

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, March 3, 2021

9:30 AM

Committee Room

CALL TO ORDER

Joint with Budget & Appropriations and Parks & Recreation

With a quorum present, Chair Barr called the meeting to order at 9:22 a.m.

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 (Remote): Margaret Cunzio, Catherine Borgia, Ruth Walter, David Tubiolo, Damon Maher, Catherine Parker, Tyrae Woodson-Samuels, Chris Johnson and Alfreda Williams; Carolyn Stevens, Lisa Hochman, Jason Chervokas, Committee Coordinators Jill Axelrod and Alie Restiano

Present: Legislator Barr and Legislator Boykin

Absent: Legislator Covill

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

MINUTES APPROVAL

February 17, 2021 at 10:00 a.m.

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

February 22, 2021 at 10:00 a.m.

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

February 24, 2021 at 10:00 a.m.

On motion of Legislator Boykin, 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

Mr. Nonna addressed questions submitted to him by email from Legislator Maher. In response to Legislator Maher's question regarding a scenario wherein Standard would apply to the Westchester IDA for a tax abatement, Mr. Nonna said that the IDA's procedures do not require payment of prevailing wage or use of union labor. The amended contract offers more protection than the IDA because it requires union labor or prevailing wage as required by County law. Also, Standard cannot seek a tax abatement from the IDA because they won't have a new project to present to the IDA. The IDA cannot grant the tax abatement because it does not own, lease or control Playland. He emphasized that the County did not bargain away anything for something that it could have already gotten in the hypothetical situation proposed. He also noted that Standard's capital plan is not a public works project because Standard is using its own money and not public funds.

In response to Legislator Maher's question whether the bankruptcy judge has been apprised of the alienation issue, Mr. Nonna said that the judge approved the plan on December 18, 2020, before anyone raised the alienation issue. There is nothing to bring back to him, and he will not rule on this issue since he already approved the plan.

In response to Legislator Maher's question whether Nick Singer, the principal of Standard, should come before the Board, Mr. Nonna said that is up to the Board to decide, and is not an issue for the Law Department to advise on.

Mr. Nonna gave an overview of the alienation issue. He said that alienation is defined as a substantial intrusion on municipal parkland for non-park purposes even if the landlord does not convey title or intends to eventually restore the parkland. He noted that the alienation issue was never raised by any County or State legislator, or any other body or organization, concerning the original agreement with Standard. He also noted that the current agreement increases the County's control over Standard. He also noted that issues implicating the factors relevant to the alienation issue were raised in connection with a prior proposed management agreement with an organization known as Sustainable Playland. The judge presiding over that case analyzed the provisions of the agreement, which were similar in many respects to the current agreement with Standard, and ruled that it was a management agreement and not a lease. Those same provisions are

contained in the current agreement with Standard. He stated that based on a review and analysis of the case law regarding parkland alienation, the law department has concluded that the proposed Second Amended and Restated Playland Management Agreement is not a lease and does not constitute alienation of Playland.

He also clarified his prior answer to Legislator Walter's question whether we consulted with parks experts on the alienation issue. He had answered that we did not need to because we researched the issue, but his colleagues reminded him that the law department has dealt with this issue extensively, i.e., for the proposed sale of the parking lot and the lease to the Children's Museum. For purposes of the Playland Management Agreement, when they received the Parks Foundation letter, they did an extensive review of all the case law and authorities addressing the issue of what constitutes parkland alienation. Their legal analysis and legal advice to the committees should be addressed in executive session.

Legislator Barr noted that if litigation were to arise, and a court determined that it was alienation, it would not matter that it hadn't been raised before, and Mr. Nonna concurred.

Legislator Maher asked what the term of the prior agreement with Sustainable Playland was going to be. Ms. Altschiller said she would look it up and let him know.

Mr. Nonna noted that the remaining questions concerned litigation strategy, and should therefore be discussed in executive session. With a motion by Legislator Shimsky seconded by Legislator Alvarado, the committee went into executive session at 10:07 a.m. With a motion by Legislator Alvarado seconded by Legislator Shimsky, the committee came out of executive session at 11:00 a.m.

This ACT was tabled

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Gashi, seconded by Legislator Shimsky, the Committee adjourned at 11:04 a.m.

Note

Meeting went into Recess

Note

Meeting Reconvened