

Memorandum

PRIVILEGED AND CONFIDENTIAL ATTORNEY OPINION WORK PRODUCT

To: File

From: Gibson, Dunn & Crutcher LLP

Re: Siekerka Interview Memorandum

On January 31, 2014, Michele Siekerka was interviewed by Reed Brodsky and Rachel Brook of Gibson Dunn. Siekerka was not represented by counsel during the interview. All information contained herein was provided by Siekerka or as indicated. Siekerka has not read or reviewed the memorandum and has not adopted or approved its contents. Brodsky began the interview by administering the standard *Upjohn* warnings per Gibson Dunn protocol, and requesting that Siekerka refrain from discussing the investigation and interview with others. Siekerka stated that she agreed, understood, and did not have any questions.

This memorandum does not contain a verbatim transcript of what was said at the meeting; rather, it is a summary of the discussion that reflects counsel's mental thoughts and impressions and is therefore protected from disclosure by the attorney work product doctrine.

I. Background

In 1986, Siekerka graduated from Rutgers University. In 1989, she obtained her juris doctor degree from Temple Law School. After graduating from law school, Siekerka clerked for two years (1989 and 1990). She then entered private practice where she worked in general litigation for nine years, including defense work, business and employment work, and matrimonial work. Next, Siekerka became the Vice President of Human Resources at AAA, and after a merger she moved to the General Counsel's Office. She left AAA because the company moved to Delaware and became the President and CEO of the Mercer Regional Chamber of Commerce, working in this position for six and one-half years.

On or about January 10, 2010, Siekerka became the Assistant Commissioner for Economic Growth and Green Energy at the Department of Environmental Protection ("DEP"). In that position, Siekerka was balancing environmental protection, economic opportunity, and social equality (to reach sustainability). In or about February 2012,

Siekerka became the Assistant Commissioner of Water Resource Management, which was a more regulatory role (as opposed to her former policy-oriented role). Finally, in August 2013, Siekerka was asked to be the Acting Deputy Commissioner, which makes her second to Commissioner Bob Martin on substantive issues.

II. Superstorm Sandy Aid

A. Sandy Aid Meetings in April/May 2013

In or about April and May 2013, there were heightened levels of activity to figure out which Sandy aid projects would work. Every other week there were environmental infrastructure meetings run by the Governor's Office of Rebuilding and Recovery ("GORR") to write up important projects.

Siekerka communicated with Eric Daleo of GORR regarding Hoboken. She was in touch with Daleo for many other projects as well because GORR was the liaison for the environmental infrastructure team, and Daleo was her point of contact within GORR. On April 25, 2013, there was a Hoboken coordination meeting with GORR, the Federal Emergency Management Agency's ("FEMA") Joint Field Office ("JFO"), and the System for Administering Grants Electronically ("SAGE"). Around this time, Daleo reached out to Siekerka to provide her with an update on Hoboken. Daleo also contacted Siekerka for similar updates on other municipalities as well, including Kearny and Bay Head.

B. May 9, 2013 – Meeting with Mayor Zimmer

1. Planning and Set-Up of May 9, 2013 Meeting

Siekerka first heard about Mayor Zimmer when Commissioner Martin told her that he had met with the Mayor and asked DEP employees to follow-up with a number of things. Commissioner Martin asked Siekerka and others to find money for projects to increase future flood resiliency in Hoboken, and he asked that the Hoboken flood mitigation plans be assessed from an engineering standpoint. This was just one project of many like this for other municipalities.

Siekerka said that Commissioner Martin never told her that Sandy aid funding was contingent on political party, an endorsement of the Governor, or development projects.

Siekerka said that someone in the DEP coordinated with Mayor Zimmer to schedule a meeting to discuss the issues Commissioner Martin had communicated, but the meeting was rescheduled, ultimately taking place on May 9, 2013. People from the Rockefeller Group attended the meeting. Siekerka also remembered the following people from the DEP being present at the meeting: John Moyle and David Rosenblatt (engineers at DEP), Matthew Klewin, Linda Coles, Eugene Chebra, and Michele Putnam. Siekerka said that as she walked

into the meeting on May 9, she was not sure who the non-DEP players were or what their roles were going to be at the meeting or in the plans to be discussed.

