

**RULES, ENACTMENTS AND INTERGOVERNMENTAL RELATIONS COMMITTEE
MINUTES**

**WEDNESDAY, JULY 17, 2019
3:30 P.M.**

PRESENT: Thomas J. Faggione, Chairman
Michael Amo, Katie Bonelli, Barry J. Cheney, Kevin W. Hines, James M. Kulisek,
Michael D. Paduch, John S. Vero

ALSO

PRESENT: L. Stephen Brescia, Chairman
Antoinette Reed, Legislative Counsel
Harold J. Porr, III, Acting County Executive
Dan Bloomer, Director, Operations and Cost Control
Langdon Chapman, County Attorney
David Church, AICP, Commissioner of Planning
John McCarey, Director, Real Property Tax Service Agency
Deborah Slesinski, Budget Director
Deanna Crawford, Budget Analyst
Richard Golden, Esq., Burke, Miele, Golden & Naughton, LLP

Mr. Faggione opened the meeting at 3:32 p.m. and requested everyone stand for the Pledge of Allegiance to the Flag. All members were present.

Mr. Faggione stated that Agenda Item No. II would be withdrawn until additional information was gathered.

Mr. Vero moved to request adoption of Local Law amending Local Law No. 10 of 2008, relating to the sale of certain County real property known as the Central Orange Development Area (formerly known as Camp LaGuardia), seconded by Ms. Bonelli.

Mr. McCarey explained that in 2008 they adopted a local law authorizing the sale of the Central Orange Development Area (formerly known as Camp LaGuardia). They are seeking to amend the original resolution to include the term "parties" which would enable them to sell portions of the property to multiple parties as opposed to only one entity. The towns of Blooming Grove and Chester, the Orange County Planning Department and the Real Property Tax Services Office are working together on zoning.

Ms. Bonelli commented that during a recent meeting the option of leasing was discussed and while the executive branch can do that independently, should the local law be amended to include a possible lease.

Mr. McCarey replied that it could be a sale/lease on the agricultural portion.

Ms. Bonelli asked for clarification that the executive branch can do a lease on their own without coming to the legislature, but they are coming to them today because of the legislature's responsibility over the sale of real property. Mr. McCarey replied yes.

Mr. McCarey pointed out that it was important to keep the legislature informed.

Mr. Amo referred to Local Law No. 10 of 2008 and asked for clarification on ...authorizing consideration of offers other than in response to advertisement Mr. McCarey replied that with the original local law they advertised nationally at a cost of approximately \$20,000.00 resulting in three bidders with the decision being made to sell to Mountco Corporation.

Mr. Amo asked if they would be advertising this as well. Mr. McCarey replied yes, but not nationally.

Mr. Vero expressed concerns with water rights for the towns of Chester and Blooming Grove and village of Chester and if specific wording should be included in the local law.

Mr. McCarey replied that Mountco Corporation did drill a well on the main part of Camp LaGuardia, but someone could buy the property and build wells. Discussions have been held with the towns of Blooming Grove and Chester on the possibility of tying into a housing development's water district as Camp LaGuardia always received their water from the village of Chester.

Mr. Vero emphasized that he would not want one group to buy the property with the sole intent of using it as a future water source. Mr. McCarey replied that deed and property flipping restrictions would be put in place.

Mr. Hines asked if zoning was in place. Mr. McCarey replied no, the Town of Chester is close to completion at 99% and Town of Blooming Grove should be completed by early August.

Mr. Hines asked if that would hinder their ability to sell to certain buyers. Mr. McCarey replied that both towns are on the same page and would like to see this move forward.

Mr. Hines asked for clarification on Section Two, Sale to the highest bidder after advertisement not required in the proposed local law. Mr. Chapman replied that the current local law does not require sale to the highest bidder and they as the legislature could pick one buyer for the entire parcel. The effort is to allow the sale or lease to multiple entities. If they would prefer to go with a lease and/or sale, he would draft the local law amendment to state "sale or lease" to one or more parties with the County Executive still authorizing the lease and the legislature still authorizing the sale.

Mr. Hines asked if the executive branch agreed with reserving water rights and things of that nature. Mr. Chapman replied that as the local law is currently written they are selling or leasing the parcel, but they are not selling or leasing the rights to the parcel. They are not authorizing to sell just an easement, water rights and/or sewer rights they are authorizing to sell or lease the entire parcel.

