

**PUBLIC WORKS AND TRANSPORTATION COMMITTEE**  
**of the**  
**SUFFOLK COUNTY LEGISLATURE**

**Minutes**

A regular meeting of the Public Works and Transportation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Tuesday, **June 1, 2004.**

**MEMBERS PRESENT:**

Legislator Peter O'Leary • Chairman  
Legislator Dan Losquadro • Vice•Chairman  
Legislator Angie Carpenter  
Legislator Andrew Crecca  
Legislator Brian Foley  
Legislator Bill Lindsay  
Legislator Ricardo Montano

**ALSO IN ATTENDANCE:**

Mea Knapp • Counsel to the Legislature  
Jim Spero • Budget Review Office  
Kevin Duffy • Budget Review Office  
Charles Bartha • Commissioner • DPW  
Bill Shannon • Highway Department • DPW  
Leslie Mitchel • Deputy Commissioner • DPW  
Alexandra Sullivan • Chief Deputy Clerk • Legislature  
Bill Faulk • Aide to P.O. Caracappa.  
Ben Zwirn • County Exec's Office  
Lynne Bizzarro • County Attorney's Office  
All Other Interested Parties

MINUTES TAKEN BY:

Donna Catalano • Court Stenographer

**(\*THE MEETING WAS CALLED TO ORDER AT 3:10 P.M.\*)**

**CHAIRMAN O'LEARY:**

I'll call the meeting to order. We'll begin the meeting with a Salute to the Flag led by Legislator Montano.

**SALUTATION**

**CHAIRMAN O'LEARY:**

Thank you. I have two cards before we begin the agenda and before we get to the discussion that's going to be presented by Commission Bartha regarding the RFP process. Ned Hurley, Bay Shore Ferry. I'm shocked that you are here.

**MR. HURLEY:**

I have changed the Charter agreement that I had had so that it's solely a lease of a boat for a fee. There's not much more to it. I believe the issue of the assignment of the license isn't an issue, but I'm not Counsel. So we have to have Counsel make their opinion on that or Budget Review.

**CHAIRMAN O'LEARY:**

Okay. I have had conversation with Counsel and BRO, and they are both of the opinion after reviewing the Charter submitted by you that the question of the assignment of license is no longer an issue. And I'm sure you are happy to hear that.

**MR. HURLEY:**

Tremendously.

**CHAIRMAN O'LEARY:**

Also with the provisions in the Charter, some of the concerns that we addressed regarding the crew and the collection of fees, etcetera, has been resolved to their acceptance and liking as well. So unless you have anything else to bring before us.

**MR. HURLEY:**

I don't think I do. Thank you.

**CHAIRMAN O'LEARY:**

Any members of the committee have any questions? Legislator Carpenter.

**LEG. CARPENTER:**

Have we •• I don't see it in the backup, do we have a copy of the Charter or BRO's overview of this?

**CHAIRMAN O'LEARY:**

I did speak to Counsel about that, and there is some concerns about confidentiality of leasing fees, etcetera, that have been expressed by not only the applicant, but Counsel and BRO as well. Is Counsel here? I just spoke to her.

**LEG. CARPENTER:**

I learned earlier today she was here all weekend too. I was impressed.

**CHAIRMAN O'LEARY:**

Counsel. The issue before us is 1531, the cross bay ferry license for Bay Shore Ferry. I've indicate to the committee on the record that Mr. Hurley has submitted a Charter and other issues that are addressed and have been resolved to your liking as well as BRO's, the assignment of license question as well as the use of his own crew and collection of the fees.

**MS. KNAPP:**

The Charter clearly shows that it is a bear bones Charter. He is going to be using his own crews on it and collecting the fees. I don't believe that it's an assignment of license at this point.

**CHAIRMAN O'LEARY:**

Thank you. Any other questions? Thank you very much, Mr. Hurley.

**MR. HURLEY:**

Thank you.

**CHAIRMAN O'LEARY:**

The second card I have is from Julie Ben•Susan, North Ferry.

**MS. BEN•SUSAN:**

Good afternoon, and thank you for the opportunity to speak with you again. Bridg Hunt was not able to be with us today because we're celebrating the anniversary of our senior captain and sage Ed Clark. Bridg and Ed were partners for 15 years before Bridge left the boats to come into the office and serve as general manager. Ed Clark has been with us for 50 years today. Since last we met, we've been working closely with both of our local Legislators, Mike Caracciolo and Jay Schneiderman. As you recall at the May 11th meeting, we confirmed that we had a signed contract with the shipyard and a strongly worded letter of intent from the bank both contingent upon the rate increase.

Since then we have made some adjustments to the tariff itself, some substantive changes and other clarifications all in response to issues that were brought up from the community •• from both local communities in one fashion or another. We direct your attention to the corrected copy, hopefully you all have that. I'll walk you through. The salient points are, number one, non resident commuters who are employees of businesses on Shelter Island may be validated by their employer and made eligible for a Shelter Island resident commuter ticket.

Secondly, the weight rating threshold of the SUV definition has been raised from 6000 gross vehicle weight rating to 7000. This confines and more clearly defines category to those vehicles which are unmistakably large and heavy. The two non residents books of ten tickets, one book is roundtrips, the other is one•ways, were both scaled back to a level of increase that is more commensurate with the other categories. Also, we stated explicitly that there are ten tickets in the books.

And lastly, we corrected an omission in the original petition of a category of dump trucks. There we have a category for under 18,000 and over 18,000. It's an existing category, nothing new, we just omitted it by accident in the original petition. Since we saw you last, we've been

working, as I said, with both local Legislators and believe that we have their support. We understand that the public hearing is still open and you cannot discharge this today, but we welcome any questions you might have. As you know, we're entering our busy season, and because so much of our business occurs in July, missing the opportunity for rate relief this next period would surely be the demise of the new boat project. So once again, we implore you to take the actions required at the June 8th meeting and vote in favor of our corrected petition. Thanks again. Have a good day.

**CHAIRMAN O'LEARY:**

Any questions. Legislator Foley.

**LEG. FOLEY:**

Thank you, Mr. Chairman. Julie, thank you for your comments. In order to •• it's my understanding that in order to put •• in order to put an order in for a new ferry, you need close to 12 months lead time in order to have it ready for the next season. Could you also explain to us how, briefly, how some of the shipyards that receive these orders, it's not as if they can wait months on end prior to starting to build a boat, it's not like a car assembly plant. Just how different is it when one •• when •• particularly a ferry company orders a new ferry? How far in advance are they supposed to order those? If there's any real delay, does it in essence, lose its place in line and do other ships then take precedent and starts the whole schedule to be delayed by a factor of not week but months?

**MS. BEN • SUSAN:**

Absolutely correct. Thank you, Brian. We are going back to Freeport Shipyard. They build one boat at a time. They have a crew that is dependent upon •• you know, being work •• being busy and working on •• working on one boat at a time. They were anticipating our being ready this spring. That's why we rushed to get the contract in place and had to subject to contract. They will have to either take another vessel or shut down if we •• if we don't go forward. So that's kinds of where we are. We have been able to keep them engaged partly by trust and partly by advancing them \$20,000 to get started on some lofting work that they can •• that they can do to keep everybody occupied. And it's understood that if we don't go forward, we will lose that money.

**LEG. FOLEY:**

Mr. Chair, if I may. If we close the hearing •• and this is a question for counsel, if we close the

hearing on June 8th, then we can vote on it at the second meeting in June; is that not correct?

**MS. KNAPP:**

Yes.

**LEG. FOLEY:**

How does this impact your time schedule if we're looking at the end of June to make a decision? I mean, that's the earliest, that's the practical matter.

**CHAIRMAN O'LEARY:**

It would be possible to close the hearing on the 8th and then let it sit and cook for a while, discharge it?

**LEG. FOLEY:**

Good point, Mr. Chairman. Counsel could give us the protocol on that. I believe it would take 12 votes, I think, to then discharge it in order to vote on it that particular day.

**MS. KNAPP:**

I'd like to look at the new rules.

**LEG. FOLEY:**

So we could move it on the 8th.

**CHAIRMAN O'LEARY:**

We could move it on the 8th provided we get the appropriate votes to do so. I don't see any reason at this point why we wouldn't do that.

**MS. BEN • SUSAN:**

That would be wonderful. Great. Thank you.

**LEG. FOLEY:**

Just a final question. Hank you, Julie. This is for Kevin. Closing the hearing on the 8th, are there any outstanding issues that need to be addressed with this application?

**MR. DUFFY:**

No issues that I'm aware of. They've all been addressed.

**LEG. FOLEY:**

Thank you. Thank you, Mr. Chairman.

**CHAIRMAN O'LEARY:**

Anyone else wish to address the committee before I go to the discussion portion of the meeting? Okay. I'll ask Commissioner Bartha to come up, please. For the record, I requested of Commissioner Bartha's Office as the Commissioner of Public Works to appear here today for the purpose of discussing the RFP process as it exists within his department and to the best of his knowledge within •• within the County itself. One of the things that we want to look into is whether or there's consistency and uniformity with respect to the process as to what department or agencies or entities are in charge of that selection process and basically how the process begins, what happens during the interim of the selection process and how it's determined that the various bidders do receive the contracts and the various types of entities that the County utilizes for the RFP and RFQ process. Charlie, I'll turn it over to you, and we'll •

- I'll have some questions after you give your initial opening statement, then we'll go from there.

**COMMISSIONER BARTHA:**

Okay. There are several SOPs and different sections of General Municipal Law, which apply to the bidding and the procurement of services. One of the items of confusion that often comes up is the difference between a bid and an RFP. Under General Municipal Law Section 103 any Public Works over \$20,000 is subject to competitive bidding advertisement, which I'll elaborate on. Purchase contracts exceeding \$10,000, that would be the purchase of goods or materials, something that did not involve labor with it. There's a \$10,000 limit over which there's a requirement that it be publically advertised. Depending on which type of work it is; highway work has a two week provision in Highway Law that it has to be publically advertised. Public Works in general is considerably less, I believe five days. In any event, we provide typically much more than that for a project such as the court project in Riverhead. We provided between a month and a half and two months. We find that you get better cost proposals based on contractors having sufficient time to put together an accurate bid.

Bid receipt, the date and time of the bid receipt is included in the advertisement, and the time

is very precise. The law is very clear. And there's been challenges throughout the years, if a bid is simply a minute late, it is late, and it cannot be considered. Bids are publically opened and read allowed in our offices for all Public Works projects. It's typically widely attended by all the firms that submit bids. After the bids are received, we analyze them to determine who is the lowest responsible bidder. We're required to award to the lowest responsible bidder. And the key is the responsibility side. One of the things we consider is bidder experience in the award, passed performance, compliance with the apprentice training program requirements that has been adopted by the County, prevailing wage rate compliance on previous projects, completing previous projects on time. Both for us if they've worked for us before and for other municipalities if they haven't worked for us before.

Purchase contracts are handled very similarly. They are advertised, the date and time of receipt of bids is very specific, and a bid that is received a minute late, will not be considered or opened. Professional services, Section 104 B, of General Municipal Law allows professional services to be procured by means other than going to the lowest responsibility bidder. This work applies to attorneys, doctors, engineers, architects, difference types of management work that •• where the quality is a big issue. For example, on the kind of work that we're involved with engineers an architects, while cost of the engineer and architect is very small compared to the cost of the project, typically it's five to 8%. While the •• you should really view that against the life cycle cost of the project, in which case, it's typically less than 1% of the life cycle cost of a building.

These are not required to be advertised, bid or awarded to the lowest responsibility bidder. And, in fact, on federal projects where we have federal aid, we cannot receive a fee proposal prior to selecting the most qualified firm to do the work. And, in fact, I've received two awards over the last several years for the •• from the American Council of Engineering Consultants with respect to the quality based selection process that we employ in the Department of Public Works, one of which was a state•wide award.

With the way RFPs are handled in general, is that the Purchasing Division of Public Works is notified by whatever department or division •• department of the county or Division of Public Works interested in issuing an RFP. They maintain an RFP model, standard RFP format, which was developed by the County Attorney's Office and then the requesting department adapts that standard model to the particular project that they are seeking an RFP on. They then return that to our Purchasing Division, and it's reviewed by our purchasing professionals along with the

County Attorney's Office, and whatever changes are necessary are made, and the RFP then is advertised and a selection group comprised of people from our Purchasing Division and the department that is seeking the services, evaluate who they believe to be the most qualified respondent and evaluate the cost proposals prior to award.

There's also a waiver that is process that is built into the law that the Legislature adopted and is included in the SOPs that the County operates by. And this •• a department can request a waiver based on very specific questions that were included in the local law adopted by the County and included in the SOP which relate to whether there's a professional •• whether the State Education Department requires the work to be done by a license professional, whether there is a relationship required between the client and the •• and the consultant. And that waiver is granted or denied by a committee of three people, which includes a representative of the County Executive's Budget Office, a representative of the County Executive and a representative of the Purchasing Division of Public Works.

