

**ENVIRONMENT, PLANNING and AGRICULTURE COMMITTEE**  
**of the**  
**SUFFOLK COUNTY LEGISLATURE**

**Minutes**

A regular meeting of the Environment, Planning and Agriculture Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Wednesday, **January 21, 2004**.

**MEMBERS PRESENT:**

Leg. Michael J. Caracciolo - Chairman  
Leg. Jay H. Schneiderman - Vice-Chairman  
Leg. Peter O'Leary  
Leg. Daniel P. Losquadro  
Leg. David Bishop

**ALSO IN ATTENDANCE:**

Mea Knapp, Counsel to the Legislature  
Ilona Julius, Deputy Clerk  
Roger Podd, County Executive Assistant  
Tom Isles, Planning Director  
Kevin Duffy, Budget Review Office  
Vito A. Minei, Division of Environmental Quality  
Christine Costigan, Division of Real Estate

**MINUTES TAKEN BY:**

Diana Kraus - Court Stenographer

**(THE MEETING WAS CALLED TO ORDER AT 1:03 PM)**

**CHAIRMAN CARACCIOLO:**

Good afternoon. And welcome to the first meeting of the Environment, Planning and Agriculture Committee. Will the members please rise for the pledge of allegiance to be led by Legislator Peter O'Leary.

**(SALUTATION)**

**CHAIRMAN CARACCIOLO:**

Thank you. Will the clerk note that Legislator Dave Bishop has called and requested an excused absence, which the Chair has granted and that Legislator Jay Schneiderman is in the building.

Okay. We have a very short agenda. And it is typically the prerogative of the Chair at the first meeting of committees each year to make a statement, which I'm not going to make today. I will make a statement at our next meeting.

We have a very short agenda. And I'd like at this time to invite anyone from the public or otherwise who would like to make any presentations or statements to the Committee to step forward. Okay. Seeing none and hearing none, we will go to today's agenda.

And let me also suggest to the members of the Committee and welcome aboard -- actually three new members as I look around the horseshoe; Legislator Dan Losquadro, Legislator Peter O'Leary, and Legislator Jay Schneiderman, welcome aboard and buckle down because this is a Committee that notoriously in the past has been noted to go three, four, five hours when we have a lot on our agenda. That is not the case today.

So without any further ado, we'll go to the agenda. And I'll also note for the record that I've requested from our Planning Director Mr. Tom Isles, a presentation be made at our next meeting indicating to the Committee fund balances in all of the County's environmental programs. And also to prepare for our consideration and deliberation through out the year a land acquisition program priority list, which he and his staff along with the Division of Real Estate have been working on for probably the better part of a year or more. So we'll look forward to those presentations at our next meeting.

**IR 1000 - local law to strengthen land acquisition reforms in connection with information summaries**, there's a request from the County Executive's Office to table this. So the Chair will make a motion to do so. Second by Legislator O'Leary. All in favor? Opposed? Unanimous. Would the clerk note that Legislator Schneiderman is present. **(Tabled. Vote: 5-0-**

**0-1)**

**IR 1011 (Implementing Brownfield Policy for Poulos property in Eastport, Town of Brookhaven)** is the Chair's resolution. And likewise I had a conversation yesterday with Michael Deering. Tom, what is Mr. Deering's official title?

**MR. ISLES:**

He is the Director of Environmental Affairs, I believe.

**CHAIRMAN CARACCIOLO:**

Okay. With respect to this resolution, and he and I will be meeting over the next week to discuss in very broad terms a Brownfield Policy for the County given now that there's some new State legislation that has been passed; and specifically this particular resolution. So the Chair at this time is going to make a motion to table, second by Legislator O'Leary. All in favor? Opposed? Unanimous. **(Tabled. Vote: 5-0-0-1)**

I see Mr. Minei has arrived. And, Vito, I would request that with respect to 1011, that's the Poulos property, Brownfield resolution, that at our next Committee meeting, that you and representatives of your department be prepared to provide the Committee with an update. I know we did one test hole drilling for contaminants and I believe the last correspondence you and I traded was that the Department was going to go further with that.