Mr. McCarey pointed out that Mr. Vero was concerned with someone buying the property and drilling wells for other locations.

Mr. Chapman replied that they would not sell to someone unless they present an offer that they find is in the best interest of Orange County. The current local law allows them to sell to one entity who's offer is in the best interest of Orange County. They would like to continue that with the exception of being sold to multiple entities or sale/lease to different entities.

Mr. Hines asked about a flipping clause. Mr. Chapman replied that it would be part of the offer and anyone putting in an offer would have to pledge that they would not sell it except to a related entity for a certain number of years or they will have the right of first refusal.

Mr. Hines asked if that language could be incorporated into the local law. Mr. Chapman replied yes.

Legislative Counsel Reed suggested they not include it in the local law because the local law is to supersede County Law Section 215. The second agenda item authorizes the Real Property Tax Director to issue an RFP and it would be more appropriate to place any conditions to the RFP in that resolution.

Mr. Chapman stated that if they do Agenda Item No. I. a., they would not need to do Agenda Item I. b. The sole purpose of the proposed local law was to sell to more than one entity but if the legislature wants added in "or lease" or "you may not sell once awarded except to a related entity" they could do so, even though they do not need to in the local law as they ultimately make the decision on who will buy the property.

Mr. Hines asked for clarification that the legislature would see the proposals. Mr. Chapman replied yes, on the sale; however, Mr. McCarey is asking for the authority to have the County Executive lease or sell the property for agricultural purposes.

Mr. McCarey clarified that it could be recreational.

Mr. Hines asked if the RFP's for a sale would come back to the legislature and/or special committee designated by the Chairman. Mr. McCarey replied that they would go back to the Real Estate Committee.

Mr. Chapman added that when the proposed local law was drafted, he did not contemplate the County Executive making the sale decision. He presumed that they would want to keep the intent of the 2008 local law in that they would decide.

Mr. Hines requested it be preserved.

Mr. Chapman asked for clarification that their goal is to allow the County Executive to lease for agricultural and/or recreational purposes at Camp LaGuardia as identified by Mr. McCarey, Director of Real Property Tax Services Office. However, if any portion of this agricultural or otherwise is to be sold they want the legislature to approve the party they deem to be in the best interest of the county. Mr. Faggione replied yes.

Mr. Hines added that the anti-flipping language needs to be incorporated.

Mr. Chapman replied that he would confer with Legislative Counsel Reed on that issue as he was unsure that on a sale they would want or need it because they will want to provide entities the opportunity to make proposals so that they can judge accordingly.

Mr. Hines asked how it would read. Mr. Chapman replied that they would need to supply him with some guidance.

Mr. Hines asked about bankruptcies being a protection measure for anyone buying the property. Mr. Chapman replied that a bankruptcy could affect it in many ways; however, he does not handle that area of law.

Legislative Counsel Reed expressed concern about the sale/lease because by giving the County Executive the authority to lease the property he could lease it for ninety-nine years with someone financing that project. While everyone may be thinking of a five- or six-year lease, it could be longer.

Mr. Hines asked if the new local law would need to be drafted before they vote as they do not know what they are voting on. Mr. Chapman replied that they provided them with a local law providing for the sale to more than one entity; however, the lease option has been brought to the table. He has no issue with adding a lease option for five or ten years into the local law or a flipping clause if they choose.

Mr. Amo recommended they think carefully about any water right restrictions because they may end up lowering the price because it may not be as attractive to potential buyers due to the restrictions. They need to find a way to get what they want without placing so many restrictions.

Mr. McCarey replied that some of the terms and conditions mentioned could be placed into the contract once a buyer has been selected or they will not accept the contract of sale.

Mr. Paduch asked if the County Executive could lease the property for ten years with an option to buy. Mr. Chapman replied no.

Mr. Vero asked for clarification that this request allows them the ability to sell to multiple buyers. Mr. McCarey replied yes.

Mr. Vero added that it does not state that they have to sell to multiple buyers, but they would have the option. He would still like to protect the water for the towns of Blooming Grove and Chester; however, that could be a separate agreement between the county and municipalities.