We typically request waivers on work involving engineers and architects. And once we receive that waiver, we have an internal procedure that's followed where we do an RFP procedure, but it's strictly internal. Once we receive that waiver under the County's SOP as well as General Municipal Law, we could select a firm to do the work.

However, the way we do it, we maintain a pre qualified list of firms who have expertise in different disciplines and ever expressed an interest in doing work for the department. This includes architects, engineers, engineers who are proficient in highway work, others that are proficient in sewage treatment. And depending on the size of the project, we will invite up to •• up to five respondents to submit proposals based on their qualifications and prior experience. They •• what they are required to do if they are interested in the project is submit separate technical and cost proposals. The cost proposal is sealed and we establish a selection team of professionals within the department, which may include myself depending on the size of the project, and certainly typically includes the division head under whose direction the work will be performed.

The selection committee then ranks •• that selection committee is comprised of between three and five people. They then rank the proposals that have been received in order of quality. The three firms that are ranked the highest in quality, those cost proposals are open and form the base of negotiation with the firm that we have identified as the most qualified. We don't

require them to match the lowest price, because quality is really the key here. But we do use it as a base of negotiation. And I believe this really promotes public interest and provides the right of quality and cost. And as •• you know, I like to try to run the department as a business, and I believe that's the way a business would try to handle the same type of events. That's basically a summary of the bidding and the RFP process, which are two separate processes, I can't emphasize that enough.

**CHAIRMAN O'LEARY:**

Okay. The purchasing comes under your •• under the DPW, does it not?

**COMMISSIONER BARTHA:**

That's correct.

**CHAIRMAN O'LEARY:**

Is it the office of Purchasing that basically administrates, coordinates the RFPs within DPW or are there separate instances where Purchasing would not be involved within your department with respect to an RFP and an RFQ?

**COMMISSIONER BARTHA:**

Purchasing is not typically involved, because we receive •• on professional services, we seek a waiver, and once a waiver is received, it does not go through Purchasing. It is handled by the respective ••

**CHAIRMAN O'LEARY:**

I'm not speaking of waivers, I'm speaking of when there's an actual RFP that's put together, and it's put out like a bidders conference, for example, and they respond to that.

**COMMISSIONER BARTHA:**

I can't answer that question, because you don't have a bidders conference on an RFP. You have to separate in your minds the difference between a bid and an RFP.

**CHAIRMAN O'LEARY:**

Okay. Well, now that's something that I have to clarify in my mind, because I'm somewhat

familiar with the RFP process as it pertains to health insurance for the County. And an RFP was, in fact, put together with the assistance of Risk Management with Purchasing, and the bidders conference did, in fact, occur where those who expressed an interest in providing the service for administrating the health insurance would respond to that bidders conference. That is unlike with respect to a capital project under construction of, lets say, a jail, or something like that, that doesn't occur?

**COMMISSIONER BARTHA:**

I would say on a large project we would have a proposers conference. In fact, we had a proposers conference on the jail and other large projects in order to clarify any questions that may arise.

**CHAIRMAN O'LEARY:**

I'm trying to get a handle on the entire process as it pertains to a policy within the County. And I'm not asking to you respond to other departments within the County, but is it •• is it common place that other departments other than DPW have RFP's and RFQs? Do they have the same guidelines that you have in your offices? Or is there any consistency in some sort of guidelines in order for these processes to be handled within the County? Or does each department basically do its own thing?

**COMMISSIONER BARTHA:**

It depends on whether they receive a waiver or not. If they don't receive a waiver, then they go through the purchasing unit of DPW. If they do receive a waiver, in those cases, then it's whatever internal procedures they have developed.

**CHAIRMAN O'LEARY:**

All right. Maybe we'll just focus on the RFP process then and RFQ, okay? Within DPW, it's Purchasing that drafts the document, or you are saying, no, that's not the case?

**COMMISSIONER BARTHA:**

Not for projects that involve highway engineering or design of a building.

**CHAIRMAN O'LEARY:**

All right. Who prepares that document?

**COMMISSIONER BARTHA:**

It would be the respective division, the Highway Engineering Division, the Building Division.

**CHAIRMAN O'LEARY:**

All tight. Who then determines the specifications that are going to be included in that document, the people from that particular department?

**COMMISSIONER BARTHA:**

The scope of work for it?

**CHAIRMAN O'LEARY:**

Yes.

**COMMISSIONER BARTHA:**

Yes. That particular division would prepare it, review it with myself, then we invite proposals.

**CHAIRMAN O'LEARY:**

And the members of that committee are selected by whom?

**COMMISSIONER BARTHA:**

By the division head.

**CHAIRMAN O'LEARY:**

By the division head.

**COMMISSIONER BARTHA:**

Or on a larger project, I would have something to say about it, such as with the jail.

**CHAIRMAN O'LEARY:**

All right. Is there any instance or any example of circumstances where either a member of the Legislature or the County Executive's Office would be represented on that review committee?

**COMMISSIONER BARTHA:**

No. And in fact, we have had instances in the past where a representative of the County

Executive wanted to be involved on that committee or another case another elected official wanted to be included, I absolutely refused because it is a professional engineer or architect that is being selected, and that comes under the jurisdiction of Department of Public Works and the Commissioner.

**CHAIRMAN O'LEARY:**

All right. Does each department then within DPW have its own written policy with respect to RFPs?

**COMMISSIONER BARTHA:**

No.

**CHAIRMAN O'LEARY:**

Well, what is the policy then?

**COMMISSIONER BARTHA:**

Depending on the dollar amount of the project, we invite proposals from a list of firms, a pre qualified list of firms that we keep. The division head makes recommendations to me, then I make the final determination.

**CHAIRMAN O'LEARY:**

What would be a circumstance •• I know you had mentioned this during your presentation, Commissioner, but what would be a circumstances that a waiver would be used?

**COMMISSIONER BARTHA:**

In the SOP, it prescribes a number of items, such as •• and I won't read it, but I'll just paraphrase some of these things, special or technical skill or experience required in rendering service, this formal education or training a prerequisite, satisfaction of New York State licensing or testing prerequisite, that's a service• professional service involved with a special relationship between the consultant and the recipient, such as doctor•patient, lawyer•client, confidentiality of DSS recipients, due to federal or New York State Law or regulations of grant requirements require funds be challenged to certain contractors. And I have never seen one of those instances. And then you have to explain why the nature of the services is such that they do not readily lend themselves to competitive procurement and why the best interest of the County would not be served by competitive procurement.

**CHAIRMAN O'LEARY:**

Is there a •• is there a cap so to speak on a dollar figure where waiver could not be used, or is it pretty much open ended, just leave up to the discretion of individual making that call?

**COMMISSIONER BARTHA:**

There is no cap in the General Municipal Law or the County's SOPS, and for good reason, because ••

**CHAIRMAN O'LEARY:**

Well, explain that good reason to us.

**COMMISSIONER BARTHA:**

You don't want to •• the bigger the job is, the more important that you select a firm that's going to give you the best job as far as quality of design. You are not talking about building something here, you're talking about someone's who's going to design it, something that's going to last and be efficient for you. Now, if you hire a firm that's going to quickly whip out a set of plans that are insufficient, you wind up with a lot of construction claims, which will vastly outpace the cost of the professional services involved. And that's specifically why under federal law you cannot solicit cost proposals when you are making your determination of who is the most qualified firm. And from what I understand, New York State is considering similar legislation.

**CHAIRMAN O'LEARY:**

I see. But wouldn't •• wouldn't that particular process lend itself to arbitrariness on the part of those making the selection where they're not weighing the variables, they're just going on reputation, you know, past reputation of individual firms or individual themselves?

**COMMISSIONER BARTHA:**

No. We have •• if you talk about the jail, for example, firms spent considerable amounts of time putting those proposals together. So it's not something that you simply say, well, these guys have done this before, we'll let them do it again. I mean, it's reported to me that the nine respondents we had on the jail project spent between 25 and \$40,000 each in preparing their proposals simply to have their proposals considered. That's what they spent in developing it to

include all of the information that they could provide in a format that they think would most convince us that the project should be considered. And that's why we have •• we don't have one person make the selection. We have a •• we set up a selection team, and those •• in all cases, they are reviewed by me before an award is made.

**CHAIRMAN O'LEARY:**

Is it •• is it not true that you have the final say, that the Commissioner has the final say?

**COMMISSIONER BARTHA:**

That's true.

**CHAIRMAN O'LEARY:**

That basically the committee just submits a recommendation to you.

**COMMISSIONER BARTHA:**

That's true.

**CHAIRMAN O'LEARY:**

And proportionately, if you are allowed to say what sort of break down •• I mean, do you •• when the committee makes a recommendation to you, what would be the circumstances that you wouldn't go along with the recommendation?

**COMMISSIONER BARTHA:**

One of the things that I have as an overview of the department is I'll be aware if a consultant is doing a lot of work in another division in the department and may have a lot of work on their plate right now, and it would not be a good thing for them to have another job right now. That's one of the things we look to balance. Besides the quality, we look to balance the workload and the distribution of the work.

**CHAIRMAN O'LEARY:**

Just to •• as I had discussed with you, Commissioner, we are charged as a body to review the guidelines and policies of the RFP process in the County. And one of the things I found out since I've looked into this is that •• is that there are other departments not under your jurisdiction or your authority which also issue RFPs and RFQs and the bids whatever, who controls that, the individual Commissioner or head of that particular department?

**COMMISSIONER BARTHA:**

Once they have a waiver, yes. But it's also the County Attorney who ultimately signs the contracts as well as the County Executive's Office.

**CHAIRMAN O'LEARY:**

Right. This all came about ••

**COMMISSIONER BARTHA:**

And myself and the Commissioner of whatever department.

**CHAIRMAN O'LEARY:**

There was •• recently in the news, there was some speculation that an individual or individuals outside of the County employee were using their influence with various entities within the County employ for purposes of giving the impression that they would be the go•betweens, if you will, for securing contracts and bids throughout the County. I think you know the instance I'm talking about. Now, with respect to that, is there •• is there any guideline in place which assure some sort of confidentiality or secrecy, if you will, in the process itself where anyone involved in that particular process wouldn't have that situation or advantage to go outside the process?

**COMMISSIONER BARTHA:**

Sure. Sure. That whole circumstances was really so preposterous and ludicrous. This is why in the industry, when I say industry, I mean engineering, architecture, construction, everyone just shakes their head and doesn't give •• doesn't even ask questions about this, because they know the system as constructed doesn't allow that, forgetting about the character of the people involved, which is certainly something that I think the department and the County deserves credit for. But the precise date and time that bids have to be submitted and publically opened and read allowed, I mean, according to the newspaper reports, that's what they're talking about, bids, not even RFP process. But even on an RFP process, there is a committee that opens the cost proposals, and cost is not the bottom line, it's quality. And that's where there's a committee of people to be involved in that evaluation. So I think what •• you know, based on the newspaper reports, it's just an indication of how naïve these people were in trying to promote themselves.

**CHAIRMAN O'LEARY:**

I just have a couple more questions, then I'm sure my colleagues on the committee might have some. But I just have one other. Any •• every situation that comes before you for purposes of approving an RFP •• I'm getting off the bid thing •• that's reduced to a written contract by the County Attorney's Office?

**COMMISSIONER BARTHA:**

Yes.

**CHAIRMAN O'LEARY:**

Is that subject to Legislative approval?

**COMMISSIONER BARTHA:**

Not after the Legislature authorizes the money for a particular project.

**CHAIRMAN O'LEARY:**

All right. So we appropriate the monies, and that's the end of our involvement as far as oversight of the process itself?

**COMMISSIONER BARTHA:**

As far as formal approvals, yes. I would say the oversight of the Legislature never ends.

**CHAIRMAN O'LEARY:**

We have a couple of other questions. Legislator Crecca, then Legislator Montano.

**LEG. CRECCA:**

Charlie, first of all, let me start off by saying I don't question the integrity or ethics of anybody in your department or yourself, but just some questions. The waiver process. Did I hear you correctly earlier that a waiver is always used when hiring architects and engineers?

**COMMISSIONER BARTHA:**

Yes. We always apply for it, and to date we have received it.

**LEG. CRECCA:**

So then when you •• once you get the waiver, then you said you select five firms or something like that.

**COMMISSIONER BARTHA:**

Depending on the size of project.

**LEG. CRECCA:**

Right. You could select more or less.

**COMMISSIONER BARTHA:**

Right.

**LEG. CRECCA:**

Now, I guess my question is if there's a firm out there that wanted to get involved in County work or they've done a lot of work say for other counties and wanted to bid, they wouldn't have access to that process then, would they?

**COMMISSIONER BARTHA:**

Certainly. We have firms •• frankly, the internet has become somewhat of a nuisance with this because people •• firms from all over the region will send me information, they obviously get my name off the internet, and look to become pre qualified. We have a Local Preference Law. So we don't really look to pre qualify firms outside the Nassau•Suffolk area. And firms do contact us that have not worked for us before within the area. We get information from them, that's a 254 form, that relates to the experience of their staff, how many years, how many people in each discipline. And they will •• they essentially give us a general statement of qualifications, which we then evaluate and add them to our pre qualified list.

