

HEALTH COMMITTEE
OF THE
SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Health Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on Thursday, August 16, 2012 at 2:00 p.m.

Members Present:

Legislator William Spencer - Chair
Legislator Kate Browning - Vice-Chair
Legislator Edward Romaine
Legislator John Kennedy
Legislator Sarah Anker

Also In Attendance:

Legislator DuWayne Gregory - District #15
Legislator Tom Cilmi - District #10
Legislator Rob Calarco - District #7
George Nolan - Counsel to the Legislature
Sarah Simpson - Assistant Counsel to the Legislature
Renee Ortiz - Chief Deputy Clerk/Suffolk County Legislature
Barbara LoMoriello - Deputy Clerk/Suffolk County Legislature
Craig Freas - Budget Analyst/Legislative Budget Review Office
Lora Gellerstein - Aide to Legislator Spencer
Terry Pearsall - Chief of Staff/Presiding Officer Lindsay's Office
Michael Pitcher - Aide to Presiding Officer Lindsay
Josh Slaughter - Aide to Legislator Browning
Lisa Keyes - Aide to Legislator Romaine
Massiel Fuentes - Aide to Legislator Montano
Maria Barbara - Aide to Legislator Cilmi
Regina Calcaterra - Chief Deputy County Executive/Suffolk County
Eric Kopp - Deputy County Executive
Ben Zwirn - County Executive Assistant
Tom Vaughn - County Executive Assistant
Dennis Cohen - Suffolk County Attorney
Jessica Hogan - Assistant County Attorney/County Attorney's Office
Dr. James Tomarken - Commissioner/SC Department of Health Services
Margaret Bermel - Director of Health Administration/DHS
Mary Finnin - Public Health Nursing in Suffolk County
Pat Rollings - John J. Foley Skilled Nursing Facility
Patricia Kurss - John J. Foley Skilled Nursing Facility
Jennifer Abrams - John J. Foley Skilled Nursing Facility
Peter Busacca - John J. Foley Skilled Nursing Facility
Roy Probeyahn - Chair/Suffolk County Disabilities Advisory Board
Carolyn Schick - Nominee/Suffolk County Disabilities Advisory Board
Michael Stoltz - Nominee/Suffolk County Disabilities Advisory Board
Garrett Hulett - Nominee/Suffolk County Disabilities Advisory Board
Frank Krotzschinsky - Director/Office for People With Disabilities
Eileen Coblens - Suffolk County League of Women Voters
Barbara Magaliff - Suffolk County League of Women Voters
Nancy Marr - Suffolk County League of Women Voters

Kimberly Teigue - Patient/Suffolk County Methadone Maintenance Program
Don Dailey - 4th Vice-President/AME
Lee Snead - Governmental Liaison/AME
Kevin McEvaddy - AME
Other Interested Parties

Minutes Taken By:

Alison Mahoney - Court Reporter

*(*The meeting was called to order at 2:38 P.M. *)*

CHAIRMAN SPENCER:

We will start the Health Committee meeting with the Pledge of Allegiance led by Legislator Browning.

Salutation

Thank you, and welcome to the Health Committee. We have a lot of speakers today and we have a couple of extremely important issues. One of the things before us today is the reappointment of the Suffolk County Disability Advisory Board, and also some new appointments.

So out of respect for those who have come to sit before this committee, I'm going to ask if Roy would come forward at this time, he's the Chairman and he's up for a reappointment. He's going to -- you can have a seat at the table, as our Chairman, and he's going to give us a statement. We have some of the new appointments who are here and we're going to also give the members of this committee a chance to ask any questions or allow them to make a statement. So, Roy?

MR. PROBEYAHN:

Yes. Good afternoon, Mr. Chairman, Ladies and Gentlemen of the Legislature and Ladies and Gentlemen. My name is Roy Probeyahn.

For the record, I live at 12 Par Drive in Manorville, New York and I'm a Suffolk County resident for over 45 years, and I've been sitting on the Suffolk County Disability Advisory Board now for -- as a member, for the last ten or so years. And I thought today I would come in particular to reintroduce myself, if you will, as I recently was elected Chair at the last meeting of the Disability Advisory Board.

I do want to thank the Legislature for moving this process forward and for reinvigorating the committee or the board and considering the reappointments that are before you, as well as the appointments, potentially, of the new members who have been come -- willing to come forth and volunteer. That's basically why I just came today, was to reintroduce myself and let you know that I've taken over as Chair of the committee and to thank you for your efforts in supporting us.

CHAIRMAN SPENCER:

Thank you. And I just want to thank you in advance for the hard work that your committee will do. We have 13 appointments to make, I think four are new appointments. Are any of the new appointment members here today? Joany (sic) Madarash, is she present today?

UNKNOWN AUDIENCE MEMBER:

She is not.

CHAIRMAN SPENCER:

Okay.

MS. LOMORIELLO:

You have to speak on the record.

CHAIRMAN SPENCER:

For the new appointments --

MS. GELLERSTEIN:

These three right here.

LEG. SPENCER:

Okay. The new appointments will have to come back before us at the next committee meeting. So I have a list of those who are present; Carolyn Schick, Garrett Mullett (sic) and Michael Stoltz. Are they here? If they could come forward. You can have a seat at the table up front here.

Good afternoon. Welcome. And thank you for your desire for accepting the nomination to serve, we definitely appreciate you being here. Legislator Browning has a remark and perhaps some questions.

LEG. BROWNING:

No questions. I'm very happy to see the faces in front of me today. Carolyn Schick is a principal in the middle school that my son attended and I can tell you the Disability Advisory Board is very lucky to have you. If you do as good as you do at the high -- at the middle school, you'll be a real asset. So I just want to say thank you and I certainly want to cosponsor that. And Mike Stoltz, I can't say enough. I can't believe you're putting your hat into more (*laughter*). Where do you find the time?

MR. CAVANAGH:

It's Frank's fault.

LEG. BROWNING:

But I just want to say thank you. And when I see the people who are here, I know Roy from my church, a very active church member at St. John's in Center Moriches. So I think we have a great Disability Advisory Board, and you know how to get a hold of me if you ever need anything. Thank you.

LEG. ROMAINE:

Mr. Chairman, I would simply echo the comments of my colleagues.

I've known Roy a long, long, long time, a dear friend. Mike, obviously with Clubhouse, I've heard of your work. We're appointing a really great board to speak for those with disabilities in our County, voices that need to be heard far more often than they currently are heard. We hear a lot about dollars and cents and not about the needs of people that live in this County. Thank you very much.

CHAIRMAN SPENCER:

Would any of you like to say hello or introduce yourself? Just if you would, just give us your name, if you would like, and just kind of -- you don't have to say anything at all besides your name, but if you have a couple of sentences about your background or why you would like to serve, that would be helpful. So I'll start to my right.

MS. SCHICK:

Hi. I'm Carolyn Schick, I am a lifelong resident of Suffolk County, as I -- Ms. Browning indicated, I am the Principal of the William Floyd Middle School. I have been a principal for 15 years, I've been in education for 26 years, I hate to even say that now. I have two children of my own. My husband has a disability and uses a wheelchair, so I have lived that as well as being, before meeting him, an advocate for special ed within the educational community. I have a degree in special education, among other things. I'm 504 Committee Chairperson in my building. So I kind of live it day in and day out, and I am very pleased to be on this committee to assist all the Suffolk County residents who have disabilities to achieve to the highest that they can achieve and, you know, hopefully we'll be able to help them and my input will help as well.

CHAIRMAN SPENCER:

Thank you.

LEG. BROWNING:

You have to hold the button.

MR. HULETT:

My name is Garret Hulett, I'm living in Suffolk County now for a little over 20 years and I'm a former employee of the Department of Transportation, so I've been working with disability problems for the last, oh, 12 years or so. And I look forward to being on the board. It's something I've been trying to do for actually ten years, but prior I was not allowed to, so now I am. Thank you.

CHAIRMAN SPENCER:

Thank you. Thanks for your willingness to serve, appreciate it. Mike?

MR. STOLTZ:

And I'm Mike Stoltz, the Executive Director of Clubhouse of Suffolk and I'm also the Executive Director of Suffolk County United Veterans. I've been in the world of psychiatric disabilities of mental health for probably over 30 years. I've had depression myself a few times, and that and a family member is what's brought me into the private mental health world. I'm also -- Clubhouse of Suffolk helps people with psychiatric disabilities to live mainstream lives and roles. We've been around since 1990, 1991. Also, along the way I've -- because of psychiatric disabilities, I've had the good fortune to meet an awful lot of wonderful and courageous people from the field of -- in the world of physical disabilities.

My daughter also, some of you know, also had scoliosis and she and my wife formed an organization that's now a non-profit that helps girls with scoliosis as well, totally unfunded, completely peer-to-peer and voluntary. So this world is very familiar to me. I live it, live it with my friends and my colleagues and I'm happy to serve the people of Suffolk County and thank you for the appointment.

CHAIRMAN SPENCER:

Thank you. Do any of my colleagues have any questions for any of these candidates? Legislator Kennedy.

LEG. KENNEDY:

I want to echo the sentiments of my colleagues. The Disability Advisory Board actually does great work for all of us. Mike Stoltz I've known, I've had the great privilege to know, and as Legislator Browning said, you are involved in so many different assets of advocacy. In particular, your veterans work and the disabilities that afflict many of our veterans, your skill set and your exposure there I think is going to be quite helpful and quite significant.

The Advisory Board, you know, not only governs general policy, but things as simple as access to our buildings, impediments and problems that our employees may encounter each day. I know that Beverly had corresponded with me many times about different issues, you know, as far as trying to address and provide the accommodations that we, not need to, but most under the Americans With Disability Act. It's an important function and thank you to all of you for agreeing to serve and thank you to Roy for his long tenure. Thank you.

CHAIRMAN SPENCER:

Thank you all very much. We appreciate you coming today. Do they have to appear in front of the full Legislature?

MR. NOLAN:

No.

CHAIRMAN SPENCER:

No. So we'll act later on those appointments, but you're free to go. Thank you so much for coming.

"Thank you" said in unison

The next thing that I'm going to turn to -- I did have a couple of Legislators who have attended this committee today. We have the extremely important task of discussing the sale of the Foley Nursing Home, and we have a lot of public speakers who are here addressing that issue. There is a process that we are going through and part of that process means that we have a responsibility to ask the appropriate questions with regards to this sale and the process. I'm just going to give a couple of remarks, if I could, as the Chair of this committee.

Foley is a wonderful facility that has served this County and employees who are there have really -- they're committed and dedicated, they do a fine job, and you can tell by the amount of passion, just really the reputation that is there, and there's definitely a lot of feelings and opinions with regards to anything that happens with regards to the Foley. And so what I'm going to ask in this process that I think some questions may be answered, I think there are members here from the County Executive's Office who are involved in it, so I would like to invite them to come forward. If they would join us at the head table, if they could.

MR. ZWIRN:

Yes. Mr. Chairman, the -- I'll ask the staff, they're in the conference room.

CHAIRMAN SPENCER:

Okay.

MR. ZWIRN:

They're waiting for --

CHAIRMAN SPENCER:

Okay. So while they are coming --

LEG. BROWNING:

(Inaudible).

CHAIRMAN SPENCER:

While they are coming in, I did want to say that it's important for us to have a productive process, and part of having a productive process, any time we're dealing with an issue that is passionate such as this, I'm going to establish a few ground rules in this committee. And I know that my colleagues, the Legislators have a right to ask whatever questions that they so desire and I will in no way inhibit that right. But I do ask that we be considerate of each other, I ask that we allow, you know, when there is a response, for that person to have the chance to finish speaking. I'm hoping that we can have a process that -- again, there is a lot of information, there are a lot of rumors, there's Internet information and I ask that we really confine our statements to substance and fact. And so what I will do as -- you know, I think that if questions are being answered, I ask that we would give them that consideration and I will use whatever power that I have as Chair to make sure that we have a civil discourse. So I did want to state that from the outset.

Since they're coming forward, we'll -- we won't get to all the public speakers until maybe afterwards, but the next -- the first speaker I have is Kimberly Teigue, if she would like to come forward. You have three minutes to say anything that you'd like, but I think you're talking about methadone maintenance.

MS. TEIGUE:

Yes, I am. So this isn't in regards to the Foley situation, but --

CHAIRMAN SPENCER:

Can you -- you need the microphone.

MS. TEIGUE:

Sorry. Thank you. Is that better?

MS. LOMORIELLO:

Yes.

MS. TEIGUE:

Okay. My name is Kimberly Teigue and I'm here as part of the County residents who utilize Suffolk County methadone maintenance. In recent years we have seen the closing of two treatment clinics, and as recently as last month we have witnessed the laying off of pertinent staff, including much-needed drug abuse treatment counselors. This is happening at a time when prescription, opiate and heroin use is endemic within our communities, a time when drug abuse treatment needs to be bolstered, not pillaged.

I understand that when it comes to the validity of methadone as a drug abuse treatment, many people have conflicted feelings. Such feelings are usually based on a false stigma and rumors that surround methadone treatment. Part of that problem, in showing just how successful methadone is, is that people that methadone does work for don't publicize that fact; they don't want to breach their anonymity, including myself. If it weren't for methadone, I would have easily been a casualty of this epidemic plaguing Long Island.

I'm a lifelong resident of Suffolk County raising a successful family with two loving parents still married today. I was part of my school district's gifted and talent program, skipped the 7th grade and graduated with more than a year's worth of college credits and AP classes. Shortly after high school graduation, I became addicted to heroin. I don't fit the stereotype of a heroin addict; in fact, most casualties of this epidemic do not. If it weren't for the methadone program, I know with a hundred percent certainty I wouldn't be where I am today. I'm currently a student at Stony Brook University, a member of the Golden Key and Phi Alpha Theta Honor Societies, and in December I will be graduating and attending Law school the following Fall.

I am four years clean of illicit drugs, steadily tapering my methadone dose. There are many others like me who have a methadone program to thank for saving our lives and allowing us to return as productive members of our community. You don't hear of us but we are there. We don't want the public to know who we are. We don't want to risk losing our jobs and everything we have worked for. Today for the first time I am taking that risk because the recent cuts to the methadone program are the exact opposite of what our County needs.

Not too long ago, County residents were being turned down by the clinic for being at a capacity. Recently, many clinic patients lost their counselors. I'm sure I do not need to tell you how detrimental it can be to someone newly in recovery to lose a counselor just as they are beginning to trust them. I understand this is a matter of figures, of dollars and cents. I implore you as elected officials to do the necessary research before you make a decision affecting our communities. What saves a few dollars now is exponentially more costly in the long run.

In 1991, the New York State Department of Drug Abuse Services did a study as to the cost effectiveness of methadone maintenance treatment. They found that methadone maintenance

saved the taxpayers 94.4%. Without methadone treatment, many of us would be in jail, utilizing much more expensive human options that are far less successful. All three options are paid for by County taxpayers, the cheapest and most successful being methadone. So if you want to look at it from a point of dollars and cents, as a taxpayer I agree that methadone makes sense. As a patient, I know that methadone saves lives.

Please, I implore you to make well researched, educated decisions, attempting to fully understand the full results of the decisions.

As an elected official, look beyond what your own personal beliefs about methadone might be. Look beyond the full stigmas and know that there are many hard working, productive members of our society out there; your neighbors, your coworkers, your interns, people like me who owe their lives to the methadone program yet never get to acknowledge it publicly.

UNKNOWN AUDIENCE MEMBER:

That's a good job.

CHAIRMAN SPENCER:

Thank you, Kimberly. We appreciate that.

Applause

Congratulations, too. Really, you are an inspiration and your story is truly a very important example for all of us. Thank you.

MS. TEIGUE:

Thank you.

CHAIRMAN SPENCER:

So we'll continue with the public portion after I take a few moments. I wanted to -- I appreciate the County Executive's team coming forward. And I've had an opportunity to be briefed, as well as some of my colleagues. We have Dennis Cohen, the County Attorney; Chief Deputy Executive Regina Calcaterra, and Ben Zwirn who have come to make themselves available to discuss Foley with this committee. And some of my colleagues, we have Legislator Cilmi and Calarco who have decided to -- and Gregory who are with us, in addition to the full Health Committee. So I didn't know if you wanted to make a couple of introductory remarks and then -- well, you'll probably have a very hefty speakers list, but we did make a couple of remarks before you came in with regards to -- that we're going to have a productive discourse regarding this issue and we're going to keep it that way.

MR. ZWIRN:

Mr. Chairman, I would just suggest, I know there are questions that I know Legislators have. Maybe instead of us going through a whole presentation, why don't we just get right to some of the questions that the Legislators have and that probably would be probably easier.

CHAIRMAN SPENCER:

Sounds good. So, Legislator Browning.

LEG. BROWNING:

Well, I think one of the first questions I'd like to ask is about the HEAL Grant. My understanding is that we applied for a HEAL Grant, and the paperwork that I have in front of me talks about downsizing 80 beds at John J. Foley, consolidating two health centers and merging them into the John J. Foley Skilled Nursing Facility. I have a couple of comments about that because I know that in my conversation with the County Executive, I was very clear with him that I did not feel that it was a good idea to consolidate the two centers by John J. Foley. I'm not saying I'm opposed to

consolidating the centers, but I didn't think this was an appropriate location and I felt it was important to have a conversation with Brookhaven Hospital, being that they're the ones who manage the centers for us.

In light of that, we're accepting a \$17 million HEAL Grant that says we're going to close beds and that we're going to consolidate two centers into John J. Foley. However, while I was away I found out that all of a sudden we have this agreement with this Mr. Sherman to sell John J. Foley Skilled Nursing Facility. So my question is what are we doing with the \$17 million HEAL Grant.

MS. CALCATERRA:

Well, actually we were notified -- is this on? Okay. Thank you, Legislator, for that -- you have to hold it while you speak? Okay. Legislator, for that question and for the opportunity to actually explain this.

The HEAL Grant is dated February 9th. It was actually submitted by our Department of Health the fifth week of our administration. So I'm not clear when you had the conversation with the County Executive, if it was before or after, but there certainly wasn't any intent on our part, our staff in the Department of Health wanted to submit it because they wanted to take advantage of the very last HEAL Grant that's going to be available, because this is the very last cycle. So they submitted a HEAL Grant, as you said, that got rid of -- that in the proposal got rid of all adult day health care at the facility, all 60 beds; would reduce it by 80 beds, and also what it says is that it would transfer costly, excess, in-patient beds and programs to the 42 other skilled nursing facilities in the County. It also did say that they wanted to use the money to consolidate Shirley and Patchogue; and like I said, that was done the fifth week of our administration.

Then on March 6th, as everyone knows, a blue ribbon panel came out with a number that was pretty devastating that said that the County was \$530 million in debt. As a result of that, we started having a lot of conversations with folks up in Albany, I think mostly because what we wanted to do, as the Executive and also on behalf of probably -- I'm hoping many members here, is prevent a fiscal control board, that's not the direction we want to go in. So when we met with members of the Governor's staff, we told them that we don't want a handout, we just want a hand up. We need assistance. We're not looking for money, we're just looking for guidance on things to do.

So in the conversations that we have had with them, we talked about everything from corrections to health to a variety of different issues. In the conversations regarding the Department of Health, they had said to us -- because we told them that we put together a mitigation plan, we've got to report this plan to the rating agencies, we want to make sure that we're not closed out of the markets as a result of what is going on. So we told them that one of the things that's in the mitigation plan, because they should know when it had to do with DOH, was that we planned on phasing out our health care clinics one year at a time at a million dollars to an FQHC. And they asked why, why one year, one at a time? And we thought, well, we thought that that was probably what the Department of Health would want us to do. And they actually said that after we had passed off the Coram facility to HRH, that they were contacted from a variety of different FQHC's that said that they would be willing to step in and help the County and participate as an FQHC in our other clinics. So in that conversation, the Governor's staff advised us that, "You should consider having all of your health care clinics become an FQHC," and by way of the documentation that we had shared with them, that would save us \$25 million a year. So that was that conversation and that conversation -- those conversations started in March and April.

And as we were continuing to talk to them about our situation, we also talked to them about options for the nursing home, we tried to get their perspective on what it is that we should do, and we talked about the HEAL Grant. One of the things that came up in the HEAL Grant was that, well, we applied for the HEAL Grant for this consolidation, and if we're going to do FQHC's, it's not going to work because we're no longer going to have these health care facilities that are going to be ours and

they're going to be imagined by an FQHC. So it was during those conversations that we were told the HEAL Grant can easily be transferred to something else. What you apply for isn't necessarily what you get. So when -- and that was the extent of the conversation.

Then on June 18th we got -- around mid-June, we got a phone call from the Governor's Office who advised us that they're granting us 17 million in the HEAL Grant; this is the last cycle. This is their way of helping Suffolk County. They didn't give us, you know, direct funding, but they do have this HEAL Grant money and we should use it to pay down our debt. So regardless of what we do with the nursing home, that's what the focus should be. And they said, "Resubmit your application within the 30 days of the time that you get the letter to include covering the debt and any capital expenditures that you have." So that concept of the 17 million being paid to down the debt was actually public information from mid-June on because it was also in the paper as well. So that's what the history is with the HEAL Grant.

LEG. BROWNING:

Okay. Well, I haven't seen that paperwork and I would like to see that application, that modified application.

MS. CALCATERRA:

Absolutely, we'll gladly share that with you.

LEG. BROWNING:

And also the approval from the State that --

MS. CALCATERRA:

We're in --

LEG. BROWNING:

-- we can pay down the debt on our nursing home or pay down our debt on what?