**MR. MINEI:**

Yes. Thank you. Good afternoon, Mr. Chairman. Sorry I'm late. I just came from Brookhaven Lab.

**CHAIRMAN CARACCIOLO:**

For the clerk, would you just note your name and title.

**MR. MINEI:**

I'm Vito Minei. I'm Director of Environmental Quality for the County Health Department. In answer to you, absolutely. We'll be glad to go back. We've done a couple of inspections over the years. And also a few ground water investigations. But we left it open. There was some unresolved issues as you just mentioned. Because we thought at that time that there was an active private party interest. And we thought we were going to be in a position of supporting that active private party, but certainly we'll be glad to give you an update. If the weather was better, I could promise you even some more ground water investigation before then. But certainly we'll give you a status report next time.

**CHAIRMAN CARACCILOLO:**

Okay. Thank you very much.

**MR. MINEI:**

I'm sorry. I was so late I didn't even hear the vote. Was it tabled?

**CHAIRMAN CARACCILOLO:**

Tabled, yes.

**MR. MINEI:**

Thanks.

**CHAIRMAN CARACCILOLO:**

Just before your arrival, I had invited anyone in the audience, and that would certainly include yourself at this time to make any statements or presentations to the Committee if you so chose.

**MR. MINEI:**

On 1011?

**CHAIRMAN CARACCILOLO:**

On anything.

**MR. MINEI:**

I appreciate that. I wish my children would give me that opportunity. But on 1011, we were hoping for you to take that kind of action because we'd like to resolve how best -- under the general concept of Brownfield's I think with the new state legislation, that revised Brownfield's guidance. I think the County, being the County Executive's Office, the Health Department, Real Estate, Planning and the Legislature should decide on a general course of action with regard to -- and the Treasurer's Office as well I would put into that group -- to decide on all of these properties that are out there. We're actively evaluating something in the order of 54 properties on a tax arrears list from the Treasurer's Office with the Real Estate Division of Planning, with the Treasurer's Office. And this follows on the heels of about three years of investigation on about 21 properties that were on that original resolution to evaluate.

We have a couple of properties that we're actively involved with Brownfield's. One is Gabreski Airport. We were one of three sites selected in New York State to get some state free services

from their engineering consultant. We did a lot of leg work on a property that was notorious from my first days with the County about 32 years ago, Blue Point Laundry, because of our background work. The state has a targeted Brownfield's assessment going on. We have a number of investigations at a property called Ronkonkoma Wallpaper that we think might be a candidate for a Brownfield's. And we'd just like to discuss probably this legislative Committee, Mr. Chairman, would be a good forum for those kinds of discussions; but in any event I think the County should decide from this point forward with the new Brownsfield Regulations what the course of action should be.

**CHAIRMAN CARACCILO:**

Along those lines, Mr. Minei, can you just elaborate what actions have now finally taken place in Albany with respect to Brownfield's so we can begin what we have really been on hold with for a long time? Yes, Legislator O'Leary?

**LEG. O'LEARY:**

Mr. Minei, if you will, also, include in your comments, just give an overview for those of us who are new to this Committee, what Brownfield's are and the regulations that are set forth as a result of that?

**MR. MINEI:**

Sure.

**LEG. O'LEARY:**

Thank you.

**MR. MINEI:**

I'd be pleased. The general definition of a Brownfield's is an under-utilized abandoned. It's usually a commercial industrial piece of property. And it's usually an eyesore in the neighborhood. Often a site for vandalism. And the idea is shouldn't government be active in trying to restore that property or encouraging private parties to restore that property so it's back on the tax rolls and becomes more of a benefit to the neighborhood than really a detriment. So Brownfield's is a general category of under-utilized property usually for perceived or known contamination. And the activity that Legislator Caracciolo has asked us for was to at least start the process of preliminary investigations to get an idea of what we believe might be the level of contamination on a piece of property in Eastport. It's right on Montauk Highway. And typically

the way Brownfield's activities unfold is you either do an initial inspection of the property. And in general you can get an overall assessment on -- is there something really gross with regard to contamination, abandoned leaking drums, other sources of contamination. Or do you believe that there might be minor contamination.

