

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

Monday, March 15, 2021

10:00 AM

Committee Room

CALL TO ORDER

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: Legislator Catherine Borgia, Legislators (Remote): Margaret Cunzio, Damon Maher, Catherine Parker, David Tubiolo, Ruth Walter, Alfreda Williams, Tyrae Woodson-Samuels; Committee Coordinators: Jill Axelrod, Alessandra Restiano, and Elizabeth Lobello; Lisa Hochman LAW: John Nonna, Rachel Noe, and Jack Micciche; Remote: Tami Altschiller, David Chen, and Sean Carey GUESTS: Elizabeth Sacksteder

Present: Legislator Boykin

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

MINUTES APPROVAL

Monday, March 8, 2021 at 10:00 a.m.

I. ITEMS FOR DISCUSSION

[2021-197](#) ACT - Lawsuit Settlement - "K.O"

Joint with Budget & Appropriations

Guest: Senior Assistant County Attorney Sean Carey

Mr. Carey said that on June 11, 2019, K.O., a Parks Department employee, fell down steps at the Westchester Hills Golf Course in White Plains. She sustained injuries to her left hip and left leg and missed six weeks of work. She is currently back to work at full capacity. She filed a claim for her injury with the NYS Workers' Compensation Board, and commenced a personal injury action against Westchester Hills Golf Club. On February 12, 2021, she agreed

to settle her personal injury claim before litigation for \$125,000. Her counsel waived his fee of \$41,662.50. Between the date of the injury and the date of the settlement, the County expended medical benefits to or on K.O. behalf in the amount of \$15,812.02 and lost wages in the amount of \$16,654.68. The County wants to reduce the lien by 33.33% or \$10,821.15, and accept \$21,645.55. After the County is reimbursed and legal fees are paid, K.O. would receive \$61,691.95.

On motion of Legislator Alvarado, seconded by Legislator Shimsky, the above item was signed by committee. The motion carried unanimously.

[2021-200](#)

ACT - Settlement of Westchester County v. E.E. Cruz & Co.

Joint with Budget & Appropriations

Guests: County Attorney John Nonna, Associate County Attorney Rachel Noe, and Assistant County Attorney Jack Micciche

Mr. Micche said that the County is seeking authorization to settle the claims of E.E. Cruz & Company, Inc. ("Cruz") against the County for additional compensation for work done to rehabilitate the Fulton Avenue Bridge. In 2016, a contract was approved for work on the bridge, including removal and replacement of the steel bridge deck, stringers and bracing and sidewalk panels. In February 2020, Cruz submitted a statement to DPW listing two separate claims for additional compensation for work performed in the amount of \$1,744,719. The first claim concerned removal of existing steel from the Bridge. The County's consultant, Henningson, Durham & Richardson Architecture and Engineering, PC ("HDR"), provided specifications and bidding information for the project which included removal of approximately 178,684 pounds of existing steel, with a pay unit per pound of steel removed. In its project bid, Cruz provided an itemized proposal with a price of \$8.00 per pound resulting in a bid amount of \$1,429,472, which is the amount Cruz has been paid. Cruz submitted an additional request for payment of \$1,292,000 from the County claiming they removed a total of 340,184 pounds of steel from the Bridge, which is 161,500 pounds over the original amount. Upon investigation, the County discovered that HDR neglected to include the Bridge's steel decking in the original amount.

The second claim concerns modifications of the Bridge's Floorbeam 5, which were required when the upper and lower flanges made contact with separate joints during test operations. Cruz claims that the interferences were the result of errors in the design documents prepared by HDR, and it is entitled to additional compensation of \$452,718.

The DPW Commissioner, who is the arbitrator per the contract, determined that Cruz is entitled to an additional \$1,061,745 for the first claim, and is not entitled to compensation for the second claim. Since the project was required to be completed by November 22, 2017, but not completed until May 24, 2018, the Commissioner applied a disincentive assessment of \$366,000 for Cruz's failure to timely complete the project. Cruz disagreed with the Commissioner's determination of the second claim, and intended to file an Article 78 proceeding. Negotiations between the parties to avoid litigation resulted in a proposed settlement of \$850,000. The County demanded that HDR indemnify the County with respect to Cruz's claims. It has been agreed that HDR is to pay the County \$154,254.40 as a contribution for the settlement. The remaining \$695,745.60 of the settlement will come from the County.

On motion of Legislator Shimsky, seconded by Legislator Gashi, the above item was signed by committee. The motion carried unanimously.

2021-201 **ACT - Settlement of claim against Henningson, Durham & Richardson
Architecture and Engineering, P.C.**

Joint with Budget & Appropriations

Guests: County Attorney John Nonna, Associate County Attorney Rachel Noe, and Assistant County Attorney Jack Micciche

See discussion of Item 2021-200 above.

On motion of Legislator Barr, seconded by Legislator Shimsky, the above item was signed by committee. The motion carried unanimously.

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

Joint with Budget & Appropriations and Parks & Recreation

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 and Legislator Borgia agreed that we had finished discussing alienation. Mr. Nonna answered Legislator Parker's questions regarding the Tiki Bar. He noted that after extensive negotiations, Standard was given the opportunity to redesign and construct a new Tiki Bar in consideration for the union labor provision. Ms. Sacksteder said the critical provisions are in Section 6F(iv) on pages 29-30. For the first year, the Tiki Bar will continue to be operated by the current licensee, pursuant to the revised agreement with the licensee. At the end of 2022, Standard's rights with respect to the Tiki Bar kick in. Standard is obligated to invest at least \$2.25 million in demolition and construction of a new restaurant, and they have to do this in the first five years. The work will be subject to all of the County's approval rights under section 6B of agreement. If the County doesn't agree to Standard's plans and specs for the new facility or Standard can't get the permits and approvals it needs, Standard can decline to proceed with constructing a new facility. Standard may then continue to operate the current facility, but they are not obligated to, and they can relinquish all rights in the Tiki Bar back to the County. This is a no lose proposition for the County. She said that we added a provision that the new facility can't impede public access to the Boardwalk or Ice Casino.