MS. CALCATERRA:

The nursing home.

LEG. BROWNING:

Okay. Let me ask you, your involvement in the nursing home; you've been involved in the nursing home for how long?

MS. CALCATERRA:

July 11th.

LEG. BROWNING:

Since July 11th, okay. Then I guess I need to have a conversation with the County Executive, because I know we met at the beginning of the year and I felt that you were of an opinion to clearly just sell the nursing home. We very much disagreed at our meeting, and I made a request that you not be involved in the John J. Foley Nursing Home.

So I can tell you, I'm very annoyed that the County Executive did not agree to continue that agreement. And -- so that's a conversation I'm going to have with him.

As far as the nursing home is concerned, I would like to know how we can pay down this debt. There are a number of questions. I don't know if anybody else has questions about the HEAL Grant.

LEG. KENNEDY:

I do.

LEG. BROWNING:

Because there are more questions I have pertaining to the nursing home.

As far as Mr. DeGere, my understanding is there's a \$500,000 fee that is being paid to Mr. DeGere. I don't believe he's a licensed broker and I'm wondering, why would we be paying \$500,000 to an individual who is not a licensed broker for the sale of John J. Foley Nursing Home? And also, I'm curious, what is his connection to this Mr. Sherman.

COUNTY ATTORNEY COHEN:

Legislator Browning, I'll answer the question regarding the lack of a broker's licence. Yes, Mr. DeGere is not a licensed real estate broker. The Statute discusses, you know, the sale of real property and someone being a broker and brokering a deal. For the property in this case, Mr. DeGere came to the County and offered his services for selling the facility. It's selling a business is what the County is doing. The sale of the property, despite whatever value it may have, is ancillary to the sale of the business. So in my opinion, he does not need a broker's license to sell the business.

LEG. BROWNING:

But I think it's also a piece of real estate, not just a business. What service did Mr. DeGere provide and, you know, how was the fee negotiated also?

COUNTY ATTORNEY COHEN:

Well, the agreement is a finder's fee agreement, so he brought to the County certain companies to make proposals. And that's what the agreement was for and that's what he did, he provided a service to bring people who are going to make proposals to buy the business. He did not bring anybody on to buy property, he didn't bring any perspective -- you know, people who were looking to make an investment in the property and use it for another use, he brought companies to buy the nursing home, to buy the beds. That was the service he provided.

LEG. BROWNING:

I still do not have the -- and again, how did you negotiate his fee?

COUNTY ATTORNEY COHEN:

The fee was negotiated. He made an offer, there was, you know, back and forth between him and members of the County's offices and we came to an agreement.

LEG. BROWNING:

Okay. I'm curious, George, maybe if you could chime in here a little bit. Because I do believe that Mr. DeGere would have to have some kind of a license or some kind of qualifications. I do believe it is not just a business sale, it's also a real estate sale.

MR. NOLAN:

Because this issue has been raised in the last couple of days, I did do some preliminary research yesterday. And really the issue is what is the dominant feature of the sale; is it predominantly a sale of a business or is it predominantly a real estate deal? And that's really the issue.

I think it's also a question of whether or not DeGere was actually serving as a real estate broker, actually brokering within the meaning of that term; I'm not sure he was. But also, I think I do agree with the County Attorney that this is predominantly a sale of a business and the real estate was incidental. So, in essence, I agree with the County Attorney.

LEG. BROWNING:

Is there land attached to the sale?

COUNTY ATTORNEY COHEN:

Yes.

LEG. BROWNING:

There's, I believe, 14 acres that are attached to it?

COUNTY ATTORNEY COHEN:

Clearly there's land attached to the deal. Right, the 14 --

LEG. BROWNING:

You know, I'm going to hold off. You know, I would like the answers on the HEAL Grant. And I know that -- I believe I heard John say he had comments or questions about the HEAL Grant. So I'll defer and then we'll get back to John J. Foley as far as the sale is concerned.

CHAIRMAN SPENCER:

I have Legislator Kennedy and then Legislator Gregory on deck.

LEG. KENNEDY:

Thank you, Mr. Chair. And thank you for being here. Dennis, you heard some of what my concerns were two weeks ago. Let me begin by saying that the request that I made through the Chair actually for copies of all the correspondence, the e-mails and all the other documents that were associated with bringing about not only this transaction with Sherman, but whomever any of the other parties were, as of today I have not received. I have IR 1811, just like everybody else has.

I read the contract and I'm prepared to talk with you at length about the contract and what's in it, what's not in it. It is a contract, in my opinion, that is extremely favorable to the buyer. I would argue that the protections for the seller, us, are woefully, woefully just not there. But let's go to HEAL.

So I read the -- after I invoked the Davis Law, I did get a copy of all the documents from Dr. Tomarken, despite the fact that I had asked at the July John J. Foley Oversight Committee meeting for them. I received them by e-mail, oh, about seven or eight days ago, and I saw your correspondence as well acknowledging it.

A, I guess I was somewhat surprised to see that the Health Department initiated an application on February 8th, and I certainly had not heard that there was going to be any effort to consolidate. Not that that is my Legislative District, but last July when the Health Department unilaterally reduced Article 6 reimbursement, I worked steadfastly with many of my colleagues to advocate for reinstatement, and especially for clinic operation. And quite frankly, I did quite a bit of work on the Coram Clinic. So I was surprised that I only became aware of this by virtue of a series of letters to Dr. Tomarken invoking Davis.

Nevertheless, here we are and we applied for the various things that were included in there. And I saw the component associated with debt reduction, as well as the closure. I thought it was interesting that the Adult Day Health Care Program would be identified to be closed, because we are one of the few medical models in the County and, quite frankly, have been heavily subscribed. I worked with former Legislator Foley to resolve the State Health Department issues associated with licensure and we did, in fact, get our 60 licenses back in place. We, unfortunately, had to discharge a number of long-term residents when there was question by the State Health Department; no fault of our own, it was actually a misfiling on their part.

So where's the question? Here's the question. The question is how do we go from that application process in February -- Madam Chief Deputy, I appreciate you giving the litany, but again, here on August 16th I'm finding out that you initiated contacts with the State Health Department in March

about a variety of these different health issues, none of them, I guess, were known to me; perhaps my colleagues were aware. But the last time I checked, we're the policy making entity. I've got a question, hold on, I'll get there.

As of five days ago, Mr. Clancy, the liaison, government liaison in the State Health Department, had no knowledge of an after-the-fact amendment to the June 18th Notice of Award. Quite frankly, he said to me, "We don't change these things after the fact." My reading of HEAL 21 under Public Health Law, Section 2801, is that it is a Statewide, open-competitive grant, and the State Health Department reviews the submissions that come from throughout the whole State competing for funds. Quite frankly, I'm at a loss to understand how the Dormitory Authority and State Health would, after the fact, elect to eliminate debt to facilitate a below market deal. It seems somewhat incredulous. How does that happen?

MS. CALCATERRA:

We were told in mid-June that we were going to get the HEAL Grant to pay down our debt. There was no deal in mid-June.

LEG. KENNEDY:

Well, I think you indicated that Mr. DeGere approached the Administration in February; isn't that true?

COUNTY ATTORNEY COHEN:

I think it was March.

MS. CALCATERRA:

We believe it was March.

LEG. KENNEDY:

All right; one month here, one month there. So we knew that there was an intent, at least on the part of the Executive, to sell the facility. Not known to us, but known to the Executive; do we agree?

MS. CALCATERRA:

No, I absolutely disagree. There was no intent. We were all trying to figure out what to do in the midst of this fiscal crisis that we have, trying to look at all the different variables. The County Executive never went into this with a closed mind, he's very open-minded and wanted to see what alternatives we can have for Foley. Even though DeGere approached us and we started having dialogues, the final contract wasn't signed by our office until a few weeks ago, so it was not finalized until then. So just because someone approached us doesn't mean that that was our intent. But as the Executive and responsible for the budget, along with you, we need to look at all the different aspects of what it is that we need to do if things don't work out. And are we going to keep it open or closed? I mean, we've got a budget hole that we've got to plug by introducing our budget in September. We could close Foley or we could keep it open if all other alternatives don't turn out. So it was something that was out there but it was never the intent.

LEG. KENNEDY:

Well, again, intent is often in the minds of an initiator, so you and I can go back and forth with intent. I'm looking at the chronology of events and what it appears to be.

Let's go to the specifics of the resolution today. We have a resolution before us to approve the 17 million retirement, if you will, of the debt. We have no writing from the State Health Department that provides us with that. We have a contract that still has several hearings to go, and despite the

fact that it has four signatures on it, it is subject to the approval of the Legislature. So while there may have been a meeting of the minds in the principles of the Administration, this part of government is not involved yet. So obviously, we all argue, we don't have an executed contract yet.

Without an executed contract, there is no assurance that there will be a sale. Without the assurance that there will be a sale, quite frankly, retirement of the debt at this point, I would offer to you, is imprudent, unwise and a poor use of funds.

The reimbursement from Medicaid is a two-fold reimbursement for physical care and for retirement of capital debt. Every day that a bed is filled, we are retiring our debt through provision of services and receipt of Medicaid. It is a short-term and, in my opinion, misguided use of those funds. Seventeen million is certainly something that can help us, but I would say to you it shouldn't go here.

CHAIRMAN SPENCER:

I'm sorry, Legislator Kennedy, if you could -- I understand your passion, once again, but if you could kind of ask, you know, questions. I appreciate --

LEG. KENNEDY:

Okay.

CHAIRMAN SPENCER:

Okay.

LEG. KENNEDY:

So here's the question; so why shouldn't we table it today?

MS. CALCATERRA:

Because we have a budget that we're addressing, a budget with a substantial hole that we all agree is close to anywhere between like 150 and 200 million remaining, and we need to close it to issue a balanced budget by September. If we have an opportunity that we are given by the Governor's office -- I don't know Mr. Clancy, I've never spoken to him -- but by the Governor's Office to help us down here and take that 17 million and apply it towards debt, and take 17 million more off of our plate that we're responsible for, we should take advantage of it and move it forward. That's why, because as people -- folks around the table were representing elected -- residents of Suffolk County, and as the County Executive, who also represents all the residents of Suffolk County, we have a responsibility to the taxpayers and we don't want the taxpayers having to bear the burden of us turning back \$17 million that the Governor gave us to pull down our debt.

LEG. KENNEDY:

Well, the Governor sounds very beneficent, but all we have at this point is your representation. There is not a single shred of writing that puts that together. I've got those six instruments that came from Dr. Tomarken, they're very clear; there's a two-page letter signed by Dr. Shah and by Mr. Williams from the Dormitory Authority. I've got a blank screen. You're telling us this was your conversation.

MS. CALCATERRA:

I absolutely am telling you that this was my conversation. And it was a series of conversations with the Executive up in Albany, which we are more than permitted to have, and the Executive's Office down here as well. A series of conversations that have been had, Legislator.

LEG. KENNEDY:

The --

MS. CALCATERRA:

And it was -- Legislator, I'm sorry.

LEG. KENNEDY:

Yeah.

MS. CALCATERRA:

If it wasn't for members of the Governor's Office actually raising this with us, telling us and advising us that we could use this to pay down our debt, we wouldn't have known. It was their way to help us.

LEG. KENNEDY:

Help comes in many different ways. I question what's being characterized as help particularly because it goes towards the validity of this sales transaction. But I will say to you today, absent some writing that reflects that the Health Department and the Dormitory Authority have consented to after-the-award modify and eliminate debt, I'm not prepared to go ahead and support it. I'll yield.

CHAIRMAN SPENCER:

Thank you, Legislator Kennedy. Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. Do you have a question? If a member of the committee wants to ask a question, I'll defer to a member of the committee.

LEG. BROWNING:

No, go ahead.

LEG. GREGORY:

Okay. Thank you, Mr. Chair. Thank you for being here today. Now, you were supposed to be here to make a presentation or to answer questions about the deal? I'm not a member, so I don't know, I just know you're here.

CHAIRMAN SPENCER:

They're here for questions.

MR. NOLAN:

For Foley.

LEG. GREGORY:

Oh, okay. Okay. All right. So I know there were questions asked earlier about DeGere, I know there's a resolution about DeGere that's on the agenda. You know, I have a background in procurement and I agree with the County Attorney as well as Legislative Counsel that there are instances where if the nexus of the service that's being provided is not, you know, I guess a real estate transaction, you know, you can -- you know, it's part of the procurement process. You don't need a license or whatever the case may be. So I fully agree with that, given my background experience on that. But is there -- from what I understand, and I think it was stated earlier, there is a signed contract?

COUNTY ATTORNEY COHEN:

Yes, there is a signed contract.

LEG. GREGORY:

Okay. Now, Mr. DeGere had approached the Administration March, February, whatever time frame?

COUNTY ATTORNEY COHEN:

My understanding is back in March, yes.

LEG. GREGORY:

There were other people, too, from what I understand, or am I wrong, that approached the Administration or --

MS. CALCATERRA:

No, actually -- may I elaborate?

LEG. GREGORY:

Go ahead.

MS. CALCATERRA:

Thank you. I'm sorry, I didn't mean to interrupt you, Legislator. Peter DeGere is the only one who actually approached the Administration saying that he could bring folks to the table; so he actually did and he brought individuals to the table. But what happened is when the article appeared in Newsday about DeGere, which was whenever it appeared, all of a sudden we got a substantial flurry of phone calls and other folks reaching out saying that they were potentially interested in also buying the nursing home.

COUNTY ATTORNEY COHEN:

And I want to make one other point clear. This was a non-exclusive agreement, so if other entities brought forth potential buyers and wanted to, you know, make their own deal and negotiate with the County, that was certainly an open possibility. And we were very clear about that in the contract, that it was a non-exclusive finder's fee agreement. So, you know, this was not just a, you know, "Well, we're stuck with DeGere and whatever happens, they're our guy." You know, they came to us, we said, "Listen, if you can provide the service, that's great. If someone else can provide the service, then that's fine, too."

LEG. GREGORY:

Right.

MS. CALCATERRA:

Five or six people -- or six people could have come to us, and it doesn't matter; if you only ended up with one negotiated sale, only one person was the one going to get, you know, the commission on that.

LEG. GREGORY:

Okay. So he didn't bring just one person, he brought multiple interested buyers.

MS. CALCATERRA:

Correct.

LEG. GREGORY:

Okay. And just for historical reference, this was after there was an -- I think there was two separate RFP's, one that we instituted and one that the Administration instituted, maybe in late 2011, I guess, or just one?

COUNTY ATTORNEY COHEN:

There were two outstanding, they ended up both being closed without awards being awarded, for lack of a better word, and -- because they weren't viable.

LEG. GREGORY:

Right, in 2012 though.

COUNTY ATTORNEY COHEN:

In two -- the RFP's were submitted in 2011, but the action to not award was in 2012, yes.

LEG. GREGORY:

Right, right. And one was a public/private partnership and I guess the other one was just fully private or the takeover of --

COUNTY ATTORNEY COHEN:

Yeah, I think the Legislative RFP was public/private, the County Executive RFP was just a straight sale or lease.

LEG. GREGORY:

Okay. So, and that happened March, April, May?

COUNTY ATTORNEY COHEN:

It was around the same timeframe. It was around the same timeframe; it was either February or March in which there was no action.

LEG. GREGORY:

Yeah, right, the no action. I'm not talking about when the RFP was let. I'm talking about when they received the responses, you evaluated the responses and you found there was no responsible bidder, or whatever.

COUNTY ATTORNEY COHEN:

Right. We didn't enter into the contract with DeGere until those were closed out.

LEG. GREGORY:

No, I'm not even implying that. I'm just trying to establish the process, because I think there may be an understanding that, you know, there should have been another RFP that was let before we even entertained the idea of talking to DeGere and whoever his interested buyers were. But there was a process that, you know, failed, for lack of a better term, or was it -- didn't return the results that we were hoping for?

COUNTY ATTORNEY COHEN:

It didn't return a viable option.

LEG. GREGORY:

Right, right. So we were left with keeping Foley as is, running a deficit as some will argue, or, you know, this person who came to the Administration and says, "I have viable buyers," and I think there was a waiver at some point.

COUNTY ATTORNEY COHEN:

Yes.

LEG. GREGORY:

Because we went through the RFP process, that wasn't successful. And then out of the waiver process you guys consummated a contract, after that.

COUNTY ATTORNEY COHEN:

The contract with DeGere?

LEG. GREGORY:

Yeah, that's what I meant. Sorry.

COUNTY ATTORNEY COHEN:

Yeah. We didn't do an RFP for DeGere's contract. DeGere came to us, you know, offering a service, and so we went through the waiver process just because -- you know, I don't know how to do an RFP to find people who are familiar with others in the nursing home industry. That's how it came to me, it was, you know, "What do we do here? Can we procure this?" It's not the type of service that lends itself to a procurement. Someone had people that they were willing to bring to us; I don't know how you RFP that. So the opinion that I gave was that, yeah, this is the type of service that's certainly appropriate for a waiver.

LEG. GREGORY:

Right. Okay. And then out of that, you were able to fully, I guess, start negotiating with whoever he brought, and then from that you -- you have a signed contract.

COUNTY ATTORNEY COHEN:

Right; with Sherman, yes.

LEG. GREGORY:

Right. Now, that includes -- I think there's been some mystery on, you know, what the deal includes; I'm hearing 14 acres, this is different than the Rozenberg deal and I don't want us -- can you clarify that?

COUNTY ATTORNEY COHEN:

My understanding is it's the same land that was being sold with the Rozenberg deal.

MS. CALCATERRA:

I don't know the comparison, but the 14 acres is the footprint, it's the building and the parking lot.

LEG. GREGORY:

Okay.

MS. CALCATERRA:

I don't know what the previous sale -- what the previous -- I'm not that, you know, familiar with the land sale aspect of it, but for this it's just the footprint.

LEG. GREGORY:

Okay. And prior to the signing of the contract, there was an appraisal, which I'm sure there was an offer, an acceptance based on the appraisal. We have that appraisal, there's been some questions about the offer being 13 million, or around that, less than the Rozenberg deal. Can you go into that?

MS. CALCATERRA:

Absolutely. Thank you for asking the question. When we -- I was one of the members at the RFP opening when the RFP was opened, the last RFP, the Executive one, to see what those offers are, and there were a few others that were there and I don't recall who was there, but I do believe a member of the Legislature or their representative was there also. And the bids that came in, I can't say it because it's confidential information, were very telling as far as what the present day value was.

Then when we started taking a look at -- this was all in July.

I mean, this just happened all in late July, and then when we started speaking -- and then the person who the County had the deal with in the past, who was Rozenberg, came back -- came back with a -- you know, expressed interest again in buying the property, and the number that came in,

again, was very telling and substantially low. So we had a conversation with them asking them what was it that they were actually basing this upon, and they went through a series of models based on reimbursement rates and property value and the price per bed. Obviously we didn't pursue with Rozenberg.

Then when we had the three buyers that Peter DeGere brought in, and we also brought in a fourth buyer, because we looked back at who had competed in the previous RFP and who was well ranked and had we contacted them, and had conversations over the phone with a few other potential buyers. They were all coming in at the range of anywhere from 18 to 22 million, those were the numbers.

So then what we did is -- and we -- but we also knew that while we were having this discussion in that very brief period of time, that we needed to get a new appraisal. So we -- because we also wanted to verify what it was that they were telling us based on reimbursement rates and price per bed and value of property. So we used the same appraiser that was used last time that actually appraised the property higher and asked them to reappraise this, everything was done at arm's length. I certainly never had a conversation with the appraiser, and they came back with the number being 22.750.

In the meantime, while they were doing their appraisal, we were getting bids in from the buyers who expressed interest, and they ranged, they all came up between 21.5 and 23 million. And we got the appraisal that Friday on the 27th, and we also did our due diligence on the buyers and that's how we ended up selecting the Shermans, they came in at -- the Shermans came in at 23 million, and it was a little bit more than what the appraisal showed. And what the appraisal reflected was, you know, change of reimbursement rates, and also a change and substantial change in the property value, and showed that the value of the property had dropped every year, five to 10% per year, thus bringing that part of it down.

And generally, looking at the general sales that have occurred in the State of New York for nursing homes, for example, the County of Fulton sold their nursing home for 20,000 per bed; the County of Essex sold theirs for 35,000 a bed; and Chautauqua, they just sold their nursing home for 76,000 per bed. We got for Foley 87,500 per bed, which is a higher end of the market, so we had to balance that in. And then, you know, as far as reimbursement rates, what should we have expected, what is the market going to bear and what is the value of the property? So that's what they did -- we did, because we needed an assessment to see how unrealistic or realistic are these bids that are coming in, so we wanted to look at the general landscape out there. And of course, the appraiser looked at the value and came back with that number and that's how everything lined up.

LEG. GREGORY:

So if I'm to understand you, Mr. Rozenberg reoffered his interest or expressed interest again, and I hope we said, "Thanks, but no thanks", but --

COUNTY ATTORNEY COHEN:

Yeah, can I -- let me just -- only because it's a little sensitive because we're under litigation with him. You know, I had discussions with their attorney and one of the options was to reinstitute the contract. You know, I'd rather not --

LEG. GREGORY:

Oh, okay.

COUNTY ATTORNEY COHEN:

-- at least in an open forum, go much deeper than that because, you know, it is still active litigation.

LEG. GREGORY:

Okay. But the -- I guess the point I was really going to was that the appraiser that he used in his

sale appraised this, appraised the land this time, the same person who appraised it at, I think it was 33 or 36 million, just, I don't know, 14 months ago, is now appraising the land actually a little less than what it seems like we're getting.
So it's in the ballpark.