In terms of Ronkonkoma Wallpaper, it was as the name implies, a wallpaper manufacturing plant. And when we started our investigations, we didn't find what we often find on some of these properties. And that's industrial solvents. As many of you have heard my presentations before, solvents are one of our biggest problems in Suffolk County. Probably second only to fuel spills with regard to contamination. Ronkonkoma Wallpaper was a little different because it was constituents in wallpaper paste and wallpaper itself. A lot of metals that don't really migrate in ground water that much. But it still has incurred a number of investigations ripping up floorboards, finding more soil contamination. And the costs have escalated. And indeed the Legislature had passed, I think recently, a resolution to spend another \$160,000 on what we thought was going to be modest clean up.

So there's really a couple of points here. One, you have to do thorough investigation as well as ground water investigation to determine the extent of clean up that might be necessary. You also have to be ready to spend a considerable sum of money even for tearing down buildings and doing what's often considered minor soils clean ups. But often times -- and this has been the concern on a number of pieces of property, contamination has left the property. It's migrated off the property through ground water and implicates nearby residents.

What has changed, and it's a rather dramatic change as I understand -- there are a couple of things which state Brownfield's and superfund legislation, in the past regardless of who was responsible for the original contamination, if you were the next property owner, you immediately on the day you took fee title of that property, were exposed to private party lawsuits; as well as the DEC descending upon you for the clean up not only on that site, but off site. That contamination might have happened 20, 30 years prior to your taking title. You may have the best intentions in the world, but you're really vulnerable to state DEC action as well as private party lawsuits. Now, what was dramatically changed with regard to the last revisions of Brownfield's and superfund was number one, the State would not hold you responsible for the off-site clean up. They would work with you on the on-site clean up. And, also, they would provide more in the way of funding, with regard to the assessments of the amount of clean up that had to be done and the actual remediation of the problem. So number one, the funding has changed dramatically.

Number two, the vulnerability to the State DEC taking action two years changed dramatically. The thing -- the one issue I would like to resolve a little bit more thoroughly is this idea of the vulnerability to private party lawsuits. With the new amendments to the Brownfield's legislation, we've been told that the State will help defend the municipality. Now, what does that constitute in terms of real action? I've been informed that they would have the Attorney General represent the municipality in any private party lawsuits. That would be formidable support. I hope it's more than moral support. I've been led to believe that it would be considerable legal support with regard to any exposure to private party lawsuit. So it's a liability issue that's changed dramatically; and it's also a funding issue that's changed dramatically.

**LEG. O'LEARY:**

Thank you very much.

**CHAIRMAN CARACCIOLO:**

That was an excellent dissertation on the law and the recent regulation changes. I don't want to digress and spend time on this property today, but substantially what has changed in terms of what originally was envisioned by Legislator Towle, who sponsored a different resolution than I, was to forgive penalties and interest on this property so that a third party would have title to this property and they at their own costs would clean it up. Given the regulation changes that you just recited, there may have been an argument then that would have mitigated this resolution. I know that was a position you took. I think clearly now that the law has been changed, this resolution certainly is in order. And after your presentation at a subsequent meeting, we'll move forward.

Would the clerk note that Legislator Bishop has arrived. Thank you. Legislator Schneiderman?

**LEG. SCHNEIDERMAN:**

I think you actually just answered my question. It has to do with Poulos in light of what you were saying, trying to figure out what the County's role here is. So now in this case -- in this case where the County doesn't own this piece of property, I know -- I had been familiar with the old resolution, which would have transferred it to somebody else. Now it would be going back to the original property owner who is in default who has now -- has he come up to his status now? Is he complete in his old payments? And then what would be the County's role here since the County isn't providing the funds -- the state funds for the Brownfield work, would the County be laying out funds for the environmental audit, or any of the clean up? I just need some

clarification on what the County's role -- County Brownfield program would be doing.

