

**ECONOMIC DEVELOPMENT & ENERGY COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Economic Development and Energy Committee was held at the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, in the Presiding Officer's Conference Room on Thursday, **December 6, 2001** at 2:30 p.m.

MEMBERS PRESENT:

Legislator Jon Cooper, Chairman
Legislator Andrew Crecca, Vice-Chair
Legislator Ginny Fields
Legislator Martin Haley

ALSO IN ATTENDANCE:

Legislator Vivian Fisher, Legislative District No. 5
Paul Sabatino, Counsel to the Legislature
John Cortez, On The Move
Virginia Acker, Legislative Aide to Presiding Officer Tonna
Gerard McCreight, Legislative Aide to Legislator Cooper
Barbara LoMoriello, Legislative Aide to Legislator Cooper
Fred Pollert, Director, Budget Review Office
Kevin Duffy, Budget Review Office
George Wallace, Suffolk Life
Gordian Raacke, Citizens Advisory Panel
Alice Amrhein, Economic Development
Todd Johnson, IR/County Executive's Office
Nanette Essel, Legislative Aide to Legislator Fisher

Minutes Taken By:

Kimberly Castiglione, Legislative Secretary

(The meeting was called to order at 3:00 p.m.)

CHAIRMAN COOPER:

I would like to call to order the meeting of the Economic Development and Energy Committee. Legislator Fisher can lead us in the pledge.

(Salutation)

We have one yellow card. John Cortez.

MR. CORTEZ:

Before I begin on what I would want to speak about, for the last four years I have been an advocate for the disabled and I have tried to do everything positively I could for the community. Our organization has done a lot for people with disabilities. As of January first, I will be leaving On The Move. I am going to be working with the Town of Brookhaven to develop sports and recreation for the disabled, bringing the sports and recreation to light. There is a lot out there right now but it is just not promoted, it is not publicized, and there is just not enough participation. So that is where I will be moving on to. I want to thank each and every one of you for everything you have done for me and our organization over the last four years.

LEGISLATOR FISHER:

Congratulations.

MR. CORTEZ:

Thank you very much. Over the last year – in fact, it was a year ago I sat down with Legislator Haley and I had said we need to promote accessible accommodations on Long Island. He sat down and said, “Well, go out and look at them and put them in a database and put them on a computer and let everybody know about them”, and that is what we have done in the last I would say year or so. We probably have over 1,000 locations that are wheelchair accessible, that anyone with a disability can go to.

One of the positive effects of our organization, what we will do is go out to the place itself, whether it is a hotel or restaurant, and visit them and we verify the information. We make sure there is parking, make sure I can get into the building, make sure I can move around and I can use the facilities. It is a little bit different when someone in a wheelchair goes as opposed to when someone is not in a wheelchair.

If you would like a copy I printed out our restaurant website page and it kind of got cut off at the end so I could explain it as I go along. One of the things we did is we have been in touch with the Long Island Convention and Visitors Bureau, the Office of Handicapped Services, to promote sites that are wheelchair accessible. I have a letter here, April 18th, from Michael Hollander stressing to work together us and promote the sites the way we do. A letter from Legislator Caracappa to Michael Hollander and Bob Gaffney basically just saying don't reinvent the wheel, this guy has already gone out and done the work with his organization, just link onto it.

Recently we had a meeting at Legislator Fisher's office that basically I am sorry to say it didn't turn out to well. One of the reasons is that Michael Hollander of the Long Island Convention and Business Bureau and Bruce Blower agree that what they will do is take the form that is in your hands, send it out to a business, the business owner will fill it out, send it back. Someone in the LICVB will enter the information in a computer and now it is on their site as wheelchair accessible. But they left out one key component. They didn't verify the information. So how do you know it is true? What we do is we go out to the site and we verify it. And what I am asking you today is please stop this in its tracks now in the early stage.

If you look at it, the questions are confusing, some have two questions in one spot where there is an answer. If you take a moment to look at our online application basically it has the information right there. What a business owner can do is go to our website, fill out the form, and as you can see, the first paragraph, we won't add you to our website until we verify the information.

CHAIRMAN COOPER:

When did Mike Hollander send this out?

MR. CORTEZ:

Recently. I would say a month.

CHAIRMAN COOPER:

He was aware of all the work that you had done already?

MR. CORTEZ:

Oh, yes. As I said, we have had a meeting together.

CHAIRMAN COOPER:

And why did he chose not to use your information or provide a link from his site to your site? Why do they want to reinvent the wheel?

MR. CORTEZ:

I don't have an answer.

LEGISLATOR FISHER:

Well, he had given you an answer at the meeting. There are just – the links have to be limited because there are many organizations that provide some level of service. The link

from the LICVB website can't occur too early in the encounter with the person who is at the website because then what happens is they go to the link and then they are out of the LICVB website and you want to keep the patron in the website as long as you can so that they are exploring options of what is available from the Long Island Convention and Visitors Bureau. You want to keep people at your website.

What Michael Hollander suggested was that they put On The Move at the end at the reviewer level so that when someone has done the exploration, has found a restaurant, then they can go to the link at that point as a reviewer, to go to On The Move at that point.

So, it was a disagreement between them and there was a problem with Michael Hollander and Bruce Blower with John's website. They felt that there were things missing in it, that they found it difficult to use.

And I don't want to speak for the LICVB, I am just telling you what happened at the meeting in my office. I think it probably would be more helpful to have Mike Hollander here or Bruce Blower so that they could speak for themselves. I certainly am not in the position to speak for them. I am just answering the question.

LEGISLATOR CRECCA:

Can I just ask one question about that, Vivian, if you don't mind?

LEGISLATOR FISHER:

Yes.

LEGISLATOR CRECCA:

Do you know if it came up during the meeting, or John for that matter, on the website, the LICVB website, do they have part of that where the handicapped can go in and check to see if it is handicapped accessible and all that?