**LEG. CRECCA:**

About how many are on that pre qualified list? Is it a small list, large list, ballpark?

**COMMISSIONER BARTHA:**

Between 50 and 100.

**LEG. CRECCA:**

I guess my question is this, again, I don't question the integrity, but there's the potential since it's all controlled within a few individuals within one department, is there a way to open up the

process but not politicize it at the same time? And why I say that is, you know, right now basically you and a select few people within the Department of Public Works ultimately decide who, especially in the area of dealing with waivers, all the engineering projects, the architectural projects. Is there a way to open up that process to give it more •• what's the word I'm looking for •• make it more open in the sense of open to the public view and all of that without politicizing it or jeopardizing the professional aspect of keeping it internally within the department? I mean •• let me start off with this, you would agree that the idea of keeping it within is good for the simple reason you want architects and people who are in the Public Works business to look at the process, people who know the difference between, you know •• you know what I'm talking about •• I don't even know what I'm talking about because it's not field •• people who know that field, who know large projects, things like that to look at it. But is there a way to do that, open it up and still •• does that ••

**COMMISSIONER BARTHA:**

To include other people to have a vote on the committee?

**LEG. CRECCA:**

I guess. I mean, I'm not even necessarily suggesting that •• you know, what's the down side, let's put it that way, for opening up the process and having, you know, people who don't work for Public Works, say, sit on the •• if I use the right terminology, would that be an RFP.

**COMMISSIONER BARTHA:**

Yes.

**LEG. CRECCA:**

Something like the jail for example.

**COMMISSIONER BARTHA:**

Yes. Well, I think, you know, as I indicated, at the risk of patting myself and the department on the back, we have received statewide awards for this. And what's important is to have good people in these roles. And you said a select few, it's actually, over the past year, I would say there's been 25 to 30 people in the department involved in different RFPs, because the highways, certain group of people, not even the same all the time, it's people who are actually involved in the job and will be responsible for the performance, from the County's perspective of the consultant. So we have people at all levels in the department that are involved in the

selection. I think •• I mean, let's just ••

**LEG. CRECCA:**

Here's my concern. It's like if I had issued some sort of RFP out of my office, and my staff is sitting on it, you know, ultimately if I start pushing one way, staff you know, there will be a tendency for the staff to want to please me •• I doubt •• my staff is probably laughing right now saying no way •• but theoretically, to please me and go that way. And I guess, you know, is that a potential problem within ••

**COMMISSIONER BARTHA:**

Having been at Public Works for a number of years, that does have the potential, but it also is a very short duration. And I can tell you from when I •• times when I was not a Commissioner, there's been some very heated conversations because of the fact that the professionalism that engineers and architects feel and their duty to the public to balance that. And also, we'll say that when Steve •• I'll go back to when Steve Hayduk was Commissioner. When he left, he had indicated to me that the County Executive's Office had never asked him to •• you know, never tried to intervene in the selection process of an engineer or an architect, I can say the same thing having worked now for both the Bob Gaffney Administration as well as the Steve Levy Administration, never has anyone tried to politicize it, and I think for good reason. Because once started to dilute the responsibility, the responsibility belongs with the department and the Commissioner.

**LEG. CRECCA:**

Well, that's good to hear. Another question for you. Local preference, how does that work now?

**COMMISSIONER BARTHA:**

On competitively bid projects, the way the local law reads is that there's a 10% local preference at the option of the agency, the awarding agency, which is, for the work you're talking to me about, is typically Public Works work. With respect to professional services, it's called a local preference law, but it's really an absolute preference where if there's a firm in Nassau or Suffolk that can do the work, you can't consider any other firm.

**LEG. CRECCA:**

Where is that embodied?

**COMMISSIONER BARTHA:**

That's in a local law.

**LEG. CRECCA:**

Okay. That's the way it works? That's what I'm curious about, the professional services. Basically, if there is a local firm, you have to use them first.

**COMMISSIONER BARTHA:**

Right.

**LEG. CRECCA:**

Okay.

**COMMISSIONER BARTHA:**

So what we've done on •• well, take two unique projects we've gotten involved with; the ballpark, and I'll say the jail, because we did go through a selection process on that, and in each case, local firms teamed with firms outside the area that brought the expertise in the specific type of project you were designing. Once you get that general conceptual professional assistance, there's a lot of grunt work involved in putting together a set of plans and specifications. And the local firm ties that in together. And I think that's worked very well, because that's been around since 1993 or '94. And we have had problems in actual litigation involving some prominent projects such as Medical Examiner's Building here, where we had a consultant from outside the area, they convinced the Administration of DPW at the time, and this is in the mid '80s, that the •• that they had all kinds of expertise. They did, but they didn't assign the expertise to that project, they had no tie to the area. So this was one job they did and they ran. But we subsequently brought litigation against them, and there was an approximately \$750,000 fee they were paid. We collected that back from them, the entire fee because of the problems we had on the project. In the arbitration proceeding, they real trotted out the A•Team again, the same team I assume the Administration of DPW saw in the mid '80s. And I told them after three hours of listening to this that they obviously are very confident, and if they were the ones involved in the project, we probably wouldn't have had the problem we did. Initially I was not an advocate as strongly of the local preference, because there are certain expertise you are better off having a broader way. But this is the way, we find

to be a very good marriage to do that.

**LEG. CRECCA:**

Thank you. I have no further questions, Mr. Chairman.

**CHAIRMAN O'LEARY:**

Thank you, Legislator Crecca. Charlie, with respect to the RFPs and the RFQs and bids that are put, other departments, like the Health Department, Parks, Social Services, when they are formulated, do they go through your purchasing department?

**COMMISSIONER BARTHA:**

Yes, provided they did not receive a waiver, it goes through our Purchasing Department.

**CHAIRMAN O'LEARY:**

Okay. So in other words •• I mean, for all intense and purposes, RFPs that don't obtain a waiver all go through purchasing no matter what the department is throughout the County.

**COMMISSIONER BARTHA:**

Correct.

**CHAIRMAN O'LEARY:**

Legislator Montano.

**LEG. MONTANO:**

Thank you. Thank you, Commissioner. Actually one of the problems we'll be speaking on later in the process is that you have answered a lot of questions I've had in my mind, but just let ask you a couple. With respect to the SOPs and the RFP process that you described, have there been any substantive changes in that process or non substantive changes within the last six month or is this something that has been going on in the same fashion for a long period of time?

**COMMISSIONER BARTHA:**

The same fashion since the state, I think it was in 1993 or '94, adopted section 104•B. So, no, the process has not changed in the last few months, probably about eight years since it's

changed.

**LEG. MONTANO:**

With respect to the list of professionals, is that a pre qualified list of professionals that you indicated earlier?

**COMMISSIONER BARTHA:**

Yes.

**LEG. MONTANO:**

How often that list updated? Is that an ongoing process or is there an opening and a closing period for that?

**COMMISSIONER BARTHA:**

It's ongoing. In fact, I speak at the professional dinners often, and I explain the process to anyone who is there that they are welcome to become included on the list of pre qualified firms and have an opportunity to do County work.

**LEG. MONTANO:**

You testified earlier with respect to Local Preference Law, and you said it's a 10% local preference. Is that what I would interpret 10% set aside for instance for local •• local companies? Can we use that term?

**COMMISSIONER BARTHA:**

No. Actually what it is •• probably a better way to describe it is if a local firm bid a \$100 on a project, and a firm from Queens bid \$108 on it, once you make that 10% difference to local firm •• I'm sorry, and you've got me in charge of this stuff right. I was doing good up until then.

**CHAIRMAN O'LEARY:**

Charlie, you were so good up until there.

**LEG. MONTANO:**

With respect to the Local Preference Law, do you also keep a list of professionals or companies on the basis •• for instance, women•owned companies, minority•owned businesses, do you

keep a separate category for those type of businesses that for one reason for another have not been included in the process historically?

**COMMISSIONER BARTHA:**

Yes.

**LEG. MONTANO:**

Now, with respect to •• let me go back. That list is available to members of the Legislature?

**COMMISSIONER BARTHA:**

Sure.

**LEG. MONTANO:**

Okay. I'd like to get a copy of the list to see who and what firms are on that.

**COMMISSIONER BARTHA:**

Both for professionals as well as non •• construction type firms?

**LEG. MONTANO:**

Yes.

**COMMISSIONER BARTHA:**

Because we do maintain both.

**LEG. MONTANO:**

I would like to see that list, because people have asked me over the last couple of months.

**CHAIRMAN O'LEARY:**

I would suggest to Legislator Montano that that request be adhered to when you make it through the committee to make copies to the whole committee as well.

**LEG. MONTANO:**

Absolutely. I don't want exclusive. It's public information is what you are saying?

**COMMISSIONER BARTHA:**

Yes.

**LEG. MONTANO:**

Okay. With respect to the committee that you indicated sort of gets together, I believe that's an in-house committee, that kind of gets together and determines what the specs would be for a particular RFP?

**COMMISSIONER BARTHA:**

I would refer to it as a scope of work rather than specifications.

**LEG. MONTANO:**

Okay. Now, what I've been asked in my capacity as a new Legislator is that there are some companies that feel that their product can provide the same type service that you are looking for, but for one reason or another, and a lot of •• the accusations or allegations or scuttle butt or whatever you want to call it, and certainly not, you know, something that I'm repeating as fact, but there's •• there's a possibility of the perception that this is a closed process, and other firms can't get into the process because there's no way of bringing forward how their product •• for instance, I'm thinking of a particular product, a boiler manufacturer, one is cast iron, I think the other is steel, and the issue is that some companies feel that their product can provide the same service for less money, but they never have an ability to get into the process, am I accurate in that? Is it something that, you know, I'm articulating accurately?

**COMMISSIONER BARTHA:**

I understand it's confusing, the RFP and the bid process. That is something that would be specified, you were right with respect to specifications, in a document that the engineer or architect that we hired or that our own staff prepared. And there are •• and that's part of the decision that the professional makes in determining what's in the best interest of the County in the long run. Now, certainly we do •• we are contacted by manufacturers for different products, and typically they will work with our division heads who have more expertise than myself in a particular field. And if they are frustrated with that, we all sit down together to make sure that we're doing the best we can for the County with respect to the long term.

**LEG. MONTANO:**

Is this a formal process or is this something that you •• that you deal with on a case by case basis and something that you would say, well, we've got a company out there that's indicating

that their product might provide the services that we need at a cheaper rate and therefore we ought to consider their concerns and maybe we'll set up a meeting, or is there a formal process within the SOPs that provide companies like this an opportunity to get into the process and have their input before the selection is made, the selection with respect to the qualifications?

**COMMISSIONER BARTHA:**

It's really an informal process. Manufacturers certainly employ a number of sales and promotional people. And they contact ourselves regularly. We also really •• virtually all the professionals in the department participate in different professional groups, which is a good area for interchange of information. And engineers and architects now for the last several years have a continuing education requirement, which is another area where we are exposed to different products that are coming out. And that's something that the consultants that we hire, they do, because they have a number of clients, not just the County, they have private clients and other municipal clients. So they really draw from a very broad base of experience on specifying individual products.

**LEG. MONTANO:**

With respect to the selection of firms, I think you answered a question from Legislator O'Leary earlier that once we appropriate was it •• we appropriate the monies for the project the Legislature has no input in what happens with that particular project, did I understand that correctly?

**COMMISSIONER BARTHA:**

Well, there's no formal approval, there's no resolution required. You realize I'm loathed to say the Legislature has no input. And it's certainly not the case. I mean, Legislators when there's a project that they're interested in, whether it's a highway project or a building project •• I just toured a facility with a Legislator, there was another tour last week, not with myself, but other people, and these are the kinds of things that we react to to keep everyone apprised.

**LEG. MONTANO:**

Okay. Once these selections are made, I mean, that also is public information. You know, in terms of my office being new, I'm just wondering how I would have access along with the other committee members to that information. Is it on an ongoing basis? Is it in a document that I haven't seen yet? Of course, you don't know what I haven't seen, but I think you get the idea.

**COMMISSIONER BARTHA:**

There is •• there is no procedure for that, but I certainly would have no objection to that.

**LEG. MONTANO:**

Commissioner, thank you very much. I appreciate it.

**CHAIRMAN O'LEARY:**

Any other questions of the committee? Commissioner, in closing I would just ask would you make any suggestions or are you in the mindset to make any suggestions or recommendations to us that perhaps the system some way, some how be tightened up a bit, or is it as is appropriate and fine with you?

**COMMISSIONER BARTHA:**

Well, I think the system certainly stands to be applauded, because it stood up to pressure that was applied by people who didn't understand the system so well. So the safeguards that we have in place and the people that are involved do the job right. So I think •• I mean, I think the system works and we should keep it.

**CHAIRMAN O'LEARY:**

Okay. Legislator Losquadro.

