

Law & Major Contracts

BOL Meeting Minutes - Final



Committee Chair: Nancy Barr

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
www.westchesterlegislators.com

Wednesday, February 17, 2021

10:00 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations and Parks & Recreation committees

With a quorum present, Chair Barr called the meeting to order at 10:10 AM.

Pursuant to Governor Andrew Cuomo's Executive Order No. 202.1, "Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency," which temporarily suspends portions of the New York State Open Meetings Law.

A section of the order, "Suspension of law allowing the attendance of meetings telephonically or other similar services," provides for the suspension of "Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed."

Others in attendance: LAW: John Nonna, Remote: Tami Altschiller and David Chen BOL: Legislators: Catherine Borgia, Damon Maher, and Ruth Walter; Legislators (Remote): David Tubiolo, Catherine Parker, Margaret Cunzio, Terry Clements, Tyrae Woodson-Samuels, and Alfreda Williams GUEST: Elizabeth Sacksteder

Present: Legislator Barr, Legislator Boykin and Legislator Shimsky

Remote: Legislator Alvarado, Legislator Covill, Legislator Gashi and Legislator Smith

MINUTES APPROVAL

February 10, 2021 at 10:00 a.m.

On motion of Legislator Gashi, seconded by Legislator Alvarado, the minutes were approved. The motion carried unanimously.

I. ITEMS FOR DISCUSSION

[2021-153](#)

ACT - Second Restated and Amended Playland Management Agreement with Standard Amusement, LLC

Guests: County Attorney John Nonna, Assistant Chief Deputy County Attorney Tami Altschiller, Associate County Attorney David Chen, and Elizabeth Sacksteder, Partner, Paul Weiss Rifkind Wharton & Garrison

Chair Barr noted that this is an amendment and restatement of a prior agreement which was created in 2016 by a different administration and signed by the prior County Executive. Although 10 of the 17 legislators currently on the Board were not here when the original agreement was signed, we are still bound to the contract, and cannot look at it as a brand new document.

Mr. Nonna responded to issues raised in a letter from Assemblyman Steve Otis and other Westchester Assembly members. As a general response, he noted that: the use of the park as an amusement cannot be changed; public access cannot be restricted; historic structures cannot be removed; creating new activities are subject to permitting approval by the Parks Department; and design layout and architectural style is restricted. The amended agreement now requires Standard to maintain the historic status of the park, and any design must be in accordance with the existing overall design of the park. Removal of those features are not allowed without approval by the County.

Mr. Nonna also responded to Assemblyman Otis' questions regarding the Playland Pool. He noted that the pool is one of the County's capital projects, is moving forward, and should be ready for opening day in 2022. It will be completed and the use cannot change. Chairman Boykin noted that DPW took the bathhouse out of the pool and made it a separate item. Mr. Nonna noted that Schedule K is the County's capital plan, and provides the details on the pool.

Regarding public access, Mr. Nonna noted that Section 2C (pages 7-9) was in the original agreement and provides that access to the park, beach area, and pool area are material elements to agreement. The provisions on page 9 guarantee the public has free access to Edith Read Sanctuary and to the beach, but the manager may set fees which must be consistent with fees in the in-season and approved under the operating plan. Legislator Walter asked who would control changing the fees. Mr. Nonna stated that a change would have to be approved by the Commissioner of the Department of Parks & Recreation. She questioned if there is a limit to number of years that applies, but Mr. Nonna stated that the limit applies to the marketing plan, not the operating plan. He stated that in the amended agreement, the manager has to submit an operating plan 60 days before they take over management of the park, and then every year after that. The marketing plan must address affordability, accessibility, and attractiveness of Playland Park to all residents of Westchester, including in particular less economically advantaged segments of the population (per Section 1B on page 3).