LEGISLATOR FISHER:

That is what they are trying to build up.

LEGISLATOR CRECCA:

I didn't know if it was existing already.

LEGISLATOR FISHER:

I am not certain. I don't remember that part of the conversation. I don't have my notes. I didn't this was going to be –

LEGISLATOR CRECCA:

No, that's okay.

CHAIRMAN COOPER:

The basic problem is that with their form no one verifies the information. As John was saying earlier, there is the possibility of someone in a wheelchair trucking all the way out to a tourist site, destination, an hour and a half drive, getting there, and it is not wheelchair accessible despite what the site said.

MR. CORTEZ:

Exactly. And if I could just – I understand Michael's point. However, if someone with a disability were going to the LICVB site, they would be looking for specific information. We have that specific information, so maybe in the first section it should say for our physically challenged visitors please visit – because on our website we have on each page the LICVB as a link. So they would be able to go to restaurants and then cut back and go – you know, we could play tag. And that is all I am saying is we should be working together. We should be putting the information out there that is beneficial to the disabled patient. That is all I am asking for.

CHAIRMAN COOPER:

Are there any questions?

MR. CORTEZ:

No. I just hope I can hear from you in the future as to what might transpire and hopefully something will change to benefit the disabled person.

CHAIRMAN COOPER:

I will try to reach Mike Hollander tomorrow and I will broach this issue with him. Obviously there has already been a meeting that was not fruitful, but I will give it a shot and then we will be in touch.

MR. CORTEZ:

Thank you very much.

LEGISLATOR FISHER:

John, who will be heading up On The Move.

MR. CORTEZ:

Our Vice President, Angela. The letters are going to be going out right before the holiday. We are very excited about the sports program. It is going to motivate more people.

CHAIRMAN COOPER:

There being no further speakers, we can move to the agenda. We will start with tabled resolutions.

TABLED RESOLUTIONS

IR 1602-01 (P) – Directing County Department of Public Works to Prepare Co-generation RFP for County Facilities at Yaphank. (Caracciolo)

I will make a motion to table the resolution.

LEGISLATOR HALEY:

Second.

CHAIRMAN COOPER:

All those in favor? Opposed? The resolution is tabled. **(Vote: 3/0/0/1 Not Present: Legislator Fields)**

IR 1790-01 (P) – Local Law to Establish Lamp Light Conservation Policy to Conserve Energy. (Cooper)

Motion to table.

LEGISLATOR CRECCA:

Second.

CHAIRMAN COOPER:

All those in favor? Opposed? The resolution is tabled. **(Vote: 3/0/0/1 Not Present: Legislator Fields)**

INTRODUCTORY RESOLUTIONS

IR 2150-01 (Non P) – Authorizing Use of Old Toll Building at Smith Point Bridge by Bay Area Civic Association. (Towle)

LEGISLATOR HALEY:

Motion.

LEGISLATOR CRECCA:

Second.

CHAIRMAN COOPER:

All those in favor? Opposed? The resolution is approved. **(Vote: 3/0/0/1 Not Present: Legislator Fields)**

SENSE RESOLUTIONS

Sense 101-01 (P) – Memorializing Resolution Requesting LIPA to Eliminate Temporary Fuel Surcharge. (Fisher)

CHAIRMAN COOPER:

Motion to approve.

LEGISLATOR CRECCA:

I make a motion to discharge without recommendation.

CHAIRMAN COOPER:

I will second that motion. All those in favor? Opposed? The resolution is discharged without recommendation. **(Vote: 3/0/0/1 Not Present: Legislator Fields)**

Time for procedural motions.

Motion No. 7 – 01(P) – Extending Retention of Citizens Advisory Panel for LIPA Oversight for 2002. (Cooper)

Motion to – let's see if we can get Ginny here. We can pass over this.

LEGISLATOR HALEY:

Well, why don't you start. I want to have some discussion on it.

CHAIRMAN COOPER:

Sure.

LEGISLATOR FISHER:

Don't you need to have a motion?

LEGISLATOR HALEY:

I mean I want to have a discussion because I am concerned about a couple of issues. Yeah, we have time.

I am very, very concerned about what has transpired in the past year with CAP. Prior to that, you know I have been very supportive of providing some sort of oversight of LIPA. And simply knowing that that was one of the down sides of supporting LIPA is that LILCO had some oversight with the Public Service Commission and we failed to have oversight.

The thing that concerns me is I think that you have over reached in a number of arenas, number one of which is a couple of months back, and I think you heard my concerns, when I felt that you started to develop an organization what I felt was a pressure group on this particular Legislature. At that particular juncture you totally lost all of my support.

Of recently, and I am concerned about I will ask about this next, is that there was some newspaper articles about the joining of a lawsuit. The thing that is very important for you to know is your fiduciary responsibility. We are not asking you to join in lawsuits, not that you did and you will be able to respond to that, all right. We didn't ask you to go out there and find pressure groups in order to facilitate your own relationship with us. We asked you to simply go out and make sure you keep an eye on LIPA for us and report back to us. That, in my view, is your only function. And I appreciate that because nobody else is doing it for us.

If I don't have assurances from you at this moment that those other issues that I brought forward and now a non-issues, those issues have to be non-issues, if I don't have that

assurance now, I am going to have a difficult time supporting extending your contract. Would you like to respond to that, if you may, Mr. Chairman.

MR. RAACKE:

I responded to the issue of the Nine Mile Two litigation already in a letter of which you have a copy of I believe and the answer on that was that we joined CAP, joined in a lawsuit initiated by the STAR Foundation regarding the Nine Mile Point Two nuclear reaction. However, we have billed no time under the County contract for any involvement in this lawsuit. No funds have been spent or requested from the Suffolk County Legislature. So while it is true that we do certain things that are outside the scope of the contract with the Legislature, of course we have not billed for that. So there are lot of things that CAP may be engaged in at one time or another, but the question really as far as I can tell on this is my understanding on this.