Mr. Chapman addressed the property flipping issue. Local municipal zoning still matters, they can flip the property to whomever they choose but they would still have to comply with local zoning. They have stated in the past that they want the local municipalities to drive this process and the towns of Blooming Grove and Chester have come in and amended their local zoning laws and therefore indicated that this is what they want. While he understands their property flipping concerns and he can structure the local law as they see fit the municipality still must be on board in the end with any land use.

Mr. Kulisek pointed out that they currently do not know what the permitted land uses are as zoning has not been finalized.

Mr. Chapman replied that the towns are rapidly moving toward finalizing their zoning.

Mr. Church reiterated that the Town of Chester zoning is close to completion; however, the Town of Blooming Grove's zoning still requires updating and should be done by September with similar if not identical zoning.

Ms. Bonelli commented that Agenda Item No. 1 a. was to amend the local law and some of the precautions they would like to see could be done further down the road when they have another bite at the apple but not appropriate to do in this local law.

Ms. Bonelli asked about Mr. Chapman's earlier comment that if they do Agenda Item No. 1. a. they would not need to do Agenda Item 1. b. Mr. Chapman replied that with all due respect they do not need the legislature's approval to put out an RFP on property the county already owns; however, they would need the legislature's approval to dispose of the property.

Legislative Counsel Reed explained that there was some confusion as to how the legislative request was written as it reads as follows: ...Request, upon passage of the amended Local law allowing sale of Camp LaGuardia to more than one entity, an RFP for agricultural, recreational, or other uses... which was why she did an (a) and (b) as they did not request the amended local law that was attached. In her opinion, they were not only asking for the local law but to issue the RFP.

Mr. Chapman clarified that they do not need their authority to issue the RFP but why issue an RFP unless they were authorized to sell it to more than one entity.

Legislative Counsel Reed reiterated that she went with what was indicated in the legislative request.

Ms. Bonelli agreed that it was very confusing, and that it was two different entities.

Mr. Kulisek asked if the current zoning was agricultural. Mr. McCarey replied that the farm parcel is agricultural but the rest of the property in the Town of Chester is light industry and offices but with this local law they would have a little more flexibility to dispose of the property.

Legislative Counsel Reed pointed out that in Section One (4) it talks about the subdivision of the land by the Director of Real Property Tax Services.

Mr. McCarey explained that the parcel is comprised of four section, blocks and lots with two towns involved and while they have the authority to move lines before they can sell, they must exempt out the cemetery.

Mr. Faggione suggested they stay focused on Agenda Item No. 1. a.

Mr. Chapman asked if they were looking to sell or lease to multiple entities or just sell. Mr. Faggione replied that they are discussing leasing; however, the item before them does not mention the option of a lease.

Mr. Chapman replied that Agenda Item No. 1. a. is for the sale to more than one entity but if they want to add lease, he would restructure the local law to state sale or lease.

Mr. Vero added that he would like to see the addition of sale or lease.

Mr. Chapman asked if they want the County Executive to conduct the lease or for the legislature to retain the rights for the lease. If they want the County Executive to do the lease would it only be for the agricultural portion and for how many years.

Mr. Vero commented that he would like the County Executive to retain that right.

Mr. Chapman asked if it would be for the entire parcel or just the agricultural portion. Mr. Vero replied either one.

Mr. Chapman asked for clarification that they would authorize the County Executive to lease any and/or all portions. Mr. Vero replied that they are currently speaking to the agricultural portion; however, it could include the other portions.

Mr. Paduch stated that if they allow the whole parcel to be leased, they will not get their money back for years. He agrees with giving the County Executive the authority to lease the agriculture portion, but they may have buyers interested in the other parcels.

At 3:59 p.m. Legislative Counsel Reed requested a five minute recess to confer with Langdon Chapman, County Attorney.

Mr. Faggione granted the recess.

RECESS

The meeting reconvened at 4:07 p.m.