Legislator Borgia asked if there is a time limit on how long construction can take. Ms. Sacksteder said there is no specific time limit for construction, but it is in Standard's commercial interest to get it done quickly so they don't lose revenue.

Ms. Sacksteder also noted that Standard is solely responsible for the cost of demolition and construction and any extraordinary maintenance or repairs to the Tiki Bar for as long as they are operating it. Mr. Nonna noted that Standard must use union labor. Unlike other provisions, there is no time limit on use of union labor for construction and demolition of the Tiki Bar. If Standard does subsequent work on the facility, they do not have to use union labor for that. Legislator Barr asked if there is any possibility that we could be left with a demolished Tiki Bar but no new Tiki Bar. Ms. Sacksteder said County approval in advance of demolition is required by Section 6B, and Standard would need permits to start demolition. She noted that there is financial assurance in the agreement that Standard has the wherewithal to do the entire project from the beginning. \$2.25 million of the manager's investment is earmarked for the Tiki Bar, and demolition would not cost anywhere near that much. She noted that demolition without building a new facility would be a material breach of agreement, and the County could terminate the agreement and recover any associated damages.

Legislator Parker asked for clarification about labor, buildout, and discussions related to the County's compensation for that. Ms. Sacksteder said the prior agreement had no provisions on union labor, and the new provisions were heavily negotiated. Legislator Parker acknowledged that at least the union labor provision covers the original stage of Standard's takeover.

In terms of the parameters of a buildout, Ms. Sacksteder said any change in size or location of the Tiki Bar shall be subject to County's consent, which cannot be unreasonably withheld or delayed. We wanted a consent right to ensure that any new facility will not impinge on any public access or be detrimental to our vision of Playland Park. Legislator Parker noted that this has been a big issue with the current Tiki Bar, and asked what about size, and whether there was discussion regarding public areas such as the pier, boardwalk, and seaside walkway. Ms. Sacksteder said the discussion was principally around the boardwalk, and there was no specific discussion regarding square footage or what the new facility would look like. The consent right is meant to address issues like that as they arise.

Ms. Altschiller reviewed the terms of the amended agreement with the current licensee for the Tiki Bar. This was discussed in executive session last week because the agreement had not yet been made public. It has since been approved by A & C, so it can now be discussed in open session.

Legislator Barr asked about the "morality clause" in the agreement. Mr. Nonna discussed various provisions, including Section 2D, which provides that the park has to be operated in accordance with the rules and regulations of the Parks Department; Section 2BB, the revised key personnel clause, which requires key personnel have no prior convictions for theft, embezzlement, or a crime of moral turpitude; Schedule H-1 which requires a criminal background check. He noted that Section 10 requires that subcontractors have integrity, and Section 11 requires removal of any employee whose conduct, demeanor, or appearance is objectionable to the Commissioner.

Chairman Boykin asked how this fits with the "Ban the Box" law, which prohibits asking about criminal convictions on job applications. Mr. Nonna said you can't refuse to hire someone because of a criminal conviction unless the job relates to the crime they committed and poses a risk. He noted that "Ban the Box" does not say you can never ask, just not on the application. You can give a conditional job offer pending a background check.

Legislator Walter asked if the clause regarding criminal conviction applies to Nick Singer, the principal of Standard. Mr. Nonna said he is subject to the criminal disclosure law, which covers principals and not just employees.

Legislator Walter asked if the contract is assignable. Mr. Nonna said yes, but Section 10 provides that the County can evaluate anyone Standard seeks to assign to for their integrity and financial ability, and it requires the County's prior written consent which cannot be unreasonably withheld. This was not in the prior agreement.

Mr. Nonna addressed Legislator Maher's question regarding continuing meetings beyond five years. The meetings for the first five years relate to the marketing plan. Section 2(O) requires Standard to attend quarterly meetings with County personnel throughout the entire term of the agreement.

Chair Barr discussed the remaining issues by noting that Mr. Nonna has said he does not expect there to be an issue with having Standard agree to free parking in the off-season. Mr. Nonna said they are talking to Standard about summer employment. He noted that they will add language to the agreement regarding the qualifications for the monitor.

Mr. Nonna asked if the committee had any suggested criteria for sponsorships to bring to Standard. Legislator Barr asked the legislators to submit that information to her or Mr. Nonna

within the next week. He noted that the Parks Department could promulgate rules and regulations regarding the types of advertisements that would not be permitted because they pose a danger to young people. Ms. Sacksteder asked if it would be sufficient if they proposed no tobacco, vaping or alcohol sponsorship. Legislator Parker said we shouldn't include alcohol since some local businesses might be hurt by that.

Legislator Maher said that we should take the position that Standard has to get County approval since the agreement goes for 35 years and we cannot foresee what might arise in the future. We can discuss this with the Parks Department at our next meeting on Wednesday.

This ACT was tabled

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Alvarado, seconded by Legislator Gashi, the Committee adjourned at 11:56 a.m.