To prepare for the meeting, Siekerka worked with her team to think about how to leverage different pots of federal money to assist Hoboken. The plan was that Mayor Zimmer and the Rockefeller Group were going to discuss flood mitigation plans, and the engineers were going to assess the plans while the finance people were present to consider funding options for the plans. Siekerka said she does not have a copy of any agenda for the May 9 meeting in her files, and did not remember an agenda. It was her habit to print any emailed agendas and bring them to the meeting if there was one.

2. Substance of May 9, 2013 Meeting

The meeting ultimately lasted approximately an hour, and the engineers did much of the talking. People introduced themselves, and then the engineer from Dresdner Robin provided a copy of the Rockefeller Group report and maps of Hoboken to others in the meeting. Dresdner Robin explained how they wanted to flood proof Hoboken. Siekerka's impression was that the Rockefeller Group had paid Dresdner Robin to conduct the study for purposes of Hoboken. The Rockefeller Group was interested in development as well and said that it could not bring jobs into a city that constantly floods. But really the meeting was about incorporating floodwalls to increase resiliency for Hoboken, not the Rockefeller Group's development. Siekerka did not even know details about the Rockefeller Group development project. Siekerka said that, if the meeting were about development, the DEP's land use people would have been present, and they were not.

During this meeting, the group also brainstormed ways to get New Jersey Transit and the North Hudson Sewerage Authority ("NHSA") involved in the flood proofing plans. Siekerka said that the state really wanted to see a comprehensive plan with private/public partnership. Mayor Zimmer was showing support for a comprehensive approach to flood prevention.

Siekerka took notes during the meeting that indicate that the group discussed the university studies due May 23, 2014 and shepherded by David Rosenblatt's group. The notes reflect that the Rockefeller Group said it is a major land owner looking for solutions to flooding leveraging dollars and requested they work on this together. The notes also say that the group discussed how elevation is not an option, so Hoboken must look to flood walls instead, though the flood walls would have to be for an urban setting. According to Siekerka's notes and memory, the group discussed the highest height of structures that would work in the Hoboken area. And the pricing of the floodwalls was discussed at \$1 million per section, with 4,000 feet of wall needed, making the cost of the wall \$15 million in total. Siekerka's notes also indicate that pumps were discussed, and Siekerka remembered that Mayor Zimmer wanted three pumps, which would cost \$58 million, and the Mayor asked the

DEP to get 404 Hazard Mitigation Grant Program (“HMGP”) FEMA money for her to use for the pumps. Siekerka suggested an Environmental Infrastructure Trust (“EIT”) low-interest loan for a portion of the pumps, but Mayor Zimmer was adamant that Hoboken could not afford a loan and insisted on having grant money for the pumps. Siekerka starred in her notes for follow-up the issue of the funding of the pumps, since they could not put up floodwalls without pumps. Her notes also said that they were going to have meetings with NHTSA, FEMA, and others in the future, and with FEMA, they had to think about how to interconnect the projects to show a comprehensive plan for funding purposes, making the projects less expensive overall. Other follow-up items in Siekerka’s notes included speaking with New Jersey Transit, dealing with combined sewer overflow, and storm waters.

Siekerka said that nothing seemed unusual about having the parties in this meeting come together. Mayor Zimmer participated in the conversation. She was advocating strongly for Hoboken and appeared anxious because just prior to the meeting another flood had occurred in the city. But otherwise, nothing seemed out of the ordinary and Siekerka did not sense tension between the Rockefeller Group and the Mayor.

Siekerka also said that no one from the Christie administration tied the Rockefeller development to floodwall construction or Sandy aid. The focus of the meeting was a private/public partnership and collaboration that would result in each party building its own part of the flood wall.

3. Follow-Up After May 9, 2013 Meeting

The day after the May 9, 2013, meeting, Siekerka spoke by telephone with people from the NHTSA to discuss the comprehensive floodwall project. She took notes. They said that the comprehensive project would need an authority on the state or local level to facilitate the work. They discussed if legislation would be required for the project and who would be the liaison, among other things.