Ms. Sacksteder noted that the operating plan continues throughout the term of the agreement, and includes marketing as part of what needs to be presented, but there is no process as per Section 1B after the first five years. Chair Barr asked how the County can ensure access and affordability after the first five years and what remedy we would have. Mr. Nonna said the Board could possibly pass a Local Law to ensure that the park is open to all persons. Legislator Maher said that Section 4 (page 21) provides that the Commissioner should not deny any part of the operating plan unless he or

she reasonably concludes that approval of the plan would materially and adversely affect the operation of Playland. Mr. Nonna noted that if the Commissioner doesn't approve a provision, the disputed provision will revert to the prior year's operating plan. The Commissioner can reject parts of the operating plan. Legislator Parker said it sounds subjective, and if there is an issue in the first year, there is no prior year to refer back to in any disputed area. Mr. Nonna noted that the first operating plan is due October 1st of this year, so we will see what it says. Legislator Maher asked if we can add explicit language that the Board has final review over certain fees. Mr. Nonna noted that the MOU already provides for oversight, and we cannot insert the Board of Legislators into specific provisions where they did not have oversight, because the judge in bankruptcy court will say that this is not in the original agreement.

Mr. Nonna then addressed Assemblyman Otis' concerns regarding the entrance to Playland. Any change to the fountain plaza is subject to review by the County under Section 6A. Playland Parkway and the scenic trailway are outside the park area and are not a part of this agreement.

As to the County's right to inspect, Mr. Nonna noted that section 2B provides that the County has access to the park at reasonable times to carry out the County's responsibility. Section 14 (page 49) provides that the County has right to enter at any reasonable time to inspect, observe and monitor any aspect of the manager's operations. Section 6L (page 32) provides that during the implementation of the manager's capital improvements, the County may inspect and stop improvement if they believe it is not being constructed in accordance with the agreement. Under Section 5, the manager, in consultation with the Commissioner, will prepare rules and regulations for conduct in the park, and no modifications can be made without the Commissioner's approval.

Legislator Parker clarified that Assemblyman Otis may have been referring to the area where the flagpole is as you enter the drive going into Playland.

Ms. Altschiller said the map attached to Schedule A shows a roadway off Playland Parkway across Forest Avenue leading to the entranceway to the park, and on either side of that roadway, there is a grassy area that is somewhat undeveloped. She noted that Section 6B provides that if the manager does anything in that area, they would need to provide specs and plans and be subject to the terms of the agreement. She doesn't think they are prohibited from developing there. Mr. Nonna noted that this may be covered by Section 2C and must be kept open for public access.

Mr. Nonna stated that section 9 (pg 38-39) provides that if the manager wants to conduct programs or events, they must give notice, and the Commissioner has 72 hours to notify the manager if it can't be conducted. The manager would also need a permit for any assembly, meeting, exhibit or other activity in the park, unless specifically approved by the Commissioner in operating plan. This provision was in the original plan and has not been changed.

Legislator Walter asked if there is language controlling the time of events, i.e., within normal operating hours. Mr. Nonna said there is no specific

language. Ms. Sacksteder said a permit is needed if an activity is outside normal operating hours or outside the ordinary operation of park. Chair Barr noted that local laws may also dictate time constraints.

Chairman Boykin emphasized that the public has full access to the park and Edith Read Sanctuary, so people can go to beach and walk dogs. Mr. Nonna agreed, and said public access to the amusement park would not apply when it is closed. He noted that in the off-season, parks are only open from dusk to dawn per Parks Department rules.

Legislator Maher asked if there will be a fee for parking in the off season.

Ms. Altschiller said that Section 2C on page 8 provides that there will be free access to Edith Read, the boardwalk and the pier. Chair Barr said that access is one thing and paying for parking is another because that affects access. Ms. Sacksteder noted that the agreement provides that Standard can't change the fee structure without putting it in the operating plan and getting approval by the Parks Commissioner. Chairman Boykin asked if we can put something in the second paragraph of Section 2C on page 7 stating that "in the off-season, as is currently done, parking will be free" to make it clear.

Legislator Maher asked if the term "off-season" is negotiable. Mr. Nonna said only with the approval of the Commissioner.