My understanding so far is that those things of course we are free to do as long as we don't do them under the County contract. I, of course, did not make any representation to anyone that this was a lawsuit brought on behalf of the Suffolk County Legislature, it was merely on the behalf of STAR and CAP.

LEGISLATOR HALEY:

Okay. I am aware of the contract services that we have, and I will ask Counsel perhaps if he – and I know it is difficult. Maybe Counsel can just reiterate that. It is very important that you stay will within the constraints of the contract and the relationship we have.

On the other point did you want to respond – or Andrew, did you want to talk about –

LEGISLATOR CRECCA:

Yeah, on that one point because it is on that particular point that Gordian just spoke about and that is why I thought this might be a good time to interrupt here.

I recognize and I understand that CAP has its own things that it does outside of what Suffolk County hires it to do. The problem I have had this year, and the problem, I think, I have stated again is that that is not -- people identify CAP as the Suffolk County Legislature's organization. Whether that is right or wrong, I believe that that is how they are identified. So when CAP goes out and speaks, I mean, I know because we got calls on this most recent lawsuit. It doesn't matter whether they were calls for or against, you know, taking such action – we had about four calls in my office and they all wanted to know why the Legislature was doing this or either praising the Legislature for doing it.

The bottom line is that it wasn't the Legislature doing it, it was CAP. I had no idea it was coming, which again, you have a right to exercise your own independence as an organization. That is the problem I have, though. I do not believe that an oversight committee or somebody we are hiring and paying a lot of money, \$200,000, I am not comfortable with having that be an organization that is out there doing their own things because people don't see it that way on the outside. It also can, as I have said all year, create conflicts, conflicts of interest. As our main consultant, if, and I am not saying if we are for or against the lawsuit or whatever, but now it appears that Suffolk County supports that lawsuit. I am not saying we do and I am not saying you represented that, Gordian, so don't get me wrong. That is my concern.

One of the things I stated earlier in the year, and that is how I feel now, is that if we are going to do oversight, we should do it either with an independent consultant that is only doing that for us and not doing other major energy things, or I would even support hiring somebody in-house that is our own staff member as an employee of the Legislature. And again, these are just possibilities.

LEGISLATOR HALEY:

How much are you going to pay?

LEGISLATOR CRECCA:

If it is \$200,000 I'll take the job, right? And I think there can be a more efficient use of the \$200,000 in that way. The problem I have is the conflict and I have made that clear throughout the year, and now it has just come to a head in the last few weeks again with this lawsuit and CAP taking a position and being a party to that lawsuit. Again, they are our consultants, they are on our contract.

CHAIRMAN COOPER:

Well, Gordian, I have only been here for a couple of years. Has this come up before in the recent contract that was negotiated? Where are the guidelines that we are not supposed to exceed, and how this done in the past?

MR. RAACKE:

I think this was clear from the beginning. There was discussion about this, if I remember this correctly, in the previous – under Mr. Guldi's leadership in the committee, and several times, I think, I said well, of course there is this issue as to when I am out in public let's say speaking to a reporter. On whose behalf do I speak? I try to make it clear every time I can that I am not speaking on behalf of the Suffolk County Legislature. And I don't think that is the perception out there. I don't think I am perceived as a spokesperson for the Legislature in any way on these issues. Now, there may be – some people still may have the wrong perception, but no matter what you do that may always be the case to some place. But I have done nothing, I think, to create the impression in any way that I am speaking on behalf of you or the committee or the Legislature.

LEGISLATOR HALEY:

Given that, I am concerned – I think what you have to convince each and every one of us, is besides the perception of conflict, is the one of objectivity. I am very concerned that under any circumstance, whether it is this particular lawsuit, or any other lawsuit, if you are already predisposed to participating in the lawsuit, how are you going to be objective –

LEGISLATOR CRECCA:

Aren't you a party to the lawsuit already?

MR. RAACKE:

We joined the lawsuit.

LEGISLATOR CRECCA:

They joined the lawsuit.

LEGISLATOR HALEY:

I am talking about objectivity. I am concerned about should we decide that we wanted to participate in something like that, how are we going to educate ourselves to make a decision on whether or not to participate when you are already predisposed or they are already predisposed to, in this particular instance, against the Long Island Power Authority. I am not predisposed against the Long Island Power Authority. I am predisposed in making sure that Suffolk County gets its fair shake out of it, whether it is representation on the board of directors, which I don't believe it really has. Even though we have the same equal numbers I don't believe we have the right representation. And I think it is incumbent upon you to come give us objective information on both sides of every issue. It is hard for me to believe that you are objective when you are participating in a lawsuit and are already predisposed to a particular action, which we may or may not participate in.

Now, when we talk about conflict, the difference between what is technically a conflict and what we think appears to be a conflict – I think we just had somebody design because of the appearance of a conflict – and I am very much concerned about that. I want to make sure that under any circumstances, to the benefit – and that is why I have supported CAP, because I honestly felt we were at a loss in the County because we didn't have anybody in the County, whether it is on the Executive side or the Legislative side, anybody that can effectively go and look at LIPA and watch them on a day to day basis, so to speak, and give us some objectively. I have a person friend on the LIPA board, but I know that on any given day he is going to give me the stick and I understand that. And when you take up a lawsuit

you are already predisposed and it becomes difficult for us, as opposed – for instance. If you were an attorney and you were representing someone, okay, you are typically going to avoid certain areas if it appears that it is going to effect your fiduciary responsibilities.