**LEG. LOSQUADRO:**

I promise I will make it quick. Mr. Commissioner, as you said earlier the Purchasing Department is also under the Department of Public Works. Does the Purchasing Department also take that Local Preference Law into account when awarding contracts for goods that are available nationwide and sometimes through •• you know, there are nationwide vendors who are able to provide these goods at perhaps a lower cost?

**COMMISSIONER BARTHA:**

Yes, that does apply to that also. And I can tell you that Purchasing wasn't always part of Public Works, it was transferred to us around 1999 or 2000. Since it's been under Public Works, I have insisted that I be the person that waive the Local Preference Law and •• in very few instances, and it's not big dollars where the Local Preference Law has had an impact. And what we've done in instances like that, sometimes local preference is a little bit more and the

deliver time is also longer, so, you know, they're local, there's no excuse. The delivery time should be at least as good as the firm that's non local. So that's the kind of thing that we've insisted on.

**LEG. LOSQUADRO:**

Very good. Thank you.

**CHAIRMAN O'LEARY:**

Any other questions? Commissioner, I want to thank you for explaining to us the entire process. I think it was enlightening to some of us. And your comments were noteworthy and taken in a true vain of, as Legislator Crecca said, there is no way, shape or form are we questioning the integrity of your department or the people who work in it. As I have since found out by the Charter and the resolutions and provisions in same, this body is charged with annual oversight and review of the process. So that's exactly what we're doing.

**COMMISSIONER BARTHA:**

Thank you. And I certainly appreciate the manner in which the questioning was conducted and your kind remarks and everyone's kind remarks.

**CHAIRMAN O'LEARY:**

All right. We'll move on to the agenda. Before we get to the agenda, does any member of the committee wish to speak to the Commissioner regarding any particular projects or construction efforts within their own particular districts? Hearing none, we'll move on then.

**TABLED RESOLUTIONS**

**1531•03. Approving amended cross bay ferry license for Bay Shore Ferry, Inc. (PRESIDING OFFICER).**

**CHAIRMAN O'LEARY:**

I'll make a motion to approve, seconded by Legislator Losquadro.

**LEG. CARPENTER:**

On the motion.

**CHAIRMAN O'LEARY:**

On the motion.

**LEG. CARPENTER:**

I have some questions, I guess, for Budget Review Office. I just received the amended copy and •• earlier today actually. In reviewing it, I see that the license •• we're amending the license to permit the use of leased vehicles owned by Port Imperial Ferry Corporation?

**MR. DUFFY:**

That is correct.

**LEG. CARPENTER:**

That's correct. But I don't see any attachments. I don't see a copy of the lease. I don't see who Port Imperial Ferry Corporation is, where they are at. And also there is a listing •• the resolve clause states that the license or the agreement is being amended to include the authorization to use the Coast Guard certified 99 and/or 149 passenger vehicles and/or catamarans from Port Imperial Ferry Corporation.

**MR. DUFFY:**

On Friday I was present with Counsel when she spoke with Mr. Hurley, and at that time, and Counsel can correct me if my recollection is not correct, that what Mr. Hurley was attempting to do was to amend his license so he would now have the authority to use leased vessels. We had indicated to him that at that point that he would be required to supply us with the Coast Guard certificates for those vessels that he was adding. In addition ••

**LEG. CARPENTER:**

Well, how many vessels is he leasing?

**MR. DUFFY:**

In looking at the agreement that we received today, my understanding is that there will be one vessel that will be based at Bay Shore Marina from, I believe, it's June 26th through September 8th. I'm not positive of those dates. Why there is a listing of more than one vessel ••

**LEG. CARPENTER:**

Actually, there is a listing of 11 vessels.

**MR. DUFFY:**

Because the owner is reserving the right in case there is a problem with the vessel that's based there, that they would be able to substitute one of these other vessels. My understanding is also that Mr. Hurley had requested Counsel that since the Charter agreement had confidential information that if someone requested the Charter, that that financial information be blocked, but that the Charter would be available. We •• I believe we just received, like 11 o'clock today, and I don't know whether or not Counsel has determined what information would not be available for the public to see, but she did indicate to him that •• and he did agree to it, that the Charter would be available as part of the backup and that the confidential financial information would be taken out.

**LEG. CARPENTER:**

Okay. I mean, I know that with many of these kinds of things when there are leases for buildings or so forth, we always have that agreement as a backup. So it seems a little bit unusual to be moving forward with this without that backup. I mean, do we have that available now?

**MS. KNAPP:**

I received a copy sometime during the Public Safety meeting.

**LEG. CARPENTER:**

All right. So is it going to be distributed to the committee prior to voting on this?

**MS. KNAPP:**

Every Legislator certainly has the right to see this obviously before they vote on it. I'm hesitant to distribute it with the dollar figures in it only because it then becomes a public document, and the dollars are there.

**LEG. CARPENTER:**

Redact them. That's not necessary to know what the dollar amount is.

**CHAIRMAN O'LEARY:**

If Legislator Carpenter has a need to see the document, I would suggest that we move on this issue and attach it to the appropriate documents before the full body.

**LEG. CARPENTER:**

If I could, Mr. Chairman. I don't want it to be brought to the personal level that Legislator Carpenter needs to see it. I just think that as a matter of process that all of the members of the committee should have that backup information before moving forward with approving this resolution.

**CHAIRMAN O'LEARY:**

I acknowledge that. We had some concerns with this particular resolution, and as I've indicated earlier, to my mind they have been resolved appropriately and accordingly. Counsel has advised that the issue of assignment of license is no longer an issue. And also in the Charter, we have been advised, which was an issue in discussion in committee of the crew and fees collected is no longer an issue as well. As far as the 11 listed vessels in the resolution of the Charter, it's my understanding that there's only going to be one used at any particular time. And Kevin, correct me if I'm wrong.

**MR. DUFFY:**

That's correct.

**CHAIRMAN O'LEARY:**

And the reason why the other ten are listed, in case the one that is being used for some reason breaks down or is no longer available for service, then the licensee will have available at his behest one of the other vessels to be used. Is that my understanding of what occurred here?

**MR. DUFFY:**

That's my understanding, correct.

**CHAIRMAN O'LEARY:**

So there's no indication that the licensee is going to be using all 11 vessels at one time or for that matter more than one at any one time?

**MR. DUFFY:**

My understanding in reading the bear bones Charter that we received is that one vessel will be

stationed at •• in Bay Shore at the Bay Shore Marina, I believe from June 26th to September 8th. I'm looking to see if I can verify that.

**CHAIRMAN O'LEARY:**

But, I mean, just to ••

**MS. KNAPP:**

June 30th.

**CHAIRMAN O'LEARY:**

There's no request on the part of the applicant to use more than one vessel at any one time. The only reason why the other ten are listed is in case the one being used is not available for service.

**MR. DUFFY:**

That's how I read the document, correct.

**LEG. CARPENTER:**

But then again, we don't have that document in front of us. So I guess that goes to my point of making sure that each of the members of the committee has it. These 11 vehicles that are listed, we have the Coast Guard certification on each and every one of them?

**MR. DUFFY:**

I indicated when I made my remarks that we indicated to the applicant that he would be required to supply those.

**LEG. CARPENTER:**

When are we getting them?

**MR. DUFFY:**

I told him that they would have to be supplied as quickly as possible. I had a conversation •• I don't know if Mr. Hurley is still here, but I had a conversation with him maybe around 1:30 this afternoon. I told him that the Clerk's Office did not have them, and it would behoove him to submit them as quickly as possible.

**LEG. CARPENTER:**

Certainly before Tuesday. I mean, I don't see how this Legislature could act, you know, absent that.

**MR. DUFFY:**

My recollection is he said that he would have New York Waterways send us a package tomorrow.

**CHAIRMAN O'LEARY:**

Well, I would like to •• as Chairman of this committee, I would want to get this particular issue out of this committee and before the full body. I'll change my motion for a motion to approve to a motion to discharge without recommendation, is there a second on that?

**LEG. LOSQUADRO:**

Second.

**LEG. FOLEY:**

On the motion, Mr. Chairman.

**CHAIRMAN O'LEARY:**

On the motion, Legislature Foley.

**LEG. FOLEY:**

Thank you, Mr. Chairman. Kevin, I have several additional questions. When we look at the amended bill, it speaks of •• go to the second page, first resolve clause, subsection four, let's call it, it says, the rate schedule to be charged to the transportation passengers shall be the rates approved 344 of '03 at •• effective as of May 29, '03. Then it goes on to say the rates and schedules shall be posted. Now, that's for the rates. What about the schedule? What schedule will be utilized by this particular ferry operation? When you look at the introductory resolution from last month, there is in a second resolve clause a service description for the ferry service schedule. That second resolve clause, is that what is also mentioned in its abbreviated form in the second resolve clause of the amended copy? Because you look at the second resolve clause it says that all of the other terms and conditions of Resolution Number 343 of '03 shall remain in full force and effect. So we know the rates are going to be from last year, but what's the schedule going to be? That was one of the bones of contention, was this greatly

expanded schedule, and many of us felt that the experience •• and quite frankly up to this day, the assurances given by the applicant weren't the most reassuring. So what schedule is going to be approved if this resolution is approved?

**MR. DUFFY:**

Counsel can correct me if she does not agree with me, but my understanding of what occurred is that when we spoke with Mr. Hurley on Friday ••

**LEG. FOLEY:**

I don't want to know what was spoken. What •• what is in the printed word •• what's been printed as to what will be the schedule that we will be approving? I don't want verbal here, I want documentation.

**MR. DUFFY:**

It would refer back to the •• in his application to amend his license, the petitioner indicated a schedule that he wished to run.

**LEG. FOLEY:**

Correct. And that was the expanded schedule. So my question is what schedule are we approving if this resolution is approved, because it's not part of this •• of this amended resolution?

**MR. DUFFY:**

Right. You would be approving the schedule that relates back to the previous resolution which incorporated the schedule that was shown in petitioner's ••

**LEG. FOLEY:**

Do you have a copy of that?

**MR. DUFFY:**

Yes, I do. I'm looking for that now.

**LEG. FOLEY:**

Could you please look for that. And while you're looking for that I can ask Counsel, Counsel ••

Counsel since the agreement was just received late this morning, if not early afternoon, is it not correct that neither you nor Mr. Duffy have had a chance to review the agreement?

**MS. KNAPP:**

I know that I have scanned it. I'm afraid the I scanned it in the period of time that I was either sitting at this horseshoe or the very brief period between the two meetings, which means that while I've scanned it, it was scanned enough to verify that Mr. Duffy was correct in that it does make reference to one of the vessels on the attached schedule. My belief was that they did that because the owners probably wasn't sure which of the 11 he was going to make available. And I can verify that the vessel is going to be available from June 30th to September 8th, and it's supposed to arrive at the dock by June 26th. However, other than that, in certain insurance provisions that I looked for, I haven't had a chance to read carefully.

**LEG. FOLEY:**

You intend to do that careful reading before next Tuesday obviously. Mr. Duffy, can you just tell us about the schedule.

**MR. DUFFY:**

Okay. The schedule would relate back to Mr. Hurley's petition dated January 16th, 2003, and in said petition, he indicated that schedule A, which gave •• as Exhibit A, which gave the times of leaving and departures.

**LEG. FOLEY:**

Well, let me ask you this. That's of '03 •• that's of "03, is that what you're telling me? So in other words, is there or is there not an expanded schedule that's being proposed here? Or is it the original •• what I call the original restrict schedule in place that we had approved last year.

**MR. DUFFY:**

My understanding would be the original restricted schedule that you had approved last year.

**LEG. FOLEY:**

All right. So in other words, what was initially proposed earlier this year and late last year as far as expanding the schedule •• you remember all those discussions?

**MR. DUFFY:**

Yes.

**LEG. FOLEY:**

Okay. That has been •• forgive the pun •• but thrown overboard?

**MR. DUFFY:**

My understanding and Counsel can correct me if I'm wrong, is that he would be limited to the schedule that was in his approved petition from last year.

**LEG. FOLEY:**

All right. That being the case, Counsel, in other words, we're looking at •• at some point last year, the applicant had •• as part of his application, he wanted to expand, greatly expand his service area. Many of us had concerns about that, because we didn't think that he had the track record that warranted that expansion. When you read this particular resolution now, is he going back to the original schedule and original restricted locations •• and I mean restricted geographically, not in any other sense of the word •• that we had approved last year?

**MS. KNAPP:**

Again, I wasn't here last year, but to the extent that when you refer to the expanded schedule, I know that in some earlier versions that do go back to the summer of last year there's a service description that forms a second resolved clause where it says that the schedule of service authorized by Resolution 344 of 2003 is hereby amended as follows. If that's the case, my reading of the version that was filed on May 28th, it certainly does not have that resolved clause in it, and instead it says that all other terms and conditions of Resolution Number 344 and 344 shall remain in full force and effect. And it's my opinion that the schedule and rates that you approved remain the schedule and the rates that Mr. Hurley's company will have to adhere to.