Mr. Chapman commented that they have indicated that they would authorize a lease for agricultural purposes on the parcel identified by Mr. McCarey and they would authorize the County Executive to conduct it. He and Legislative Counsel Reed discussed whether the County Executive has the authority to lease automatically in the County Charter and yes, he can. Since they have a local law on the books that states it can only be sold to one entity, the County Executive can lease the agricultural piece for agricultural purposes for ten years with the remaining parcels being marketed. If that is what the committee wants, he would amend the local law that was provided. He would recommend changing the wording in Section One (4) from ..."The effect of this enactment will be to allow the sale of the property and for the property, and/or portions thereof, to be sold at fair market value"... to ..."The effect of this enactment will be to allow the sale of the property and for the property, and/or portions thereof, to be sold at fair and adequate consideration"... so that both Section One and Section Two are consistent.

Mr. Faggione asked if Legislative Counsel Reed agrees. Legislative Counsel Reed replied yes.

Mr. Cheney asked for difference between "adequate consideration" and "fair market value". Mr. Chapman replied that from a defense in litigation "fair market value" could be a question of fact as opposed to "fair and adequate consideration".

Legislative Counsel Reed asked if the agricultural parcel had its own section, block and lot. Mr. McCarey replied that it was currently 3-1-1 but would be known as 3-1-1.2.

Legislative Counsel Reed stated that she would have preferred it have its own section, block and lot before they pass the local law.

Ms. Bonelli asked if it would be done in Mr. McCarey's office. He replied yes.

Mr. Chapman commented that he was unsure that the section, block and lot needed to be identified in the local law.

Mr. Faggione asked Mr. McCarey, in his professional opinion, was the leasing of the agricultural parcels a sound practice. Mr. McCarey replied yes; however, his first choice would be to sell all parcels.

Mr. Hines asked if the county would continue to own the cemetery. Mr. McCarey replied that it would be subdivided off as they cannot legally sell a cemetery.

Mr. Kulisek commented that due to the concerns and questions brought forward he would suggest tabling the request for one month.

Mr. Kulisek motioned to table the request for one month, seconded by Mr. Paduch.

Mr. McCarey replied that while he respects their decision they need to move forward, and the current local law only allows them to sell to one party. They have several people interested and they need the flexibility to either sell the whole and/or part of the property. In addition, anything they sell would come back to the legislature for approval and, in his opinion, it would be wise to move forward.

Legislative Counsel Reed requested the committee go into executive session citing attorney-client privilege.

Mr. Vero moved to enter into executive session pursuant to **§4503** of the Civil Practice Law, attorney-client privilege, seconded by Mr. Cheney.

The committee entered into executive session at 4:15 p.m.

Mr. Cheney moved to leave executive session at 4:26 p.m., seconded by Mr. Paduch.

The committee left executive session at 4:26 p.m.

Mr. Kulisek motioned to withdraw his motion to table, seconded by Mr. Paduch.

Legislative Counsel Reed clarified that they need a motion to amend the local law to include "fair and adequate consideration" in Section One.

Ms. Bonelli motioned the amend the local law to include fair and adequate consideration, seconded by Mr. Vero.

Motion carried. All in favor.

Mr. Paduch asked about the water rights issue. Mr. Chapman replied that it would be stipulated in the contract.

On roll call, the local law as amended passed by the following vote:

Motion carried 8-0 with Legislators Amo, Bonelli, Paduch, Cheney, Hines, Kulisek, Vero and Faggione voting in favor.

Legislative Counsel Reed requested that Agenda Item No. I.b. "Upon adoption of amended Local Law allowing sale of Camp LaGuardia to more than one entity, authorizing the Real Property Tax Director issue an RFP for agricultural, recreational, or other uses consistent with local zoning. Parcels consisting of 138.4 acres in the Town of Chester: Chester 3-1-1- (portion of) = 93.97 acres; Chester 3-1-2 = 40.80 acres; Village of Chester 106-2-2 = 3.63 acres; Total = 138.40 acres (new S/B/L will be known as 3-1-1.2)" be withdrawn.

Mr. Faggione granted the request.

Mr. Vero moved authorizing the Director of Real Property to issue an RFP for the sale of a portion Section 20, Block 1, Lot 10.21 in the Town of Goshen (known as the "Quarry" currently leased to Tilcon of New York), seconded by Mr. Faggione.