In other words, CAP has certainly every legal right to go and participate as an organization in a lot of activities, but if you choose to participate in activities that you need to be objective with us about, it becomes a problem. It becomes a significant problem, because we may want – because 18% interest in Nine Mile is a very important – was a very significant issue that was brought up when we were looking to support the whole LIPA program. Very significant. There were Legislators on both sides of the aisle and they had difficulty participating or supporting the whole LIPA contract because of Nine Mile. But now that concept, their problems, or that issue put aside LIPA is in fact here, but it is still sensitive to many Legislators. Maybe not perhaps as much to me as to others, and that is part and parcel of the whole operation.

If CAP wants to participate in other arenas, whatever that might be, alternate energies, we need you to be objective about your relationship with LIPA and LIPA's relationships. If you start participating when we give you a narrow view – just give us an objective view of LIPA. If you want to play in all these other arenas, fine, but if you are going to participate in another way and taking a position concerning LIPA, then I think it is a fatal conflict and I think it is a problem.

MR. RAACKE:

I don't think I have ever said that I would be an objective view. I am biased. I have a view that is pro consumer. I am a consumer advocate. I am not, and I don't think you can expect me to be, objective on LIPA issues the way let's say {Jeff} would be objective. I try to look out for the interest of the consumer, I try to look out for the interest of residents in Suffolk County, and I think that is my role. Therefore, I will tell you my honest opinion. If that is what you call unbiased, I would agree that is what I will do.

LEGISLATOR HALEY:

I appreciate that. But you are asking me to support extending your contract when I haven't been able to objectively ascertain whether suing LIPA relative to Nine Mile serves the interests of the constituents I serve. I haven't been able to ascertain that yet. So now I am in a precarious position. I think that from a – all right, I will even give that, well, I am not going to be that objective. It seems to me that even if you have, if you are slighted towards one way or another, that's fine as long as we understand from disclosure perspective. But you still have to be able to from a fiduciary perspective, give us both sides of the picture on any given day. This is what they have represented, this is what they say, this is what I say. This is the ups for this circumstance, this is the downs. Because we are depending on you to help us make a decision. If you are already predisposed in a certain direction, then it is a major problem.

I would suggest that we find a way of maybe rethinking our relationship with you. It doesn't mean that I am prepared, because in absence – I would just assume not give it to you, quite frankly. But in absence of being prepared with an alternative with providing some sort of objective oversight of LIPA, it is difficult just to say no.

CHAIRMAN COOPER:

Legislator Fisher.

LEGISLATOR FISHER:

I can wait until the members are finished. I am not a member.

LEGISLATOR CRECCA:

I have questions for Budget Review and a little bit of follow-up to Marty. So if you want to go ahead, it doesn't matter to me. I would rather have everything aired out.

LEGISLATOR FISHER:

I agree with some of what you are saying. It is just that we have to be careful where CAP is

acting as an agent of the Legislature or the perception of that. However, I take great exception at comparing CAP's participation in the lawsuit in any way with the conflict of interest that we just saw vis-à-vis the Chandler Estate, where there were implications of personal gain or personal relationships. CAP entered that lawsuit as advocates for consumers as a citizen's advocate. So, that is really a very unfair comparison.

LEGISLATOR HALEY:

That was just a shot.

LEGISLATOR FISHER:

I know it was just a shot, and that is why I have to just say this to counter the shot into the record because it was really a stretch. I think that what we have to do, Gordian, is again, I am fairly new and CAP was there when I came on board, and is the definition of CAP to act as an agent of the Legislature?

(Legislator Fields entered the meeting at 3:30 p.m.)

MR. RAACKE:

That is handled by the contract and --

LEGISLATOR FISHER:

Was CAP created as an agent of the --

MR. RAACKE:

No, CAP was not. It is clearly spelled out in the contract that only with prior approval by the Legislature may I speak on behalf of the Legislature. And that is why once again I make this very clear wherever I go that I am not speaking or acting on behalf of the Legislature.

LEGISLATOR FISHER:

Okay. But can you speak, can CAP speak on its own behalf publicly? In other words, does CAP have an existence outside of its representation of the Legislature.

MR. RAACKE:

Absolutely. We are a not-for-profit corporation. We are an organization that deals on many issues and many fronts. The work for the County is part of the work that we do, and is certainly not the only thing --

LEGISLATOR FISHER:

Okay. So it is like asking Catholic Charities if they are having a contract with us, that they cannot have any other position where they use the word Catholic Charities --

LEGISLATOR HALEY:

Unless they agree to that.

LEGISLATOR FISHER:

Unless they agree to that. What do you mean by that?

LEGISLATOR HALEY:

I mean you can ask them to agree to such restraints and they can agree to that.

LEGISLATOR FISHER:

Okay. But we have never asked CAP to agree to those restraints.

MR. HALEY:

It is in here. The second paragraph.

LEGISLATOR CRECCA:

Can I ask Budget Review a question?

LEGISLATOR FISHER:

Can you tell me what paragraph that is in so I can read that?

MR. HALEY:

Second.

LEGISLATOR FISHER:

“As you recall, Section 3F of your May 16, 2000, contract with the Suffolk County Legislature and Section { 16-1} of your Suffolk County Charter, precludes the initiation of litigation on LIPA related matters in the absence of legislative authorization.” Okay. So they can act on their own behalf, but not when it comes to LIPA.

LEGISLATOR CRECCA:

That is not what that says.

LEGISLATOR FISHER:

In litigation.

LEGISLATOR CRECCA:

Oh, right, yes. I'm sorry.

MR. RAACKE:

And of course we did not file this litigation on behalf of the Suffolk County Legislature. That would be a breach to this contract.

LEGISLATOR HALEY:

I would rather have Counsel read it.

MR. McCREIGHT:

Paul is taking a personal break.

CHAIRMAN COOPER:

The question I have always had was that the only restriction of LIPA – CAP were activities where they might be restricted if they bill to the Legislature for those activities. I never thought –

LEGISLATOR HALEY:

It is out of context.

CHAIRMAN COOPER:

You have to ask Paul, really.