**MR. MINEI:**

In case there was -- there's a lack of clarity, it's my understanding when Legislator Caracciolo and I first had this discussion, was that we were informed of what I considered an active private party interest. Typically we hear people making inquiries about properties that have tax arrears. In this case the -- what we thought was the private party Poulos and their partners, they had actually gone as far as site plan design, as well as going before the sewer agency and asking for conceptual certification of a type of sewage treatment. So, again, in my mind, that seemed more than a casual interest regarding gee, what is the back taxes and what can the County do to forgive any financial burden taking this property over. But that was one level of discussion.

But to answer your second question, Legislator, I don't believe the County will be penalized. In fact, it's been my experience that expenditures the County has made up front usually makes our applications for future funding more compelling. In other words, gee, the County has inspected this property four times. We've installed 12 monitoring wells. We've probably done to this point on the eastern resources property I think conservatively something on the order of \$75,000 worth of work. Is the County going to lose that? No, we will try to parlay that into further assessment work as well as the actual cost of remediation. And that's the part I left out, too. One of the changes, one of the more significant changes to the State legislation was that once you did the assessments, once you did the remediation, once you auction off the property, the State was first on line to share in the profits from that. I believe they've removed that aspect of it. So one of the discussions we had about, gee, you go through all this expense and you turn over the lion's share of the funding back to the State, didn't quite make sense when we thought we had an active private party interest.

**MS. COSTIGAN:**

Mr. Chairman?

**CHAIRMAN CARACCIOLO:**

Yes, Christine Costigan.

**MS. COSTIGAN:**

Mr. Schneiderman, the question you asked about what would the County be paid or recover in the event of the passage of this legislation, I think Vito responded in terms of the program. In

terms of this legislation, the legislation anticipates that the property would be sold at auction. If the property is sold at action, the upset price is related to a market value. It has no bearing on the clean up costs or the outstanding taxes or any of the above. It would simply be a sale price.

**LEG. SCHNEIDERMAN:**

But we would then reimburse ourselves for the --

**MS. COSTIGAN:**

I don't -- yes.

**LEG. SCHNEIDERMAN:**

Out of the auction price.

**MS. COSTIGAN:**

That's correct. I don't think it would probably make us whole, but it's hard to say. I mean we're -- the outstanding -- there's ten years of outstanding taxes. I think they're over almost two million dollars. So there's lot already --

**CHAIRMAN CARACCILO:**

Thank you for that explanation.

**LEG. SCHNEIDERMAN:**

There was another charge, if I --

**CHAIRMAN CARACCILO:**

Well, let me just for the benefit of the new Committee members and particularly Legislator Schneiderman, who -- we really have to go -- I've been there. I'd like to take Jay there because it's literally on the border of our two districts, this property. But having said that, when you look at this property and it's potential value vis-a-vie an auction, it's substantial. Now with the changes in the state regulations, there could be state funding for the Brownfield's clean up. And as Vito mentioned, out of 12 monitoring wells, as I recall that correspondence, there was only one well that showed some contamination. And it was literally at one of the far reaches of the property. So in the past there has been a lot of representations made by your predecessor and others about this property in that -- Jay, it's a win/win situation if the County were to let this property go to these developers, if you will, who have a very, I guess, from their perspective promising and sound development plan. But the County has to protect its interest. And that's what this Legislature is here to do. And that's why I put in this resolution. Rather than forgive,

I think, as Christine has just mentioned, almost a million dollars in back taxes -- was that the figure, Christine?

**MS. COSTIGAN:**

I think it's above a million dollars. Although the point that I'm making is that at auction sale, the taxes are irrelevant,

**CHAIRMAN CARACCILO:**

Right.