Siekerka said the actions taken after the meeting were unrelated to development. The land use people did not get involved after the meeting, and Siekerka did not have any follow-up with the Rockefeller Group or their engineers. The focus after the May 9, 2013, meeting was brainstorming ways to fund a comprehensive flood mitigation project.

Siekerka said that in the various conversations and interactions with Mayor Zimmer and her staff, particularly Stephen Marks, the Rockefeller Group did not come up, with the exception of this May 9, 2013 meeting.

C. May 15, 2013 – Meeting with Hoboken and FEMA

On May 15, 2013, Marc Ferzan of GORR hosted a meeting regarding mitigation projects with FEMA, Hoboken, and Governor's Office people leading up mitigation projects from GORR and the Office of Emergency Management ("OEM").

At the May 15 meeting, there was discussion of the three pumps that Mayor Zimmer wanted. Hoboken already had one pump submitted to EIT pre-Sandy, so that pump was installed and functioning. The group discussed tying NHSA into the other pumps and using FEMA 406 funding, which can provide unlimited money for building protection for a facility. The key issue to consider was whether the pumps would protect the NHSA facility.

The following day, May 16, Siekerka went out to NHSA with FEMA people to discuss how to merge the pump and facility projects in Hoboken. Jack Malone from FEMA was present, but no one from Hoboken was present. Siekerka took notes during the meeting on May 16, and her notes said that the plan was to follow up with Hoboken after the meeting.

Ultimately, after much back-and-forth with FEMA in June 2013, FEMA indicated that the costs of this Hoboken project outweighed the benefits to the public that would result from the project, and public benefit is required for allocation of FEMA funds. Siekerka said she spoke with Malone to see if there was another Hoboken project (such as a school) that they could attach the mitigation program to that would fit within FEMA 406 regulations. They agreed that the Hoboken floodwalls project would be a good FEMA 404 project if there were more 404 funds.

On June 27, 2013, Siekerka emailed Mayor Zimmer and explained that FEMA would not fund the project since the project did not fit within FEMA regulations. Siekerka suggested in the email that they regroup to figure out other funding options. Mayor Zimmer never responded to Siekerka's email and her office was non-responsive throughout the summer. Siekerka followed up with the Hoboken business administrator, Stephen Marks. She tried to call Marks and could not get through to him or his voicemail. So in the middle or end of July, Siekerka emailed Marks, copying Mayor Zimmer, and said that she was not able to reach them. Marks then told Siekerka that since there was a 1% chance of the project getting funding, they were going to have to find another way to fund the pumps. Siekerka did not know exactly why Mayor Zimmer and Marks had been nonresponsive for the summer.

Siekerka said that FEMA representatives experienced a similar non-responsiveness from Hoboken during this time period. Malone was the expert for FEMA on FEMA 406 funding, and he had previously worked with Siekerka on a different floodwall project for another municipality. Due to their success on this project, Malone worked extensively with Hoboken to try to work out the flood mitigation project there. Malone mentioned that Hoboken was being nonresponsive around this time.

D. September 2013 – Conversation Regarding Hoboken Land Use Activity

In September 2013, Siekerka spoke with people from the Port Authority about land use activity in Hoboken, because such activity required permits. None of the permits that Siekerka saw or discussed at this time were for the Rockefeller Group.

In September 2013, Daleo also asked Siekerka for an update on projects in Hoboken. Siekerka said that update requests for municipalities like this one were common. She told Daleo that Hoboken had one pump due to EIT, and Pat Shepard from the land use department said that Hoboken had five active permit applications at the time. The permits were for flood proofing and flood mitigation architecture plans, none of which were for the Rockefeller Group.

E. November 25, 2013 – Mayors Meeting

Siekerka was present at the November 25, 2013 mayors meeting. This was her last contact with Mayor Zimmer. At this time, Commissioner Martin directed Siekerka to expedite the EIT bridge loan program for Hoboken. The Commissioner would often ask for actions to be expedited if possible so that municipalities could obtain money and assistance as quickly as possible.

F. Rebuild by Design

Siekerka attended the Rebuild by Design meetings, but she is not well-versed in the details of the program.