LEGISLATOR CRECCA:

I have a question for Budget Review. Do you want me to ask that now or?

LEGISLATOR FISHER:

I am finished. I am not even a member of the committee. I am just a guest.

LEGISLATOR CRECCA:

I guess my question is is that a lot of what we are hearing is that, which has been brought up in the past, is that we've – there are sometimes conflicts. Like if we wanted to say to CAP go look at this Nine Mile, which I know it has come up during the last year, this idea of their still having an interest in that and all that. Right now there is no question that if we hired them to look into that particular issue there would be a conflict. They are a party to a lawsuit on that direct issue.

I guess my question is what would stop us from taking the \$200,000, putting it in the 456 account and using that \$200,000 on a case by case basis, issue by issue basis, to hire consultants, including CAP, for certain things.

So let's say we wanted to look into, I don't know, window conservation. Do you know what I

mean, if that was something we wanted to do. Or for that matter, to look into a particular issue regarding {pole} use by LIPA, whatever it is. We can turn around then and do a resolution or out of committee \$40,000 to CAP to report back to us and set the parameters, one of the things we have been talking about doing this year. Could you do that without have a formal – and not have a contract with CAP, but if that would allow us to go to other consultants, too, possibly.

MR. POLLERT:

You could. Currently the money is in our 456 account. The contract expires at the end of the year, I believe, with CAP. So at the expiration of the contract you could decide not to reenter into a new contract with CAP, but go out to other consultants as you see fit. Just from a practical point of view I believe that we are the sole revenue source of CAP. So to the extent that you say, gee, we want to hire you on a case by case basis, CAP may cease to exist without a –

LEGISLATOR CRECCA:

I don't mean to interrupt you, but how –

MR. DUFFY:

We have been told that in addition to us, Gordian's office informed us that also have secured a \$50,000 grant, I believe.

MR. RAACKE:

Yes, from the Department of Energy last year.

LEGISLATOR CRECCA:

Last year? For this year's budget, in other words?

MR. RAACKE:

That is being spent in 2001.

MR. POLLERT:

It is a grant to require you to do specific things. So if they were not funded by the County – if you decided to go –

LEGISLATOR CRECCA:

If you are saying it is solely funded by the County – I don't mean to interrupt you, Fred, but this goes back to – and we have a contract with them that says, and I know we have to get a law interpretation on the litigation with LIPA, if we are their sole source of funding, I mean, I am going to assume, and I guess the question should be directed to Gordian, then when you do these other activities that you are talking about, you are doing those on a pro bono basis?

MR. RAACKE:

We don't do them on County billing. I cannot –

LEGISLATOR CRECCA:

What is funding that, though. That is what I am asking. It is obviously coming out of the same CAP office, correct?

MR. RAACKE:

Right.

LEGISLATOR CRECCA:

And if there is no other funding – you have computers, you have equipment, you have overhead, you have office space. You know, there is a question as to is that really coming out of – are we maintaining an office for you to do this other work and stuff. It is different if we are the sole source of funding, and I didn't know we really were, and I heard there is a \$50,000 grant. Then there is that lack of independence, and when you are out there and you are doing it on our dime, and I know you are saying you are not, you don't bill us for it, but the work is coming out the same office, the same research that we are paying for. That

has been my discomfort with everything with CAP all year.

I have no problem hiring CAP on a case by case basis, okay, to do work for us. But I do have a problem taking all \$200,000 doing this if CAP is going to be doing its own independent activities. Because like I said, too, I think what this lawsuit is a prime example is, it looks now that the Suffolk County Legislature, that is our position. And it may well be in the end, but there has been no determination there. And with CAP out there representing that, I believe it reflects on us since we are the sole source of funding for CAP. You can't say we are not CAP when we provide either 100% of its budget or 80% of its budget, and I am not good at math, so I went into politics.

CHAIRMAN COOPER:

Gordian, you signed a contract with the Legislature?

MR. RAACKE:

Of course, since 1990.

CHAIRMAN COOPER:

And where did you get the funding in the past?

MR. RAACKE:

From the federal court settlement. Let me just point one thing out. Under the County contract our duties include monitoring LIPA, monitoring any activity by LIPA and other related entities in the energy fields. Let me give you one example. You know, a lot of times the watchdog function is something that I do, that we do on an ongoing basis. We keep an eye on things and then things pop up. Yesterday, for example, I was in New York City at a Public Service Commission proceeding and hearing where among other people a LIPA staff member was testifying. I was able to cross examine the LIPA staff member there under oath and during that cross examination it became evident that LIPA is entering into long-term power contracts and has retained a number of developers to build these turbines that you may have heard about.

The only – during the cross examination it became apparent that LIPA did not issue an RFP for these projects. We are talking about approximately \$450 million here. We are also talking about long-term power contracts that could be binding on us, on LIPA, on the County, on every ratepayer really to take the capacity and the energy on a basis whether we need it or not for up to 25 years.

These contracts took place without any written solicitation, without any criteria as to how the bidders would be selected. There was no RFP with the exception of the {inaudible} proposal. There was no formal evaluation of the bids. There was no public notice issued, and what I heard yesterday I just did not believe. We are going to get the transport and I will report on this to you in a more formal way. I have already notified the New York State Comptroller about this. LIPA, of course, is subject to the New York State Finance Law and the General Municipal Law when it comes to letting contracts and bidding.

LEGISLATOR HALEY:

Were you representing us then when you were there?

MR. RAACKE:

Once again, I was not representing the County. I was merely cross examining a LIPA witness and other witnesses there. Now, the question is we don't know what is going to come out of this. This in part is how I see my work. Would you have, under a different arrangement, would you have retained a consultant, would you have retained me or somebody else to go there and to be there and to do this work.

LEGISLATOR FIELDS:

How would you even know that that kind of a meeting existed?

