

Law & Major Contracts

BOL Meeting Minutes - Published Draft



Committee Chair: Nancy Barr

800 Michaelan Office Bldg.
148 Martine Avenue, 8th Floor
White Plains, NY 10601
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Wednesday, February 24, 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 10:08 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: BOL: Legislators Damon Maher and Catherine Borgia; Legislators (Remote): Catherine Parker, David Tubiolo, Ruth Walter, Tyrae Woodson-Samuels, Chris Johnson, and Alfreda Williams LAW: John Nonna, Tami Altschiller, and David Chen GUESTS: Elizabeth Sacksteder

Present: Legislator Barr, Legislator Boykin and Legislator Covill

Absent: Legislator Alvarado

Remote: Legislator Gashi, Legislator Shimsky and Legislator Smith

MINUTES APPROVAL

I. ITEMS FOR DISCUSSION

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

2021-153 ACT - Second Restated and Amended Playland Management Agreement with Standard Amusement, LLC

Mr. Nonna addressed the two remaining items raised in Assemblyman Otis' letter dated January 26, 2021. He asked Ms. Sacksteder to discuss the issue of year-round maintenance and operation tasks at the park. Ms. Sacksteder said that is one of the core obligations of Standard under the agreement, and their obligations are addressed under the following sections of the agreement: Section 2(A) on page 6 (maintenance and repairs),

Section 2(E) on page 9 (snow removal), section 2 (F) on page 9 and 10 (solid waste removal), and section 2(H) on page 10 to 11 (safety/security). Section 2(H) requires Standard to provide private security guard services at its own expense. The County will provide public staffing (police, park rangers), but Standard will pay for those services starting at \$400,000, and increasing to \$600,000 once the County has met its 70% threshold of substantial completion of the County's capital projects, and will increase in proportion to pay increases in the relevant collective bargaining agreements between the County and the police and park ranger staff.

Legislator Parker asked what necessitates the need for private security guard services. It seems duplicative because the County is providing police and park rangers. Ms. Sacksteder said this is unchanged from the original agreement. The thought is that police and park rangers will not safeguard property 24/7, and their role is different than private security, who can safeguard equipment used for capital investments by County and Standard, and prevent vandalism, theft, or mischief when the park is closed that could result in people being hurt. Ms. Altschiller said Standard has the ability to, but may not definitely provide private security.

Legislator Parker asked if Section 2(E) includes more than snow removal. Ms. Sacksteder said Standard is responsible for ordinary course maintenance and repairs, i.e., potholes. If extraordinary repairs are needed for something that only happens on an occasional basis, then Section 2-a (page 14) provides that the County is responsible. Legislator Parker also asked for a definition of repair versus renovation. Ms. Sacksteder said renovation is subject to the review process set forth in Section 6, and the expense for that is on Standard.

Legislator Barr asked who will be responsible to pay if the County wants to increase police staffing. Ms. Sacksteder said that Standard pays a fixed fees for services with adjustments as described in the agreement. If Standard requests an increase in staffing, the County will discuss the details of the increase, and Standard will pay additional fee which is proportional. If the County on its own initiative wants to provide additional security, the agreement does not provide for Standard to pay for that. If the County wants to reduce security services, they must keep it at least the 2019 level of staffing (2019 is the most relevant year because the park was closed in 2020).

Legislator Walter asked whether "commercially standard" used in the section on maintenance and repairs is different from the County standard. Is there a common understanding of what the standard is? Ms. Sacksteder said that language in the agreement is "standard industry practices." If the County thought that Standard was not living up to the standard for the level of maintenance the agreement calls for, we could bring that to the attention of the monitor. Legislator Walter asked if we would have to pay 50/50 for the monitor for that. Ms. Sacksteder said if a dispute is brought to the monitor, the monitor has discretion to charge all fees for the dispute to the losing party. Legislator Walter asked if in defining the "industry standard", is there another amusement park that has a year round park function to compare.

Mr. Nonna said he did not think there were other amusement parks in New York State. Ms. Altschiller noted that Section 2(M) on page 11 requires the manager to carry out work in a commercially reasonable manner. Legislator Walter asked if the \$400,000 payment by Standard for County police and park rangers includes benefits. Ms. Altschiller said it was a flat fee, but she can ask the Budget Director if certain formulas were factored in. Legislator Borgia said that they are working on a comparison of operating costs for Playland being run by the County versus the projected financial implications of this contract.

Legislator Maher asked who will be responsible for repaving of the roads leading up to and into Playland. Ms. Sacksteder said that patching and interim repairs will be done by Standard, but full repaving would be considered extraordinary repairs to be done by the County.