Chair Barr asked about Section 2Z (page 13). Ms. Sacksteder said this provision allows Standard to use a portion of the parking lot during the off-season for temporary attractions. The use can't impede parking for the Ice Casino, Tiki Bar, or Children's Museum, or the County's need to use the parking lot for emergency services or other temporary public needs. This was a heavily negotiated provision, and is somewhat modified from prior agreement. Chair Barr asked about using the parking lot for Edith Read or the beach (i.e., for dog walkers), which are not enumerated in this section. Ms. Sacksteder stated that you have to read the agreement as a whole, and all the provisions together. She noted that Section 2C (page 8) specifically provides that the manager has to preserve access to the parking lots, including the beach and pool parking lots, as well as the main parking lot, in the off-season year round during hours for Ice Casino and Children's Museum operations, or dawn to dusk off season and dawn to park closing for the in season. Nothing in Sections 2Z trumps that general requirement to preserve access, and provides that only a portion of the parking could be used for a temporary attraction.

Legislator Williams asked if County use of parking lot for storm emergency use is protected. Ms. Sacksteder said yes, and noted that Standard has not pushed back on that at all.

Mr. Nonna noted that Section 2C (page 9) guarantees free public access, but we need to clarify that free access means free parking too.

Legislator Parker asked if rides that are removable could be moved to the parking lot. Ms. Sacksteder said Section 12 addresses rides. She noted that moving rides to the parking lot would be subject to permitting, and that there is a general requirement in Section 2M (page 11) that all work has to be consistent and give consideration to the surrounding community.

Chairman Boykin said that we should move Section 2(Z) to the top of page 8. Ms. Sacksteder said that this is an amendment and restatement of an existing agreement which is not organized the way we would have liked. Chairman Boykin asked that Mr. Nonna figure out a way to move the section without changing language.

Legislator Maher asked what "temporary attractions" are anticipated in Section 2(Z), and asked if we can change the language allowing the County to use the parking lot if it "needs to" to if it "opts or chooses" to use the parking lot. Ms. Sacksteder said Standard had referred to having a farmer's market, but they would need a permit. Legislator Maher is concerned about noise and homeowners in the surrounding area. Ms. Sacksteder noted that Section 2M is there to make clear that Standard must give consideration to the concerns of the surrounding community.

Ms. Sacksteder discussed Section 6(A) and (B) (page 22), which governs the County's oversight of material improvements made by Standard. Things that are impermanent are not subject to the restrictions. Section 6B explains what oversight consists of. There are two stages of mandatory review before work can start and one optional stage. If Standard wants, it can present concept drawings and solicit the County's reaction. Mandatory review is when project is in design. At the 50% design state, the manager has to provide plans, and again at 90% design state. At each stage, the County can stop project from going forward if it doesn't meet the criteria on page 24 and 25. Chairman Boykin asked why the County only has 10 business days to respond. Ms. Sacksteder said the County has 20 business days to give substantive response, and 10 to say if we will review. This is a heavily negotiated provision that did not exist in the 2016 agreement. Page 24 has the 10 day provision, and Section 6B provides for 20 days. She noted that if several projects are submitted at once, the County gets 25 business days to review.

Legislator Walter asked if the response times are sequential or concurrent. Mr. Nonna said concurrent. Ms. Sacksteder said if multiple plans are submitted, the response date for each one is determined by when they submit the plans. Chair Barr noted that this seems tight, but is better than not having any oversight. Mr. Nonna said that Peter Tartaglia was heavily involved and we relied on his expertise.

Legislator Maher asked about sponsorship signs. Mr. Nonna said that Section 9(A) (page 38) governs sponsorship. Standard can manage corporate sponsorship except for the Ice Casino and Children's Museum, and must make a determination if the sponsorship is appropriate for a family park, and cannot enter into sponsorship agreement with an entity that engages in activities that are clearly defamatory or offensive to the reasonable standards of the community. Legislator Barr asked about tobacco or marijuana companies. Mr. Nonna said no because those products have age restrictions. Ms. Sacksteder said those companies would not meet the standards. She also noted that this was in the original agreement.