MR. RAACKE:

We have to be keeping track of these things. A lot of times we find out about things and everything is just fine. Every once in a while we come across something that is not and we bring it before the Legislature and we let you know.

LEGISLATOR FIELDS:

It is kind of like having a dog when you know you are having a burglary. Do you know what I mean?

LEGISLATOR CRECCA:

I do, but what I brought up before is that we could serve that same function in one of two ways. Then we should fund CAP, then as its own independent organization like we do other groups and things like that. But we don't do that now. We have a contract with them as a consultant. And we get back to what we were talking about earlier, is that the apparent appearance of a conflict and all that. I have no problem. I would be more comfortable putting Gordian on the staff of the Legislature as an employee of the Legislature, and I not necessarily endorsing that, Gordian, but I mean I would be more comfortable with that and then let him send out and be a watchdog and all that and pay him to do that than I would with having CAP have its own thing that it does and also be working for us because sometimes those come into conflict. And I think it is great to have a watchdog out there, and that is what CAP is about, the Citizens Advisory Panel.

You know, again, and you weren't here earlier, but they brought a lawsuit. They have every right to do that as an independent organization, although I think that is questionable if they didn't violate our contract or not by doing that. They can go do that but the problem is that I got four calls at my office and everyone that called, and honestly everybody didn't have the same position, but thought it was the Suffolk County Legislature doing that. Why? Because I think CAP and us have become synonymous.

Actually, Paul, we were talking about their contract and it was a memo there, Marty was saying it and I tend to agree, that on reading the memo it would appear that they can't bring a lawsuit against LIPA.

MR. SABATINO:

I read the newspaper article on a couple of occasions, local papers, that CAP had brought a lawsuit on a Nine Mile issue and we had specifically discussed that issue in the committee and it was a fact finding study was supposed to be secured and brought back to the committee. I was certain that the article was wrong because I know you wouldn't go bring a lawsuit on behalf of the County without getting the authorization because that is required by the Charter and by the contract, the contract being consistent with the Charter. So, I had written a memo just to make sure that wasn't the case, but I was a little bit response when the response came back that you were in fact participating in the lawsuit.

Now, you didn't violate the contract in the sense that you didn't bring it on behalf of the County, so there is no violation of the contract, but, and I instructed Budget Review, the vouchers can't pay for any work that is related or associated with that. The concern is we are doing 99.9% of the funding. I sent another letter out just to kind of reinforce this notion that CAP is no longer the federal court appointed watchdog for Long Island. You are now a corporation that works for the County of Suffolk and we fund you to the tune of - whatever it is, 99.999%. As a result, I think you should -- once again to begin -- represent yourself in the public as the Suffolk County Legislature's consultant or watchdog or whatever the appropriate wording is. And secondly, you have to follow our contract, which is that the constituent complaints that come out of the County Charter pursuant to - there is a whole string of things where you can fact find and get information and bring it back to the Legislature. Lawsuits are the one thing - lawsuits can only be done pursuant to legislative authorization, and then specific requests for specific projects can, in fact, come from Legislators.

The purpose of the memo was just to make sure that we are not spending money on a

lawsuit that we didn't authorize. Quite frankly, I don't think – it is not illegal, but it doesn't look good for CAP to be participating in the lawsuit without creating the impression that you are something separate and apart from the County of Suffolk when you are not. You are no longer the court appointed watchdog for Long Island. That money is gone. That status is over. You are now a contract agency with the County of Suffolk. And that is all I was trying to communicate because Legislators may or may not want to participate in certain types of litigation strategies. And in this case, there was explicit instruction just to do the fact finding on the Nine Mile Point Two, so.

CHAIRMAN COOPER:

But, Paul, aside from lawsuits, which are precluded without authorization from the Legislature, what other activities do you feel would be inappropriate for CAP, let's assume that he is not charging the Legislature –

LEGISLATOR CRECCA:

It is the same message.

CHAIRMAN COOPER:

I understand. So what activities do feel would be inappropriate, all activities?

MR. SABATINO:

The contract has a starting point {inaudible} with regard the LIPA. Those occurred by the County Charter that was approved by referendum. That's CAP's function, fulfilling that. The second level of things we talked about were meant to monitor, to look at the things that are happening with regard to LIPA. So they should be doing fact finding, securing information.

CHAIRMAN COOPER:

For example, the meeting that you attended in the City recently where you did not bill us. That was monitoring LIPA. You apparently ascertained – gained some information that may well prove helpful down the road.

LEGISLATOR FISHER:

But actually that should have been billed because he was watchdog. He said he wasn't representing us but he was working –

LEGISLATOR CRECCA:

You said earlier you weren't billing for that.

LEGISLATOR FISHER:

No. He said he wasn't representing us but he was working for us.

LEGISLATOR CRECCA:

But you said earlier you weren't billing for that.

LEGISLATOR FISHER:

No, he said he wasn't representing.

MR. RAACKE:

No, I did not say that I was representing the Suffolk County Legislature.

LEGISLATOR FISHER:

The question was did you represent us.

MR. RAACKE:

And I always make sure that that is clear. If I have authorization from the Suffolk County Legislature to represent the interest of the County Legislature I will say that. If I don't have that, I will certainly not say that I am representing the Suffolk County Legislature because I can't by contract obviously. I am not allowed to do that. It says only with prior authorization from the County Legislature.

And let me also make something clear on the lawsuit because this seems to be a big issue. Of course we did not bill the County for this litigation. I should also make it clear that the litigation was really brought by another group, the STAR group. They called me, they said would you agree to sign on to this litigation, I said yes. I signed the affidavit and that was the extent of it. So, it is not as if we spent a lot of time getting –

LEGISLATOR FISHER:

Gordian, would it have been less thorny if you had just signed on as Gordian Raacke instead of CAP?

MR. RAACKE:

That is the feeling I am getting here today, yes.

