argued that an autocratic, top-down selection of a memorial designer would have produced a more compelling design than did the actual public competition.<sup>83</sup> It is noteworthy then that the Garden Under Glass bypassed any manner of public engagement or competition.

## IV. USE OF LANDFILL GENERATED BY SITE EXCAVATION

### A. *Original World Trade Center Development*

Battery Park City was built on the landfill excavated by the original World Trade Center project.<sup>84</sup> Generally perceived as a success story,

<sup>79</sup> Dunlap, *supra* note 46.

<sup>80</sup> See Jo Levy, *Paved Parking Lot Becomes Paradise*, at [http://boston.about.com/cs/attractions/a/glass\\_garden.htm](http://boston.about.com/cs/attractions/a/glass_garden.htm) (last visited Apr. 10, 2005).

<sup>81</sup> Robert L. Turner, *Glass Act: A Spectacular Winter Garden Is the Centerpiece of the Massachusetts Horticultural Society’s Plan for the Parkland Above the Depressed Central Artery. But Can the Society Get the Job Done?*, BOSTON GLOBE, Mar. 30, 2003, (Magazine), at 10, available at [http://www.boston.com/beyond\\_bigdig/news/artery\\_033003\\_magazine\\_1.htm](http://www.boston.com/beyond_bigdig/news/artery_033003_magazine_1.htm) (last visited Apr. 10, 2005).

<sup>82</sup> See GOLDBERGER, *supra* note 4, at 226.

<sup>83</sup> See Pogrebin, *supra* note 63.

<sup>84</sup> See GARVIN, *supra* note 4, at 361; see also GLANZ & LIPTON, *supra* note 1, at 177. (“[T]he excavated soil from the foundation would be poured into the Hudson to create the newest piece of Manhattan real estate at Battery Park City.”); Willis, *supra* note 1, at 13 (“Battery Park City . . . was created in its first stage of landfill from the excavations for the Trade Center.”).

Battery Park City is nevertheless substantially cut off from the rest of Lower Manhattan.<sup>85</sup> Today's redevelopment planning is seen as an opportunity to connect Battery Park City to Lower Manhattan by reopening streets closed by the formation of the original superblock.<sup>86</sup>

### B. *Comparison with the Big Dig*

As part of the Big Dig, Spectacle Island—a former city dump—received 3.7 million cubic yards of clay and dirt to cap the dump and create new topsoil for a park.<sup>87</sup> Spectacle Island is now part of the Boston Harbor Islands National Recreation Area, supervised by the National Park Service.<sup>88</sup> As with Spectacle Island, material produced by the Big Dig excavation was used to cap Quarry Hills and create a new recreation area for that neighborhood.<sup>89</sup>

### C. *Lessons Learned from the New York and Boston Experiences*

Both the New York and Boston experiences suggest the creative potential for landfill generated by excavation of a large urban development site. In New York, the excavated landfill enabled the construction of allegedly middle-income housing in the urban downtown. In Boston, the excavated landfill enabled the capping of a dump that was thought to be leaking into the harbor and the creation in its place of new major green space. What remains to be seen is whether Spectacle Island in particular becomes a destination for Boston urbanites and others. As with Battery Park City, the question is one of access.

## V. CREATING NEW PUBLIC TRANSPORTATION OPPORTUNITIES

### A. *World Trade Center Redevelopment*

It is fitting that we conclude our discussion of lessons learned from the World Trade Center and Big Dig with issues of public transportation opportunities created by large-scale open-space projects because, in many respects, that is where both projects began. The origi-

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<sup>85</sup> See, e.g., GARVIN, *supra* note 4, at 363–64.

<sup>86</sup> See, e.g., GOLDBERGER, *supra* note 4, at 48.

<sup>87</sup> See Mass. Tpk. Auth., *Spectacle Island*, at <http://www.masspike.com/bigdig/parks/spectacleisland.html> (last visited Apr. 10, 2005).

<sup>88</sup> See Nat'l Park Serv., U.S. Dep't of the Interior, *Boston Harbor Islands*, at <http://www.nps.gov/boha/index.htm> (last visited Apr. 10, 2005).

