

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

June 14, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, NY 10601

Re: Legislation authorizing the County of Westchester (the “County”) to commence an action, if necessary, against ASF Construction and Excavation Corporation, and DECO Land Holding Corporation, to eject them, and or any other necessary and appropriate parties, from possession of certain County real property.

Dear Honorable Members of the Board:

This request, if enacted, would authorize the County of Westchester (the “County”), to commence an action, if necessary, against ASF Construction and Excavation Corporation (“ASF”), and DECO Land Holding Corporation (“DECO”), to eject them, and or any other necessary and appropriate parties, from possession of certain County real property (the “subject premises”).

By deed dated May 19, 1942, the County acquired fee title to the subject premises from the New York State Realty and Terminal Company. The subject premises is located in the Town of Cortlandt, and identified as Parcel Number 1 on Record Map Highway No. 1850, Westchester County, Map No. 13 (r-2), dated February 20, 1942. The subject premises is encumbered and bisected by U.S. Route 9, which runs north and south through said property.

Though the County has fee title to the subject premises, the New York State Department of Transportation (“NYSDOT”) has maintenance jurisdiction over it.

The subject premises is bounded to its immediate east by real property owned by ASF. ASF’s parcel has a tax identification number designated as 22.16-4-4, and a mailing address identified as 37 Roa Hook Road, Cortlandt, New York 10567.

To the west of the subject premises, and separated by two parcels in between, is real property owned by DECO. DECO’s parcel has a tax identification number designated as 22.16-3-1, and a mailing address identified as 42 Roa Hook Road, Cortlandt, New York.

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914- 995-3132*

*Please be advised that service by facsimile is not accepted.



By letter dated April 11, 2023, the County notified ASF that it was informed that ASF was intentionally entering the subject premises, and storing numerous pieces of equipment, supplies, heavy machinery, metal, scaffolding, trailers, assorted other vehicles, sheds, containers, and debris on it, without justification, or the County's permission.

The County notified ASF that its use of the subject premises was unauthorized, a trespass, and possibly a violation of Chapter 712 of the Laws of Westchester County ("LWC"), including §712.191, §712.321, and §712.351.

The County notified ASF that it was not permitted to use the subject premises, and must immediately cease and desist all activities on it. Further, the County notified ASF that if it did not cease and desist its activities on the subject premises, and provide an affirmative response regarding same by April 25, 2023, the County would take necessary legal action.

By letter to the County, dated April 25, 2023, ASF's counsel informed the County that he also represented DECO, and that ASF and DECO were in the process of establishing title to the subject premises. Counsel also requested that the County refrain from taking any action on the premises until they filed a quiet title action.

ASF and DECO alleged in the letter that the County had abandoned the subject premises for "highway purposes", which triggered a clause in its deed reverting ownership of the property back to the grantor. ASF and DECO further alleged that the County's abandonment of the subject premises, for "highway purposes", was established by an April 6, 1964 Resolution from the County's Board of Supervisors.

By letter dated May 30, 2023, the County informed counsel for ASF and DECO that the resolution cited in their April 25, 2023 letter, regarded real property separate and distinct from the subject premises, and which was conveyed to the County by a separate deed.

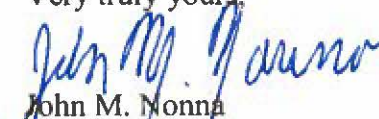
On May 24, 2024 NYSDOT informed the County that it needed to use the subject premises for an upcoming highway project, pursuant to its maintenance jurisdiction over it. Upon information, NYSDOT needs the property as a staging area for its impending reconstruction of Annsville Circle, which is a traffic circle lying to the southwest of the subject premises.

By letter to DECO's counsel, dated May 29, 2024, NYSDOT notified DECO that it was using the subject premises in violation of NYSDOT's maintenance jurisdiction, and demanded that DECO vacate the premises by June 14, 2024. In addition, NYSDOT directed DECO to reconstruct the earthen berm that NYSDOT alleged DECO had altered or removed in constructing two illegal access points onto U.S. Route 9 from the subject premises.

To date, neither ASF nor DECO has vacated the subject premises, nor have they communicated to the County that they would. As the County is the owner in fee of the subject premises, the County is entitled to immediate possession of it.

In order to protect the County's real property interests, and upon the recommendation of Hugh J. Greechan, Jr., P.E., Commissioner of the Department of Public Works and Transportation, authority to initiate legal action, if necessary, against ASF and or DECO, and or any other necessary and appropriate parties, is requested.

Very truly yours,



John M. Nonna
County Attorney

JMN/cji

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Your Committee has carefully considered the subject matter and the accompanying Act, and recommends authorizing the County to commence an action, if necessary, against ASF, DECO, and or any other necessary and appropriate parties.

Dated: White Plains, New York
June , 2024

l:cji

COMMITTEE ON

ACT NO.

- 2024

AN ACT authorizing the County Attorney to commence an action, if necessary, on behalf of the County against ASF Construction and Excavation Corporation (“ASF”), and DECO Land Holding Corporation (“DECO”), to eject them, and or any other necessary and appropriate parties, from possession of certain County real property.

BE IT ENACTED by the Board of Legislators of the County of Westchester, as follows:

Section 1. The County Attorney is hereby authorized on behalf of the County to initiate legal action, if necessary, against ASF Construction and Excavation Corporation (“ASF”), and DECO Land Holding Corporation (“DECO”), and or any other necessary and appropriate parties, to eject them, and or any other said parties, from possession of certain County real property located in the Town of Cortlandt, identified as Parcel Number 1, and having a Tax Identification Number designated as 22.16-4-4.

Section 2. The County Attorney or his duly designated representative is hereby authorized to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Ejection Action, ASF and DECO NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND AIRPORT FUND SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 10,000

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: 101-46-3300-5325

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Dianne Vanadia

Title: Associate Budget Director

Department: Budget

Date: June 14, 2024

Reviewed By: *Lawrence C. Sault*

06/14/24

Budget Director

Date: 6/14/24