**LEG. FOLEY:**

But do we have any documentation that speaks of •• by the way, let the record reflect that we've asked this of all applicants for all ferry operations when they come before us. Do we have documentation that shows exactly what locations on Fire Island that this resolution would allow the ferry boats to go? That's my point.

**MR. DUFFY:**

If I can answer that, Legislator Foley. You would refer back to his petition for a cross bay license where he added Ocean Bay Park dated January 16th 2003. To that, he appended schedule A, which he has a schedule effective Memorial Day through Labor Day, and he lists various locations.

**LEG. FOLEY:**

Well, read those locations into the record, please.

**MR. DUFFY:**

He leaves Bay Shore Thursday, 11:00 a.m. arrives Robins Rest 12:30 p.m., arrives Ocean Bay Park 12:40; Friday leaves Bay Shore 6:00 p.m., arrives Robins Rest 6:30. Arrives Ocean Bay Park 6:40, leaves Bay Shore 9:30, leaves Robins Rest 10:00 p.m., leaves Ocean Bay Park 10:10.

**LEG. FOLEY:**

If I may just interrupt, through the Chair, so in other words, if we looked at Introductory Resolution 1531 of '03, which you make mention of in this resolution which was corrected as of June 16 of '03, that's speaks of leaving Bay Shore, the mainland, and going to Robins Rest and Ocean Bay Park Thursday, Friday, Saturday, Sunday, and then Monday through Thursday there's also a schedule believing Bay Shore and going to Robins Rest and Ocean Park, then there's also a schedule that is in reverse from Ocean Bay Park, Robins Rest and Bay Shore, is that not correct?

**MR. DUFFY:**

You are referring to the resolution from last year?

**LEG. FOLEY:**

Yes.

**MR. DUFFY:**

Counsel had spoken on Friday •• I can say, she had asked Mr. Hurley, because that was part of the reason that when he originally filed an amended petition, changed the schedule. And since Mr. Sabatino, who was Counsel at that time, was not approving the schedule •• the resolution was not approving the schedule that was in his original petition, Counsel Mr. Sabatino at a point indicated the new schedule that would be run by the applicant. When we spoke to Mr. Hurley

on Friday, Counsel Mea Knapp indicated to him that are you then abandoning that and going back to your original schedule that had been approved, and he indicated he was.

**LEG. FOLEY:**

With that answer, Mr. Chairman, I understand you want to clear that docket, and I fully understand as past Chair of the Committee, you know, I and others who are past chairs like to do the same thing. Part of due diligence in this particular area in particular when •• and this is not overly dramatizing the issue when as we've seen happen over in Staten Island when •• when, you know, problems can occur and life and dealt situations can arise through ferry operations on surface waters, I would like to see a copy •• before we approve this thing, a copy of the exact schedule of service that would be provided if and when this particular resolution is approved.

I don't see it in front of me now. There's been some verbal communication between the applicant and Counsel and the Budget Review Office, but I would like to say, you know, appended to this resolution exactly what the schedule service is. Then we can •• then we can make judgments about whether or not the schedule service reflects the one ferry operation that's being proposed here. Because as we all know, in prior iterations of this proposal there was a greatly expanded schedule that reflected the applicant's wish to have multiple boats. So since it's gone back to one boat, we need to make sure the schedule reflects the actual operation of only one boat at the •• at the Bay Shore port of call.

**CHAIRMAN O'LEARY:**

Kevin, correct me if I'm wrong •• do you have a copy of the resolution in front of you?

**MR. DUFFY:**

Which resolution are you referring to?

**CHAIRMAN O'LEARY:**

The one that's before us, 1531, with the amended schedule. What is this one here? May 23rd, 2004 to September 1st, 2005. Is the schedule the same or has it changed?

**MR. HURLEY:**

No other ferry company has every filed a schedule. Why doesn't Fire Island Ferry have a

schedule?

**CHAIRMAN O'LEARY:**

Mr. Hurley, I'm under the impression that every ferry company files a schedule.

**MR. HURLEY:**

I believe you should bring up every application of a ferry company and you should look, and you will find zero schedules. My application is the only one. There is not a level playing field here. You know, I refuse to ••

**LEG. FOLEY:**

Mr. Chairman, just to the Budget Review Office, please. Is there a schedule? What is the schedule?

**MR. DUFFY:**

What normally would happen is that in the first resolve clause, the resolution would approve the petition as submitted. The petition itself would usually have a schedule in it. Therefore, it would be done by ••

**LEG. FOLEY:**

No, sir. We're going through the Budget Review Office. You must have in your file then, Kevin, and I'm sure you have it in front of you, part of the petition has to have contained in it what that schedule is, that's all I'm asking.

**MR. DUFFY:**

The petition is normally as part of a backup. They will attach copies of what their schedules are, which will show the dates ••

**LEG. FOLEY:**

But we don't have it here with the resolution. I'm asking you for your copy.

**MR. DUFFY:**

What had happened with this resolution when the applicant originally filed his amended petition, the one that's the subject to 1531, he had indicated the schedule that he wished to run.

**LEG. FOLEY:**

I know, but as the staff •• with all due respect, as the staff person, as you are with all of these, and that's to your credit and the credit of the Budget Review Office for being as thorough as you are, I know that you •• as you do with all the applicants, you request these not just verbal assurances, but documentation that satisfies the issue •• verbal assurances. So I'm asking part of the petition application that was submitted to you for your staff review contained in there as you just stated is the schedule. So what is the schedule? And if you have a copy of it, go through the committee staff here to give us copies of that.

**MR. DUFFY:**

The schedule would refer back to the petition that was backup to Resolution 344 of 2003.

**LEG. FOLEY:**

Which was resolution 1531 of '03?

**MS. KNAPP:**

No.

**LEG. FOLEY:**

All right. So if it goes back to one that we had approved, let's get a copy of it. Where is that? It's not •• that's the whole point, it's not attached. And if Counsel •• rather through the Chair, BRO has a copy of that so let's just simply distribute it here.

**LEG. LOSQUADRO:**

Is it the same schedule that was attached to 1531? I understand it was 344, but is it the same one that was attached as backup to 1531?

**MS. KNAPP:**

I'm not sure that any of us can be certain of that.

**LEG. LOSQUADRO:**

I have a copy of that.

**LEG. FOLEY:**

I have a copy of that too. That's what I'm trying to find out.

**LEG. LOSQUADRO:**

What it says is that the schedule service authorized by Resolution 344 of 2003, and then it has the entire schedule as the backup. All of them were date specific. Schedule five is May 23rd 2004 to September 1st, 2004 and each and every May 23rd to September 1st and each and every year thereafter through 2005. Is that the schedule we're referring to?

**LEG. FOLEY:**

Counsel •• the Counsel not of the Legislature •• through the Chair, Legislator Losquadro makes a good point. If you go back to 1531, the second resolved clause states that scheduled service authorized through Resolution 344 of '03 is hereby amended as follows. So the amended resolve clause, I'm assuming, of 1531 expands what was originally authorized in Resolution 344.

**MR. DUFFY:**

Correct.

**LEG. FOLEY:**

Now, what we're approving today, or what is being sought to be approved today, goes back to the original Resolution 344 for a schedule, correct?

**MR. DUFFY:**

Correct.

**LEG. FOLEY:**

Because 1531 of '03 was never approved.

**MR. DUFFY:**

Correct.

**LEG. FOLEY:**

So now •• thank you, Legislator Losquadro for putting it so directly. So what is the schedule of Resolution 344?

**MR. DUFFY:**

The schedule of resolution ••

**LEG. FOLEY:**

And do you have a copy there that can be given to us?

**MR. DUFFY:**

It refers back to your original petition submitted by the applicant dated January 16th, 2003. And I started reading it before. It's the schedule that was leaving Bay Shore, Robins Rest and Ocean Bay Park, and it gives particular times for each of those days and also would allow the applicant ••

**LEG. FOLEY:**

I would like to have a copy of that, Mr. Chairman, if we may, please. Could we have a copy of that?

**CHAIRMAN O'LEARY:**

Let's do this. Let's get all the relevant copies here before us. I'm going to go on with the rest of the agenda. And by the time this meeting is over, I want to address this issue once and for all to either put it behind us or move forward. So any copies that we need, including the redacted charter, let's get that before us before the end of this agenda. I'm going to move on now.

**LEG. FOLEY:**

Thank you.

## **TABLED RESOLUTIONS**

**1211•04. Authorizing the authorization of rates for North Ferry Co, Inc. (PRESIDING OFFICER)**

**CHAIRMAN O'LEARY:**

That was tabled subject to the public hearing, which is anticipated to be closed on June 8th. At that point, as we indicated, we will hopefully move to approve it after the hearing is closed. But right now it's tabled subject to the hearing on •• that's been recessed to June 8th. Motion to

table by myself, second by Legislator Losquadro to continue tabling. All those in favor? Opposed? Abstain? Motion passes. **APPROVED (VOTE:7•0•0•0)**

**1236•04. Approving rates established for Davis Park Ferry Company. (PRESIDING OFFICER)**

**LEG. FOLEY:**

Motion to table.

**CHAIRMAN O'LEARY:**

There was a motion to table on 1236 by Legislator Foley, seconded by myself.

**LEG. CARPENTER:**

On the motion. This hearing was recessed anyway, wasn't it?

**LEG. FOLEY:**

Recessed.

**CHAIRMAN O'LEARY:**

Continued in that tabling status.

**LEG. CARPENTER:**

Just to let the record reflect, if I could, Mr. Chairman. I know a comment was made before about licenses or applications not having to attach schedules. I was just looking at this application, it does have a schedule attached to it. So everyone is doing that.

**CHAIRMAN O'LEARY:**

Point well taken, Legislator Carpenter. Moving on •• so 1236 is **TABLED. (VOTE:7•0•0•0).**

**1240•04. Approving Adopt•A•County•Shoreline Program. (COOPER)**

**CHAIRMAN O'LEARY:**

I have a request from the sponsor to table. Motion by myself, seconded by Legislator Carpenter. On the question of the motion to table, all those in favor? Opposed? Abstain?

1240 is **TABLED (VOTE:7•0•0•0)**.

**1321•04. Authorizing that Resolution No. 892•2003 be rescinded which appropriated funds in connection with the dredging of Moriches Inlet for Smith Point Park Beach replenishment. (COUNTY EXEC)**

**CHAIRMAN O'LEARY:**

Jim, is this the •• yes. What is the status of 1321?

**MR. SPERO:**

That should be tabled. The Legislature passed a resolution that would transfer these funds to a generic dredging project.

**LEG. CRECCA:**

Could we table this subject to call?

**LEG. FOLEY:**

Prior to our making that •• voting on the table subject to call, as has been the tradition of the committee through my time and Legislator Caracappa's time, since it is a County Executive bill •• through the Chair that is, if they have any comments to make about this or a related issue with this resolution, I think it would only be right to give them a chance to speak on it if they have any points to raise .

**CHAIRMAN O'LEARY:**

Is there anyone here from the County Executive's Office that wishes to speak on 1321?

**MR. ZWIRN:**

I think we put the comment on the record at an earlier time.

**CHAIRMAN O'LEARY:**

You have put the comments on the record already, Mr. Zwirn?

**MR. ZWIRN:**

Yes.

**LEG. LINDSAY:**

I'm confused, Mr. Chairman. Does this address •• isn't there a veto in connection with this?

**MR. SPERO:**

The County Executive resolution rescinds the appropriation. The Legislature's resolution transfers the appropriation to a generic dredging project and an accompanying bond resolution rescinds the old bond and creates the authorization to issue bonds for the generic dredging project. Now that resolution has been vetoed by the County Executive on the grounds that we had to amend the Capital Budget again and find an offset to transfer the appropriation to the generic dredging project, which ••

**LEG. LINDSAY:**

So what does this resolution do?

**MR. SPERO:**

It would rescind the appropriation altogether.

**CHAIRMAN O'LEARY:**

What happens to the monies?

**MR. SPERO:**

Right now, they would be transferred to the generic dredging project.

**CHAIRMAN O'LEARY:**

Right, which I thought already did and the County Executive vetoed that.

**MR. SPERO:**

That's correct. So there will be a motion to override the veto at Tuesday's meeting.

**LEG. CRECCA:**

That's a safe presumption.

**CHAIRMAN O'LEARY:**

Your presumption is correct. Whether or not it's going to be successful or not is another thing. There's a motion to table 1321, seconded •• by Legislator Carpenter, seconded by myself.

**LEG. CRECCA:**

Motion to table subject to call.

**CHAIRMAN O'LEARY:**

Which has precedence, motion to table or motion to table subject to call?

**LEG. CRECCA:**

Motion to table subject to call.

**CHAIRMAN O'LEARY:**

Motion by Legislator Crecca to table subject to call. We don't have a second yet. Is there a second on the table subject to call?

**LEG. LINDSAY:**

I'll second for purposes of discussion. If we just tabled it until we see whether the ••

**LEG. CRECCA:**

That's fine. I'll withdraw the table to call.