Mr. McCarey provided the committee with a brief overview of the property. In 2016, a request was made for an engineering study on the quantity of potential rock extraction with his department estimating 3.66 tons. He presented the committee with a handout from Tectonic Engineering & Surveying, P.C. on the 34.6-acre quarry site in the Town of Goshen (see original minutes). In addition, there are not many buyers for the location besides the adjacent property owner and in 2016, they made an offer of \$500,000.00 which is low and, in his opinion, the number should be higher. The RFP would put the minimum price at above \$600,000.00 and he would put it at between \$750,000.00 and \$800,000.00.

Mr. Faggione asked who appraised the property. Mr. McCarey replied L.T. Bookhout, Inc. and it was also appraised in 1990 and in 2004.

Mr. Faggione asked for the appraisal in 2004. Mr. McCarey replied that it was updated in 2015 for \$318,000.00 on the 34.6 acres.

Mr. Paduch asked if that was for the land or a mining operation. Mr. McCarey replied a mining operation.

Mr. Paduch expressed his disbelief as they met with an individual involved in a mining operation who stated that it could be worth \$2 million. Do they have a contract with Tilcon and what are they paying.

Mr. McCarey replied that the lease with the county goes back to the 1970's and they pay the Budget office on the amount of stone taken from the county parcel which averages approximately \$6,000.00 a year.

Mr. Cheney commented that they have not had the opportunity to look at the handout and he would like to have Tectonic come before the committee before moving forward. In addition, they are missing an evaluation of the resource and even though they have an estimate on quantity they do not know what the value is, and that information should come from an expert in the mining field. Because they may be in a situation where there is only one buyer, they need to ensure that they get the best deal possible for the county and, as a committee and the legislature, they need to see the RFP and the basis for the contract of sale. Since Tilcon is not taking much, the current agreement is not hurting the county; however, it seems low based on Mr. Paduch's comments as they have been led to believe that the resources are more valuable than what their current agreement is with the property owner. Lastly, the current agreement only covers part of the acreage not the entire acreage and what is the status of their mining permit because based on his calculations that permit expired July of 2018.

Mr. McCarey replied that it expired in December 2018 and his understanding was that they received an extension.

Mr. Cheney asked that the sketch relative to Tectonic (on file with the Real Property Tax Service Agency) as viewed by the committee be distributed as it demonstrates the significance of them obtaining the property not being leased and the tremendous value in terms of resource.

Mr. Cheney motioned to withdraw the request and to work toward receiving answers from pertinent individuals so that they can make an educated decision relative to how they should proceed given that there is only one potential buyer for the property, seconded by Mr. Paduch.

Mr. Amo asked if Mr. Cheney's motion addressed bringing back the request at next month's meeting or was it open-ended. Mr. Cheney replied that it was open-ended.

Mr. Amo suggested they bring Tectonic to the committee meeting next month to get their questions answered. He could support it if there was a limit on when it would come back.

Mr. McCarey stressed that there is a great deal of liability with the property.

Mr. Paduch suggested having a specialist come before the committee to explain what the resources are worth.

Mr. Faggione asked that Mr. McCarey work on obtaining the information needed for the committee in 30 days but if it needs to go beyond 30 days, he would ask that Mr. McCarey advise the committee that he will need extended time. He would suggest they leave it open-ended with the invitation to come back next month.

Ms. Bonelli asked if there was a reason why they could not ask the director to begin issuing the RFP with the understanding that in 30 days he would have to come back with additional information and what would the turnaround be in getting the information. Mr. McCarey replied a few weeks. This was part of his department's 2019 budget and it cannot be done parallel because even if he received a concrete offer, he would have to bring it back to the committee for acceptance.

Mr. Faggione asked if Mr. McCarey could provide the committee with the answers requested within the 30 day time period. Mr. McCarey replied that it was possible.

Legislative Counsel Reed explained that her understanding was that the intent of the legislative request was to adopt a local law to supersede New York State County Law Section 215 as the proposed local law from 2016, which has been attached, was never adopted to consider offers other than the highest responsible bidder. Mr. McCarey is not here for the issue of an RFP, but a local law and he needs the legislature's authority before he can issue the RFP and the acceptance of offers other than from the highest responsible bidder.