**MS. COSTIGAN:**

They are not an element of the price. And, moreover, the fact that there may be a contract on this property is also irrelevant. I mean the fact there's a person interested in developing it is anecdotal. It doesn't figure in the auction. Then it's auctioned to the public.

**CHAIRMAN CARACCILO:**

Go ahead.

**MR. MINEI:**

My only point was to just highlight that there's another partner here. And that's the Town's. And in this case the Town expended eighty, ninety thousand dollars for demolition of what was a dreadful eyesore in that neighborhood just off of Main Street in Eastport. But that, I believe, gets added to the tax arrears if the County were to -- or anyone takes over that property. Someone is due to reimburse the Town.

**MS. COSTIGAN:**

No, no. The tax arrears are irrelevant once the County takes over the property.

**MR. MINEI:**

This is informative for me as well.

**LEG. SCHNEIDERMAN:**

When it gets auctioned, is there a minimal bid based on some appraisal?

**MS. COSTIGAN:**

There is an upset price at an auction. It's calculated based on the -- what the estimated value is from a -- just a market value perspective. It does not factor in and can't factor in things like the

clean up costs or the back taxes.

**CHAIRMAN CARACCIOLO:**

As I recall, this site's about seven acres.

**MR. MINEI:**

It's pretty considerable. I think the main body is about three and change. And there were a couple of other pieces. One of the unresolved issues on that was as often happens in these abandoned properties, there was a squatter. When my inspectors went on the property, they found someone conducting a furniture stripping business. One of the unresolved issues was did this character leave behind remnants of ground water contamination. So we'd like to go back and visit that. My point is -- I guess I went too far and indicated what the Town would assess -- but it's another point of partnership that we often use with County commitment. We say the County has expended this much in terms of staff and resources. The County's ready to spend this on capital funds for restoration. You, the Town government, what are you willing to contribute as part of getting this piece of property back to active utilization? So, that was it. So, it's just not County trying to get state funding or things like that. We always have to think about our relationship with -- partnerships with the Towns.

**CHAIRMAN CARACCIOLO:**

So to summarize, given the new Brownfield amendments in Albany and the regulations, what is your understanding as it would pertain to this property?

**MR. MINEI:**

Well, one thing we still would like to make sure we're certain of is this idea of off-site liability. It may or may not be a major issue with regard to eastern resources. The new regulations, I believe, will help us if we want to pursue the course of the County taking it for the purpose of auctioning off with regard to conducting the more thorough assessment as well as any possible soil or ground water remediation that has to be done on-site. That's what it puts us in line for. So it's money well spent regardless of which direction we take. If we're looking to support a private party interest or we're looking to expedite the County taking title to the property for the purpose of auctioning, all this effort is well worth it in my estimation.

**MS. COSTIGAN:**

Mr. Chairman, in response to your question, the status of the property in terms of the new law is unclear in that the regulations haven't been written yet. This was one of the discussions we had

with Mr. Deering at the meeting that Peter alluded to, that the -- the regulatory process hasn't even really started. So he was unable to predict what the regulations will require or advance to us. And it'll be sometime before they're in place.

**CHAIRMAN CARACCILO:**

He also indicated to me that as a former staffer with Assemblyman DeNapoli that he played a significant role in the changes to the legislation. So I don't think it will take him very long to get to the bottom of what the changes are and what the effects are.

**MS. COSTIGAN:**

Right. It's just without the regulations, it will -- it will be in effect until they have regulations.

**CHAIRMAN CARACCILO:**

Okay. Thank you both very much.

Legislator Bishop, we had two items on today's agenda, which there have been motions to table on. Would you like them to be reconsidered for the purpose --

**LEG. BISHOP:**

I want to be put with the majority.

**CHAIRMAN CARACCILO:**

Okay. Thank you. Is there any other business before the Committee? Hearing none, the Committee stands adjourned.

**(THE MEETING WAS CONCLUDED AT 1:25 PM)**