LEGISLATOR CRECCA:

But we also hired you to look into the Nine Mile – you were working on that for us and then you go around – how does it make us look as public officials when we have you investigating and I read in the newspaper that you bring a lawsuit, okay, and now I get four phone calls in my office and I have to turn around and say well, I don't really know anything about that. I didn't know CAP was going to do that. Well, aren't you guys CAP? No, we are not. CAP is an independent organization. This is the problem, Gordian. And the problem is, is that you are not – we can call you an independent organization and maybe you should be an independent organization, but the problem is we are too joined at the hip to do that.

I personally think that we should take the \$200,000, leave it in the 456 account, and if you want to continue the Citizens Advisory Panel, I would hope that you do, and then we should hire you on an issue by issue basis or to fulfill specific functions like investigate, report back to us, on consumer complaints and different things like that. Again, unless there is going to be strictly CAP is going to work for the Suffolk County Legislature, I can't support spending taxpayer dollars and having this, what I think are at least the appearance of conflict in there.

LEGISLATOR FISHER:

Mr. Chair, if I may. The concept of just having CAP being reactive is so self defeating that we would lose any ability to be watchdogs at all. The beauty in having CAP is that we can be proactive. Gordian can be at meetings and hearings such as he was last week or if something comes up where we are aware of something I can pick up the phone or any one of us can pick up the phone ask Gordian, can you research this. Can you tell me how much energy are we using. We are the energy needs and what will be produced and what would be the consequence of that production.

To say that we will contract on a case by case basis and limit ourselves to simply being a reactionary body I think would be absurd. We need to be proactive with regards to energy. We need to have an entity such as CAP. Whether or not we agree on this one issue with bringing a suit, I think, is another issue. But I don't think that you should throw away the entire concept. This is a very, very important – LIPA doesn't have any – nobody has any oversight over LIPA that we can get our hands on. We need to have CAP.

LEGISLATOR CRECCA:

I agree. Legislator Fisher, I want to say – because I do agree with you. I agree with the oversight idea and I agree with having somebody out there doing that, the concept. The problem I have is, is that – and I would, for lack of a better way of saying it, would I endorse having somebody like Gordian Raacke out there attending those hearings, being our watchdog, looking, yes. The problem is CAP has its own functions that it does independent of this Legislature, yet they are provided -- almost their entire budget is dependent on the Legislature. There is a conflict there. What I am saying is if we can hire –

LEGISLATOR FISHER:

Can you enumerate those functions that you find are in conflict?

LEGISLATOR CRECCA:

Sure. We had it happen just now with the lawsuit. We have had it happen earlier in the year with – I forgot what it was now. We had it happen like two or three times this year where it came up where what Gordian was doing was not necessarily what we directed. What was the other thing with the organizations they put together –

CHAIRMAN COOPER:

Citizens for –

LEGISLATOR FISHER:

Wait a minute. How is that in conflict? We have an energy advisory committee that is working on creating a management plan.

LEGISLATOR CRECCA:

Correct, but it ended up being a different one, and not that one, and that's fine. And that was from a legislative point of view we decided that those were not the appropriate organizations and that was not the appropriate group to do that. The idea was good but my point is –

CHAIRMAN COOPER:

I think your point is no one would mind if Gordian Raacke, individual citizen, participated with CEP or a lot of independent things, but when it is Gordian representing CAP, which is basically funded by the Suffolk County Legislature, it gives the impression, it gives the perception, that it is Suffolk County that is participating for CAP or their activities.

LEGISLATOR FISHER:

Well, couldn't that just be defined and maybe have clear parameters?

LEGISLATOR CRECCA:

I don't know, but the answer is, is that by funding – and I don't mean to cut you off, Paul, but I think by funding CAP again under the same type of contract, I have a problem with that. I am not going to do that. What I am saying is that –

MR. SABATINO:

In fairness to CAP, over the two years one of the difficulties has been, and it has been better this year than it was the year before, was that the pertinent committee was really to sit down at least at the beginning of the year and maybe even periodically and try to give some direction for focus by special projects or things out of the ordinary course of what would be – working with Legislators is fine, monitoring what is going on, bringing back facts. To some degree it was much better this year than it was the year before, but I think that first year they were kind of directionless because the committee that year really only met with them once, and then halfway through the meeting they broke off the agenda and wouldn't take any procedural motions, which I had laid out, to vote to do this, that or the other thing. So I think the real answer is that if the committee would just maybe at the beginning in the first quarter adopt a couple of procedural motions saying this is the area of activity we wish to pursue.

I mean, for example, with Kings Park Power Plant was an important topic a couple of years ago. That would have been a motion to do something, whatever the case might have been. If this year the issue is going to be a –

LEGISLATOR CRECCA:

Why can't you hire him on a –

MR. SABATINO:

The point is if the committee could do that, and I think in fairness to CAP that was missing, especially in the first year, less so in the second year. But the litigation thing is clear cut and that is why I wrote the memo, because that was very problematic. I think the third thing they have to do is they have got to change the way they represent themselves publicly. I know Legislators have mentioned that to me. I think they should stop calling themselves the court appointed –

LEGISLATOR CRECCA:

Why couldn't we as a Legislature to avoid this appearance -- you know, you are Counsel for us. You work for us, you work at our direction. That doesn't mean you don't advise us during the year and say guys, look out for this, this is coming, and Budget Review does the same exact thing. My point being is that CAP is not always independent the way or at our mercy as an employee, so to speak, if you want to put it that way, functioning always with our interest in mind. It sometimes has its own interest. And what I am saying is I think we need to be more on a basis, whether it is a Gordian Raacke we hire or we hire someone else who is the equivalent of a Gordian Raacke to do those watchdog functions, but we need to have somebody who is ours. That is my opinion.