COUNTY ATTORNEY COHEN:

Yes, exactly. That's exactly right.

LEG. GREGORY:

So it's a fair appraisal, arm length appraisal. So we're not -- you know, there's no sweetheart deal that, "Oh, we're just, you know, foregoing \$13 million in" --

COUNTY ATTORNEY COHEN:

No. And in fact, it's consistent with what was being offered, you know, and that's really what you want to see. First of all, I mean, what fair market value is was what people are willing to pay for the asset. So, you know, we were comfortable just with the offers we had, but to go above and beyond, you know, we reordered the appraisal just to make sure and it came back consistent with what we were offered. I mean, that's fair market value, right? That's the whole market system. What's fair market value is what people are willing to pay.

LEG. GREGORY:

Right. Well, we can't -- we can't take the position, "Well, we got \$36 million last year. We're going to hold out for 36," meanwhile the appraisal is 23 or 22.

COUNTY ATTORNEY COHEN:

Right. Again, I mean, without getting into the litigation, there are reasons why Rozenberg backed out of the deal.

LEG. GREGORY:

Okay. So -- all right. So that's DeGere's part in this process.

COUNTY ATTORNEY COHEN:

That's their involvement, yes.

LEG. GREGORY:

He's come to us. I don't necessarily like, you know, these people that offer their services and they want a big fee, but that's the nature of the business and he actually provided a service; if you provide services, you should be paid for it.

Now, if we have, you know, a disagreement that he may have a conflict of interest or some inside advantage because of his prior experience, then we should address that through Law. But a service has been provided and we should pay for that service; that's a separate issue.

Now, the HEAL Grant. Now, there was an application that was submitted earlier this year, conversations with the Governor's Office just stating has kind of changed what arrangements or interests or purpose we were looking at. Now, you're stating, Regina, that the Governor's Office has accepted or offered -- I think, if I heard you correctly -- us to use, have some flexibility in the use of the HEAL Grant, but we have to resubmit another application or amendment?

MS. CALCATERRA:

According -- now -- please excuse me, because I'm not too well versed on the process of a HEAL Grant. But when we received, when the County received a letter back on July 18th or June 18th, I have it in here, that says that you received an award, you then have to submit something called a Grant Disbursement Agreement, a work plan and a budget time line; that's pro forma, everyone has

to do that. So by then, we already had the conversation with the Governor's Office and they said, "When you resubmit to us, when you submit to us the Grant Disbursement Agreement, the work plan, budget and time line, put in what your debt payment is and put in any capital improvements that need to be done, that could be covered by the \$17 million HEAL Grant." So regardless of whether or not what was put in the original HEAL Grant stood or what paying down the debt would apply, you still had to, after receiving the letter of award, had to submit these three documents, and then you have the flexibility to put in there what you were going to put in there, at least the Governor's Office gave us that.

LEG. GREGORY:

Okay. All right. Thank you. And I guess I have a question for BRO. I know I should know this, but I just -- I don't. I don't understand these reimbursement rates and all that stuff. I know Legislator Kennedy had mentioned that there's a two-pronged or dual purpose of reimbursement rates, one's to pay for the actual care or the cost of service, the other is to go to -- to pay down capital expenses.

MR. FREAS:

That's correct.

LEG. GREGORY:

Okay. So it's my understanding, and I could be wrong, several years ago, two years ago the debt in the budget, we tried to address payment of the debt and it was around 17, 18 million, I thought.

MR. FREAS:

It's around sixteen nine thirty-four, something like that.

LEG. GREGORY:

That's today, right? Or is that number --

MR. FREAS:

That's previously.

LEG. GREGORY:

Okay.

MR. FREAS:

The -- my understanding from conversations I've had with the Department of Health Services is that the HEAL Grant would be repurposed towards Foley to, one, set up the sinking fund to defuse the debt on the actual construction of the property. The other purpose would be to bring the building up to the standards that we also have capital projects in the pipeline for right now. The building is going to require some new fire proofing and some work on the electrical conduits in order for it, more or less, to continue operating as a nursing home, whether we operate it or whether another entity operates it.

LEG. GREGORY:

I guess where I'm confused is the debt service on the building seems to be stagnant, seems to remain the same, but yet --

MR. FREAS:

No, that's not correct. It's a small --

LEG. GREGORY:

Or is it just a very small amount that's just chipping away at it?

MR. FREAS:

The building, we pay about 2.3, \$2.4 million at this point a year; that's on the major portion of the debt, the construction debt.

LEG. GREGORY:

Okay.

MR. FREAS:

The remainder of the debt -- and the building has its own capital project associated with it to purchase equipment, which we haven't done in a little while but we do occasionally do. It also has another project that I believe was not included this year that would have done some of the other -- the improvements I just mentioned. One was also included in a more general capital project for general building improvements throughout the County's facilities.

LEG. GREGORY:

Okay. And I know I'm taking a lot of time and I thank the committee for their indulgence, but I do have one last question. So just a reminder, the Rozenberg deal was 36 million for the building, but the County still had to pay 16 -- whatever it was at the time, 17, 18 million.

MR. FREAS:

Correct.

LEG. GREGORY:

So out of that 36 million, we probably would have netted 18 million.

MR. FREAS:

Give or take.

LEG. GREGORY:

Give or take.

MR. FREAS:

Actually you don't -- you don't need as much money in the sinking fund as the current debt, because the sinking fund, what you do with it is you buy government securities with them which accrue interest, so you needed -- for sixteen nine thirty-four, or whatever it was, you needed 15 million and change in the sinking fund, so it wasn't -- you're basically correct, but you don't need quite as much money in the sinking fund as you do, it doesn't have to be equal. You can have less money because you'll make interest.

LEG. GREGORY:

Oh, okay.

MR. FREAS:

On the money that's in the sinking fund.

LEG. GREGORY:

Okay. Well, I'm looking at it from this perspective, just comparing those two deals. That it seems like we're almost at a slight advantage with the current deal, because we won't be taking -- for one, we won't be taking money from the deal to pay off debt, the debt is handled with the HEAL Grant. So we're just being -- the net is we're being paid for transferring over the service to a private provider.

MR. FREAS:

Assuming that the State fully approves --

LEG. GREGORY:

Right.

MR. FREAS:

You know, that's --

LEG. GREGORY:

I mean, you know, all assumptions being made, everything --

MR. FREAS:

-- the debt, yes, you could certainly argue that.

LEG. GREGORY:

Okay. All right. Thank you, Mr. Chair.

CHAIRMAN SPENCER:

Thank you, Legislator Gregory. I wanted to just say something briefly. Our next Legislator is Legislator Cilmi will be speaking, but this issue is so complex, we were trying to figure out a way to be able to organize it, because we have questions regarding the HEAL Grant and then the contractor who brought the finder's fee and then the buyers. But I think that Legislator Gregory kind of went through most of his concerns. I know Legislator Browning and Kennedy will follow-up with the remaining items that they have. So I just ask, again, for the public's indulgence with regards to this. If you gave us a card, I am going to allow you to speak. This will probably be an extended session, but I do appreciate everyone's cooperation, I feel this has been very productive.

So just before I let Legislator Cilmi speak, I did want to acknowledge -- and again, Kate, who just returned from Ireland and we're glad that she's back and we know that she went over for a very difficult situation with the death of her mother and we're glad that she made it back safely.

LEG. BROWNING:

Thank you.

CHAIRMAN SPENCER:

And she has our condolences. And she's just been -- she's a senior Legislator that's just been a real pillar to this Legislature and we're glad that she's back with us. And I also -- our Deputy Presiding Officer, he's also -- he had a death in his family, too, and so our prayers are with him and his family, and I say these things because, you know, I'm sure people will leave. And then Barbara LoMoriello, who this is our last committee session with us today, she's retiring and so she's someone that has served very well as an Assistant Clerk. She's just been really someone that's had a long history of County services. So I definitely wanted to recognize that this is her very last session that she will be serving in committee, so we wanted to again congrat --

MS. GELLERSTEIN:

She's not in the room.

CHAIRMAN SPENCER:

Oh, she's not in the room. I picked a fine time to do that.

MR. ZWIRN:

She's already escaped.

*(*Laughter*)*

CHAIRMAN SPENCER:

She's already escaped. But with that -- that was just a brief service break there. We'll get back to our Foley hearings with Legislator Cilmi.

*(*Barbara LoMoriello reentered the auditorium*)*

LEG. CILMI:

Barbara missed it.

CHAIRMAN SPENCER:

Thank you, Barbara.

MS. LOMORIELLO:

You're welcome (*laughter*).

LEG. KENNEDY:

Good job.

Applause

LEG. CILMI:

Thanks, Mr. Chairman and the committee for your indulgence. Ms. Calcaterra, thanks for your very detailed presentation so far, and I have a question for our County Attorney.

With respect to the lawsuit that you referenced between us and Mr. Rozenberg, I'll try and ask the question in such a way not to -- as not to compromise our position and if -- hopefully you can answer it the same way, and if not, maybe we could entertain an executive session at some point.

But the lawsuit -- is it conceivable that a remedy from the lawsuit, or the decision that comes out of this lawsuit, could involve the enforcement of the original contract between the County and Mr. Rozenberg?

COUNTY ATTORNEY COHEN:

No, the lawsuit was brought by Rozenberg seeking the return of their down payment. The County, as far as I know, did not counterclaim for a specific performance, which is what you're referring to. And the County, I guess, could have counterclaimed for a specific performance, which is very unusual in a real estate deal. Specific performance usually works the other way where a buyer may sue the seller to enforce the terms of the contract. But generally speaking -- in fact, I think there's a Liquidated Damages Clause in the contract, now that I think about it, that limits the liability to the buyer to the down payment. So I know I went around in a circle, but the answer is there's a Liquidated Damages Clause that limits the liability to the down payment.

LEG. CILMI:

Okay. Could the County, at this point, submit a counterclaim in that regard?

COUNTY ATTORNEY COHEN:

No. No because, like I said, there's a Liquidated Damages Clause which means our sole remedy is the down payment that was submitted, and that's really the intent of a down payment. Because it's impossible to, you know, put a number on the damages in a failed real estate deal. It could go the other way, sometimes when a seller breaches the buyer can bring a lawsuit for specific performance, but it doesn't go from seller to buyer.

LEG. CILMI:

Okay. Thank you.

COUNTY ATTORNEY COHEN:

Sure.

CHAIRMAN SPENCER:

I have Legislator Browning, part two, and then Kennedy part two.

LEG. BROWNING:

(Laughter). Thanks. Okay. So now getting to a number of things I have, and I know, John, you have a number of questions. As far as the appraisals are concerned, it's my understanding that the contract is dated July 30th. What is the date of the appraisal, that you got the appraisal?

MS. CALCATERRA:

The date on the appraisal is July 27th.

LEG. BROWNING:

Okay. So in three days, you were able to put together a contract with Mr. Sherman for the sale of John J. Foley.

COUNTY ATTORNEY COHEN:

Actually, I just want to make the record clear. We didn't get the appraisal until after the contract was signed. The appraisal is dated July 27th because that's the date I believe that they used for the value. You know, they have to have a certain date when they put the value; it's valued at this amount for this specific date. We didn't get the appraisal in until -- I want to say the first week in August.

LEG. BROWNING:

Okay. So you agreed to a sale, you agreed to the sale and you have a contract with Mr. Sherman for 23 million, but you didn't get the appraisal before you signed that -- what I'm trying to understand is you got the appraisal on July 27th of 23 million. Did you know what the appraisal was beforehand and -- I'm trying to understand how in three days you were able to put together a contract like this.

MS. CALCATERRA:

We actually didn't agree to the sale until the afternoon of July 30th.

LEG. BROWNING:

And in three days you were able to --

MS. CALCATERRA:

In a few hours.

LEG. BROWNING:

In three days --

MS. CALCATERRA:

We agreed --

LEG. BROWNING:

-- from the time of the appraisal --

MR. ZWIRN:

(Inaudible).

COUNTY ATTORNEY COHEN:

Right. So the letter on the date of the appraisal is July 30th, just to make that clear for the record. So the contract was signed on the same day?

MS. CALCATERRA:

Yes.

LEG. BROWNING:

So you agreed in one day to a \$23 million sale.

MS. CALCATERRA:

We actually were in discussions with a few different potential buyers. We were vetting them for about a week before and we wanted to also see if there was an opportunity that the Easter Seals Program would work out. I believe that there was a call on the 30th that I did not participate in, and after that call was concluded and we proceeded with negotiating the contracts, we actually negotiated the contract the afternoon into the evening of the 30th.

LEG. BROWNING:

So basically in one day you put this contract together and -- in one day you put this contract together with an appraisal. And did the value of the appraisal, does that include the license?

COUNTY ATTORNEY COHEN:

The value of the appraisal includes -- you know, it's an appraisal on the going concern of the business. It takes into account everything involved in the business.

LEG. BROWNING:

And can you tell me what the value of the license is?

COUNTY ATTORNEY COHEN:

I guess, you know, if I went back to the appraisal I can get that number, but I couldn't give it to you now.

LEG. BROWNING:

Okay. So --

MS. CALCATERRA:

And -- sorry. I apologize.

LEG. BROWNING:

I just -- I'm just trying to figure out how you were able to sign a contract with an individual for \$23 million dollars when now you're telling me that the day that you got the appraisal, the day that you received the letter was on the same day you signed the contract.

COUNTY ATTORNEY COHEN:

Well, I think it goes back to what I indicated earlier. I think it's a faulty premise to say that we can't negotiate a contract without an appraisal. Fair market value is what people are willing to pay for the asset. We had prospective purchasers who we met with, who we gave information to, they provided information to us, we got proposals from those companies and this is what the market was willing to pay. The appraisal really was -- I mean, we ordered the appraisal, we certainly wanted the information contained in the appraisal, but it's not the end-all of what you can get for whatever asset you're showing, whatever asset you're selling. The end-all is what are people willing to buy.

LEG. BROWNING:

Right. But what I'm saying is is that you had other people who came to you with an interest in the purchase, but this one individual was the only one that you signed a contract with prior to receiving the appraisal.

COUNTY ATTORNEY COHEN:

Yes, we only entered into one contract, clearly, yes.

LEG. BROWNING:

Okay. How many of the -- because I know there was an RFP went out with Rozenberg. And during the time that that RFP went out, Rozenberg responded, I believe there was four or five others that responded. How many of those other potential buyers have you had conversations with?

MS. CALCATERRA:

One of them.

LEG. BROWNING:

Only one?

MS. CALCATERRA:

One.

LEG. BROWNING:

You didn't reach out to the others at all, or did they just not respond?

COUNTY ATTORNEY COHEN:

I think they were included in the RFP's that went back out. When the two RFP's went out in 2011, you know -- and maybe I shouldn't say this because I'm kind of assuming that -- they sent the RFP's to people who had expressed an interest in the past.

LEG. BROWNING:

Right.

COUNTY ATTORNEY COHEN:

That's who you sent the RFP's out to.

LEG. BROWNING:

But I believe there were six responders and Mr. Rozenberg being one of them. So when you decided to sell John J. Foley Skilled Nursing Facility, did you go back to any of those other responders?

MS. CALCATERRA:

We didn't decide -- we did not decide to sell until July 30th, we were merely having conversations before that. But one of the folks that we did reach out to was somebody who had bid previously as well.

LEG. BROWNING:

So you didn't go back to any of those previous people. Because I'm just curious, because, you know, you had about five other responders that I think were potential buyers, and I think that they should have had an opportunity to be included in a conversation. Not that I ever supported a sale, but I just think that there was one RFP, yet now we spent \$500,000 with Mr. DeGere to do a finder's fee, or whatever you want to call it, and you could have eliminated that 500,000 if you hadn't went back to those four or five other responders.

MS. CALCATERRA:

That's a presumption that I don't agree with, because we don't know if those other buyers were

actually -- were to come to the table with a bid. Because the one buyer that we did go back to did not come to the table with a bid, so the one buyer that was on that RFP didn't come to the table with a bid, so we're not sure if any of them -- anyone who came to the table under the timelines with -- they had to agree to take all of our employees and take every one of our patients; that was the opening discussion. And if they weren't interested in doing that, no further discussions were going to happen, and that includes somebody else who was on the previous bid. And if they chose not to come to the table with a bid, then we had discussions with those who actually did bid. But what we did do was while we were having discussions with potential buyers for those few weeks, we vetted them, we did a substantial amount of background. So when we -- when it came to the 30th and we made the decision to go forward with it, we made a decision who to go with at that point.

LEG. BROWNING:

But the bottom line is you didn't approach any of those other potential buyers.

MS. CALCATERRA:

There were plenty of other buyers who also -- this was very public. There was an article in Newsday with Peter DeGere. We got plenty of folks who had called our offices and we told them that we weren't interested in selling, this was just a story that was out there. But if they wanted information, they can take a look at the old RFP and look at the old -- the scope in the old RFP that was public. And if they were still interested, they would get back to us and we'll put them on a list.

LEG. BROWNING:

Well, I just think it would have been more responsible, rather than to have Mr. DeGere and paying him \$500,000 to approach all of the other potential buyers and ask them were they still interested, and that clearly wasn't done.

COUNTY ATTORNEY COHEN:

Again, my understanding is, and I just confirmed with an attorney in my office, is that the RFP's that went out in 2011 included the companies who bid under the prior RFP that resulted in the award to Mr. Rozenberg. They had their chance to make proposals and they were unacceptable, they weren't viable.

LEG. BROWNING:

But you didn't approach any of them, bottom line.

COUNTY ATTORNEY COHEN:

We didn't go back and approach them again, no.

MS. CALCATERRA:

Several of them submitted bids for the Executive RFP that was opened and that was deemed non-responsive; they weren't viable bids.

LEG. BROWNING:

When -- there's another issue that we brought up, and I know I brought it to our County Comptroller, was some issue with equipment that was purchased for the nursing home with Dormitory grants, a couple a million dollars worth. Have you deducted that? Because I believe under the grant, we're required to be in possession of that equipment for five years. And if we sell John J. Foley Skilled Nursing Facility, have you deducted the amount of money for that equipment from the sale? And are we going to be paying back the Dormitory Authority? What are you doing with that?

COUNTY ATTORNEY COHEN:

The contract does not reflect any kind of deduction for any equipment that was purchased with grant money.

LEG. BROWNING:

Okay. But under the Dormitory Authority grant, we are required to be in possession for five years. And I believe that we would either have to pay them for that money, reimburse the Dormitory Authority; I'm not sure what we do. And that's my understanding, is that when Mr. Rozenberg was looking to do the purchase, we had made --

COUNTY ATTORNEY COHEN:

(Speaking with Margaret Bermel).

LEG. BROWNING:

If Margaret has the answer, maybe she can answer.

CHAIRMAN SPENCER:

Margaret Bermel, would you like to join us at the table? There's another chair right. Well, I think that's the Clerk's chair, but --

MS. BERMEL:

Sure.

CHAIRMAN SPENCER:

Thank you.

MS. BERMEL:

Thank you, Mr. Chair. Legislator Browning, the reimbursement on the Dormitory grant equipment was not fully reimbursed to John J. Foley due to the involvement of Audit & Control and the audit of that equipment and the District Attorney's involvement in it. And there was some contact with the dormitory Authority officials and that reimbursement was stopped, so the reimbursement on that equipment was not fully completed.

LEG. BROWNING:

Okay.

MS. BERMEL:

So that's the response on that, it wasn't -- it wasn't reimbursed and there was County expenditure, unreimbursed that was borne by John J. Foley Fund 632. So that the County absorbed much of the cost of that equipment.

LEG. BROWNING:

Okay. Thank you. And, you know, at the beginning of the year, the County Executive put together a Performance Management Team, and I see one of them is here. Knowing that John J. Foley was having some financial problems, and clearly, in my opinion, was not being run properly. And if it was being run properly and everything was done right, we wouldn't be where we are today.

Being that the nursing home, there's always this negative media about the nursing home and how much money it's costing us. Did the Performance Management Team look at the nursing home in any shape or form for efficiencies over the past six months? Because, you know, the empty beds right now I believe will cost us about \$8 million because they're continuing to be empty. And also, I'm curious as to why we have been denying patients into John J. Foley. I have a constituent who contacted me with a friend who had a family member with dementia and they were denied access to the nursing home, and it was basically one of the last places that they were hoping to get into. So why would we deny patients when it's costing us money to run it? And filling beds is clearly going to bring us some revenue. So has there been some kind of an effort to stop bringing in any more people into the nursing home? Because I know that's something that was going on with the past

administration. But again, let's go back to the Performance Management Team and what have they done to look at efficiencies to try and make the nursing home run a little better?

MS. CALCATERRA:

The Performance Management Team isn't that large. As you know, when we walked into this Administration we had one-third less Executive staff than was provided to the other Executive, and we had to live within our means. And the goal was actually to not even work within what it was that we were provided as far as limited staff, but to actually work with less. So we don't have a tremendously massive Performance Management Team, and it's a handful of folks who do a variety of different things at once, not just performance management. And they've been very busy working on trying to identify tasks that we can use to put in our 2013 budget, that we know that will be executed in 2013. So they've been looking at a variety of different things. They never got a chance to look at John J. Foley yet, but there's many things that they haven't looked at yet as well because we're extremely limited on staff, as you all know here as well.

LEG. BROWNING:

Okay. But however, knowing that it's running such a high deficit, don't you think that the Performance Management Team, that could have been a priority to look at it?