<sup>89</sup> See Mass. Tpk. Auth., *Quarry Hills Project*, at <http://www.masspike.com/bigdig/background/quarryhills.html> (last visited Apr. 10, 2005).

nal World Trade Center project took its shape in significant part from mass transit concerns.<sup>90</sup> Initially, the project was conceived for Manhattan's lower east side, but was quickly moved to the west side to address concerns of the then-New Jersey governor, who, as co-director of the Port Authority board, insisted that the World Trade Center be located closer to New Jersey for purposes of better access to jobs, etc.<sup>91</sup> In addition to addressing these concerns, the Port Authority agreed to assume management of the failing Hudson and Manhattan sub-Hudson rail line from the New Jersey government.<sup>92</sup> In fact, the towers were built on the site of the rail line's former headquarters.<sup>93</sup> The rail line was re-named the PATH train,<sup>94</sup> which continues to operate today, connecting Lower Manhattan with northern New Jersey.

As part of its current redevelopment planning, the LMDC commissioned a study of post-September 11 transportation options for Lower Manhattan.<sup>95</sup> Completed in May 2004, the report prioritized downtown New York's transportation needs as follows:

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<sup>90</sup> See GLANZ & LIPTON, *supra* note 1, at 51–61; GOLDBERGER, *supra* note 4, at 22.

<sup>91</sup> Glanz & Lipton note:

New Jersey abruptly balked on the entire World Trade Center plan . . . .

. . . New Jersey governor Robert Meyner made the plain observation that a pile of office buildings, parking lots, and exhibition space on the east side of Manhattan did not seem to have a hell of a lot to do with New Jersey. . . . If the Port Authority was going to spend millions of dollars on new infrastructure, Meyner wanted the money to go toward saving the H&M.

See GLANZ & LIPTON, *supra* note 1, at 55. Similarly, Willis states:

The Port Authority had tentatively agreed to develop that complex [on the east side], but in 1961 the site shifted to the Hudson River waterfront in a political accommodation with New Jersey interests that required the agency to take over the bankrupt Hudson and Manhattan Railroad and tubes and to operate them as the PATH commuter rail system.

See Willis, *supra* note 1, at 14.

<sup>92</sup> See GLANZ & LIPTON, *supra* note 1, at 56.

<sup>93</sup> See *id.* at 57. Glanz and Lipton write:

If they would have to tear down the H&M terminal buildings anyway, Sullivan thought, why not save themselves a lot of trouble and put the World Trade Center right on top of a new train terminal? Moving the trade center from the east side to the west would mean that not only the H&M buildings but acres of the surrounding cityscape would also have to be razed. . . .

. . . [N]o major structures would have to be demolished except the H&M terminal buildings themselves.

*Id.*

<sup>94</sup> See *id.* at 59.

<sup>95</sup> See Lower Manhattan Dev. Corp., *Transportation Priorities for Lower Manhattan* ("In May, 2004 the results of a coordinated study on a new rail line between Lower Manhattan

- Access to JFK, LaGuardia, and Newark Liberty International airports;<sup>96</sup>
- Lower Manhattan Transit Complex;<sup>97</sup>
- Bus Facilities and Below-Grade Infrastructure;<sup>98</sup> and
- Ferry service.<sup>99</sup>

There has been active consideration of using the World Trade Center redevelopment as an opportunity to link Lower Manhattan with the three major regional airports: LaGuardia in Queens, JFK on Long Island, and Newark in New Jersey.<sup>100</sup> The PATH train to Newark airport is already running, and the LMDC continues to study the feasibility of establishing a baggage check-in for JFK Airport in downtown Manhattan, where security is a major concern.<sup>101</sup>

Finally, one element of the expanded transit hub is a direct transfer to the subway from the PATH train, which was previously unavailable. The PATH station has already reopened on the World Trade Center site,<sup>102</sup> making it the first element of Libeskind's master plan to bear fruit.

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and Long Island and JFK Airport were released. A year ago, Governor Pataki charged a multi-agency team with identifying a feasible option for the rail link.”), at [http://www.renewnyc.com/plan\\_des\\_dev/transportation/default.asp](http://www.renewnyc.com/plan_des_dev/transportation/default.asp) (last visited Apr. 10, 2005).