**LEG. LINDSAY:**

Just leave it at that.

**CHAIRMAN O'LEARY:**

All right. Legislator Crecca withdraws his motion to table subject to call. There's a motion to table by Legislator Carpenter, second by myself on 1321. On the question of the tabling motion? Hearing none, all in favor? Opposed? Abstentions? 1321 is **TABLED (VOTE:7•0•0•0)**.

**1362•04. Approving cross bay license for Bayard Marine Corporation. (PRESIDING OFFICER)**

**LEG. LINDSAY:**

I make a motion.

**CHAIRMAN O'LEARY:**

Motion to approve by Legislator Lindsay, seconded by myself. On the question of the motion?

**LEG. FOLEY:**

On the question, Mr. Chairman. I don't see Mr. Duffy here, but has it met all the requirements of the BRO Office?

**MS. KNAPP:**

1362?

**LEG. FOLEY:**

Yes.

**MS. KNAPP:**

My notes indicate ••

**LEG. FOLEY:**

If you can please talk into the mike, Counsel.

**MS. KNAPP:**

My notes indicate that it must be tabled, because the public hearing is going to be held June 8th.

**CHAIRMAN O'LEARY:**

June 8th.

**LEG. FOLEY:**

Motion to table.

**CHAIRMAN O'LEARY:**

Okay. Motion to approve is withdrawn. Motion to table to a public hearing scheduled on 6/8 by

Legislator Lindsay, seconded by myself to table. On the question of the tabling motion of 1362? All in favor? Opposed? Abstentions? 1362 is **TABLED (VOTE:7•0•0•0)**.

**1364•04. Authorization of rates for Bayard Marine Corporation for cross bay license within the County of Suffolk. (PRESIDING OFFICER)**

**CHAIRMAN O'LEARY:**

Motion to table by Legislator Carpenter, seconded by Legislator Crecca. On the question of the motion, all those in favor? Opposed? Abstain? 1364 is **TABLED (VOTE:7•0•0•0)**.

**1412•04. Authorizing execution of agreement by the Administrative Head of Suffolk County Sewer District No. 3• Southwest with the owner of 515 Restaurant Corp. (COUNTY EXEC)**

**LEG. FOLEY:**

Explanation.

**LEG. CRECCA:**

Motion to approve.

**CHAIRMAN O'LEARY:**

I don't have a complete agenda. Motion to approve by Legislator Crecca, seconded by myself.

**LEG. CARPENTER:**

Motion to table.

**CHAIRMAN O'LEARY:**

Motion to table takes precedence. Is there a second on the motion to table?

**LEG. CARPENTER:**

This was the office building, if I remember correctly, that they decided they were going to put a restaurant in there. There were some questions about •• I would make a motion to table.

**CHAIRMAN O'LEARY:**

Is there a second on the motion to table? Hearing ••

**LEG. LINDSAY:**

I'll second.

**CHAIRMAN O'LEARY:**

Legislator Lindsay seconds the motion to table. 1412, tabling motion, all those in favor?  
Opposed?

**CHAIRMAN O'LEARY:**

I'm opposed.

**LEG. CRECCA:**

I'm opposed.

**CHAIRMAN O'LEARY:**

One, two, three, four, five opposed, two in favor. Tabling motion fails. Motion to approve by  
Legislator Crecca, seconded by myself. On the question of the motion, all those in favor?  
Opposed?

**LEG. CARPENTER:**

Abstain.

**CHAIRMAN O'LEARY:**

One abstention. 1412 passes. **APPROVED (VOTE:6•0•1•0).**  
**(Abstention; Legis. Carpenter).**

**1462•04. Appointing member to the Suffolk County Transportation Advisory Board  
(Stephen E. Nelson) (FOLEY)**

**CHAIRMAN O'LEARY:**

Motion to approve, Mr. Chairman.

**CHAIRMAN O'LEARY:**

Motion to approve even before I read it by Legislator Foley.

**LEG. CARPENTER:**

Second.

**CHAIRMAN O'LEARY:**

And there's a second by Legislator Carpenter.

**LEG. FOLEY:**

He is here.

**CHAIRMAN O'LEARY:**

Is he here?

**LEG. FOLEY:**

Yes, he is, Mr. Chairman.

**LEG. CRECCA:**

Thank you for being patient, Mr. Nelson.

**CHAIRMAN O'LEARY:**

Yes. Thank you so much, Mr. Nelson. There's a motion to approve your appointment, Mr. Nelson, by Legislator Foley and a second by Legislator Carpenter.

**LEG. MONTANO:**

Mr. Chairman.

**CHAIRMAN O'LEARY:**

On the question of the motion, Legislator Montano.

**LEG. MONTANO:**

Yes. In view of the fact that Mr. Nelson resided in my Legislative district, I'd like to go on as cosponsor.

**CHAIRMAN O'LEARY:**

Let the record reflect that Legislator Montano would like to be a cosponsor in light of the fact that Mr. Nelson resides in his district. Anyone else wish to be a cosponsor?

**LEG. CARPENTER:**

I would like to be a cosponsor.

**CHAIRMAN O'LEARY:**

Legislator Carpenter would like to be cosponsor too.

**CHAIRMAN O'LEARY:**

Let's move along. 1462, there's a motion to approve by Legislator Foley, there's a second by Legislator Carpenter. On the question of the motion, all those in favor? Opposed? Abstain? Motion is unanimous. Congratulations, Mr. Nelson. **APPROVED (VOTE:7•0•0•0)**.

**LEG. FOLEY:**

Thank you, Mr. Chairman.

**CHAIRMAN O'LEARY:**

We look forward to your participation on the Transportation Advisory Board.

**1466•04. Renaming Riverhead portion of CR 105 as "Trooper Thomas J. Consorte Memorial Highway." (COUNTY EXEC)**

**CHAIRMAN O'LEARY:**

Motion by myself to approve, second by Legislator Losquadro. On the question of the motion, all those in favor? Opposed? Abstain? Motion is unanimous. **APPROVED (VOTE:7•0•0•0)**.

**1510•04. Appropriating funds for the demolition of the old Cooperative Extension Building and parking facilities, Town of Riverhead. (CARACCIOLO)**

**MR. SPERO:**

Mr. Chairman.

**CHAIRMAN O'LEARY:**

Yes.

**MR. SPERO:**

That's contained in the revised 1561.

**CHAIRMAN O'LEARY:**

Is that in 1561?

**MR. SPERO:**

Yes, it is.

**CHAIRMAN O'LEARY:**

I'd like to bring to the attention of my fellow committee members that 1561 has been added to the agenda. I hope you have it on your sheets.

**LEG. LINDSAY:**

Motion to table 1510.

**LEG. CARPENTER:**

Second.

**CHAIRMAN O'LEARY:**

Motion to table 1510 by Legislator Lindsay, seconded by Legislator Carpenter. On the question of the motion to table? All those in favor? Opposed? Abstain? 1510 is **TABLED (VOTE:7•0•0•0)**

**1523•04. Establishing a County cost containment policy for replacement of jail facility at Yaphank. (Management) (COUNTY EXEC)**

**LEG. CRECCA:**

Motion to table.

**CHAIRMAN O'LEARY:**

Motion to table by Legislator Crecca, seconded by myself. On the question of the motion to table?

**LEG. FOLEY:**

On the motion.

**CHAIRMAN O'LEARY:**

On the motion, Legislator Foley.

**LEG. FOLEY:**

Since this is a resolution by the County Executive, does County Executive staff have any comments to make on the resolution before tabling?

**MR. ZWIRN:**

Thank you, Legislator Foley. Ben Zwirn for the County Executive. It all ties in with 1561, which we were just made aware of a few moments ago. So all of these bills that are being tabled now, I guess in anticipation of the new 1561. I reserve my comments until we get to 1561 if I might have the opportunity to speak at that time.

**CHAIRMAN O'LEARY:**

Certainly. So then there's no objection from your part for tabling 23 is it's included in 1561?

**MR. ZWIRN:**

I wouldn't put it quite like that.

**CHAIRMAN O'LEARY:**

All right. There's a motion to table 1523 by Legislator Crecca, seconded by myself. On the question of the motion to table? All those in favor? Opposed? Abstain? 1523 is **TABLED (VOTE:7•0•0•0)**.

**1531•04. Appropriating funds in connection with the elevator safety upgrading at various County facilities. (COUNTY EXEC)**

**LEG. FOLEY:**

Motion.

**CHAIRMAN O'LEARY:**

Motion to approve by Legislator Foley, seconded by myself. On the question of the motion? All those in favor? Opposed? Abstain? 1531 is unanimous. **APPROVED (VOTE:7•0•0•0)**

**1532•04. Appropriating funds in connection with the intersection improvements on CR 100, Suffolk Avenue and Brentwood Road/Washington Avenue, Town of Islip. (COUNTY EXEC)**

**LEG. MONTANO:**

Motion.

**CHAIRMAN O'LEARY:**

Motion by Legislator Montano, seconded by Legislator Carpenter to approve. On the question of the motion to approve? Hearing no ••

**LEG. FOLEY:**

Cosponsor.

**CHAIRMAN O'LEARY:**

Cosponsor, Legislator Foley. On 1532 to approve, All those in favor? Opposed? Abstain? 1532 is **APPROVED. (VOTE:7•0•0•0)**

**LEG. CARPENTER:**

Cosponsor.

**1533•04. Appropriating funds in connection with the rehabilitation of CR 51, Moriches•Riverhead Road, Town of Southampton. (COUNTY EXEC)**

**CHAIRMAN O'LEARY:**

Motion by myself to approve, seconded by Legislator Foley. On the question of the motion? Hearing none all those in favor? Opposed? Abstentions? 1533 is **APPROVED (VOTE:7•0•0•0)**.

**1536•04. Amending the 2004 Capital Budget and Program and appropriating funds in connection with the County share for participation in the construction of the Port**

**Jefferson • Wading River rails to trails pedestrian and bicycle path. (COUNTY EXEC)**

**CHAIRMAN O'LEARY:**

There's a motion to approve by Legislator Losquadro, seconded by Legislator Carpenter.

**LEG. LINDSAY:**

On the question.

**CHAIRMAN O'LEARY:**

On the question of 1536, Legislator Lindsay.

**LEG. LINDSAY:**

I believe this is also part of 1561. I don't know what harm it would do if we approved it two different ways.

**LEG. FOLEY:**

It was supposed to be amended out of that resolution last Friday to give the County Executive his due.

**LEG. CRECCA:**

Why don't we ask Jim if it's in there at least so we know what we're doing.

**CHAIRMAN O'LEARY:**

Is the rails to trails in 1561?

**MR. SPERO:**

The appropriation of these funds was included in 1561.

**CHAIRMAN O'LEARY:**

Rails to trails is in 1561?

**MR. SPERO:**

Yes.

**LEG. CRECCA:**

Motion to table.

**LEG. FOLEY:**

On the motion to table, Mr. Chairman. We had ••

**CHAIRMAN O'LEARY:**

Wait. Wait. Let's get a little organized here. On 1536, that is contained in 1561, Jim? Is that what you just said?

**MR. SPERO:**

Yes.

**CHAIRMAN O'LEARY:**

All right. There's a motion to table by Legislator ••

**LEG. LOSQUADRO:**

I have a question for Budget Review.

**LEG. CRECCA:**

Is 1531 in there also?

**CHAIRMAN O'LEARY:**

Let's get the motion •• do you want to stay with the motion to approve?

**LEG. LOSQUADRO:**

On the question of the motion, I have a question for Budget Review. 1536 fronts \$40,000, does 1561 do the same thing or does it simply just approve ••

**MR. SPERO:**

It appropriates the full two million. 1561 appropriates the full two million dollars for the rails to trails project.

**LEG. LOSQUADRO:**

Okay. Thank you.

**MR. SPERO:**

The County Executive's is doing the planning portion.

**CHAIRMAN O'LEARY:**

Okay. Are you withdrawing your motion to approve?

**LEG. LOSQUADRO:**

Yes.

**CHAIRMAN O'LEARY:**

Yes. All right. There's motion to table by Legislator Losquadro, seconded by Legislator Crecca. On the question of the motion, Legislator Foley.

**LEG. FOLEY:**

Thank you, Mr. Chairman. As much as I'm supportive of moving ahead with a number of projects this year, this was something that the County Executive had moved forward, 1536, the rails to trails. And it was my understanding that this particular portion was going to be amended •• forgive my grammar here, but amended out of the larger 1561 and allow the Executive's initiative here to move forward. So I'm hesitant to go along with the tabling motion since it was my understanding as of late Thursday going into last Friday that this particular component of the larger bill was going to be taken out, which would the County Executive's resolution today, 1536, to be approved.

**LEG. LOSQUADRO:**

Mr. Chairman, if I may.

**CHAIRMAN O'LEARY:**

Yes. Legislator Losquadro.

**LEG. LOSQUADRO:**

I don't see what impact it would have on 1561 in the grand scheme of things considering this is a two million dollar federal transportation enhancement.