MS. CALCATERRA:

The County is running a \$200 million deficit. They're looking at a variety of different things across the County to see what it is that they can plug. So Foley, John J. Foley is one of them, but there are many, many others.

LEG. BROWNING:

Okay. Well, I think it would be nice to have the Performance Management Team look at it before we even consider a sale, and let them come back with a response.

Another question is we spent almost a million dollars on medical records, on Electronic Medical Records; this was something that's been approved since last year. To my knowledge -- now, electronic medical records are a great revenue generator, and today, it's my understanding that they're still not in operation, and I'd like to know at what point in time are they going to be in operation?

MS. CALCATERRA:

We recently gave the go-ahead to start making sure that folks are being trained on the medical records, because there's a cost factor involved. And as we're looking at every decision on overtime, on cleaning up certain parks or, you know, a variety of other things that we have to look at, a lot of things are -- have to get approved before we say yes to it. And there is a cost involved with that, but that we have affirmatively given the green light to the Department of Health to move ahead and make sure that we're doing what we possibly can to ensure that Electronic Medical Records is going to be implemented and folks are properly trained.

LEG. BROWNING:

Okay. And I have one last question and I know John's got a few more. I'm reading the contract, page 9-D, it says, "To use its best efforts to assist buyer in obtaining a property and sales tax abatement from Suffolk County IDA". What other nursing homes in Suffolk County are receiving tax abatements like this? And isn't it the intent to try and -- I mean, obviously you want to sell the nursing home and you want to put it back on the tax rolls. You want to put it on the tax rolls so we'll receive the taxes. Why would Suffolk County be given tax abatements to this purchaser when we have many other nursing homes who would probably be very happy to get a similar agreement?

MS. CALCATERRA:

This is a purchaser who is coming in and taking over 200 of our employees and keeping the facility

as is and doesn't anticipate for a while being able to turn it around and knows that he's going to be somewhat challenged. So with the assurance that they would keep all of our staff and keep all of our patients, that was also a part of what we said, was that we'll help out at the beginning to make sure that everything stays as it is so they can get fully up and running the way that it works for everybody.

LEG. BROWNING:

Okay. However, there is many nursing homes that can give you the same message and say, "We have empty beds and we would like tax abatements, too, to get us through these tough times." So I think if this person wants to buy our nursing home, he sees an opportunity to make money. And I think that that is something that he should just accept and fill the beds.

Now, whether he's accepting our employees -- and let's go back to employees. And actually, I did read, there's a part in here about retaining the residents. And again, Mr. Rozenberg said the same thing, unless he cannot provide the service that's needed for that resident, he -- it does say that that person can be transferred. So there is absolutely nothing in here, there's no reverts clause. If he was to release any employees that are currently County workers -- and there is nothing here to say if any resident that is currently in John J. Foley removed, transferred, whatever, there is absolutely nothing in this contract to guarantee that no one will be displaced.

And what I found out, which really upsets me, is that, you know, the conversation that was made, was had with Easter Seals, and there was a meeting with John J. Foley workers that Easter Seals basically walked away and was no longer interested. It's my understanding, from what came back to me from Easter Seals, was, no, they are interested. They were basically given an option of "buy it or we have no deal." And as you know, their agreement was not to necessarily buy it outright, they were going to phase-in, and they were basically told that it's one -- you know, buy it or nothing. And so I think that to go to the workers at the nursing home and tell them that Easter Seals walked away, I don't think that that's true and I don't think that should have been said to the employees.

It's my understanding also that the union was present and told that they could not be present during that meeting; I think that's definitely a violation of the Labor Law.

CHAIRMAN SPENCER:

Legislator Browning, I'm sorry, could you direct a question?

LEG. BROWNING:

Well, my question for you is, and I know we have some union representatives here, but is it true that Dan Farrell was in attendance and was asked to leave?

MS. CALCATERRA:

You asked a series of questions related to whether or not patients are going to get kicked out, whether or not employees are going to have their jobs, whether or not -- how come other nursing homes aren't going to get IDA programs and what was said to -- and what happened with Easter Seals. So I'm going to do my best to answer all of them because they need all to be responded to.

As far as the residents, nursing home operators want to fill the beds. There are 264 beds there. Now we only have 194 people in those beds. One hundred and fifty-seven are paid by Medicaid, eight by Medicare, five by insurance and one is a self-pay, 16 have Medicaid pending and seven are no-pays. He's agreed to take all of them, regardless of whether or not they're paying or they're covered, but the majority of them are covered, and he will take all of them because he wants to be able to fill the bed. Because the issue with the remaining ones, with the 16 Medicaid pending and

the seven no-pays, is that they haven't completed their Medicaid application process; either they haven't filled out the Medicaid application or they weren't provided the right information. So we're moving forward, since we're the County of Suffolk and Medicaid comes through our DSS, to work with them to make sure that that happens. And we have -- and the history of this buyer, when we met with them at Roslyn and also investigated them, is that they do not get rid of patients. They keep all the patients. And all the buyers said the same thing as well; they want to keep the patients, they want to fill the beds.

The second thing related to employees is there will be a meeting with all the employees and bringing them on board. If there's an employee that has a behavioral problem, we can't guarantee that they have to keep them, then we're going to have to take on that liability and we certainly don't want to do that. But they need these 200 employees that we have. This is -- this is not an urban area, that is a suburban area. We've got a lot of LPN's there, RN's, doctors, medical social workers; they still need to be providing this care. That's going to be the continuity of care for the patients and is it that they have the same people working there who have been working on their behalf; that makes it easier for the transition. It would be a very difficult transition if all of a sudden people are fired. You want to keep the same people there and that's what they plan on doing. They plan on making no changes and keeping the same staff members there.

As far as other nursing homes, anyone could approach the IDA. Anybody, you know, can approach the IDA and look for potential tax breaks, whether it's a nursing home or a -- you know, another particular business out there, somebody who wants to move here. We want to do our best to keep jobs here and keep people employed and have businesses here so there's sales tax revenue that continues. So that's an open door to everyone.

I was not at the meeting, the discussions with the Easter Seals, but I do know the concern, I was made aware of the concern that they weren't willing to invest in the particular -- in Foley in any way whatsoever, and it would take them a long time, and we are to even come up with a plan and try to figure out what to do with it. And we're in a fiscal crisis and we've got, unfortunately, some decisions that we have to make and we have a huge hole that we have to plug in a few weeks when we put forward our budget and then you come back and you negotiate with us what's in it. And with the \$17 million HEAL Grant, paying down the debt, and with the 23 million that we're going to get in Foley and the 10 million in recurring savings, that's a substantial help for us to move forward in this County to help start dealing with some of the challenges that we have here.

And as far as -- so that's why with Easter Seals, there didn't seem to be any level of investment that they were able to make at all. Include -- anyway. The other -- I wasn't at the meetings with Labor, we had four sessions, but I did speak with our Labor Relations Director after each session, I was concerned about questions that were being raised, making sure that we were being responsive to all of our patients. We had four sessions last week, two on Tuesday, two on Thursday, eight to 10 in the morning and 2 to 4 in the afternoon. These session times chosen by Kevin Carey, the administrator. We asked him to please provide us with times, four, so we could capture as many employees as possible during that window to allay their fears and start having a dialogue with them. We will not have all the answers, but we need to start a dialogue so at least somebody is reaching out to them. It's the same thing that we did, we sent a letter to the family members and hand delivered letters to residents and invited the employees to this particular session, because information is vital.

The first session from 8 to 10 on Tuesday morning, I was advised that the leader was not there, and the meeting ended and he was walking in the place, so it was not as if he was prevented from the meeting. The last -- he went to the meeting in the afternoon hours and what he was told is that he can't do a presentation but he could sit there and respond to questions or maybe we could refer people to him them. And then he was also available at the next two. So there was no violation of the National Labor Relations Board Act, you know, or any other relevant act like that as well,

because he was there and present with a team of folks.

LEG. BROWNING:

Okay. Well, I guess we'll -- I'm sure the union members are here and representation from the board is here and we'll hear from them on that. And I do know that my aide, because I was not able, my aide attended that visit to one of Mr. Sherman's nursing homes, and the average age being 80. The average age in John J. Foley is 50, because they're hard to place. And while you're telling me that Mr. Sherman will keep these people in the nursing home, he at some point will realize -- once he starts getting beds filled, he will start now rejecting those hard-to-place, difficult people that we currently have in the John J. Foley Nursing Facility. And again, what it says in the contract is that he can, if he cannot provide the service -- and don't quote me word for word, but if he cannot provide the service, that he can transfer patients out of John J. Foley, and that would be to possibly, like one of them has already been transferred to Massachusetts. A Suffolk County lifelong resident has now been sent to Massachusetts, prior to the last sale. So my concern is there is no guarantee that this home will continue to be a Skilled Nursing Facility and that they will continue to keep those hard-to-place residents.

And again, where you talk about our budget, I respect that; yes, we have a budget problem. But what we're doing with our budget is we're taking the poor and the most infirmed people in Suffolk County and we're filling a budget hole on their backs. And I think to be honest with you, as Democrats and the ideology of Democrats, that is not the ideology of Democrats, is to hurt the least fortunate people, and that's what really upsets me.

Applause

MS. CALCATERRA:

We are representing 1.6 million taxpayers in the County who don't want a County that's going to file for bankruptcy or get a fiscal control board that we'll end up looking like other particular counties here. We are taking this responsibility very, very seriously in every decision that we're making, and they're very challenging decisions. And if we weren't making them, then we could welcome a fiscal control board in here, and I think that would make all of our lives a lot more difficult.

As far as the patients, we're very cognisant and concerned about anyone who comes to us as a Suffolk County resident for services. And to ensure that there's continuity, that is why we're creating a division in the Department of Health that's going to be the John J. Foley liaison. So we're going to have someone here in the Department of Health who's going to be working with the Shermans, who's going to be our liaison with those patients to make sure that everything is going along as it should be going along and that they're being taken care of, and that they're going to be staying there as well. So we're going to have a person assigned, and they're well aware of that, and so is Legislator Spencer, that was all part of our initial discussions, to make sure that not only the State has an ombudsman, but that we have our own ombudsman as well.

LEG. BROWNING:

And how long do you plan to do that, for a year, two years, five years, ten years?

MS. CALCATERRA:

We are putting it in the budget and we should talk about that. For as long as you want, Legislator Browning. No, absolutely, we're putting it in our budget. Five years, ten years, however long you want it.

CHAIRMAN SPENCER:

Thank you, Legislator Browning.

MS. CALCATERRA:

I'm sorry, I did want to answer one more thing. But as far as the patients that are there, most of them are Medicaid covered. Regardless of what it is -- whatever their disability is or their challenge is, they're Medicaid covered, the reimbursement rates are the same and the reimbursement rates that we know are about \$280 a day. So I don't understand what -- I know that you have a concern as far as them being hard to place, but they're all placed there. And for the Shermans not to take them, it would behoove them because in Suffolk County there are 600 open beds. So if they're not going to take them as patients, someone else is going to take them as patients.

LEG. BROWNING:

No they won't.

MS. CALCATERRA:

Yes, they have to accept them with Medicaid pending, and we'll work with them and we have a liaison.

LEG. BROWNING:

I recently had a discussion with a former director of a nursing home, a private nursing home in my district; near my district, I should say. And in discussion with the residents, explaining who the residents were of John J. Foley, she told me very clearly that their age and their conditions, that the nursing home that she worked in, and it's a very well respected nursing home, she said, "No, we would not take people like that."

MS. CALCATERRA:

I understand that, but that's anecdotal; we don't know who she is, we haven't had a conversation with her. And we would welcome you and other members that are here to have -- to go and meet with the Shermans and speak with them.

LEG. BROWNING:

Yes, and I know who she is.

CHAIRMAN SPENCER:

I'm sorry, we're going to --

LEG. BROWNING:

I know who she is.

CHAIRMAN SPENCER:

We need to finish this.

LEG. BROWNING:

And she's very well respected.

CHAIRMAN SPENCER:

Okay.

LEG. BROWNING:

And I will tell you that based on her experience of having run a nursing home, she said, "No, they would not be accepted."

CHAIRMAN SPENCER:

All right, we're going to move on. I definitely appreciate and I don't want to cut off Legislator Browning, but we're going to move on. I've been -- you know, we have had a productive discussion and Legislator Kennedy, if you'd like to continue.

LEG. KENNEDY:

Okay, Doctor. Thank you. I thought that we were going to go topic by topic, but it seems like we've gotten into the whole broader discussion, if you will. So let me see if I can try and go through this somewhat succinctly.

First of all, as to DeGere and his contract, I respectfully disagree with your characterization of it as only a broker fee. I'll point to you the appraisal that was delivered in the first week of August, and I'll point to the fact that the business is valued at about 4.85 million, so I'm to assume that 19 million is the value for the bricks, the mortar and the dirt. In the State of New York, that's the venue of real estate. Under Article 12, in order for one to vet real estate, you must be a licensed broker. So let's be very clear.

In my opinion, and that's why I filed the resolution, this is a void contract, it is unenforceable and, as a matter of fact, it's a misdemeanor. I would strongly encourage you, don't go forward, don't approve the payment. And I don't care who he brought to you. His contract with you lists five entities; Sam Sherman, Eric Greenberger, Ari Gluck, David {Simhar} and Joel {Lifer}. Your contract with him says that if there is anyone else that purchases, he does not receive his compensation. So there is a disincentive for us to engage in a sale to anyone else. That is self-dealing at best and criminal at worst.

Now let me ask a question. Does Mr. DeGere --

CHAIRMAN SPENCER:

Thank you.

LEG. KENNEDY:

Does Mr. DeGere have any relationship with the Shermans?

MS. CALCATERRA:

I understand that he works at their facility part-time as a physical therapist.

LEG. KENNEDY:

I believe that he furnishes services at several of their facilities. As a matter of fact, the Absolute Care Network in {Nesta}, New York, I believe he furnishes services at all of the place.

So let me ask you, in your opinion, is there some type of a preferred relationship, or how can we characterize this as an arm's length act on the part of this physical therapist?

COUNTY ATTORNEY COHEN:

I'm not sure what the insinuation is. He brought companies to the County who negotiated with those companies. Mr. DeGere did not participate in negotiations where he was seeking bids from these companies. He was a finder's fee agreement. He brought companies who were willing to make a proposal. I think, you know, to insinuate that there's some kind of -- and I certainly didn't understand the first part of that whereas he brings -- he sets forth five companies in his contract and there's a disincentive for the County to contract with anyone also? I don't understand that.

LEG. KENNEDY:

Disincentive for him, Dennis. In other words --

COUNTY ATTORNEY COHEN:

Well, he brings the companies.

LEG. KENNEDY:

-- if there was anyone else that we engaged in contract with, and you referenced that you contacted Rozenberg, Brookhaven had previously submitted as well back in 2008. But if any of those entities,

we entered a contractual relationship with, then DeGere would not be paid.

COUNTY ATTORNEY COHEN:

Right.

LEG. KENNEDY:

Correct?

COUNTY ATTORNEY COHEN:

And we wanted to make it clear in the contract, it was actually my office's idea to make him submit to us the companies that he was going to bring to us, because we wanted to make sure that these were companies that he was providing. And we didn't want to have to argue after the fact, if he brought somebody to us that we were already aware of, that he was due a fee.

LEG. KENNEDY:

Okay.

COUNTY ATTORNEY COHEN:

So that was the intent of that, and that was added very late in the contract negotiation.

LEG. KENNEDY:

I appreciate the perspective you have. I'm trying to share with you the perspective I have, and I will tell you that I will attempt to move my resolution today to terminate the contract with DeGere. So let's leave that one now.

Let's go to the more fundamental premise about how we arrived at where we're at now. You did a memo a couple of days ago, I read it. I am still unable to understand how we can be relieved of our responsibilities under General Municipal Law when it comes to RFP and when it comes to having to undertake notice to the world to obtain a full value for the property before soliciting bids and to then select the highest, most qualified bidder. How does that happen?

COUNTY ATTORNEY COHEN:

I think the memo was clear as to what the cases say about a privately negotiated sale. The County has the absolute right to go to that process. What the County did was actually we went above and beyond what was required. We could have just picked out one company, negotiated with that company for what would be considered fair market value, and we could have used the appraisal to justify that, and we didn't have to deal with anybody else, and the cases are very clear on that. The Administration went above and beyond that, solicited other entities, gave them the exact same information, asked for the exact same information from those companies so that everyone was dealing on the same level playing field, took the offers, did the due diligence and made a decision based on what was the best value and the best deal, taking into consideration all factors, to the County. Now, that's above and beyond what's required under the law, and those cases are very, very clear.

What the County wants to do is to make sure it's getting the best deal. The RFP process is not the only way to do that, and sometimes it's not the best way to do that.

LEG. KENNEDY:

Again, I hear what you're saying, I appreciate the explanation, but I will offer to you that the date on the appraisal is July 27th. This was after, presumably, you had elected to select Sherman. So there could not have been an equal distribution amongst all of the projected bidders. Let's just say at this point --

COUNTY ATTORNEY COHEN:

Could I just --

LEG. KENNEDY:

I'm --

COUNTY ATTORNEY COHEN:

I'm sorry, go ahead. I don't mean to cut you off.

LEG. KENNEDY:

Let me just say to you, you have a particular perspective, I hold to the fact that I don't think that it resonates with the law at this point, and perhaps that's an item that we may have to agree to disagree.

I shared with you my perspective on DeGere, I shared with you my perspective on this. I will share with you my perspective as far as giving the Shermans a tax-free ride for this purchase. Nowhere, anywhere did anybody ever mention anything in the fact that there was going to be a sales tax abatement and/or a property tax abatement, and I didn't see that until two nights ago when I was reading this so that I could go to CEQ yesterday morning. Quite frankly, I was flawed. It is consideration that goes, then, even beyond the 23 million. At the very least, quantify it and represent it as far as what the benefit is that he will receive. In this one, I guess I'll ask BRO; we're going to need that in a fiscal impact statement, because it is a measurable, defined benefit that the purchaser would receive, assuming that this transaction would be consummated.

And I'll take one moment to disagree. Yes, the door is open to the IDA for anybody, but very rarely do we have a signed contract where the County of Suffolk stands behind an effort to assist a purchaser in securing that type of status; that's the difference. We put that in as an inducement and consideration.

MS. CALCATERRA:

Actually, the Suffolk County Executive wants our economy to grow as much as it possibly can and is very supportive of the IDA and we are willing to assist any business that wants to come to Suffolk County or stay in Suffolk County and doing what we can to make sure that they stay here. Because the way that our County operates, I'm sure you know this, is mostly on sales tax, and our sales tax revenue hasn't been what it should be and that's one of the reasons why we're in this position. So we want to keep jobs here, so we will be playing a role in keeping jobs here, and part of that role is possibly offering up an IDA incentive to make sure jobs stay here and that it stays open. Because alternatively, we close the nursing home and we lose a few hundred jobs. This is our way that we keep it open. Notwithstanding that, the bids that came in actually came in lower and we wanted it to come in a little bit higher. So part of our trade-off was that you negotiate a number higher and we're going to work with you with the IDA to try to get some type of an incentive. And it's a short-term that's going to be capped, but at least it's for them to get their feet on the ground and move forward with Foley.

LEG. KENNEDY:

Just two other points and then this audience has waited a long time. Dennis, you made a representation about 215. Is it your position -- I'm sorry, County Law 215. Is it the Administration's position that you can obviate the State law and that this resolution would be able to be passed by a simple majority?

COUNTY ATTORNEY COHEN:

Yes, that's the opinion.

LEG. KENNEDY:

Okay. Again, obviously I disagree.

COUNTY ATTORNEY COHEN:

Right? In fact, just to give you a little explanation behind it, the -- by doing it by a privately negotiated sale which, again, has been already decided by the courts, it's the same -- it's the same issue. Because the RFP process is set forth in 215 of the County Law as well as the super majority, so if you can supercede one, you can certainly supercede the other. There's no reason that the law would allow you to do one without the other.

LEG. KENNEDY:

When you look at the case law, as a matter of fact, and you look at the process, and this is one of the many fatal flaws in the Rozenberg deal was you cannot do a surplus designation and effectuate a transfer in the same instrument. It's got to be separate acts. What went on with Rozenberg was something that was a joint-type of an effort. So here we would have to declare surplus first and then you would go ahead and you would do the sale. Again, all I can say to you is I guess we're going to have to agree to disagree.

Finally, I'm going to ask you to tell me a little bit about the Shermans. And I don't want to know about the Shermans in Sun Harbor. I want to know about the rest of the places that the Shermans run.

MS. CALCATERRA:

We did do due diligence on all potential buyers, that included a substantial amount of background research and lexis nexus searches and Dun & Brad Street. We wanted to make sure that they were financially viable as well as ensuring that there weren't any lawsuits that were brought against them for any harm that was brought to patients, that they had any potential criminal liability or civil liability in the past, and anything else that would raise a red flag. We wanted to take -- ensure they were labor friendly, because they're going to be, you know, working with our workers here, and that they had welcomed the labor shop, and that they also didn't have any discrepancies with patients as far as -- one of the concerns as far as you no longer taking patients.

In all the research that we did, everything came up negative. In fact, there was a recent article, or an article written a few years ago where the Absolute Facilities in Upstate New York signed an 1199 contract for all of their facilities. We then found out in the Roslyn facility that all the employees there were 1199, they're continuing to be 1199, so they continue to keep the employees in the bargaining unit that they're presently in; that was a plus. And there were no lawsuits against them as well, and when we put together research, looking at other things, nothing came up as a red flag.