Mr. Nonna said that Mr. Otis had asked about maintenance of Playland Parkway and the trailway. Mr. Nonna noted that the parkway and the trailway are not part of the park and are still the County's responsibility. We are discussing with the Parks Department how they'll handle that. He then addressed item number 10 in Mr. Otis' letter regarding employees. This is addressed in section 11 (page 42-43), which was extensively negotiated in the prior agreement, and there's a limited amount we can do to change it. It provides that once Standard takes over the park, it can keep on the County employees who currently work there. We have already provided a list of the regular, full-time County employees that work there. We still have to provide a list of full-time hourly employees by April 1st. By June 30th, Standard has to tell the County who they are keeping. If they don't keep an employee, then that employee remains an employee of the County and the Parks Department, and will be assigned elsewhere. So the employee's employment is protected by the County. He also addressed Item 14 in Mr. Otis' letter regarding summer employees. Section 11 of the agreement states that the manager acknowledges that the County is a large summer youth employer, and Standard will continue to support this arrangement.

Mr. Nonna asked Ms. Altschiller to discuss the provisions of the agreement regarding the City of Rye's interest in the operation of Playland and any changes that affect them. She cited Section 2(M), which provides that the manager must carry out the work giving due consideration to the expressed concerns of the surrounding community within one mile of the entrance of Playland and the users of Playland Park. Section 2-b(5) provides that the manager will consult and meet with an advisory committee quarterly, and the committee members appointed by the manager may be selected from the City of Rye, among other groups. Section 2-b(6) provides that the manager acknowledges that there are issues of mutual concern between management and the City of Rye, and agrees to act in good faith in discussing and negotiating issues with the City. Section 2(I) (page 11) provides that the manager shall not create a public or private nuisance in and around Playland.

Mr. Nonna responded to Item 11 in Mr. Otis' letter regarding continuation or

cancellation of outside vendors and concessionaires. Mr. Nonna stated that the County can keep concessionaires until the 2022 season, and then it's Standard's job to get the right concessionaires. The County will have certain rights of approval depending on how big the concessionaire's contract is. In response to Item 16 regarding federal and state grants secured for the park, Mr. Nonna advised the Parks Department said we have not gotten any federal grants, but we got money from FEMA for repairs after Superstorm Sandy, and there is a pending request for a New York State grant for repair of the carousel. Legislator Maher asked if there are any bond covenants that we could be in violation of. Ms. Altschiller said we have been very careful in overseeing bonds issued on behalf of Playland to make sure there are no issues going forward.

In response to Item 13 regarding financial terms and terms for cancellation, Mr. Nonna stressed that we can terminate the agreement for a material breach by Standard, such as not meeting revenue targets for four years, not investing the manager's investment, or breaching other obligations in the contract. Legislator Barr asked if we will respond to Mr. Otis' letter in writing. Mr. Nonna said he could draft something. He noted that he spoke to Mr. Otis by phone, and Mr. Otis understood that there was a robust discussion with the Board of Legislators addressing his concerns set forth in the letter, and he had no questions for Mr. Nonna. Legislator Borgia noted that current legislators are completely capable of making the decisions that are before them. Chairman Boykin said they can watch the video of the meetings, which provides more information than a letter of response would.

Mr. Nonna discussed questions outstanding from the last meeting. He noted that Standard has not said no to free parking in the off-season, and we are pursuing that. For Legislator Barr's questions regarding sponsorship, he asked the committee to give him some ideas of what they would like to see in the agreement.

In response to questions about moving rides during the off-season, Mr. Nonna said the cost of transporting rides is not worth it, and it would be more cost-effective to rent rides. He said that he was advised by Peter Tartaglia that for past few years, the County has not taken rides from Playland to the Winter Wonderland at Kensico Dam.

In response to questions from Legislator Parker regarding a letter from the current licensee for Charley's Pier Restaurant, Mr. Nonna said that we are now negotiating a license agreement with the current licensee for the next few years, which takes into account her concerns.

Ms. Sacksteder answered Legislator Maher's questions sent by email regarding the letter of credit and estoppel letters. She said that the purpose of the letter of credit is to address the concern we had under the prior agreement, which was the subject of extensive litigation, that Standard didn't actually have access to the funding it needed to complete its capital projects. Section 1(D) (page 5) provides that Standard must prove to us that they have the money to do what they are obligated to do, in liquid assets that they have the right to access without any contingencies of others. When the agreement is signed, they must show they have \$15 million in

cash in their own name. Then on December 1, they must show they have \$17,750,000 in cash or through an irrevocable standby letter of credit that they can draw down, or some combination of the two. Legislator Maher said he is concerned that the letter is only a snapshot and the money may not be there the next day, so we have no guarantee. Mr. Nonna says we can terminate the contract if they don't perform. Legislator Barr asked what would happen if Standard started a job, but was then unable to finish because they don't have the money. The County would be stuck with a half-finished job. We could terminate, but what is our recourse after termination? Mr. Nonna said they will probably have a performance bond in place. Ms. Sacksteder said that section 6(E) (page 27) deals with performance bonds, which is separate from financing. Legislator Maher asked what would happen if they draw down on letter of credit. Mr. Nonna noted that there are multiple provisions in the agreement that provide plenty of controls over whether Standard is doing the work.