<sup>96</sup> LOWER MANHATTAN DEV. CORP., LOWER MANHATTAN TRANSPORTATION STRATEGIES 57 (Apr. 24, 2003) (estimating a cost of \$525 million and an implementation period of seven to eight years), available at [http://www.renewnyc.com/plan\\_des\\_dev/transportation/pdf/all\\_pages.pdf](http://www.renewnyc.com/plan_des_dev/transportation/pdf/all_pages.pdf).

<sup>97</sup> *Id.* at 22–27. The complex will consist of a new PATH terminal located on the World Trade Center site, as well as a new Fulton Street Transit Center at Broadway and Fulton. The PATH terminal, which will be completed over a three to six year period, is estimated to cost \$1.7 to \$2 billion. The Fulton Street Transit Center, which will be completed over a three to four year period, will cost \$750 million. *Id.*

<sup>98</sup> *Id.* at 36–40. A secure facility for the storage of tour and charter buses is expected to accommodate between 75 and 150 buses daily. *Id.* The location of the facility has not yet been determined, though the cost of the bus facility and below-grade infrastructure work is estimated at \$500 million. *Id.*

<sup>99</sup> *Id.* at 76–83. Enhancing and expanding ferry service to Lower Manhattan is planned as a means of linking Lower Manhattan to the region. *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 66.

<sup>102</sup> See David W. Dunlap, *Again, Trains Put the World in Trade Center*, N.Y. TIMES, Nov. 24, 2003, at A1 (“The World Trade Center PATH Station opened at 2 p.m. after a \$323 million, 16-month reconstruction, to applause and tears along the platforms and aboard the trains.”).

### B. *Comparison with the Big Dig*

Like the original World Trade Center project, the Big Dig took its shape from concerns for transportation, albeit of a very different sort—cars, not trains. The master plan for the Big Dig open space includes reference to a water shuttle dock on parcel 24, located at Russia Wharf between Congress Street and the Evelyn Moakley Bridges.<sup>103</sup> Presumably, this shuttle dock represents ferry service to Logan Airport, located across from the Wharf District. Whether the Big Dig project was seen as an opportunity to improve Boston's mass transit infrastructure and not just submerge its major highways underground is unclear, though the Massachusetts Bay Transit Authority (MBTA) and Massport are listed as key partners on the project's official website.<sup>104</sup>

### C. *Lessons Learned from the New York and Boston Experiences*

In light of the fact that the Big Dig project was initiated largely out of concern for transportation congestion in downtown Boston, whereas the World Trade Center redevelopment was undertaken in the wake of a national security crisis, it is striking the extent to which it is New York, and not Boston, that has used the resulting planning process to consider how best to create new or expanded public transportation opportunities. While planning officials in New York have studied possibilities for the expansion of the region's mass transit systems, officials in Boston largely have not.

## CONCLUSION

In reflecting on the World Trade Center and Big Dig projects, I return to where I began: to what extent are these examples *sui generis*, or are there lessons to be learned for public open space planning generally?

The New York and Boston experiences teach us much about the types of constraints placed on public open space planning. One unsurprising but critical lesson is, of course, for the centrality of politics

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<sup>103</sup> Mass. Tpk. Auth., *Parcel Land Use*, available at [http://mtanew.ashtonservices.com/pdf/big\\_dig/parcel.pdf](http://mtanew.ashtonservices.com/pdf/big_dig/parcel.pdf) (last visited Apr. 10, 2005).

<sup>104</sup> The official Big Dig website listed key partners as including: the Massachusetts Turnpike Authority (of which the Big Dig project is a part); the Federal Highway Administration; the Massachusetts Highway Department; the Metropolitan District Commission; the Commonwealth of Massachusetts; the MBTA; Massport; and the City of Boston. "Big-dig.com" has now been merged with the MTA website. See Mass. Tpk. Auth., *The Big Dig*, at <http://www.masspike.com/bigdig/index.html> (last visited Apr. 10, 2005).

to any land use planning. Other transferable lessons include: recognition of the influence of the press, as with the *New York Times's* reporting on the World Trade Center and the *Boston Globe's* reporting on the Big Dig project; constraints on the autonomy and flexibility of decisionmaking presented by the complex public and private ownership of land; the potential for using excavated landfill to create new urban spaces; and the potential for generating new public transportation opportunities through open space planning.

I look forward to seeing how these lessons are applied to urban-centered public open space planning in the future.