LEG. KENNEDY:

Are you familiar with their \$100,000 OMIG fine that they had just recently, I believe it was two months ago, three months ago with Sun Harbor.

MS. CALCATERRA:

No.

LEG. KENNEDY:

Okay. Are you familiar with any of the inspections associated with their Upstate facilities, including a death at Gas Port, multiple falls and severe criticisms in {Eden and Somatica}?

MS. CALCATERRA:

I would like to see that information because based upon --

LEG. KENNEDY:

I'll be happy to share it with you.

MS. CALCATERRA:

Because there's a series of things that we were looking at when we looked at the ratings. The nursing homes, at least what the Shermans do, part of what they do as far as the reporting is voluntary. So 19 to 50% -- 19 to 50% of what were their alleged violations they self-reported. In our nursing home here, 19% are only self-reported. And so their self-reporting was high, but their citations were low. And that was key because the citations were basically what the State comes down with and it charges them and says, "You've got to make this change." And in those citations, we saw what the little variables were and they submitted a plan and the State was -- finally their plan was submitted. And when they went ahead, the State actually gave them a Certificate of Necessity recently to purchase their Niagra facility. So that is what I'm familiar with, that the State has enough confidence and the Public Health Council has enough confidence in this particular buyer that they not only gave us a letter, which you probably all read, with A-96 doing a preliminary review of the Shermans, but they also recently just gave them a Certificate of Necessity to buy another nursing home. And the Department of Health's responsibility is obviously to take care of patients and those indigent who are in need of care, and if they were satisfied then we were satisfied.

LEG. KENNEDY:

Okay. What happens if the Shermans elect to stop operating the nursing home as a nursing home in two years and turn it into business condos?

*(*Laughter From Audience*)*

COUNTY ATTORNEY COHEN:

There's no provision in the contract that sets forth how long they have to continue operating the nursing home.

LEG. ROMAINE:

They could close it tomorrow and sell it to BRT.

LEG. KENNEDY:

So then the representations that they have to retain patients or that they have to employ our employees, what's the duration of that?

COUNTY ATTORNEY COHEN:

Well, the retention of the -- there is no time frame on the retention of the patients, meaning for as long as the current patients are there, they have to keep them there. So, you know, if they're still there in two years, then obviously they can't close it down. There's no provision in here that requires them to keep the facility open for a certain period of time, but there is a requirement with respect to the residents.

LEG. KENNEDY:

Did you consider any kind of a reverts or covenant that would be put in in order to go ahead and have it operated as a nursing home?

COUNTY ATTORNEY COHEN:

I'm sorry, I didn't hear that question.

LEG. KENNEDY:

Did you consider any kind of a reverts or covenant that would be put in to operate it as a nursing home?

COUNTY ATTORNEY COHEN:

I mean, we're comfortable -- what we were seeking were nursing home operators. You know,

they're buying the facility to continue to operate it. So did we consider that? I didn't as the one who helped draft the contract. I mean, I can only speak for myself, but it's not something that I felt that was needed. They want to operate it as a nursing home facility.

LEG. KENNEDY:

I think what they want to do is, they're entrepreneurs, they want to make the best amount of money that they can. They're acquiring a building that's actually in excellent shape and it has not been appraised at replacement cost value; it's a growing concern with an intentional deficit.

You know, there's going to be more that goes on with this. I guess I'll have more questions with you. You've been quite patient.
Thank you for coming over.

CHAIRMAN SPENCER:

Thank you, Legislator Kennedy. Legislator Romaine?

LEG. ROMAINE:

I can't comment or vote on this issue.

CHAIRMAN SPENCER:

Understood. Legislator Gregory.

LEG. GREGORY:

Thank you, Mr. Chair. I promise I'll try to be short, brief.
A lot has been said, but I do -- I feel compelled to respond to what Legislator Browning said earlier. I love you, Kate, you know I do.

LEG. BROWNING:

(Laughter).

LEG. GREGORY:

This is not a Democrat issue. You know, we get support from the general public and they charge us -- they charge us with --

LEG. ROMAINE:

Come to our side. Come on over.

*(*Laughter*)*

LEG. GREGORY:

-- with being responsible, fiscally responsible. And, you know, when they see that the County is falling off the cliff, they don't care if you're a Democrat or a Republican, they care that you're their representative that they elected and it's incumbent upon us to do the responsible thing.

LEG. BROWNING:

Stand for what you believe.

LEG. GREGORY:

No, I understand it as a Democrat and ideology but, you know, there are cold, hard facts that we have to face as well. And to continue to facilitate at least a \$10 million deficit, I don't think bodes well with the public in an environment where this body refuses to raise taxes. You know, it's not -- it's not going to happen. So we -- you know, we either sell it or close it. And I certainly think that most people don't want to close it, so we have to find, you know, the best deal possible.

I went to the Sun Harbor facility and I looked at it from the point of view as a Legislator, but I also looked at it from the point of view as a son. You know, I have a twin brother, most of you probably don't know that, he lives out of state, but I have aging parents. And I talk to my wife all the time, this is a very big concern of mine. My mother's 75, my father's 82 and, you know, that responsibility is going to be on my shoulders. So when I went to Sun Harbor, I looked at it from a son's perspective; is this a place where I would want to put my parents, my family, and I felt very comfortable that I would. I forget the administrator's name, he was wonderful. He was very knowledgeable, he clearly has a connection to the patients, they knew him, it wasn't a dog and pony show. You know, and they knew the Shermans, and I forget the Sherman that I met. He was a great guy, nice guy, he's not some sinister snake oil salesman looking to, you know, rob old people, he wants to provide a facility to take care of our parents and family. And I think, you know, that's our responsibility. If we can no longer afford to take care of these patients in the environment that we have, fiscal environment, it's incumbent upon us to find a responsible provider to provide those services to our seniors that are Suffolk County residents and I think we have that in the Shermans, I'm confident in that. But I will get to a question.

CHAIRMAN SPENCER:

(Laughter).

LEG. GREGORY:

There were some questions about the appraisal. Now, we did receive an appraisal before the signed contract. It's not, you know -- I mean, you guys do these deals all the time. I mean, it's not uncommon to negotiate with someone before you have an appraisal, particularly in an environment where you've gotten interest and all of the responses that you're getting are in that general neighborhood anyway; is that correct? I mean, from what I understand, 18 to 23 million was kind of the range there?

COUNTY ATTORNEY COHEN:

Yeah, I don't want to speak to what occurred. I've only been here for, you know, almost eight months. I don't know what occurred before. I mean, again, to go back -- to me, the appraisal is to provide comfort when you're negotiating a contract or when you come to an agreement that it's a fair deal. You know, it's not the end-all. The County had gone through this process once before. So again, I was very comfortable with the process that occurred with respect to having multiple people put out -- make a proposal on the business to know that we were getting fair market value. So it certainly wasn't surprising to me when the appraisal came in, you know, right in the neighborhood of the number.

You know, as someone who -- I'll leave it at that. I mean, I'm comfortable knowing that the appraisal was done. I actually would have been comfortable going forward without the appraisal because, again, the process lends itself to getting fair market value.

LEG. GREGORY:

Right. And I'll try to end on this. Now, the DeGere situation, there's a bill before us, 1811, 1813, that seeks to eliminate the contract all together, because there may be a question of whether DeGere has the proper credentials to be the broker and whether it's, in effect, a real estate deal or really, you know, a finder's fee. Your position again is that, you know, he's not signed -- he's not the one that signed us on the contract, he wasn't a part of the negotiations, he's just the person that said, "Hey. You know, I have these people that are interested," he wants a fee for finding these people; whether they were previous interested parties or not, he brought them to us in the time that we were looking for people.

COUNTY ATTORNEY COHEN:

Let me just -- you know, my understanding of the resolution, you know, at least the way I read it,

was it was a resolution to prevent the County from entering into a contract with DeGere. The contract's already signed, so I'm not sure what the intent of the resolution is. But with respect to the contract, again, you know, I'm comfortable that -- first of all, it's a finder's fee. And I thank Mr. Nolan for raising that other part of the issue which I neglected to raise which is, you know, was he really acting as a broker, even with respect to the sale of the facility? He brought people to the County. You know, he wasn't involved, at least from my understanding, he wasn't really involved in the negotiation with these people that he brought. He literally was, "I have people for you and I'm bringing them to you." And there are cases that talk about whether, you know, what the role of the broker is and what makes that individual broker, and I don't think that he rose to that level. That being said, even if he did, it wasn't a real estate deal. Notwithstanding -- and I understand and I respect Mr. Kennedy's bringing up the appraisal, however, the fact of the matter is this was a deal to sell the nursing home. We did not take real estate people and take offers from them, from people that Mr. DeGere brought, that wasn't the intent of what his role was. His role was to bring nursing home operators to the County to buy the facility that were never brought to us in the past; that was the role and he fulfilled that role.

LEG. GREGORY:

But regardless, he is not a signer on the contract, so preventing his -- preventing a contract with him which you already have --

COUNTY ATTORNEY COHEN:

Has no impact on the sale of the nursing home.

LEG. GREGORY:

-- should be -- is irrelevant to moving forward with the sale of the nursing home.

COUNTY ATTORNEY COHEN:

Exactly.

LEG. GREGORY:

Which this bill seeks to tie together.

COUNTY ATTORNEY COHEN:

Correct.

LEG. GREGORY:

Okay. All right, thank you.

CHAIRMAN SPENCER:

So, thank you so much for really coming and being patient and answering our questions. We really appreciate that.

You know, we'll have further opportunity to actually debate this bill as we consider the resolutions. But again, we appreciate you answering our questions thoroughly, candidly. And we also respect the very difficult position that you're in in terms of addressing this County's financial crisis. So thank you.

MS. CALCATERRA:

And thank you for the opportunity.

*(*The following testimony was taken by Alison Mahoney & Was transcribed by Diana Flesher - Court Reporters*)*

CHAIRMAN SPENCER:

So with that, what we're going to do is return to the Public Portion. I have several cards and I will say there are a couple of people that have submitted two cards and -- on different issues, but this is not public hearing. Everyone -- you'll have the opportunity for three minutes. So, if you have two topics, you have to address those -- according to the cards that I have now, we have about 45 minutes to an hour of testimony. So, if you have had your questions answered and you wish to pass, I'm sure that your neighbor would appreciate that. But if you desire to speak, you shall have an opportunity to speak.

So with that being said, Mary Finnin. On deck is Don Dailey.

MS. FINNIN:

I came to address certain issues. And after the input presented, I have more questions than I had when I came. But I want to say first, where did the \$500,000 come from? Whose budget? What is the cost impact of, you know, separating out the Medical Examiner's Office in terms of staff and the impact on the Department of Health budget? I had asked at the last meeting that there be a 90-day review of HRH services provided, where we have a contract in Coram. I'm asking if that has been done. I know that HRH is in discussion with other of our contract hospitals in the County. And I heard today that there's, you know, a plan to merge some of the clinics, for instance, Patchogue and Shirley as a member of the advisory board of those clinics. I want you to know that we had no prior knowledge.

So, what is the plan for health care in Suffolk County? We spent a lot of time today talking about John J. Foley. But I'm concerned about our health centers, our jail, our drug facilities, everything, our immunization programs. There is no plan and there is no public input for what's going to happen to health care in Suffolk County. And I'm concerned about the total picture. And we're not getting the answers. And all these deals with HRH and these other contractors are all, you know, behind closed doors. And we hear it after contracts are signed. And then we have to do an end run to see what we can do to stop some of this waste of our taxpayers' money.

In the meantime as we decimate the Department of Health, removing the Department of Health to another facility on the South Shore. What's the cost there? You know, staffing has been cut. And in the meantime they have to pack up and move. And there's a cost to moving. And I don't know that there's a cost benefit ratio any more to that particular arrangement.

I want to know how much the County is spending currently on contracting out for professional health care services in the mail at John J. Foley, at our health centers, and in any of the other programs where we have contracted out services, whether it's at the colleges or whatever. So that the public has the information, and that decisions are made based on a plan, that the public has input, and that we are able to know what is the cost. There's a \$300 million deficit. But the only thing that I hear being hit on is health care. And the health care for providing services to the needy and the poor of this County. We are eliminating the safety net for health care in Suffolk County.

Applause

CHAIRMAN SPENCER:

Thank you, Mary. Those are all very important questions. Hopefully during the discussion -- but specifically, if you need to reach out to my office is -- you know, we clarified some of the items that you asked, would like to provide you as much clarification as we can. Don?

MS. FINNIN:

Can I respond?

CHAIRMAN SPENCER:

Sure. I'm sorry?

MS. FINNIN:

We tried that, but all the decisions are being made out of the County Executive's Office.

CHAIRMAN SPENCER:

Don Dailey.

MR. DAILEY:

Good afternoon. I'd like to thank all the members of this Committee for allowing me to speak before you today. My name is Don Dailey and I'm the Fourth Vice President of the Suffolk County Association of Municipal Employees. I'm here today to speak on behalf of the heroes that report to work every day at the John J. Foley Skilled Nursing Facility in Yaphank.

While the County deals with massive shortfalls due to the economic picture, more and more departments manned by our brothers and sisters are doing more with less. This was an election slogan used by your County Executive, but it has been a daily way of life for the men and women at Foley. The thought of providing anything less than total concern and stellar care does not exist in the mind set of these employees, yet their future has been in constant play by the Suffolk County government for over a decade.

It is difficult to speak without passion about my brothers and sisters at Foley. As the husband of a registered nurse, I know what these men and women go through. The required tasks are endless, yet the level of care is never compromised. And when a staff member is with a patient, that patient's well-being and quality of life is the most important issue.

My brothers and sisters at Foley trudge this difficult road every day. A workforce such as this should be honored and protected. Suffolk County could never measure their worth in terms of dollars and cents. And it is insulting that these men and women are being undervalued the way they seem to be by the Suffolk County government.

The burning question is why? Why has this gone out as a no-bid contract? It could be understandable that the County would want to secure the best deal possible regarding this facility. But why would the County entertain an offer that is less than that of a previous party? Why would the County entertain a deal that includes additional acres of land in prime industrial location for less money? And how does one spin this illogical action to the taxpayers of Suffolk County and to the distinguished members of our Legislature.

Was there a proper appraisal completed that included the Real Estate as well as the building? What is the additional land intended to be used for? And has an environmental evaluation been completed as to the impact of whatever endeavor is pursued? With all these valid questions that deserve to be put through the entire legal process, the question asked by our heroes in white at the JJ Foley Facility is how can the government of Suffolk County allow the sale of this facility to a company that is alleged to provide substandard care to the citizens of this County that need it most? With all the difficulties these heroes face everyday, their primary concern is for the patients. I ask all the Legislators to look beyond party politics and embrace the simple concept of right and wrong. This deal is wrong.

It was mentioned a little while ago about a HEAL Grant for \$17 million and that could be used to pay down the debt. It was also mentioned that we have a \$500 million deficit. If you put that 17 million to the 500, you still have a 477 million dollar deficit. And they're talking about selling the Foley Center for \$23 million. This doesn't make sense.

And finally, on August 9th, I as well as other members of the AME Executive Board, were present at

John J. Foley and we were thrown out of the building by the Director of Labor Relations. While we were speaking to the members at Foley, who expressed their wishes to remain AME and not members of the SEI 1199, which is not their bargaining unit, they want to stay AME. We want to keep them AME. Thank you.

Applause

CHAIRMAN SPENCER:

Can you come back for just one moment? I have a question from Legislator Browning.

LEG. BROWNING:

I think he answered my questions because they clearly couldn't answer that when you attended the meeting with the membership, you should have had the right and you should never have been told to leave. Have you been given any other dates of meetings that are coming up so that you can attend?

MR. DAILEY:

No so far, no.

LEG. BROWNING:

Okay. Well, I think that -- obviously I think that should be something that should be required is that they're having meetings with your members. And I'll talk to you after this.

MR. DAILEY:

Thank you very much. And on a personal note, I'm sorry for your loss.

LEG. BROWNING:

Thank you.

CHAIRMAN SPENCER:

I'm sorry. We're not done with you yet. Legislator Gregory has a question for you.

LEG. GREGORY:

Hi. Mr. Dailey?

MR. DAILEY:

Yes.

LEG. GREGORY:

Hi, how are you? I just -- maybe I heard you wrong or -- but I'll give you the opportunity to correct what I thought I heard. Did you say that put party labels aside or something to that effect about the sale of Foley?

MR. DAILEY:

Yes. The term that I used was to put party politics aside. And I used that term just because the sale seems to be -- all the Democrats want are in -- want to sell it.

LEG. GREGORY:

Really?

MR. DAILEY:

And the Republicans don't. And I think that we really need to be more concerned about the taxpayers.

LEG. GREGORY:

Well, I have to tell you that you're 100% wrong. You have a Democrat who's one of the major proponents or advocates against the sale.

MR. DAILEY:

I'm sorry. I thought Legislator Browning was a member of the Working Families Party.

LEG. GREGORY:

Working Families and the Democratic -- Well, she's apart of the Democratic caucus, the majority. I know there are Republicans that are for the sale. And I believe the Democrat next to me is against the sale. So --

MR. DAILEY:

I apologize. If I used the term all, perhaps I shouldn't use the term all.

LEG. GREGORY:

Okay. Well, I didn't think there's a clear majority on either party for or against. I think it's a hodgepodge to use -- for lack of a better term.

MR. DAILEY:

Sort of a hot potato issue.

LEG. GREGORY:

Well, sir, that --

MR. DAILEY:

I'm an electrician -- I'm an electrician. And it took Suffolk County months to negotiate the sale of \$5,000 worth of wire. And the County can negotiate the sale of a facility that has many, many members and families, lives that hang in the balance. And that decision was made in three hours. I think this deserves a little more time and a little more due diligence. And I think it's an insult to our union and our members that this isn't being done. It's -- what's happening now is performing the actions first and getting permission later. Where I come from, you used to have to have an appraisal or have an offer before you signed a contract. It wasn't the other way around. You don't sign a deal and then say, "by the way, here's what it's worth." That doesn't make sense to me. And I think it's tough -- I think it's tough to try to spin that, to try spin that another way.

LEG. GREGORY:

Right. And I think all your questions are valid questions. I just strongly disagree. And it's been kind of a recurring theme that Democrats are against the union, the AME union, when, in fact, in this particular case that is certainly not the case. They're not opposed to your point of view. So, I just want to put that on the record.

Thank you, Mr. Chairman.

MR. DAILEY:

I appreciate that. Thank you.

CHAIRMAN SPENCER:

Thank you. Peter Busacca.

LEG. KENNEDY:

Mr. Chairman, can I just share one thing with the speaker?

CHAIRMAN SPENCER:

Absolutely, Legislator Kennedy.

LEG. KENNEDY:

Okay. As to the party politics, one way or the other, I guess, you -- you know, you heard from the Majority Leader. I'm not going to debate that or go back and forth. It's incumbent on AME, I guess, to see where each and every one of us, all 18 of us are.

But what I will say to you is, is that I think it's extremely important to continue to make the point, that AME is the recognized bargaining entity under the New York State Taylor Law. And the fact that I continue to hear that this purchaser engages in other unions, in fact in itself is a violation of the New York State Taylor Law. So, I think it's important that you continue to come forward and remind us and reaffirm that you're the chosen entity to bargain on the behalf of the employees of the Suffolk. So I encourage you keep doing that.

Thank you.

CHAIRMAN SPENCER:

Thank you.

MR. DAILEY:

Thank you.

CHAIRMAN SPENCER:

All right, Peter, sorry.

MR. BUSACCA:

Good afternoon. My name is Peter Busacca. I've spoken before this group before a few years ago in Riverhead when there was not a Dr. Spencer or Sarah Anker on board. And of course there was the Steve Levy's administration. And I have a Masters of Business Administration. I have experience as a business broker and I'm a licensed nursing home administrator. I wish Calcaterra and Company were here so I could set them straight. Usually with a bona fide business brokerage firm, usually the principals are also real estate agents in addition to being bona fide business brokers.

Now, also back when I last spoke to you in Riverhead, business brokers have a book, a standardized book throughout the whole country that business brokers, wherever -- whatever state you're in use. And it's about -- it's got to be 5,600 pages thick, and different businesses are worth different things. In a nutshell, a business is worth the revenue of the previous year, but, of course, more businesses are complex than others. And, of course, the nursing home business is the most complex business there is and most regulated, even more so than nuclear power plants.

And if you open up the book for what a nursing home is valued at, the value of a nursing home is five to eight times the earnings before interest and taxes. And that's essentially the gross revenue. So if you -- at the time when I last spoke, and I guess they had close to a full house, they had 26 and a half million dollars in revenue, and I believe at the time New York State Department of Health issues a license to nursing homes. You just can't own a hotel -- a beautiful hotel and call yourself a nursing home. You have to be Medicaid/Medicare certified and have a license through the New York State Department of Health. And that license can be quite expensive. I believe at the time the license was worth about \$10 million. So why is the Bellone Administration, maybe a lacking, and it appears they are lacking in their due diligence, why are they not talking about this New York State Nursing Home license for the beds?

And I ask you, the Legislators, to look into this to double check to see if the value has gone down. Maybe it hasn't. Maybe it's stayed the same. But I remember back when I last spoke to you a year and a half, two years ago, whatever it was, that that was valued at 10 million. And, of course, the

revenue at that time being close to a full house, being 26 and a half million, and then the license for the beds being 10 million gave you 36 million, or thereabouts, which is what the Levy administration was trying to get in selling it. But if you look at the true value from a business broker standpoint, of the five to eight times the gross revenue, we'll say, you know, you're up to 125 million, a 135 million.