**LEG. FOLEY:**

It's 100%, yes. So we can approve this thing? We can approve this?

**LEG. LOSQUADRO:**

If it conflicts, why not just move ahead with 1561 being that we're ••

**LEG. FOLEY:**

I want to support 1561. I'm just saying that this was a particular initiative of the Exec's Office, and I would just ••

**LEG. LOSQUADRO:**

Mr. Spero, does it make a difference?

**MR. SPERO:**

They are mutually exclusive. You can't approve both.

**LEG. LOSQUADRO:**

Correct. If we approve 1561, it has no impact on us getting the money back?

**MR. SPERO:**

Actually, you would be appropriating the twice the amount of planning funds, because it would be added.

**LEG. CRECCA:**

Plus, this only does planning funds. Doesn't the other one ••

**LEG. LOSQUADRO:**

No. I mean, if we table 1536 as is up right now and we approve 1561, the project would move forward and we would get the grant money back and everything would be exactly as we intend?

**MR. SPERO:**

That's correct.

**LEG. LOSQUADRO:**

Thank you.

**CHAIRMAN O'LEARY:**

Okay. There's a motion to table 1536. On the question of the motion? All those in favor.  
Opposed?

**LEG. FOLEY:**

Opposed.

**CHAIRMAN O'LEARY:**

One opposed. Abstentions? 1536 is **TABLED. (VOTE:6•1•0•0).**  
**(Opposed; Legis. Foley)**

**LEG. CRECCA:**

Point of order.

**CHAIRMAN O'LEARY:**

Point of order, Legislator Crecca.

**LEG. CRECCA:**

1531, which we've already approved, is that also contained in 1561?

**LEG. LINDSAY:**

No.

**LEG. CRECCA:**

Thank you.

**CHAIRMAN O'LEARY:**

The elevator safety upgrades?

**LEG. CRECCA:**

I apologize. I just thought it might be. I didn't want to have the same problem.

**1544•04. Amending the 2004 Capital Budget and Program and appropriating funds in connection with strengthening and improving County roads. (COUNTY EXEC)**

**LEG. FOLEY:**

Motion.

**CHAIRMAN O'LEARY:**

Motion to approve or table?

**LEG. FOLEY:**

Motion to approve.

**CHAIRMAN O'LEARY:**

Motion to approve by Legislator Foley, seconded by myself for approval. On the question of the

••

**LEG. CRECCA:**

On the motion.

**CHAIRMAN O'LEARY:**

On the question of approval, Legislator Crecca.

**LEG. CRECCA:**

Yeah. I would just ask Budget Review if any of these conflict with 1561 to please let us know before we vote on them. So I would assume 1544 does not conflict with 1561, correct?

**MR. SPERO:**

This does not conflict. However, just been aware that it will require 14 votes at next Tuesday's meeting because of the funding change from pay•as•you•go to serial bonds.

**CHAIRMAN O'LEARY:**

Motion to approve. On the question? Hearing none, all those in favor? Opposed?

Abstentions? 1544 is **APPROVED** unanimously. **(VOTE:7•0•0•0)**

**1545•04. Amending the 2004 Capital Budget and Program and appropriating funds in connection with the reconstruction of culverts. (COUNTY EXEC)**

**LEG. FOLEY:**

Motion.

**CHAIRMAN O'LEARY:**

Motion to approve by Legislator Foley, seconded by Legislator Losquadro. On the question of the motion? I assume, Jim, this is not in 1561.

**MR. SPERO:**

It's not included, but will require 14 votes.

**CHAIRMAN O'LEARY:**

Fourteen votes again, yes. 1545, motion to approve. All in favor? Opposed? Abstentions? 1545 is **APPROVED** unanimously. **(VOTE:7•0•0•0)**

**1549•04. Amending the 2004 Capital Budget and Program and appropriating funds in connection with the energy conservation at various County buildings. (COUNTY EXEC)**

**CHAIRMAN O'LEARY:**

Again a 14 voter. Motion by Legislator Lindsay, seconded by Legislator Crecca. On the question of the motion to approve 1549? Hearing none, all those in favor? Opposed?

Abstentions? 1549 is

**APPROVED. (VOTE:7•0•0•0)**

**1554•04. Amending the 2004 Operating Budget to transfer funds from the Suffolk County Water Protection Fund (477) Reserve Fund to the Suffolk County Department of Public Works for stormwater remediation on Carlls River at Phelps Lane. (COUNTY EXEC)**

**CHAIRMAN O'LEARY:**

Is there a motion?

**LEG. FOLEY:**

Motion to approve.

**CHAIRMAN O'LEARY:**

Motion to approve by Legislator Foley, seconded by Legislator Carpenter.

**LEG. FOLEY:**

If we could here from the Commissioner on this, please.

**CHAIRMAN O'LEARY:**

Yes. Commissioner.

**COMMISSIONER BARTHA:**

I'll ask Bill Shannon, Chief Engineer of Highways to address what's included in this.

**LEG. FOLEY:**

We have to have the Chief Engineer speak at least once at committee.

**CHAIRMAN O'LEARY:**

Is that a 14 voter as well, Jim?

**MR. SPERO:**

No. This is transferring funds from the Quarter Cent Program for this remediation.

**LEG. FOLEY:**

Why Phelps Lane? Of the lanes on the South Shore, why Phelps Lane?

**MR. SHANNON:**

Well, through the water quality process, the Carlls River is a vital waterway that requires work. In this particular case, Deer Park Avenue, a County Road, discharges directly in the headwaters of Carlls River, so we want to mitigate that direct discharge. And that's what the funding is for. The application was approved.

**LEG. FOLEY:**

Thank you.

**CHAIRMAN O'LEARY:**

Any other questions on 1554? Hearing none, all those in favor? Opposed? Abstentions? 1554 is **APPROVED** unanimously. **(VOTE:7•0•0•0)**

**1561•04. Amending the 2004 Capital Program Budget and appropriating funds to provide a common sense responsible plan for long term cost avoidance and infrastructure investment. (PRESIDING OFFICER)**

**CHAIRMAN O'LEARY:**

Mr. Zwirn.

**LEG. CRECCA:**

Well, a motion first.

**CHAIRMAN O'LEARY:**

There's motion by Legislator Crecca to approve, seconded by Legislator Carpenter.

**MR. ZWIRN:**

Thank you, Mr. Chairman. We did not receive a corrected copy of this resolution. It was not transmitted to the County Executive's Office until 9:30 this morning •• to my office when I was hear to attend the Ways and Means Committee. It was amended on Friday at 4:18 p.m. which is fine. Why a corrected copy was not sent to the County Executive's Office in the 45 minutes left in the work day. Why not •• why it wasn't transmitted any time passed over the weekend. And at 9:30 this morning we received this •• this notice and the copy of the corrected resolution. It was also in a different committee, as of today. And it wasn't until noon time according to the Clerk's Office that the committee assignment changed, which makes one wonder, you know, about the process that we're trying to work together here. I know Ms. Knapp today, you know, asked us if we would make sure we get all the information to her in advance, that she felt that she didn't get information today in a timely manner so she could act. And we said we would try to do that. We've tried to cooperate at least since I've been here. We've tried to get information out. I've held my hand out to Legislator Crecca and Linda Burkhardt on behalf of the Presiding Officer. And to get a \$50 million appropriation sort of

slipped in at the last minute, switching committees, not sending corrected copies to the County Executive. I mean, you are the County Legislature and can do pretty much as you please, and I respect that. You know, within the bounds of law you can pass all these bills and spend all this money.

But there's another process of government here. The County Executive would have liked to have an opportunity to have some input into this process before slipping it through •• the way it's being done. And I think the process is important here. We try to respect the process by filing everything in a timely manner and getting that information over to the Legislature. And I just think this is a pretty sad day in the short time I've been here to see it done in this particular manner. I mean, the public has no notice that this is being done today. Your own committee didn't know about it. You had to ask •• Mr. Chairman, you had to ask your own committee members, do you have a copy of this bill before you, do you know it's here, do you know it's been in our committee just moments ago. So I mean, we think that the process should be respected. This is going to have an impact on taxes. And certainly for the taxpayers of the County, I think we'd all like to keep it out in the daylight and, you know, keep it at sanitized as possible so, you know, we all have an opportunity to present our side. I thank you very much.

**CHAIRMAN O'LEARY:**

Legislator Crecca.

**LEG. CRECCA:**

Mr. Zwirn, first of all let me indicate something, two things; number one is the Legislature follow proper procedures. You are making it sound like there was some sort of effort here to dupe you or keep the County Executive's Office out of the process. When you were preparing the Capital Budget, I don't remember myself as Chairman of Budget and Finance, nor should I have been, by the way, consulted on what the County Executive decided to put in or what projects he decided to cut during the 2004 •• for the 2004 Capital Budget, because we have a separation of powers; there's the Executive Branch and the Legislative Branch. You know, certainly if we're going to start this •• something where we have to consult with each other every time we're going to change a resolution, I've been here five years, okay, when Mr. Gaffney was in there and he submitted his Capital Budget, it's not like we sat down ahead of time and worked things out as to what was going to be in the budget. That's the reason we get the budget, review it and take appropriate action[.|.|.]

Understand that this is highly unusual to have a County Executive change the 2004 Capital Budget so drastically when he filed his Capital Budget And also filed a resolution to change a policy that this Legislature already enacted as far as spending for this year. He has every right to do that, and I don't criticize it. I welcome it. You know, that's government. We should be doing this. But to insinuate that somehow we should have given you the heads•up at four o'clock on Friday is really sort of silly. June 8th we're going to come back and adopt this. You know, you certainly have time to review it. It's really not that difficult to understand. These are projects that have been in existence for a long time, we're just replacing a number of projects that the County Executive chose to cut. So there's no great surprises here, we're just restoring projects, but not all of them. We're maintaining some of the cuts, that's number one. Number two is the reason it was switched to this committee, and I'll take as much responsibility for that as anybody else, was because it was inappropriately in Public Safety. Given the magnitude of it, the amount of cuts •• restorations that are involved here, the appropriate committee is Public Works. And that was to maintain the integrity of where this bill should be, that's why it is here.

You know, to suggest for any reason that it was put here to somehow ensure its passage, you know, I think is disingenuous. You did say, you know, one has to question why it was assigned here. This is a bipartisan bill that was drafted with the input of a number of Legislators from both the Democratic and Republican sides of the aisle. And again, it's just it's strictly on the merits. So I appreciate your comments. You know, I apologize to the extent that in the 42 minutes or so left in the workday on Friday that it wasn't •• someone didn't run it over to the County Executive's Office. You know, well take responsibility for the 42 minutes difference of when it arrived in the County Executive's Office. But again, I don't ••

**MR. ZWIRN:**

Excuse me. It's not 42 minutes. We are talking days. We have people working over the weekend. We have people there until nine o'clock at night. I mean, the workday may have ended at five, but you suggested that at five o'clock everybody goes home, that's not the case.

**LEG. CRECCA:**

I'm not suggesting ••

**MR. ZWIRN:**

You say it's a 42 minute gap, and it's more than that. It's a 4:18 filing, which we have no objection to. That's fine. A five to five filing would be fine, five o'clock.

**LEG. FOLEY:**

Mr. Chairman.

**MR. ZWIRN:**

Just as a courtesy that we always extend, we send corrected copies over. Nobody has to run it over. I wouldn't expect anybody to do that on a holiday weekend, but they could have e-mailed us like they did this morning at 9:30 in the morning.

**LEG. FOLEY:**

Mr. Chairman.

**CHAIRMAN O'LEARY:**

Yes. I'll be right with you, Legislator Foley. Mr. Zwirn, is the your objection that 1561 was transferred from another committee or is it the timing of it that you weren't notified?

**MR. ZWIRN:**

Mr. Chairman, it's the entire process. It was a late corrected copy, which is fine, no objection to that. But we never got any kind of notice of a corrected copy. We have people in the office looking for correct copies on Friday. It would have been no problem to e-mail that to our office even after five o'clock. It was never e-mailed to us until 9:30 this morning. I have that from the Clerk's Office. We have the transmittal numbers. We also know that it was transferred from one committee to another, you know, at noon time today, which I think the facts sort of speak for themselves, I mean, as to the history of this bill and how it progressed. And that's all. I just wanted to get that on the record.

**LEG. CRECCA:**

No. Mr. Chairman, if I may, I really wasn't done. You say the facts speak for themselves and you are insinuating something.

**MR. ZWIRN:**

I'm not insinuating anything.

**LEG. CRECCA:**

Yes you are. You are insinuating that something as done ••

**MR. ZWIRN:**

The facts speak for themselves.

**LEG. CRECCA:**

Let me finish, Mr. Zwirn. Mr. Zwirn, with all due respect, you are sitting there making accusations about something involved in this process. If you have something to say, say it. Don't deal with innuendos or try to question of process here.

**MR. ZWIRN:**

I am questioning the process.

**LEG. CRECCA:**

Well, then, put the question on the table. What are you saying?

