

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 10, 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 10:15 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): Damon Maher, David Tubiolo, Tyrae Woodson-Samuels, Catherine Parker, Ruth Walter, and Chris Johnson; Lisa Hochman, Carolyn Stevens, Jason Chervokas, Jill Axelrod, Alie Restiano, Remote: Beth Lobello, Melanie Montalto

Present: Legislator Barr and Legislator Boykin

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

MINUTES APPROVAL

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 answered Legislator Walter's question on the difference between the BOL's current role vis-à-vis Playland versus under the 2015 and 2016 agreements and the agreement we are considering now. Mr. Nonna said there is no difference, and there hasn't been any change.

Ms. Altschiller said that the County has agreed with the current licensee for the Tiki Bar regarding an amendment which will take the County through 2022. It will be presented to the Board of Acquisition and Contract for this or next week's meeting. Ms. Altschiller suggested

discussing the terms of the amendment in executive session since they have not been made public yet.

Ms. Sacksteder said that the parties have chosen a monitor. After interviewing four candidates, two of whom were proposed by Standard and two by the County Attorney, all the parties involved agreed on two leading candidates. One of those two candidates withdrew from consideration for personal reasons, which left us with David Murphy. He had practiced for many years at Wachtell, Lipton, doing sophisticated, high-stakes litigation, and is well-known and respected in the New York legal community. He retired and was invited by a former judge to join his practice and do arbitration and mediation, which he has been doing since 2017. Ms. Sacksteder had proposed Mr. Murphy based on her prior experience with him. She has known him to be fair, extremely intelligent, substantively engaged on the issues, and having a high level of emotional intelligence. Both sides agreed that an important quality for the monitor is extensive experience and a track record of success with both arbitration and mediation. Chair Barr asked if there is a provision for removal of the monitor. Ms. Sacksteder said no because once the monitor is jointly appointed, it shouldn't be an option for one side or the other to be able to unilaterally remove him. That's why the selection process is so important, and we need both sides to have a high degree of confidence that the monitor will fulfill the role very ably. The agreement provides that there will be another joint appointment if and when successor monitor is needed, but does not specify the process.

Legislator Walter asked if the monitor selected has parks experience and Westchester experience. Ms. Sacksteder said he does not have parks experience per se, and lives in Rowayton, Connecticut, but is very familiar with Rye and Playland. He has represented governmental parties in disputes in the past, including the tobacco settlement with the states. Legislator Walter asked if we will have a cap for the cost of the monitor, or will the Board have oversight of it. Ms. Sacksteder said we are still negotiating exact terms with the monitor, which won't be finalized unless and until the agreement is approved. Mr. Murphy has proposed an hourly fee structure. We don't initially know what time commitment will be on an ongoing basis. It will likely be greater in first few years of the agreement and will decline as time goes on.

Legislator Walter questioned whether the Legislature will have the ability for oversight of the monitor's fees. Legislator Borgia said she thought the fees would be approved part of the Parks budget, and an expense beyond that required a budget transfer, the BOL would have to approve it. She questioned whether this would come through the Law Department since it's a quasi-legal matter. She will ask the Budget Director.

Legislator Walter noted that the monitor will be paid to learn about the contract, operations, etc. and if there's a dispute, there will be more hours. She asked for clarification of which party pays the fees for dispute resolution. Ms. Sacksteder said if a dispute arises, the monitor has discretion to allocate those fees other than 50/50, and decide what's appropriate in the circumstances. He has discretion to decide what's fair and sets the right incentive in a dispute. Legislator Walter also questioned whether the Legislature should have more input into choosing monitor as oversight, as we have an approval process through the Appointments committee. Mr. Nonna said there is no role for the Appointments committee, because this is not a County position. He said a lot of work went into choosing the monitor, and the two finalists for the position were both chosen by the County. He is very impressed with Mr. Murphy's qualifications and abilities. Legislator Walter said she is thinking that in the future, there may be a different Board and CE, and nothing in this agreement should diminish the Board's ability to have legislative oversight. Mr. Nonna noted that if we have to select a new monitor in the future, we will have to come before the Board to tell them the process for

selection.

Mr. Nonna noted that the BOL is currently in control of Playland to the extent that they have oversight of the Parks Department, and that will not change. Legislator Walter requested that put language in the agreement that the Legislature retains oversight of the Parks Department, and nothing in this agreement diminishes our oversight. Mr. Nonna said he doesn't know if Standard will see any reason to put this in, because this is an internal issue. He said the agreement gives the Board oversight to get financial information from Standard pursuant to Section 2-B of the MOU. We can say Section 2-B remains and doesn't diminish any of the oversight of the Board.

Chair Barr is concerned that a future County Executive may not provide information to the Board regarding the choice of a new monitor. Mr. Nonna said the Board could pass an Act that the Board would have approval rights for a future monitor for the Playland agreement. Legislator Parker asked the current rate for the monitor. Ms. Sacksteder said it is \$1300 per hour to be split with Standard for the ongoing work. Legislator Parker asked if 1000 hours sounds like a reasonable estimate of the work required for the monitor. Ms. Sacksteder said that sounds high. She noted that the idea of the quarterly report is that the parties are jointly presenting issues to the monitor that they think merit his attention, which will narrow his focus. She said she sees possibly 100 hours in the first year assuming there are no disputes. Legislator Covill said we should put language into the agreement expressly stating what the monitor's qualifications should be.

Legislator Maher said he thinks the monitor should be someone who lives in Westchester and appreciates the uniqueness of Playland. He also thinks the Board should have the opportunity to interview the monitor in person. Ms. Sacksteder said Mr. Murphy has been lives in Fairfield the area and is very familiar with Westchester and Playland, and is sensitive to the issues surrounding it.

Mr. Nonna said he would discuss the issue of alienation in executive session because it concerns legal issues and legal advice.

At 11:10 a.m., with a motion by Chairman Boykin seconded by Legislator Alvarado, the committee went into executive session. At 12:21 p.m., with a motion by Legislator Shimsky seconded by Legislator Covill, the committee came out of executive session.

This ACT was tabled

II. OTHER BUSINESS

III. RECEIVE & FILE

ADJOURNMENT

Moved by Legislator Alvarado, seconded by Legislator Smith, the Committee adjourned at 12:28 p.m.