So why, you know, shapes of things before my eyes makes me describe why, you know, I'm trying to remember why, you know, maybe it's the fight experience of the current County Executive, but, you know, is anyone listening to me? And if this does go through at that lesser sale of -- even at 36 million, that's a joke as far as I'm concerned. And if it goes for sale 22, 23 million, that would only make Steve Levy a martyr.

*(*Laughter*)*

I don't think you want to do that.

LEG. ROMAINE:

Absolutely not.

MR. BUSACCA:

I don't think the Bellone Administration wants to do that either, so get with it people.

CHAIRMAN SPENCER:

Your time is up.

MR. BUSACCA:

Thank you.

CHAIRMAN SPENCER:

I did here what you said. That's five to eight times the gross revenue. Is that -- that's your point?

MR. BUSACCA:

No, no. The point is that a nursing home is the most complex business there is. You know, if you go buy a dress shop, you buy the dress shop for the gross revenue at the previous year. You go to a card store, you buy for essentially the gross revenue from the previous year. But if you go to an automobile dealership, that's valid at three times the gross revenue because, there's, you know, a big inventory of automobiles worth thousands -- hundreds of thousands of dollars. And you have the financing, you know, the influx. It's calculus. It's an influx of money from the manufacturer, from the dealer, whose an impotent dealer, and then money out, you know, so you have -- it's a big flux of money in, money out. And so different business are worth different things.

In the nursing home business being the most regulated industry, a year from now nursing homes all throughout New York State have to be totally sprinklered, every square foot. And that's going to cost a good \$200,000 but it's for the safety. And I'm sure there's financing out there for government to provide for these sprinklers.

So according to a bona fide business broker, which it sounds like that physical therapist is not, the value of a nursing home is five to eight times -- and of course five to eight times. You know, if it's a brand new building, it'd be eight times. If it's an old building, 20 years old, probably five times the earnings before interest and taxes, the gross revenue, in simple terms.

CHAIRMAN SPENCER:

Thank you, Pete.

MR. BUSACCA:

So \$135 million is what it should be going for. You will be cheating the taxpayers if you don't sell it for what it's worth. And you'll get unelected.

LEG. KENNEDY:

Just one quick question.

CHAIRMAN SPENCER:

Don't run away. All right Legislator Kennedy has a question for you.

LEG. KENNEDY:

You always give us great perspective when you're here, Peter. And I appreciate it. Thank you. And you follow this issue religiously. One of the things in the query that we've had in these last couple of hours, and I keep forgetting to ask you, but you would know the answer to this. The licenses associated with John J. Foley, do they have a separate inherent value to them?

MR. BUSACCA:

Yes.

LEG. KENNEDY:

Okay.

MR. BUSACCA:

Yeah. The licensing fee, you could sell -- you know, if you were going to dissolve John J. Foley, you could sell the building as like an assisted living and you could sell that licensing fee for the beds issued by New York State separately to save another nursing home somewhere else in New York State. And then that nursing home could go build more beds, build a new building with new beds from that license. So that license is a separate identity from the nursing home itself.

LEG. KENNEDY:

At the very least, not that -- as I've said it before, I do not agree with the Goal and Concern valuation. I think at the very least we should have replacement value for it as well. But regardless of whatever methodology we use to appraise, there should be something that reflects the separate and inherent values associated with those three licenses that the County of Suffolk now holds. Isn't that correct?

MR. BUSACCA:

Yes.

LEG. KENNEDY:

Okay. Thank you.

MR. BUSACCA:

Thank you. And, you know, you don't have to believe me. Just go -- crack open the yellow pages and look up business broker. There should be one in Bohemia and two or three others in Suffolk County. Just do your homework. Thank you.

Applause

CHAIRMAN SPENCER:

Lee Snead.

MR. SNEAD:

Good afternoon, members of the Committee. I am one of those individuals who had two cards, so I will try to hold to three minutes; in fact, I'll try to get off much sooner than that.

I am the governmental liaison to AME and we have a number of our Executive Board Members here today, some of whom will speak, some of whom won't. I'm not going to reiterate many of the points that were brought up here except to say that it's fairly clear that this deal, however you call it, was negotiated in a manner that was not sort of, say, according to hoil. We will actually prepare a legal brief on that issue to prepare for the hearings that are -- the public hearings that are going to be coming up under your Administrative Code.

What I would like to say is that Legislator Browning hit it right on the head. There is absolutely nothing in this contract that guarantees the employment of one, not even one, of the 200 of our employees or any of the other employees who are at this facility. There are two areas in that contract that talk about this, one says that the buyer will offer employment, that's all it says. It doesn't give the terms, it doesn't say how long they have to accept or reject. The second provision says, even more interesting, it talks about how they are terminable at will and says to the extent that anybody is offered employment, they will be offered at employment at the same rate given to other health care workers in the County of Suffolk. Now, I don't know what that same rate would be, but I ask this question; who's going to be there to enforce those two terms of this contract? Is it going to be the County of Suffolk? I don't think so. Because this contract specifically says no third party interests are identified herein. It's not for the benefit of any third party interest. So this contract has absolutely no protection whatsoever for the employees who I represent.

When we talk about the residents, the same thing is true. As Mr. Cohen indicated, he could turn around and sell this facility tomorrow, close it down, turn it into another Splish Splash. But more importantly, you guys are being asked to do this after the fact. You're being told that this process is going to be benefit you in next year's tax year; let's take that as a given. Is that really the case? They think this contract is going to close by December 31st of 2012. This contract requires as a condition of closing the obtaining of zoning approvals to operate this facility at the Town of Brookhaven. Presuming you had your application in now, you don't even get on the calendar for this kind of facility for another six months. And knowing the people in Yaphank and South Brookhaven who aren't going to really want to hear about the development of this area, potentially that could happen in two years, I don't think you're going to get through those hearings in a year. So you might not even be in this financial year with the money you think you're going to get. And you're not getting the money up front; you get the money when it closes, if it closes. And if it doesn't close, guess what? You've got another \$23 million hole in your budget.

Now, I've heard somebody suggest that the Rozenberg deal was 38 or \$36 million because we had a -- because the County had a \$19 million bond payment that it had to make. I don't understand that at all. Because if it's 38 million for Rozenberg, it's 38 million for anybody. And the fact that this year we got a HEAL Grant just means you got another 19 million. So coming in at 23 million doesn't make a whole lot of sense.

I will just on a couple of small points --

CHAIRMAN SPENCER:

I need you to wrap it up, I'm sorry.

MR. SNEAD:

I will. Mr. DeGere, I am told, and I ask you to investigate this, was actually -- when the County contracted -- he was a contracted individual at Foley to operate the department of physical therapy. If that's the case, he has intimate knowledge of the inner workings of Foley and how much money

they bring in and where their expenses go, and yet he's operating on behalf of the buyers too. And apparently he's going to be employed. I don't -- all these arguments, legal arguments about whether or not it meets real property broker or not, New York State Real Property Law is very clear; if you have a building and it is attached to the land, it is real property. You want to sell a business? You can sell a business. He could sell that \$10 million license. But when you sell property and you sell the building, you're selling real estate; the two are very distinct and one does not necessarily need to be with each other because this guy Sherman could come in, buy another piece of land somewhere else, develop this one and put a facility there. So there you go. Thank you.

CHAIRMAN SPENCER:

Thank you, Mr. Snead.

LEG. ROMAINE:

Quick question.

Applause

CHAIRMAN SPENCER:

Yes. Legislator Romaine.

LEG. ROMAINE:

Lee? I can't comment on Foley or anything to avoid a conflict. But certainly with Mr. DeGere, one of the things you may want to look at, I believe his role as a physical therapist with Foley was approving which patients Foley would accept or not accept. I mean --

MR. SNEAD:

Well, there right there.

LEG. ROMAINE:

And to me, you know, I would ask you to look into that. Because at that point, you're talking serious conflict.

MR. SNEAD:

Well, Legislator, we certainly will. But since we're not the organization that has to approve this deal, we'd ask that somebody maybe from Ms. Calcaterra's organization look into that.

LEG. ROMAINE:

I'm sure she'll find nothing wrong.

*(*Laughter*)*

Applause

CHAIRMAN SPENCER:

Nancy Marr. Only 20 more speakers and we'll be out of here; No, I'm just kidding.

MS. MARR:

I don't have to do anything about the button anymore?

MS. MAHONEY:

No, you don't.

MS. LOMORIELLO:

No, you're fine.

MS. MARR:

Good. Okay. Well, I had various things to say, but I really appreciate having had all of this display. My original question was going to be what's happened to all the issues that Mr. Kennedy brought up two weeks ago. So some of those I now understand a little bit. But I heard also, in the course of things and I didn't quite understand it, the reference to the South Brookhaven Health Center, since I, too, am on their advisory committee. It sounded to me like they were going to be put together with Foley, but I don't think that's what I heard.

But what I am puzzled about is you mentioned also the FQHC and hoping that all of the health centers would become FQHC's. About a year ago we were concerned in South Brookhaven about the fact that nobody seemed to be entering an application to become a look-alike FQHC which would have brought money into the County which would have maybe put the health centers into a better position, and I'm not hearing any of that now. And it also sounds as though the track is we're not going to give Foley another chance, and I think most of us feel that it really hasn't been given a chance, that there's been uncertainty, there's been efforts to close it down and most of us feel that it could be made viable and not cost the County so much money if it were done properly. I don't know whether the HEAL money could be used for capital equipment at Foley, that wasn't clear to me.

But the other thing I did want to say is that when we take a service that's being done by a County government and we privatize it, we really have to make sure that it's done properly and a reverts clause or some method of making sure, over the long run, that everything is done the way we think it should be done, has to be built into the contract. So I hope we will go forward slowly, if at all, and I would love to see the health centers kept in good shape. Thank you.

CHAIRMAN SPENCER:

Thank you.

LEG. BROWNING:

Can I --

CHAIRMAN SPENCER:

One question for you, Nancy.

LEG. BROWNING:

Not so much a question. I know, Nancy, we could talk later about this, but I believe the -- the issue with the look-alike status, the applications were denied for the other health centers. So, but there has been discussions, I believe with Hudson River, to continue with the FQHC. And as far as John J. Foley is concerned, I appreciate you always coming out to speak in support of it.

I think you're right, there has not been enough done to try and protect the nursing home. And I just -- I'm very disappointed that there hasn't been enough effort to try and do the right thing.

MS. MARR:

I think Mary Finnin asked whether there's been some report back about how Hudson River is doing with Coram before we plunge ahead and give other health centers to them.

LEG. BROWNING:

Well, I believe things have gone very well.

MS. MARR:

Okay. Thank you.

Applause

CHAIRMAN SPENCER:

Pat Rollings and Patricia Kurss is on deck.

MS. ROLLINGS:

Hi. Good afternoon. Thank you for giving me the opportunity to speak again. Legislator Browning, you were sorely missed. We're so glad you're back.

You know, when Mr. Bellone first took office, we were really hopeful that this time we have a chance. We have somebody that's going to really try to make government work for the people. And of course, as we go along down the road, we have another Steve that's just -- this guy's coming at us with a big smile instead of the daggers like the old Steve.

You know, they talked about the patients. They're not going to keep any of our behavior patients. They're going to go out, they're going to have the meltdown, they're going to go out to the hospital, they're not going to take them back, they don't have to. They're more work than they're worth as far as the private sector is concerned. And with all due respect, Mr. Gregory, when you visited that place and you said it wasn't a dog and pony show, they all knew you were coming. They put on their prettiest faces, their best uniforms, they watered all the plants and everything looked *(indicated giving a kiss)* for all of you.

You know, we were confused when they shut down one of the units. We were told, "Well, we're going to downsize because other people are going to come in." We were kind of shaking our heads like, you know, that's a lot of beds to be empty. As of today, the last I looked, the fifth tower, which is our money-maker, our rehab unit, has 10 people in it, ten. I do believe that there is nothing going on with getting new residents into our building. I work on the dementia unit, we have three empty beds. Kate was saying that there's a family with a dementia patient; we have three empty beds and they've had them for quite some time. Foley is our Safety Net, okay? Yes, I understand that the County doesn't want to be in the nursing home business. The County is in the business of taking care of its residents and those are the residents that no one else wants.

And as far as the Shermans not turning over their residents, well, that's because they picked the cream of the crop. We're not going to get rid of the good guys. We had to fight to get that resident, so when that resident goes to the hospital, he's surely going to come back to our place.

And as far as Labor Relations when they were in our building, anybody who went up there, I did not myself go, anybody who went up there came down distraught, upset, depressed, some in tears. They did not feel that they were given any hope or any help. They pretty much felt that they were told either take the lower rate of pay and the new union or go on unemployment. Now, I've been working for the County for 25 years. When I first started, I could bring in my Social Security thing that you get every year, I was making peanuts. I was making peanuts for a good eight, nine years. I stayed there because I loved the job, I loved the people, it's a community. And also, I was promised you work for the County, you will be able to retire, we will take care of you like you've taken care of us. I kept my promise. I went to work every day, I gave the patients every bit of me, every bit of my heart. When they died I was upset. My promise has been kept. There's no light at the end of the tunnel, the brick wall has been put up and my retirement is in jeopardy. Thank you.

Applause

CHAIRMAN SPENCER:

Thank you. Patricia Kurss.

MS. KURSS:

Good afternoon.

CHAIRMAN SPENCER:

Good afternoon.

MS. KURSS:

And I'm glad you're back also, Kate, because the community has missed you very much. Sorry about your loss.

I'm just going to say one thing. I think it's a very big mistake to sell John J. Foley to Mr. Sherman. I was disturbed by an article I read in Newsday by Paul LaRocca, it clearly said that the Sherman Family had 26 more violations than any other nursing homes in New York State. That was very disturbing, knowing that myself and my coworkers, or I should say ex-coworkers, delivered the best quality of care and it didn't matter what position they held. I'm just -- I'm just pleading to you not to go along with the sale of the facility to these people. Thank you.

Applause

CHAIRMAN SPENCER:

Thank you. Is there anyone else in the audience that desires an opportunity to speak? Please come forward and we've got to have you fill out a yellow card, and we can do that after you speak. You have three minutes. If you could just tell us your name?

MS. ABRAMS:

My name is Jennifer Abrams.

MS. LOMORIELLO:

You have to put it on the record, please.

MS. ABRAMS:

My name is Jennifer Abrams.

CHAIRMAN SPENCER:

Hi, Jennifer.

MS. ABRAMS:

I'm a Registered Nurse at Foley, I've been there for a pretty long time.

I just wanted to tell you that I had a unique opportunity to be in admissions for Foley. Currently I'm on Three North and, you know, it's a great place to be. There really is nowhere else like it. I had an opportunity to go to many nursing homes, that was when I was in hospice, and hospitals for admissions, to bring them into our facility.

I'm sure that Sherman has a wonderful nursing home. There are plenty of great nursing homes out there. They probably do provide similar care, I'm not going to say we're better than them. But one thing I can tell you honestly and truly is when I got there, I'm from Foley, the people that I would see would be the ones that were sitting, that were picked over, that didn't make it to other nursing -- other private facilities. Sometimes it would take me a while to even get them in to our facility because they really did require a lot of care. Some of them -- our Dementia Unit is a locked unit, technically a locked unit, gated. I think we're the only ones, really. If you go to this Roslyn, they probably -- they may have a watch-mate system, we have a watch-mate system, but our Dementia

Unit and at our other unit has a very heavy site component. Our -- I've been to nursing homes where little old ladies are actually using -- can actually knit, they could probably be home. The ones -- the patients that we have have a much higher level of care. And I really -- it's really true. If you go to Stony Brook, you'll see, there are patients that are waiting. They're either Medicaid -- it may be financial, it could be Medicaid pending; but again, that's what we are here for, we can help them through that process.

I worry about if we close the John J. Foley, because Sherman is private. You know? They may offer us jobs and we may be able to stay, but if we remain County, there is a great, great need for those -- for the beds that we have closed on Four South. There's 43 empty beds. The dementia people were the hardest ones to place. They are the -- any nursing home right now, I would urge you to go back to Hauppauge and, you know, talk about it. I urge you to think about opening that unit and allowing for us to take in those patients, with probably the same amount of employees that we have right now.

I ran the Four South Dementia Unit. Everybody was moved over to Four North and Four South was closed. And even though they're getting the same level of care, when they closed that unit, it changed everything. It's a very heavy site component there, you have a lot of behaviors, you have, you know, people talking out. You know, just so many things, you've been there, you know what I'm talking about. When Four South was open, they had a wonderful freedom to go -- residents could roam back and forth and we all knew -- you know, we'd bring them back over to North. I really, I urge you to consider reopening that unit and letting those beds be filled.

As far as the ten that are empty up on Five, the reason that they're empty is because the rehab patients are going to the private facilities. They're the first ones that are picked over. The long-term patients are getting the same rate of pay, we have -- those beds could be filled. And I would say, you know --

CHAIRMAN SPENCER:

Legislator Kennedy has a question for you.

MS. ABRAMS:

Okay.

CHAIRMAN SPENCER:

I have to interrupt you, your time.

MS. ABRAMS:

Sorry I'm going over.

LEG. KENNEDY:

Thank you for being here. And you, like many of the employees, offer great perspective and you do a good job there, like everybody else. But I want to speak about what you just talked about, what was your most recent job, and that was admissions.

MS. ABRAMS:

Correct.

LEG. KENNEDY:

And you used to go to Stony Brook and St. Catherine's and Southside and Brookhaven and you'd meet with the discharge staff there and you'd review the PRI's; right?

MS. ABRAMS:

Uh-huh.

LEG. KENNEDY:

Okay. That's how people came into Foley.

MS. ABRAMS:

Yes, there's a computer program, E-Discharge. Most of the residents are put up on there, I could profile the PRI or I could walk in and talk to the discharge planners. Yes, it's through the PRI system, though.

LEG. KENNEDY:

How long since you've been out to the hospitals?

MS. ABRAMS:

I worked in admissions from I guess November until May, I came back to the floor.

LEG. KENNEDY:

Okay. So there's been nobody making the rounds.

MS. ABRAMS:

No, they have a couple of people in admissions. Honestly, I missed being on the unit. *(Laughter)*.

LEG. KENNEDY:

I know.

MS. ABRAMS:

I liked taking care of people. And it was great to be out there and to help the facility to bring people in.

LEG. KENNEDY:

Okay.

MS. ABRAMS:

As far as who they have going out right now, they have --

LEG. KENNEDY:

I understand. You don't have to give an opinion one way or another, but I'm glad you're there doing direct care. All right, thank you.

CHAIRMAN SPENCER:

Thank you.

MS. ABRAMS:

Okay.

CHAIRMAN SPENCER:

Thanks for your comments. With that --

Applause

-- we're going to now move on to our agenda. Oh, Legislator Anker has something to say, and I see someone -- we have one last speaker. Legislator Anker, would you like to speak?

LEG. ANKER:

I promise to be quick. I just want to thank the people that have attended here to give comment. It is heartbreaking to hear the cases. And even your job situation, you guys are the heroes, heroines and heroes of our society to take the time and get the education and provide the care to our most needy. And you know, again, it's a huge concern to try to understand, where would the people, and they are people that we're responsible for, to care for, where are they going to go if Foley closes. I still haven't gotten an exact answer, so I'm very uncomfortable with that. But just bottom line, thank you for your service.

CHAIRMAN SPENCER:

Thank you. Could you just --

MR. RUSSO:

Thank you for letting me speak. My name is Sal Russo, I'm 2nd Vice-President of AME.

CHAIRMAN SPENCER:

Welcome, Sal.

MR. RUSSO:

There's been a couple of -- quite a few members, actually, calling me up and they just happen to be women and they're really concerned. They seem to be -- women that are in health care. There seems to be like 90% women that are in health care and they're feeling like they're being targeted, so they asked me to speak. So it's really concerning to me. You know, there's 200 members, it's quite a few of them who are women in there. So I'm telling them to come next week to the Leg to speak up. Okay?

My Dad had no legs, so I take concern with the health care. Okay? He was in Stony Brook in the VA. You know, the VA, they brought in outside people for therapy to bring revenue in. They got creative, they figured out there was other ways of bringing in an income. I was really hoping we could come together and think of ways of creating revenue for this place. I think this place can make money instead of lose money. It's right there at our fingertips and we're going to let it slide? It doesn't make any sense. But I just wanted to come up here and say my peace. Thank you very much.

Applause

CHAIRMAN SPENCER:

Thank you, Sal.

Okay. So I definitely appreciate your patience. We've gone on for three hours, but I do think that it's been a very productive meeting. We're going to move on to our agenda. We're going to go to

Tabled Resolutions:

The first one is ***IR 1200-12 - To accelerate the evaluation and remediation of Brownfields in Suffolk County (Cilmi)***. Motion to table.

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

Second by Legislator Anker. All those in favor? Opposed? Abstentions? Motion carries.
Tabled (VOTE: 5-0-0-0).

1232-12 - Amending the 2012 Capital Budget and appropriating funds in connection with Brownfields Site Rehabilitation (CP 8219) (Cilmi). Again, same motion, same second.

All those in favor? Opposed?

LEG. ROMAINE:

Opposed.

CHAIRMAN SPENCER:

Opposed, Legislator --

LEG. ROMAINE:

To approve this or to table?

MR. NOLAN:

To table.

LEG. ROMAINE:

Opposed to table.