Legislator Barr asked if we can ask Standard to see their statements, and if they would agree to notify us when they draw down on the letter of credit. Legislator Maher said the bank has to be a party to this for us to know for sure. Mr. Nonna said the bank will not agree to tell a third party whether they are paying out on a letter of credit.

Legislator Covill asked whether an irrevocable standby letter of credit means that the amount changes as they draw down. Mr. Nonna said it becomes a lesser amount, but noted it is also called "evergreen" because it is constantly renewed by the bank automatically, and they can't terminate it. Ms.

Sacksteder emphasized that the letter of credit is the financing from the bank, and the bank will have to be satisfied that its borrower is creditworthy. You have to have resources standing behind you to get \$32.75 million in financing. The ultimate investor is a big hedge fund. The bank and investors will make sure Standard does what it's meant to do under this agreement because excellent performance at Playland is what will get the bank repaid and get investors their return.

Ms. Altschiller noted that in 2016, we didn't know where the money Standard would invest was coming from, and this agreement has a lot more assurances, and puts the County in better situation. The agreement also provides that Standard has five years to spend the money, or we can declare an event of default, and terminate the agreement. Another key provision that was not in the original agreement now provides that until manager's investment is spent, the manager has to provide monthly reports delineating all the funds being spent that the manager claims is part of its investment. All of these things together put County in a better position.

Mr. Nonna noted that the forms to be used for the monthly report came from the Finance Department. There is a summary report and a form for project expenditures which includes invoice date, amount, and name of vendor. These are controls over how the money is spent.

Legislator Barr asked if we could ask for supporting documents, such as actual invoices. Mr. Nonna noted there are monthly meetings, and we have an audit right to ask for the invoice. Legislator Walter asked who will look

over the monthly reports. Mr. Nonna said the Finance and Parks Department. Chairman Boykin noted that the Board of Legislators could ask for updates once a quarter or every six months.

Legislator Walter asked if the manager has an obligation to use prevailing wage for their capital projects. Mr. Nonna said there is a requirement to use union labor or pay prevailing wage until 2026, except for the Tiki Bar. She also asked if there is a termination, would this go back to bankruptcy court. Mr. Nonna said no. Legislator Maher asked if we asked for a performance guarantee from a parent company, and Mr. Nonna said no.

Mr. Nonna addressed Legislator Maher's concerns about estoppel letters. Section 46 provides that the County may qualify an estoppel letter if any statements therein are not true or accurate in the county's reasonable opinion. Legislator Maher asked if we need to get estoppel letters as well. Ms. Altschiller said that an estoppel letter assures a lender that the person seeking money is not in default. We won't have that scenario because we're not seeking to borrow money. It would not be appropriate for County to have the same requirement because our financing is bonds. Legislator Maher asked if the bonds underwriter is concerned about liens we don't know about. Ms. Altschiller said that when the County does its annual bond sale, there is a tremendous amount of due diligence, and we evaluate things that would impair the County's financial ability to pay back those bonds. Ms. Altschiller will check with bond counsel to confirm whether we need an estoppel letter for our bonds.

Mr. Nonna discussed questions Legislator Covill sent via email. She asked how much we had gotten from a concessionaire on Manursing Lake. He said he spoke to Peter Tartagia, and there was a concessionaire with a pontoon boat that generated revenue of \$9,000. He noted that it is in the County's sole discretion to decide if we will have activities on the lake. He also noted that Standard will not have anything to do with the Ice Casino. Legislator Covill asked about the definition of operating season in Section 8 (page 38). Ms. Sacksteder said that if park is closed for more than 10 business days in season, the manager would get a proportional reduction in the annual management fee they have to pay to the County. Legislator Covill said there are two different terms, "seasonal operating season" and "operating season", and we should use "seasonal operating season" in this section. Ms. Sacksteder said if the point is that we should use the same words to mean the same things, that is something we can carry back. Legislator Barr asked if sponsorships and advertisements part of gross revenue for the County's percentage. Mr. Nonna said yes.

This ACT was tabled

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Covill, seconded by Legislator Boykin, the Committee adjourned at 12:02 p.m.