MR. SABATINO:

Another way to describe it, I think is that -- may I wasn't clear -- is that gathering information certainly fits within the contract. I think the problem falls in when you are talking about doing affirmative things, where you are affirmatively going out to articulate a position on some relative issue. I think that is where we have kind of fallen short. I think that CAP has to understand that they can't go out and articulate a formal position --

CHAIRMAN COOPER:

Even if he is not representing the Suffolk County Legislature and even if he is not billing the Suffolk County Legislature, you still see it as problematic?

MR. SABATINO:

I really do, only because they have become, in my mind, the Suffolk County Legislature's energy watchdog for Long Island, and rightfully so pursuant to that referendum and that Charter Law. We need somebody, whether it is Gordian Raacke's group or in-house people or some other organizations, to be able to get you the information that you need to fulfill that role. Gathering information is fine, but to go out and articulate a position that may only represent what five Legislators believe or seven or nine but not a clear majority, that to me is problematical.

So what I would envision, and the way the contract was set up, was that you would bring back the information, and then when you wanted to go out and articulate affirmatively, make a policy statement or make a statement in reaction to something, then I think you need that decision to be made by the elected officials.

LEGISLATOR CRECCA:

He said it better that I did.

LEGISLATOR HALEY:

Mr. Chairman. I know that you have a very positive view of CAP and I have in the past and obviously it has waned. But that doesn't mean that I am not willing to revisit this and establish a relationship, a relationship that is rewritten and to make sure to preclude any problems like this. I am willing to address that, and I don't think we are going to -- we are obviously not going to resolve that today.

The only other question I have, and I want assurances before any relationship with CAP in the future, that we are not going to have a repeat of what we went through with the pressure group that he decided to participate in put us in what I felt was a precarious position. I don't want that to happen again. If I have assurances that is not going to happen again, then I don't have any problems on working on our relationship, reestablishing where we need to be, making sure that he is clear what the relationship should do, because maybe he wasn't that clear. I mean, it is a two way street and we need some additional language and stuff like that. Because I sincerely want oversight. I sincerely want to take advantage of the knowledge and capabilities of Gordian Raacke. I want to do that, but it has to be defined and he has to understand that he his relationship has changed substantially and that I am not going to participate looking for an objective view of circumstances surrounding LIPA when he is participating as CAP with pressure groups such as he did this past --

CHAIRMAN COOPER:

But you have no problem with Gordian participating as an individual.

LEGISLATOR HALEY:

He is CAP. I don't care what anybody says, whether you call it Gordian Raacke or CAP. If he goes out as an individual that is supposed to be objective and supposed to somewhat represent us and goes on his on and goes and participates in a lawsuit, I think you kind of a have a problem.

CHAIRMAN COOPER:

But I mean the meetings that he attended at CEP and –

LEGISLATOR HALEY:

Oh, no. He can attend any meeting he wants. This is America, remember?

LEGISLATOR CRECCA:

I think he was talking about it would be as if, and I know it is not quite the same, but if Fred Pollert went out and started holding – saying things publicly about the budget without coming to the Legislators first and reporting back to us, you know, I think we would have a problem with that also. I think what we are getting into is a situation where while they may be a consultant, they have gone beyond. They have their own identity out there as an organization and we are funding them completely and everyone is identifying them as ours, and I think they are. I think it is as Counsel said, and I think we either have to redefine the relationship and how we are going to go forward with that or – I mean, I have no problem funding CAP, but it is probably not going to be CAP anymore.

LEGISLATOR HALEY:

It might not be. I depends. But I am concerned about my relationships with him, whether it is CAP or whether it is –

LEGISLATOR CRECCA:

The function – we all agree in principle what should be happening, I think. The question is how to make that happen.

CHAIRMAN COOPER:

We all see Gordian as an important resource for us, the Legislature. The question is how we can maintain this resource without compromising either us or him.

LEGISLATOR CRECCA:

Or his function. I mean, Gordian does have an expertise. We need somebody with his type of expertise.

LEGISLATOR HALEY:

With that in mind, Mr. Chairman, if you would – I would assume that you would take the lead on that. I would like to make a motion to table this.

LEGISLATOR CRECCA:

I will second.

MR. RAACKE:

Let me just first of all thank you for your vote of confidence. I also want to say that there may have been times when we have disagreed on certain issues, but I think that is also part of, it is my understanding, of giving you an honest opinion. I think it is my duty to tell you if I see things a certain way even though you may disagree at times. I think that discussion is valuable and fruitful. I don't see any harm in having a relationship that allows that. I just once again want to thank you for your confidence and I hope we can find a relationship that allows a certain degree of independence because I think that is important. I think the

standing of CAP and the public perception of CAP has been an independent body. It gives us a certain credibility that you would not have if we were a County department, for example. They have a very different role to play –

LEGISLATOR HALEY:

I understand completely. I would want to be as independent as possible, but unfortunately –

LEGISLATOR CRECCA:

We are spending taxpayer dollars and we have elected as officials to represent government. We don't fund organizations that go out and espouse opinions.

CHAIRMAN COOPER:

Unless they reflect our opinion.

LEGISLATOR CRECCA:

Exactly. That is what I am saying. And for the most part they usually do with CAP but not necessarily 100% for this independent function is what sometimes causes at least a potential conflict, and that is what we are talking about. Maybe we can work on something with Counsel and our Chairman. I am happy to help out if I can work on that relationship or figure out a way around this.

CHAIRMAN COOPER:

Okay. We have a motion to table and a second. All those in favor? Opposed? The resolution is tabled. **(Vote: 4/0/0/0).**

MR. RAACKE:

I can do this another time, but I did have several items I wanted to report on.

LEGISLATOR HALEY:

Can you reduce those to writing and ship them out to us?

MR. RAACKE:

Sure.

LEGISLATOR CRECCA:

That would be good.

CHAIRMAN COOPER:

Thank you.

(The meeting was adjourned at 4:00 p.m.)