CHAIRMAN SPENCER:

Okay. **Tabled (VOTE: 4-1-0-0 Opposed: Legislator Romaine).**

LEG. ROMAINE:

I was opposed to tabling 1200, too.

MR. NOLAN:

Too late.

(*Laughter*)

CHAIRMAN SPENCER:

IR 1577-12 - Adopting Local Law No. 2012, a Local Law to require public notification of sewage contamination in Suffolk County (Romaine). It needs to be tabled for public hearing.

Is that fine with the sponsor?

LEG. ROMAINE:

The public hearing has been closed. Move to approve.

LEG. KENNEDY:

Second.

CHAIRMAN SPENCER:

The public hearing was not closed.

MR. NOLAN:

We reopened the public hearing, we're doing the -- we had to reopen it because of changes, so we have to keep it open.

LEG. ROMAINE:

All right. Move to table for a public hearing.

CHAIRMAN SPENCER:

Motion to table by Legislator Romaine. Seconded by Legislator Kennedy. All those in favor? Opposed? Abstentions? **Tabled (VOTE: 5-0-0-0).**

CHAIRMAN SPENCER:

IR 1696-12 - Adopting Local Law No. -2012, A Charter Law to establish an independent Office of the Medical Examiner (Romaine).

LEG. ANKER:

Motion so table.

LEG. ROMAINE:

Motion to approve.

CHAIRMAN SPENCER:

The County Executive has expressed that they want to do this in Budget, they've asked that we table it. So there's a -- so we have a tabling motion --

LEG. ROMAINE:

Well, the County Legislator here wants to do it now to create an independent Medical Examiner's Office. I appreciate the County Executive's initiative. Unfortunately for him, although he may think so, he doesn't share a seat at this table. This is a Legislative table, this is a Legislative resolution. While I appreciate his opinion, I have a resolution before our body. If you wanted to vote no, you want to table it, debate it on the merits, tell me why you want to table it and explain to me why.

I believe it's important to have an independent Medical Examiner's Office. This office is up for certification this Fall. I believe it needs its resources. I e-mailed the Health Commissioner some time ago, he was kind enough to e-mail me back to indicate that he did not have any objection to this. I believe, from my discussions with the DA's Office, that they are supporting this initiative, and I believe this is something that should be done.

This is as simple as can be. I believe that the uniqueness of the Medical Examiner's Office and its connection to the criminal justice system, it's an integral part of our criminal justice system, as I'm sure we know, because it operates the Crime Lab for this County. And I believe that we need an independent, non-political Crime Lab that is not affected by other machinations. That's why I believe there should be an independent office.

I further believe that we saw what happens sometimes when the crime labs don't get adequately funded in Nassau County and our neighbor to the west. I think that this piece of legislation merits passage; my colleagues can disagree. I appreciate the County Executive's opinion on this. And actually, in this particular instance, this bill has been out there for a while.

CHAIRMAN SPENCER:

I think that -- Ben, do you have --

LEG. KENNEDY:

Madam Clerk, do you have me as a second on that motion to approve?

MS. LOMORIELLO:

No.

LEG. KENNEDY:

Okay. Please put me as a second on that motion to approve.

MS. LOMORIELLO:

Sure.

LEG. KENNEDY:

Thank you.

LEG. ANKER:

I have motion to table.

CHAIRMAN SPENCER:

And there's a motion to table. I'm a second on the table, tabling motion,

MS. LOMORIELLO:

Who made the motion to table?

CHAIRMAN SPENCER:

Sarah Anker. Okay. Ben?

MR. ZWIRN:

I think that we would agree with just about everything that Legislator Romaine has said with respect to the policy, we just want to find a way in the Budget Office to fund it. So we're just asking for a tabling so that we can provide the money, and there are a couple of avenues that they're looking at that would not have impact on General Fund property taxes to do this. So we're not opposed to it, we think it's probably a very good idea. But we just ask for a tabling motion so the Budget Office, as they're preparing the budget, can find a revenue source that would cover this position and any staff that it may need as a result of this position being created.

LEG. ROMAINE:

Mr. Chairman, I hear --

MR. ZWIRN:

Sir, we're not --

LEG. ROMAINE:

-- Mr. Zwirn and I'm happy for the support and I appreciate the support, but let me just say one thing. This position is currently funded in the budget. These positions -- the only difference is this would be listed as an independent office. The way to get this done is to get this done now before the budget comes out so it can be listed separately in the budget as an independent Medical Examiner's Office and continue to be adequately funded. It is funded now. And I would assume, unless our Executive wants to cut funding for our Crime Lab, funding for our Medical Examiners, I would assume it would be continual funding at the same or hopefully enhanced level so that they can perform the services that they do.

CHAIRMAN SPENCER:

On the motion, also. Legislator Romaine, I think one of the concerns as we go through a very difficult budget -- and we've been looking for ways to be able to kind of save overhead. One of the budgeting concerns is that if you break it out separately, right now as it falls under the umbrella of the Department of Health where a lot of the overhead costs, the secretarial costs and things like that can be shared, we're looking for ways to be able to kind of consolidate and to be more efficient. Whereas if we establish an independent department that stands alone, would that open up additional overhead that would be required to --

LEG. ROMAINE:

I don't believe so because those positions are funded right now in the budget. The clerical help doesn't work for the rest of the Health Department, the clerical help works for the Medical Examiner's Office alone. I've asked Commissioner Tomarken and he e-mailed me and said he had no issues with this resolution. Their staff works in that building for their people. It doesn't work in

that building and another building and yet another building for Health, it works for the Medical Examiner's Office. This is not an overhead issue. But I can tell you if we continue to dicker about this and look to cut this critical office or figure out other schemes to finance it, I can guarantee you one thing, we won't be watching CSI Suffolk any time soon.

*(*Laughter*)*

CHAIRMAN SPENCER:

Since we have both BRO and Commissioner Tomarken in the room, just briefly, if I could just get -- so I agree, we're saying that if we expand it that we're not necessarily going to incur additional costs. But if we don't expand it, it doesn't necessarily mean that we would incur additional costs either. I mean, how, if we don't expand it, would that cause cuts to the Medical Examiner's Office, if it stayed, remained as it is.

So Commissioner Tomarken, I see he's with us. But while he's coming forward, does BRO have an opinion? Is there any sort of budgetary impact on establishing this independent office with regards to overhead?

MR. FREAS:

The Local Law created a Chief Deputy Medical Examiner which has a potential cost, it's not budgeted for right now. I would assume that it would be budgeted either way in the '13 budget, I don't know, but the current Medical Examiner basically can't leave the County, and she -- there's no Chief Deputy, the way that the law is currently structured. So Legislator Romaine's legislation says, well, we're going to have a Chief Deputy and fill it again, but because it's not a budget amending resolution, it just amends the Charter to repair that issue.

In our fiscal impact statement, we discussed that and the potential cost of that, of that position. I spoke to Dr. Milewski, she asked me, you know, why is this going to be more money? I said, "Well, as required, the law theoretically requires more." I believe last year in the -- in our review, we recommended that a Chief Deputy Medical Examiner be appointed, because it's good practice for someone, for a Commissioner or a department head in that kind of position, Dr. Tomarken occasionally has a Deputy Commissioner, or at least an acting one that he can use, but Dr. Milewski does not and she really -- it's very difficult for her to take any time off, you know, or if anything was to happen to her or if we needed the position split because of an emergency preparedness issue, we would not be able to fulfill some of the responsibilities that we as -- we'd have to fulfill.

LEG. ROMAINE:

But it doesn't call for funding it.

MR. FREAS:

But it doesn't call for funding, that's going to have to be addressed in the budget.

LEG. ROMAINE:

Do we have positions in the budget? Do we have positions that we discuss in the Charter and other things that are not filled but are mentioned?

MR. FREAS:

We certainly do.

LEG. ROMAINE:

So this would be no different than all the other situations we have and the decision to fill the Deputy or not would be up to this Legislature. And like we have done with so many other positions that are mentioned, we choose not to fill them. Although, in this case, while it might make good sense, I understand the budgetary and that's why I included no impact on this. I simply wrote a descriptive

thing that the Charter would require that language. I did not say that it should be funded, I am not advocating for it to be funded, that's a budget battle. This is simply an administrative issue; where should this be? Should it be under the Health Department? Because the last time I looked at CSI, with no offense to the good Dr. Tomarken, they never speak to the Health Commissioner, they always speak to the ME, to the Medical Examiner.

MR. FREAS:

The --

LEG. ROMAINE:

And that's usually because most Medical Examiners in crime labs in large communities in this nation tend to be independent and separate.

CHAIRMAN SPENCER:

Thank you. Commissioner, do you have an opinion? What are your thoughts? Do you object to this? Do you -- what's -- tell me what you think.

COMMISSIONER TOMARKEN:

I have no objection to it. The only cost that would be incurred would be the fiscal services that we provide for the ME's Office.

CHAIRMAN SPENCER:

And what are those fiscal services?

MS. BERMEL:

All fiscal services such --

MS. MAHONEY:

Margaret, can you please use the microphone?

MS. BERMEL:

Okay. Thank you. All fiscal services such as purchasing and the budget mods, budget transfers, anything -- any entries into the IFMS system, the budget process itself, everything comes into central -- the central finance administration area which I oversee, and it's all -- any contract processing comes through our office. All IT service support is also provided by the Health Department, centrally. So that's the only concern, is that these services would have to be set up within the Medical Examiner's Office so that they could operate independently as a department. So we're talking fiscal, a fiscal person or possibly two fiscal people and IT staff support as well.

LEG. ROMAINE:

Doctor, if I may?

CHAIRMAN SPENCER:

Yes.

LEG. ROMAINE:

Yes. Mrs. Bermel, are you contending that if this office were separated from Health, our IT department in the County would not supply support services as it supplies to the Health Department; was that your contention?

MS. BERMEL:

No, that's not my contention.

LEG. ROMAINE:

Well, okay. So we have an IT department that supplies services to a whole host of departments throughout this County, and I would assume that the IT department would provide those services to the Medical Examiner, whether or not it's part of the Health Department.

MS. BERMEL:

That would have to be established; yes, that's correct.

LEG. ROMAINE:

Established? Mrs. Bermel, I think this Administration would be --

COMMISSIONER TOMARKEN:

It's our IT department that supports ME, it's not County IT.

LEG. ROMAINE:

Right, I get that. The Health Department is large enough because of its unique software, none of which -- very few of which is applicable to the Medical Examiner's Office, has their own IT. But other departments that are smaller don't have IT and that's why we have a general IT department that supplies those services to those departments. I can guarantee you that economic -- well, maybe it does today because of the emphasis, but economic development or housing or any of those units don't have their own IT department, they're small departments, they depend on our IT department over all, over across the street here, and they supply the services. They come over, the set up things, if there's a problem they problem-solve those things, they trouble shoot, that's what they do. So whether you're part of the Health Department and use the Health Department IT or you use the IT service across the street, it doesn't matter, it's the same service the taxpayers are paying for.

MS. BERMEL:

That's correct, Legislator. The only point is that these services would have to be put in place for the Medical Examiner, the fiscal and the IT services.

LEG. ROMAINE:

Oh, the fiscal services are going to be put in place by the Budget Office. They're going to get assigned a budget analyst and they're going to have to have clerical staff to input into the system any purchase orders or requisitions or payments that have to be made, If I'm not mistaken.

MS. BERMEL:

It would actually be a higher level staff person that would be required in the Medical Examiner's Office. It's not a clerical function, it's really an Account Clerk or even a finance, a higher level accountant type of a position. So just to bring this to your attention, this is what would be required to support the division so that it could function as other departments do independently.

LEG. ROMAINE:

How many Account Clerks do you have for the Health Department?

MS. BERMEL:

Currently, after July 1st, probably about maybe 15 to 20.

LEG. ROMAINE:

And how many employees do you have?

MS. BERMEL:

Right now?

LEG. ROMAINE:

Well over a thousand.

MS. BERMEL:

About maybe a thousand fifty.

LEG. ROMAINE:

A thousand fifty, thank you. Okay. The Medical Examiner's Office would have how many?

MS. BERMEL:

The point is that a clerical cannot do the work that's required of a department independently. So the only point is that you would need a fiscal person in the department when it's established as the Medical Examiner's Department. We're not opposed to it, we're just bringing to your attention you would need someone out there in the department to assist with the financial support that is currently offered by Health Administration Finance.

LEG. ROMAINE:

In terms of entering any revenue or expenditures or things like that.

MS. BERMEL:

Correct, and purchase orders.

LEG. ROMAINE:

Okay. I have run a department of about 140 people with revenues of half a billion dollars and expenditures probably in the neighborhood of four to \$5 million at the time when I was County Clerk, I had one person doing that and that was not an Account Clerk at the time. Because once we have the IFMS, or I used to like to call it the "hit and miss system," that you entered things into. As long as you entered it into the system, your purchase orders, your requisitions -- and when I was Clerk, unless I was out which was very rare, I signed every single purchase order and requisition for that department. So I will tell you, I don't know how large this Medical Examiner's Office is, but currently how many people are employed by the Medical Examiner/Crime Lab?

MS. BERMEL:

What do we have, like --

CHAIRMAN SPENCER:

Legislator Anker.

LEG. ROMAINE:

Well, I'm obviously just disproving some things simply because I have a little bit of knowledge about how a County operates. How many people are employed by the Medical Examiner/Crime Lab?

MS. BERMEL:

Off hand, I would say in the neighborhood of 70 people. I don't have the exact count, I'll be happy to get that for you.

LEG. ROMAINE:

Okay. If you could e-mail that to my office, I'd appreciate that.

MS. BERMEL:

Sure, I'll certainly do that.

LEG. ROMAINE:

Okay. Thank you. All right, so it's obviously a much smaller entity than the Health Department requiring less input in terms of purchase orders, requisitions, expenditures, declaration of revenues and things of that nature, just to make that point. Okay? So while you may need a high level person for a large department to do that, smaller departments usually don't employ -- they might do an Account Clerk or something of that nature, but they don't employ like an Administrator I or II or III or IV to do those types of tasks. But thank you anyway for your information.

CHAIRMAN SPENCER:

Legislator Anker.

LEG. ANKER:

Again, I will also mention my concern for increased financial impact for the -- you know, for the budget. So I would like to table this and look into this. You know, it's an interesting idea, maybe, you know, see if the County Exec's Office has some creative financial ideas and then maybe pursue it in the future.

CHAIRMAN SPENCER:

Legislator Gregory.

LEG. GREGORY:

Just to answer Legislator Romaine's comment to Ms. Bermel. I did a tour of the Medical Examiner's Office probably about a year ago, and if all things being the same, I would agree with her, probably about 70 to 75 personnel there.

LEG. ROMAINE:

I don't know if you need a very high level -- I think it --

MR. FREAS:

Ninety-five

LEG. ROMAINE:

Ninety-five. I don't know if you need a high level person, I think an Account Clerk, clerical staff might be sufficient.

The budget impact on this is absolutely none, to answer is none to answer Legislator Anker because I know she raised that concern. This is not a budget resolution. This is simply a resolution that says you will not be over here in the organizational chart, you'll be over here. Whatever people you have go with you and that's it. No dollars, no cents. Those issues are going to be debated with us after the County Executive submits his budget on the third week in September. This is not a budget resolution. This has no budget impact at this time. This is an organizational resolution that simply changes the organizational chart in where the Medical Examiner comes forward.

CHAIRMAN SPENCER:

No. I guess my question to the sponsor of this legislation is that, again, my concern when we talk about just in difficult times where we're trying to consolidate for efficiency. So we're saying organizationally we want to separate it and you cited the concern that that Medical Examiner's Office should function independently. How is it -- or can you site any specific example of how it's not functioning independently by being under the Department of Health? Where --

LEG. ROMAINE:

Absolutely.

CHAIRMAN SPENCER:

Where is the interference?

LEG. ROMAINE:

What happens is if you're are under a department, you don't have the ability to advocate for your division within that department. Your -- all your advocacy, all your effort as a division head goes through the department head. If the department head has other priorities, and believe me there are other priorities in the Health Department, you may get lost in the shuffle. Okay? So that's a concern. At one time, at one time we had a separate Record Management Office that was under General Services. County Executive Halpin gave me the honor when I was County Clerk of dropping it from General Services into County Clerk's Office, promptly stopped renting the building on 45 Mall Drive in Commack and moved it out to the shell of a building, which we later spent several million renovating, our former BOMARC Missile Assembly Plant in Westhampton. So my ability to advocate for them was limited. Had they been on their own, they might have been a better advocate because they had to work through me.

Most Medical Examiner Offices in large cities and counties in this nation tend to be independent because of the nature of the work that they do, which is very dissimilar from other functions in the Health Department. They're interested in working very closely with the District Attorney's Office who, by the way, as Mr. Zwirn will tell you, is supporting my resolution for the independent Medical Examiner and has indicated that and will come forward, if necessary, at the General Meeting and state that as well, or send over a letter. So that he will advocate for that position being independent because he has to work very closely with that. It's not under the DA's Office, maybe it should be as opposed to under the Health Commissioner since a lot of the things that the Crime Lab does is directly related to the work of the District Attorney.

But then there's the Medical Examiners, and we all have undertakers in our community. And let me tell you, you may not have been here, Dr. Spencer or Legislator Anker, but we had a time when our last County Executive tried to cut back and we could not get bodies out on the weekends. And as a result, we had a huge outcry from the undertakers in our communities and we led an effort to try to restore funding for Medical Examiner so they could address people who died over the weekend because they didn't have enough staff. And what was happening is they weren't releasing the bodies in time because they just could not do the autopsies that were mandated. This is why I strongly believe that they need an independent voice. I don't know, you know, the Medical Examiner except to say hello to her and to talk to her about some of the issues, but this is an issue that has been percolating through County government for many years, and a lot of this discussion started when the undertakers rose up against these cuts that prevented autopsies from being done in a timely fashion on the weekends and bodies were held for three and four and five days, and there was a lot of complaints about that. This issue will come up again. And by making it independent, I think we're going to see a lot of undertakers, funeral homes breathe a sigh of relief because they're going to feel that there's going to be someone to advocate --

CHAIRMAN SPENCER:

You've answered my question quite well.

LEG. ROMAINE:

Okay.

CHAIRMAN SPENCER:

I thank you. And actually --

LEG. ROMAINE:

The mass mailing is coming.

*(*Laughter*)*

CHAIRMAN SPENCER:

Legislator Kennedy. Thank you, sir. I appreciate that.

LEG. KENNEDY:

Mr. Romaine covered almost every aspect of this issue except one; well, not except one.

MR. ZWIRN:

(Laughter)

LEG. KENNEDY:

In a nutshell, let's talk about two different circumstances that have occurred in the last 12 months regarding staff and the ME's office.

If Dr. Milewski was her own department, she would not have submitted a budget request that came in the 2012 recommended that eliminated two of her four pathologists. There was an effort by the previous administration to drop her staff by 50%, despite the fact that they undertake eleven hundred examinations a year, many of them full-course autopsies.

So it's simple mathematics. There's a finite number of hours in the day. You better than anybody know what's involved with an autopsy.

A department director doesn't eliminate those individuals that are at the essence and most critical in what their mission is.

More recently, in the latest iteration of layoffs, we had a ballistics technician who was slated for layoff. We all worked and the County Executive heard the message, but in the first instance that ballistics technician who was 100% State funded was identified to be laid off. Dr. Milewski knows her 70 people. She would not have offered that position for layoff in the first instance. A Health Department that has a thousand people that maybe a little bit more remote and not fully engaged in tact with the mission of the Medical Examiner might have missed that, but she doesn't and she wouldn't. So, therefore, she's much closer to the action, she belongs to be her own department head.

CHAIRMAN SPENCER:

So --

MR. ZWIRN:

Mr. Chairman, we agree with everything that has been said. We're just asking for an opportunity just so we don't have to create a position and not fund it so we have position that's unfunded. We're looking for revenue that this position can be funded on a regular basis, a recurring basis. We are persuaded by the eloquence of Legislators Kennedy and Romaine that this is probably a very good idea. I don't -- now let's give us an opportunity to find the revenue to pay for it.

CHAIRMAN SPENCER:

Legislator Browning.

LEG. BROWNING:

Okay. So my understanding is whether it's independent of the Health Department or with the Health Department, it doesn't change anything as far as the money is concerned.

LEG. ROMAINE:

Right. This is just organizational.

LEG. BROWNING:

The only difference is, my understanding, the only difference is the Medical Examiner does not have a Deputy. So the Deputy is the one that we're talking about finding funding for.

MR. FREAS:

Specifically. Now, Margaret said, you know, basically there will be opportunity costs within the new Department of Medical Examiner or Department of Forensic Science, whatever we end up calling this thing, because they're going to need staff; admin, logistics, operations, that kind of thing. We mentioned in our fiscal impact that that would be a -- you know, there's an opportunity cost. We didn't quantify it because there are other command relationships that they could explore that would work with respect to either being partially administratively supported by the Health Department but an independent office or whether there were -- this legislation doesn't address any of those things, it just simply creates the new department and let's the budget, I suppose, figure out what the budget's going to be.

LEG. BROWNING:

But whether it's in the Health Department or not.

MR. FREAS:

But the only new position -- the only specific new creation -- new position created in the legislation is the Chief Deputy Medical Examiner.

LEG. BROWNING:

Which we --

CHAIRMAN SPENCER:

That's already created under the current language.

LEG. BROWNING:

Right, right.

CHAIRMAN SPENCER:

That doesn't change.