Ms. Bonelli asked if another action must be taken before they direct Mr. McCarey. Legislative Counsel Reed replied that Mr. McCarey can issue the RFP, but he needs their authority to adopt the local law which was not done in the past and something she would like confirmed by the County Attorney. They would not lose the whole local law process for another 30 days and all their questions on the possible sale and purchase price could be answered.

Mr. Cheney stated that the work Mr. McCarey does could be for naught until they meet with the experts and know how the RFP should be constructed. One of his concerns and something he would like to hear from an expert is if there are ways in which the buyer with county property in hand could make changes to the mining plan that would gain additional material being extracted and

if so then the RFP and the contract must establish a means in which the county would receive compensation if that were to happen.

Mr. Hines referred to Section 2 of the proposed local law of 2016 which talks about \$500,000.00; however, they do not know if that is a good figure.

Legislative Counsel Reed clarified that is for an amount not less than \$500,000.00.

Mr. Faggione added that after hearing Legislative Counsel Reed's statement he finds it imperative that they discuss the motion to table this request for at least 30 days. The legislative request reads: Requesting authorization from the County Legislature to issue an RFP for the sale of portion Section 20, Block 1, Lot 10.21 in the Town of Goshen (known as the "Quarry" currently leased to Tilcon of New York). However, Legislative Counsel Reed has indicated that no action was taken on the local law in 2016. He would request that items come before this committee in a logical and clear manner.

Mr. Faggione asked if Mr. Cheney was okay with the tabling of the request be open-ended with a suggestion of coming back in 30 days. Mr. Cheney replied yes, and Mr. Paduch agreed as the second on the motion.

Chairman Brescia recommended they move the process along in the next two to three months as they are finally in the home stretch. Mr. McCarey has worked on this for a long time. He understands that the main concern is price and getting the proper recompense for the property and he would like to see it sold for liability reasons also. If they decide that it will not be sold, then a proper lease agreement must be done. He would like to see them bring Tectonic come before the committee in August to answer questions, receive a proper value and minimum bid price as there could be other suitors.

Mr. Amo suggested they table it for 30 days as it would force them to do something.

Mr. Faggione stated that he would have all relative parties at the next Rules, Enactments and Intergovernmental Relations committee meeting in August.

Ms. Bonelli noted that the County Attorney had arrived, and he would like to hear from him on this issue.

Legislative Counsel Reed asked that the motion to table be suspended for five minutes.

Mr. Faggione granted the request.

Mr. Chapman stated that they are seeking the endorsement of the legislature to sell the property and to supply them with the minimum bid price. While they do not need the legislature's approval for an RFP, but given the property, they will not get the right price until it is placed for sale.

Legislative Counsel Reed asked if they are requesting the legislature to adopt the proposed local law from 2016 and that was submitted with the legislative request.

Mr. McCarey asked if it could be declared surplus property and authorize the sale without a minimum bid.

Mr. Chapman stated that the 2016 proposed local law was drafted to sell only to Tilcon. Anyone can bid and while they might only get one bidder, they might get more. The purpose today was to get the endorsement to sell and the amount of the minimum bid.

Mr. Hines asked for clarification that Legislative Counsel Reed was asking if Mr. Chapman wanted "not the highest bidder" included. Legislative Counsel Reed replied yes.

Mr. Chapman replied that this local law only authorizes the sale to Tilcon for an amount not less than \$500,000.00. They need to advise them on how they want to proceed, and do they want them to sell to only the highest bidder or highest bidder with minimum price. He understands the legislative request could have been written differently but he does not think that the administration wants to put out an RFP to the sell property without support.

Mr. Cheney commented that there have been fits and starts on the process, but they are finally to the point that they can define what is missing and get the appropriate people in to explain and get those answers that would allow them to determine a fair value for the property.

Mr. Chapman noted that from their perspective that was fine and all they ask is that they tell them the terms they want.

Mr. Porr added that the question of liability has been around for years and complaints have been filed against the county for shattered glass from operations at the facility. In addition, they place approximately \$500,000.00 in expected revenue into the 2019 budget based on the sale of this property and it needs to close in 2019.

On roll call, the motion to table passed by the following vote:

Motion carried 8-0 with Legislators Amo, Bonelli, Paduch, Cheney, Hines, Kulisek, Vero and Faggione voting in favor.

The meeting adjourned at 5:00 p.m.