Legislator Barr asked if we can review sponsorship agreements. Ms.

Sacksteder said there is no process for review apart from the operating plan and marketing plan process. You would expect them to be addressed there, and if not, they are in breach of Section 4. Legislator Barr asked if we can we define what is considered appropriate for a family park. Ms. Sacksteder said it is difficult if not impossible to make changes. She noted that in a 30 year agreement, what you say now is going to be under inclusive later, so it may not help much by adding an illustrative list. Legislator Borgia said we could add something more definitional for clarification rather than a list. Legislator Barr said we can revisit this issue.

Ms. Sacksteder discussed oversight of rides as set forth in Section 12B (page 45). She noted that this was also heavily negotiated, as there was nothing in the old agreement about County approval of new rides that the manager puts in. This is similar in concept to Section 6(B). Of paramount importance is safety, family friendliness, footprint of the park, and suitability of location of the ride, so the process provides that if Standard proposes to install, remove or relocate a ride, they have to tell County and we let them know if we will review it within 10 days, and do the review within 20 days. The criteria for review are set forth on page 45-46, and if they aren't satisfied, Standard can't go forward until the issues are resolved. The seven historic rides scheduled in the agreement cannot be removed or moved. Chairman Boykin asked if there is an event like a fire, and a ride needs to be repaired, where that is covered. Ms. Sacksteder said Section 2-a (page 14) would govern and provides that the County is responsible for extraordinary maintenance, repairs and improvements.

Legislator Parker asked if there is anything which compels Standard to make those rides permanent. If they enter into leasing agreements for those rides, what can we do after the agreement is over? Ms. Sacksteder said their vision for the park is to acquire very high-end rides and build high-end theming around them. Standard has an obligation to spend manager's investment on the things they are required to spend it on or else the County gets the difference. So there is no incentive to do this cheaply, because then the County gets the money. Mr. Nonna noted that this deals with new rides, and replacing, removing or relocating rides.

Ms. Sacksteder noted that pursuant to Sections 6D and 6K, Standard must get all permits and certificates for all work they do. Also, they must also meet the criteria set forth in Section 6H (p 30-31), which governs all improvements, not just material improvements. The criteria include: must be consistent with historical character and architecture, must meet industry standards, and cannot materially affect the County's obligation to maintain the park for the public's use and enjoyment. Section 2W (p 13) provides that Standard must comply with the tree law in landscaping the park.

Chairman Boykin asked whose ride it is once it's purchased by Standard. Mr. Nonna noted that any ride they bring in, once it's bought, it become the County's property. If they are leasing it, it does not.

Legislator Maher asked whether non-fixed, non-historic rides can be taken down and sent elsewhere and then brought back. Mr. Nonna said Standard would have to get permission to relocate a ride. Ms. Sacksteder said that on

page 44-45, it provides that if Standard buys a fixed ride, it becomes the County's property immediately when affixed to the County's property at Playland. If it's a removable ride, it's Standard's property until it's fully depreciated, and then it's the County's property. Legislator Parker noted that the County has taken rides to the Winter Wonderland at the Kensico Dam in the past. The question is who has the right to new rides in the off-season. Chair Barr asked Mr. Nonna to advise the committee at the next meeting whether the County can remove rides: 1) for use that benefits Westchester residents and 2) for use by non-Westchester residents. Mr. Nonna said he will look closely at that.

Legislator Parker also stated for the record that she had submitted correspondence from the owner of Charley's Pier Restaurant. Mr. Nonna said that the letter had misstatements. They did not get a license agreement from the RFP process because all the bids from the RFP were rejected for non-compliance. Chair Barr said the committee will discuss this in greater detail at a future meeting.

This ACT was continued

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Covill, seconded by Legislator Alvarado, the Committee adjourned at 12:10 p.m.