MR. NOLAN:

Yeah, we took this straight from what's already in the code and just moved it over.

LEG. BROWNING:

Right.

MR. NOLAN:

So within appropriations, there's supposed to be a Chief Deputy.

MR. FREAS:

But there's no Chief Deputy position right now.

LEG. BROWNING:

Correct.

MR. FREAS:

There's not even a position right now. It's not like it's an unfunded -- it's not like it's vacant frozen, it's just there isn't one --

MR. NOLAN:

Right, it's not in the budget.

MR. FREAS:

Correct.

MR. NOLAN:

But it is in the Administrative Code.

MR. FREAS:

Right.

MR. NOLAN:

And that's what we did, it's still going to be in the Administrative Code.

MR. FREAS:

Which is why we specifically quantified the cost for that position.

CHAIRMAN SPENCER:

So there are two motions on the floor, the tabling motion goes first.

LEG. BROWNING:

You know, I think that Legislator Romaine, I'm listening to what he's saying, I don't see where the harm is to create that separate department. And, you know, if it's just that one position of a Deputy, whether it be independent of the Health Department or within the Health Department, budgetarily we're still going to have to try and find the money in our budget. So I don't know why we're waiting for the budget. We still have to go through the budget process to find that position and fill that position. And if we don't have the money we don't have the money, she'll just have to continue to do what she's doing, but now she'd be independent. And it's not -- no offense to the Health Department, but I think that, you know, John J. Foley being a perfect example, maybe John J. Foley should have been independent of the Health Department.

LEG. ROMAINE:

(Inaudible).

LEG. BROWNING:

And maybe it wouldn't be in the position it's in today.

So, again, I think the Medical Examiner, like you said, maybe it should be more connected to the DA's Office than being with the Health Department, because that's where they do the majority of their work. So I'm inclined to support what the Legislator is saying. So either, you know, we can approve it or discharge without recommendation, whichever way you want to go, I say put it on the floor next week.

CHAIRMAN SPENCER:

Fair enough. So we'll take a vote and we'll see how the vote falls and then we'll go to the next vote. So all those in favor of tabling? Opposed?

LEG. ROMAINE:

Opposed.

LEG. KENNEDY:

Opposed.

LEG. BROWNING:

Opposed.

CHAIRMAN SPENCER:

Tabling motion fails.

All those -- so the next is there's a motion for approval by Legislator Romaine, seconded by Legislator Kennedy. All those in favor? Opposed?

LEG. ANKER:

Opposed.

LEG. KENNEDY:

I'm not opposed.

CHAIRMAN SPENCER:

Okay. All right. So I was in favor of the tabling motion, but I don't -- I'm not prepared to vote against it. So the motion carries, so we'll take it up Tuesday. Very good. Congratulations.

Approved (VOTE: 4-1-0-0 - Opposed: Legislator Anker).

LEG. KENNEDY:

Rock and roll.

Introductory Resolutions:

CHAIRMAN SPENCER:

So we have a lot of Introductory Resolutions to establish our County Board of Disabilities. So I'm going to do ***IR 1760-12 - Approving the appointment of Teresa Strum to the Suffolk County Disabilities Advisory Board - Group C (County Executive).*** Motion to approve.

LEG. ROMAINE:

Second.

CHAIRMAN SPENCER:

Seconded. All those in favor? Opposed? Abstentions? Motion carries. ***Approved (VOTE: 5-0-0-0).***

IR 1761-12 - Approving the appointment of Kleo J. King to the Suffolk County Disabilities Advisory Board - Group B (County Executive).

Same motion, same second, same vote. ***Approved (VOTE: 5-0-0-0).***

IR 1762-12 - Approving the appointment of Joan Madarash to the Suffolk County Disabilities Advisory Board - Group C (County Executive).

She's a new appointment, she has to appear, therefore motion to table. Second on the motion.

LEG. KENNEDY:

Second.

CHAIRMAN SPENCER:

Second. All those in favor? Opposed? Abstentions? She's ***tabled (VOTE: 5-0-0-0).***

1763-12 - Approving the appointment of Michele Santantonio to the Suffolk County Disabilities Advisory Board - Group B (County Executive), who actually appeared today, this is a new appointment. Motion to approve. Seconded by --

LEG. KENNEDY:

Same second.

CHAIRMAN SPENCER:

Same second, okay. All those in favor? Opposed? Motion carries. ***Approved (VOTE: 5-0-0-0).***

IR 1764-12 - Approving the appointment of Carolyn Schick to the Suffolk County Disabilities Advisory Board - Group C (County Executive). Same motion, same second, same vote. ***Approved (VOTE: 5-0-0-0).***

LEG. BROWNING:

Cosponsor, please.

CHAIRMAN SPENCER:

Cosponsor for that one.

IR 1765-12 - Approving the appointment of Michael Stoltz to the Suffolk County Disabilities Advisory Board - Group B (County Executive). Same motion, same second, same vote. ***Approved (VOTE: 5-0-0-0).***

LEG. KENNEDY:

Cosponsor on that one.

LEG. BROWNING:

Cosponsor.

LEG. ROMAINE:

Cosponsor.

CHAIRMAN SPENCER:

Cosponsor, okay, by Legislator Romaine and Legislator Browning.

IR 1766-12 - Approving the appointment of Roy Probeyahn to the Suffolk County Disabilities Advisory Board - Group D (County Executive), who is the Chair. Same motion, same second, same vote. ***Approved (VOTE: 5-0-0-0).***

LEG. ROMAINE:

Cosponsor.

LEG. BROWNING:

Cosponsor.

CHAIRMAN SPENCER:

Cosponsors, Romaine and Browning.

IR 1767-12 - Approving the appointment of Glenn Campbell to the Suffolk County Disabilities Advisory Board - Group D (County Executive). Same motion, same second, same vote. ***Approved (VOTE: 5-0-0-0).***

IR 1768-12 - Approving the appointment of Beverly Cody to the Suffolk County Disabilities Advisory Board - Group D (County Executive). Same motion, same second, same vote. ***Approved (VOTE: 5-0-0-0).***

LEG. KENNEDY:

Cosponsor.

CHAIRMAN SPENCER:

Cosponsor, Legislator Kennedy.

IR 1769-12 - Approving the appointment of Diane Gaines to the Suffolk County Disabilities Advisory Board - Group D (County Executive), who was not present today, so she has to be tabled. Second on the tabling by Legislator Kennedy. All those in favor? Opposed? Abstentions? Motion is ***tabled (VOTE: 5-0-0-0)***.

IR 1770-12 - Approving the appointment of Garrett Hulett to the Suffolk County Disabilities Advisory Board - Group D (County Executive). He's a new appointment, has to appear, so --

MS. GELLERSTEIN:

He was here.

CHAIRMAN SPENCER:

Oh, he was here? I'm sorry, Garrett was here, I apologize. So same -- motion to approve. Seconded by Legislator Spencer. Motion was made by Legislator Browning. All those in favor? Opposed? Abstentions? The motion carries, ***approved (VOTE: 5-0-0-0)***.

IR 1771-12 - Approving the appointment of Valerie Lewis to the Suffolk County Disabilities Advisory Board - Group D (County Executive). Same motion, same vote -- same second, same vote. ***Approved (VOTE: 5-0-0-0)***.

CHAIRMAN SPENCER:

The next one, ***IR 1799-12 - Barring a certain contract with DeGere Physical Therapy Services (Kennedy)***.

LEG. KENNEDY:

Motion to approve.

LEG. BROWNING:

Second.

CHAIRMAN SPENCER:

Motion to approve and there's a second. Motion to table.

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

And there's second. All right, that's on the motion. So, my understanding, barring position one way or the other, there's already a contract so we can't bar a contract.

LEG. KENNEDY:

What we would do with this resolution, and I'm going to ask Counsel to confirm this, is essentially, notwithstanding the fact that there's a contract executed, the authority that purportedly had been offered, by in through the waiver, clearly no longer exists. I made the arguments and I won't go over them again before, but everybody has heard me say, this is not a void full contract, this is a void contract on its face, because it is illegal. And so by passing the resolution, we are quantifying and codifying, if you will, the absolute outright lack of authority in giving the Comptroller clear

guidance under no circumstances to disburse funds to this entity. I made it very clear with the County Attorney that I disagreed vehemently. He raised some arguments about the fact that it was undefined, about the allocation of the 23 million, between services and property. I point out, in their appraisal that they solicited that there's clearly \$19 million that's attributed to vending of real property. So I think there can be absolutely no question whatsoever that this individual brought about the meeting of the minds and that, in fact, he acted as a broker under Article 12. That's my basis for the motion.

CHAIRMAN SPENCER:

To Counsel, reading the language of this, if there's a contract that's already been established by the current laws that we have in place, can this retroactively go back and undo that contract?

MR. NOLAN:

Well, I think when we originally drafted this law, Legislator Kennedy asked me to draft it, we were not aware that the contract had already been entered into, or perhaps it was entered into in before it got to us here.

The language, it's to bar entering into the contract, and the reality is the County entered into the contract and I guess the guy has performed the services under the contract. So I don't know what the effect of this resolution is going to be. I don't know if it's going to be effective to stop the guy from -- the contractor from making a claim for the money that he's entitled to under the contract. I just don't know that it's going to have the impact or the effect that Legislator Kennedy is looking for.

CHAIRMAN SPENCER:

I think that's my concern, is that there was a contract entered into, apparently a service was performed. We can discuss whether or not the way that we approve of that or not, but I don't think that we can bar the contract, it's already happened.

LEG. KENNEDY:

The issue, and at this late hour, as a matter of fact, nobody wants to hear about these elements of contract law or basic provisions. But if the act that's contemplated under a contract is an illegal act, whether or not there was a contract that was entered or not, ultimately it still remains an illegal act and an invalid contract.

So what I would offer is the mere fact that we have a writing, and I've got a copy of it here, a 31-page writing signed by the County -- the Chief Dep and everybody else, doesn't do anything to reform it or make it into a legal act. The signatures are what the signatures are; that act that underlies it is not a legal act. So I believe that the resolution would have guidance and merit and I think it's important to send it to our Comptroller, quite frankly, for protection for all of us, because this is I think what we'd call unjust enrichment.

LEG. ROMAINE:

Including Mr. DeGere who may be subject to penalties of law.

LEG. KENNEDY:

Yeah.

CHAIRMAN SPENCER:

So there are two motions.

LEG. BROWNING:

Well, I'd like to comment, too. Because I think one of my biggest concerns, too, is conveniently Mr. DeGere brings this Mr. Sherman, and I think there is a serious conflict because Mr. DeGere works currently at John J. Foley, has inside information and conveniently works for

Mr. Sherman. So I --

LEG. KENNEDY:

There's conflicts all over.

LEG. BROWNING:

I'm sorry, I can't support a -- I do see a serious conflict of interest. And I still believe that he should be a licensed broker and I -- my gut instincts tells me that this is just not a very good idea to approve something like this, not just myself but us as Legislators, to approve this. I don't think it's going to make us look very good.

CHAIRMAN SPENCER:

I understand what you're saying. I don't know if voting -- by not approving this or voting this or tabling this, that it implies consent. I think that there are issues that have been brought up by the County Attorney and have been brought up by Legislator Kennedy, and I can appreciate the --

LEG. ROMAINE:

Discharge it.

LEG. KENNEDY:

Why don't we discharge it? I'll make a motion to discharge without recommendation then.

CHAIRMAN SPENCER:

Right, I think that -- okay.

LEG. KENNEDY:

I'll withdraw my motion to approve and instead I'll substitute with a motion to discharge without recommendation, this way there's an opportunity between now and Tuesday to go ahead and have some further dialogue. It doesn't necessarily reflect either affirmation or opposition and it puts it before the full body.

LEG. BROWNING:

Do you think that maybe we could get a comment from the Comptroller?

LEG. KENNEDY:

Absolutely. As a matter of fact --

LEG. BROWNING:

I mean, obviously he's the one that has to pay it out.

LEG. KENNEDY:

Yep.

LEG. BROWNING:

And I think he clearly, if he sees a conflict or any serious problems with it, he's not going to want to pay it.

LEG. KENNEDY:

I'll write to him and I'll cc everybody tomorrow morning. All right?

LEG. BROWNING:

Okay. Well, I'm not real comfortable at all with approving this out, but its your bill, I'll agree with that.

CHAIRMAN SPENCER:

I think under the circumstances, looking at the composition of how the vote would come down, I think that is the fairest thing to do.

LEG. KENNEDY:

Excellent. I thank you. I would appreciate it.

LEG. ANKER:

I withdraw my table.

CHAIRMAN SPENCER:

Okay, withdraw. Withdraw the motion to approve, is that withdrawn? Motion to discharge without recommendation by the sponsor. Second on that motion?

LEG. BROWNING:

I'll second that.

CHAIRMAN SPENCER:

Seconded by Legislator Browning. All those in favor? Opposed? Abstentions?

LEG. ROMAINE:

Please list me as a recusal. I haven't been able to contact our Ethics Commission.

*(*Laughter*)*

I don't believe they're operating. I wanted an opinion of whether I could vote on this, because the deal is with the sale of John J. Foley and I felt that until I get further instructions, I'm going to recuse myself.

CHAIRMAN SPENCER:

Fair enough.

LEG. KENNEDY:

Thank you.

CHAIRMAN SPENCER:

We're almost done. But just, again, earlier I had made mention that Barbara LoMoriello, this was her very last committee session and we wanted to recognize her. I have to just say, she's leaving and --

MS. LOMORIELLO:

I'll be here Tuesday.

CHAIRMAN SPENCER:

She's leaving now, though.

MS. LOMORIELLO:

This is going to be a great meeting.

CHAIRMAN SPENCER:

Barbara is someone that I've known on a personal level. She's one of the reasons why I am here. She's a personal friend, she's someone that has given me advice and guided me in terms of my introduction to the County and just -- she's just someone that is extremely knowledgeable,

hard-working, who has really made a name for herself.

MS. LOMORIELLO:

Thank you.

CHAIRMAN SPENCER:

I'm honored to be her friend and I just wanted to make a presentation to her before she goes. So Barbara, if you could come up, please.

*(*Chairman Spencer presented Barbara with flowers*)*

Applause

But she's going to continue to serve on the Disability Board.

LEG. KENNEDY:

Good.

MS. LOMORIELLO:

I'll be here Tuesday for this great meeting.

*(*Laughter*)*

Thank you all.

LEG. ROMAINE:

All day, all night.

LEG. KENNEDY:

It will be a marathon.

CHAIRMAN SPENCER:

All right. *IR 1801-12 - Approving the reappointment of Ronald J. Gaudreault as a member of the Suffolk County Board of Health (Spencer)*. I've served with Mr. Gaudreault for the past year, he was the CEO of Huntington Hospital, he's done a fantastic job since he's retired from the CEO's position. He brings a perspective that's very good with regards to health care in this community, to public health, he's offered just a long-standing history of service. So I recommend a motion to approve.

LEG. ANKER:

I'll second.

CHAIRMAN SPENCER:

Second. All those in favor? Opposed? Abstentions? *Approved (VOTE: 5-0-0-0)*.

IR 1811-12 - Adopting Local Law No. 2012, a Local Law authorizing the County Executive to execute agreements for the sale of the John J. Foley Skilled Nursing Facility (County Executive). Has to be tabled for a public hearing. Motion to table.

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? *Tabled (VOTE: 5-0-0-0)*.

IR 1812-12 - Repealing Resolution No. 213-2011 which prohibited use of John J. Foley's Name or likeness (County Executive).

LEG. BROWNING:

Motion to table.

CHAIRMAN SPENCER:

Motion to table.

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

Second. All those in favor? Opposed? Abstentions? ***Tabled (VOTE: 5-0-0-0).***

LEG. ROMAINE:

I would ask one question on this resolution. Has the County entered into a sale, agreement to sell John J. Foley? Have they entered into a contract to sell John J. Foley; that's a question.

MR. ZWIRN:

Subject to approval of the Legislature.

LEG. ROMAINE:

Okay.. I will tell you, in Resolution IR 1237 of 2011, the third RESOLVED clause reads, *"The County of Suffolk shall not enter into a contract for the sale of the Skilled Nursing Home with any private entity that uses John J. Foley's name in its business or corporate name."* If you are entering into a sale, if you've entered into a contract of any type, you are in violation of this resolution; just be aware of that. I've read this into the record. You know this is existing law, hopefully you've done your homework. If you enter into a contract using the John J. Foley name, that contract, under this law, is null and void.

Applause

John J. Foley would never want his name used for this purpose, and that's why this Legislature last year passed this resolution unanimously, and the Foley family spoke about this. Why the Executive would introduce this to pour salt into wounds is something that mystifies me as I speak.

CHAIRMAN SPENCER:

I do -- just in terms of, again, I'm not --

LEG. ROMAINE:

I might as well let it roll all out (*laughter*).

CHAIRMAN SPENCER:

Right, I understand you're letting it all out. But I do know that -- and I guess the representative of the Executive's Office does know that the County Executive has gone to the family. So, I don't know, Ben, if you could just --

MR. ZWIRN:

We would ask that this be tabled.

CHAIRMAN SPENCER:

Okay, fair enough.

LEG. BROWNING:

Good.

CHAIRMAN SPENCER:

Motion to table. I will second it. All those in favor? Opposed? Abstentions? *Motion is tabled (VOTE: 5-0-0-0).*

IR 1813-12 - Amending the 2012 Adopted Operating Budget and the 2012 Adopted Capital Budget and accepting 100% State grant funds and appropriating a part thereof from the New York State Department of Health (NYSDOH) to the Suffolk County Department of Health Services for the HEAL NY Phase 21 Grant for the John J. Foley Skilled Nursing Facility (County Executive).

LEG. BROWNING:

I'm going to make a motion to table. And I think based on the information, or lack of information, that we have received about the HEAL Grant, clearly they're not using that grant for the purpose that it was stated in the documents I have received. I want to receive in black and white what they're using that for, I have not received it, so that's why I'm asking for a table.

CHAIRMAN SPENCER:

We're in the same situation where we have possibly a two-two. So if the tabling motion fails, then it has to go to a vote.

LEG. BROWNING:

I'll tell you what. I can look --

CHAIRMAN SPENCER:

If the vote fails --

LEG. BROWNING:

I withdraw my table.

CHAIRMAN SPENCER:

So, motion.

LEG. ROMAINE:

There's a motion to approve.

CHAIRMAN SPENCER:

Motion to approve.

MS. MAHONEY:

Who made the motion?

CHAIRMAN SPENCER:

Same deal, discharge without recommendation?

LEG. KENNEDY:

No, not on this one.

CHAIRMAN SPENCER:

Table it?

LEG. BROWNING:

Well, I withdrew my motion to table.

LEG. KENNEDY:

There is no motion to table.

CHAIRMAN SPENCER:

I'll make a motion to table.

LEG. ANKER:

I'll second.

LEG. ROMAINE:

There you go.

MS. GELLERSTEIN:

Just take the vote.

CHAIRMAN SPENCER:

Still, if you --

LEG. ROMAINE:

That's it.

MR. NOLAN:

It doesn't matter.

CHAIRMAN SPENCER:

Well, can we discharge without recommendation if I withdraw --

LEG. KENNEDY:

No.

LEG. ROMAINE:

No.

MS. GELLERSTEIN:

Just take the vote.

CHAIRMAN SPENCER:

All right, so motion to table. All those in favor? Opposed?

LEG. KENNEDY:

Opposed.

LEG. BROWNING:

Opposed.

CHAIRMAN SPENCER:

Tabling motion fails.

LEG. ROMAINE:

Recuse.

CHAIRMAN SPENCER:

He recuses, okay. **Failed (VOTE: 2-2-0-0-1 In Favor: Legislators Spencer & Anker - Opposed: Legislators Browning & Kennedy - Recused: Legislator Romaine).**

Okay, motion to approve. Do I have second on that motion?

LEG. ANKER:

To approve it? Second.

CHAIRMAN SPENCER:

All those in favor? Opposed?

LEG. KENNEDY:

Opposed.

LEG. BROWNING:

Opposed.

LEG. ROMAINE:

Recuse.

CHAIRMAN SPENCER:

All right. So, **tabling motion fails. (VOTE: 2-2-0-0-1 - In Favor: Legislators Spencer & Anker - Opposed: Legislators Kennedy & Browning - Recused: Legislator Romaine).**

We'll go to the next one, **IR 1817-12 - Appropriating funds for the purchase of equipment for Medical, Legal Investigations and Forensic Sciences and to approve the purchase of one (1) replacement vehicle in accordance with Section (B)(6) of the Suffolk County Code and in accordance with the County Vehicle Standard (CP 1132)(County Executive).** Motion to approve.

LEG. KENNEDY:

Second.

CHAIRMAN SPENCER:

All those in favor? Opposed? Abstentions? Motion carries. **Approved (VOTE: 5-0-0-0).**

IR 1834-12 - Authorizing support for the submission of a Local Government Performance and Efficiency Grant Application for the implementation of the Grants Management System (GMS) (County Executive). Motion to approve.

LEG. ANKER:

Second.

CHAIRMAN SPENCER:

Second. All those in favor? Opposed? Abstentions?
Approved (VOTE: 5-0-0-0).

All right. So that covers our agenda. Thank you for a four hour meeting.

(*Laughter*)

We appreciate that. Motion to adjourn.

LEG. KENNEDY:

Second.

CHAIRMAN SPENCER:

It's a privilege to be a public servant.

*(*The meeting was adjourned at 6:21 PM*)*

{ } - Denotes spelled phonetically