**MR. ZWIRN:**

I'm saying exactly what I said before. I'd be glad to say it again. The bill was submitted as a corrected copy at 4:18 on Friday. No corrected copy was transmitted to the County Executive's Office until this morning. We had Saturday, Sunday, Monday was a holiday, but had people working. Anybody could have just sent it over to the office as a courtesy so we would have it this morning. We wouldn't have known what committee it was in until afternoon, but at least we would have known it was on the agenda somewhere, and that would have been, I think, the correct way to handle this. Any other insinuations you can draw for yourself.

**LEG. FOLEY:**

Mr. Chairman.

**MR. ZWIRN:**

Legislator Crecca suggested that I said it was in the this committee because it had better chance of passage. That thought hadn't even occurred to me so I don't know what Mr. Crecca is insinuating.

**LEG. CRECCA:**

You know, Monday was a holiday. Normally the deadline is on Monday, Okay? So because of the holiday, it gets bumped up the five o'clock on Friday. I can tell you •• you're insinuating that we somehow did something after the fact, we didn't. This bill, the substance and parts of this bill were well decided on well before Friday at 4:18 p.m, and that's the insinuation, or at least what you are eluding to here. You know, the fact that it did not get there for 42 minutes •

- you know, again, you can say it was all weekend, but it was a holiday weekend. You know, there were 42 minute of business hours. You know, God bless that you worked on Saturday and Sunday and Monday and whatever else the County Executive's Office worked, but the fact of the matter is you are not showing how you have been prejudiced or how this somehow affects the process.

**MR. ZWIRN:**

We would have had an opportunity, I think, to come in and talk about some of these matters a little bit more, you know, fully then we are at this particular moment.

**LEG. CRECCA:**

I'll stay as late as you want tonight, Mr. Zwirn, and I'm sure my colleagues will too. But quite frankly, there are 24 projects that the County Executive cut that we're restoring. This is not anything, you know, crazy or magical. You certainly had the last five hours at the least or since 9:30 this morning to decide what you want to say about those 24 projects. You obviously did enough research on them to know why you wanted to cut them. So if there's anything to say, say it now. I will not sit here and have this Legislature's process questioned or our ethics questioned. And I think that's what you're doing.

**LEG. FOLEY:**

Mr. Chairman.

**CHAIRMAN O'LEARY:**

Legislator Foley, before you comment. You are stating for the record, Mr. Zwirn, that the County Executive and his staff did have this in their possession as of 9:30 this morning?

**MR. ZWIRN:**

Yes, sir.

**CHAIRMAN O'LEARY:**

Okay. So they in effect had that all day to review it, correct?

**MR. ZWIRN:**

We would have had since 9:30 this morning, yes, that's correct.

**CHAIRMAN O'LEARY:**

So the issue of it being reassigned to a different committee has no bearing on whether or not you have perused the resolution.

**MR. ZWIRN:**

Yes, it would have. We didn't see it in Public Safety, and we didn't anticipate it would have been here in Public Works.

**CHAIRMAN O'LEARY:**

Oh, okay. Legislator Foley.

**LEG. FOLEY:**

Thank you, Mr. Chairman. As much as I'm supportive of the resolution, I think the facts •• there's a recurring situation here. I don't think Mr. Zwirn is attacking the ethics of this particular institution or attacking anyone or insinuating. There are certain facts. And some of the facts that occurred, for instance, early in the year when there were late amendments made to resolutions that there was a delay between the time that the amended resolution were submitted to the Clerk's Office and a copy of same was transferred or transmitted to the Executive's Office.

There were several bills early in the year when that had happened. At that time, Clerk Barton had mentioned that he would make sure that for the future there would be a more timely transmittal of those amendments that occur, let's say, in the last hour that an amendment can happen. So I believe one of the points Mr. Zwirn is making, and believe me, as part of this institution, I would take great umbrage if he was attacking my ethics or anyone around the table. I don't think that's what he is doing. I think what he is saying is particularly relevant to what occurred early in the year where there was a very late transmittal of information on

amendments to the •• to the County Exec. That was supposed to have been corrected. In fact, the Presiding Officer at that particular General Meeting had stated the fact he would ensure that the Clerk would transmit on a timely basis the information.

So again, if there's 45 minutes left or whether there was a half hour left before a national holiday weekend, my only point is that as a matter of professional courtesy which has been extended in the past, that that courtesy would continue under this situation where something as particularly as important as this \$50 million, that the Executive Branch has the right to have timely notification of that as opposed to waiting to this morning. As much I'm supportive of the bill, I would •• you know, I would make the point that I don't think they are attacking the institution, just that they're asking for a more timely notice of this information.

**CHAIRMAN O'LEARY:**

Okay. We have a growing list here, Legislator Crecca. Are you just going to respond to ••

**LEG. CRECCA:**

Just one little part of it, nothing •• no big deal.

**CHAIRMAN O'LEARY:**

Okay.

**LEG. CRECCA:**

Just that earlier in the year, Brian, just to clarify, the issues was that that was what time bills were •• amendments were coming over here. They were coming over like seven o'clock at night from the County Executive's Office. It wasn't the other way around. But your point is well taken. I just wanted to make •• clarify that.

**CHAIRMAN O'LEARY:**

All right. We have a list here. Very brief comment, Legislator Losquadro, Legislator Carpenter, Legislator Montano, Legislator Lindsay.

**LEG. LOSQUADRO:**

If I may. I must make a comment here. I do take exception to these comments, and I'm going to tell you why. Recently, the County Exec's Office decided to hold a press conference. It was

in regard to dredge spoil dumping. It was held up on the 12th floor. This is ten miles off the coast of my district. I have been involved in this process. And I was contacted at 9:30 on a Sunday night. I rearranged my schedule that Monday morning. But I applaud the dedication, I guess, in the County Executive's Office for working day and night through the weekend, but the rest of us have lives. And I do not see any problem with people going home for a three day weekend and getting this to you the first possible moment on the first business day after that three day weekend.

I took exception with that, but I rearranged my schedule, I made due, I had to cancel some appointments, but I was there for the press conference because it was important to me. But I did not appreciate being called on at 9:30 on a Sunday night when I could have been called any time during the week before. I don't think the County Executive's Office contacted the press agencies at 9:30 at night to set that press conference up. I'm sure it was done well in advance throughout that week, but no one saw fit call me until 9:30 Sunday night. So this works both ways.

**CHAIRMAN O'LEARY:**

Do you have a comment? Legislator Carpenter. I'm trying to move this along.

**LEG. CARPENTER:**

I just wanted to make reference to your comment, I guess, it was about the fact that it was done so quickly and that the public didn't have an opportunity to know what was going on. The fact of the matter is that these are 2004 projects. These are projects that were adopted last year that the public had every right to expect were going to be going on; things like the Riverhead County Complex, where literally, you know, tens of thousand of people go in that building, work in that building, and finally after many, many years had come to expect that we were going to go forward with the project that was in our plan that had been approved for 2004. So I think your argument about the public probably works the other way, because the public expected that these things were going to be done. And certainly we're not trying to do anything other than do what's right for this County. And we might disagree on it, but I for one am going to look into why, if it was completed at 4:18 on Friday, why it just wasn't automatically e-mailed or faxed over to your office. I find that, you know, disturbing.

**MR. ZWIRN:**

Thank you.

**CHAIRMAN O'LEARY:**

Legislator Montano.

**LEG. MONTANO:**

Mr. Chairman, point of information. I'm not making an accusation, but I believe there have been a number of instances where I have asked to address one of the witness prior to some of the other speakers, I don't know if you haven't heard me or if you just passed over, but I hope that's not an accurate perception on my part, and I'm not saying it is. With respect to the issue here, I have a question for Counsel. My understanding of the facts is that the amended resolution was presented at about 4:47 on Friday.

**MR. ZWIRN:**

4:18.

**LEG. MONTANO:**

And the County Executive's Office wasn't notified or given a copy until Monday morning, is that what we're saying here in terms of the facts?

**MR. ZWIRN:**

Exactly 9:23 according to the transmittal sheet.

**LEG. MONTANO:**

Question, Counsel. Is there a requirement that these amended resolutions be transmitted to the County Executive's Office within a certain period of time, or are we just dealing with a professional courtesy? I know that Legislator Crecca said he was here for five years. I have only been here five months, so I will defer to his procedural knowledge on that. But I am not clear on whether or not this was just something that was an oversight or we have a process in place where for some reason it wasn't followed. Counsel, would you enlighten me on that?

**MS. KNAPP:**

Actually the rules do not speak to an obligation to transmit at any particular time. As a matter of fact, up until the last session or the session before, amendments were filed, not by me, but certainly in the past, I understand, amendments were filed up until midnight. Now, I would

have to ask the question of somebody who was here, because like you, I only started here in January. But I don't know whether the Clerk's Office was staffed until midnight and then they sent amendments over immediately. I don't know the answer to that. I do know that you know that it was the day before a holiday. I'd defer to the Legislative Clerk, Mr. Barton. It may be that they were a little short staffed.

**LEG. MONTANO:**

Thank you.

**LEG. FOLEY:**

All right.

**CHAIRMAN O'LEARY:**

To Legislator Montano, if there was an impression on your part that I was overlooking your request to speak before the body, it's •• it did not •• there was no purposeful intent of me to ignoring your request.

**LEG. MONTANO:**

I didn't here what happened. So I just wanted to be clear.

**CHAIRMAN O'LEARY:**

Okay. Legislator Lindsay.

**LEG. LINDSAY:**

Rather than continue this conversation about when it was sent over and whether it was done intentionally or not intentional, I would just like to review the 12 projects here and the rationale for reinstating them.

I believe ten of the 12 projects on 1561 were in the '04 adopted budget, and I guess there was a presumption by the County Executive's Office that the County Executive's resolution that he sent over to modify '04 would be adopted. And there's an honest disagreement on some of these issues. The biggest project of restoration as opposed to •• in this resolution is Project 1643, which is the improvements to the County Center in Riverhead, which is 50 years old. I think everybody agrees it's in dire need of renovations. We have already spent well over \$2 million in planning that project. The County Executive in his resolution wants to spend \$8 million to repair the air•conditioning and heating system in subsequent years that really isn't

working now. We really felt that would throwing bad money after good, because if you repaired the heating system and you don't replace the single paned windows in the building, I mean, you are just really wasting money. And there was a very strong feeling that the project needs to be done now. And it's especially at record low interest rates. We felt that that was the reason to go forward with that.

The next Project 1768, the demolition of the Old Cooperative Extension, the County Executive hadn't had in the '05 budget. We had it in '04, and the reason why we thought it was important is there's an ongoing project there now to renovate the court facilities in Riverhead. And unless we demolish this building, we'll have no parking or very little parking for when those court projects are done. And to delay it to '05 would make the renovation work that we have just done really less meaningful.

3102 is an add, there's no doubt about it. We're adding a million and a half dollars to the residential juvenile detention center that's been bid twice. It's come in a million and a half above what we have budgeted. There's a very strong feeling here that we want to go forward with this project. The reason we want to go forward, we got testimony today from the head of probation telling us that we're currently spending \$12 million to shift juveniles out of County. And we really think in the long term this project will pay for itself very quickly. And we didn't want to put it out to bid again. We already bid it twice.

The jail utilization study, the replacement facilities, that's the planning money, Jim? That's to appropriate all the planning money for the planning of the jail, which was part of the County Executive's overall projects for this year. The helicopter hangar for the East End operations is something that we did appropriate money for last year. The County Executive did not want it in his version. I think we cut it down to one and a half million from two four. Right now, we're spending \$60,000 a year for rental for a hangar that is totally deteriorated. It does not seem to meet our needs, and we just think it's something that should be done if we're going to, in fact, maintain the service of the East End helicopter on the East End of Long Island, which everybody seem committed to.

Public Works highway maintenance equipment is 700,000. I think we cut that in half from the initial request. And again, it's a matter of much needed equipment to keep our fleet operational for snow storms and whatever. Improvements to County Road, South Country Road, was in

'06, we moved it forward, because we felt that they couldn't wait until '06. The trail that we talked about before, the difference is that everybody agrees it's totally federally reimbursable. The County Executive wanted the planning money. We think we can use the planning and the construction and get it done and get our money back from the federal government. So that's the difference.

The Tier II homeless shelter, one and a half million dollars was in '05. We wanted to keep it in '04. We believe we have already gotten a grant from the State of New York to assist us. This is for land selection and purchase. And you know, with the threat of losing the one Tier II Shelter we have now, we don't think that this project should be slowed down in any way, shape or form and start putting people back in motels at a cost of like \$5,000 a month. Construction of maintenance operations and facilities. This is \$1.2 million for the Timber Point Country Club. I don't have to tell all of you, probably our greatest revenue stream in the Parks Department is our golf courses. We have been on study plan of spending money to maintain them to keep them in top shape to protect our revenue stream.

And the historic restoration preservation fund, we have 500,000. It was more than that initially, Jim? Do you remember, Jim? The historic restoration, did we cut that number down? That one escapes me.

**MR. CHIUSANO:**

It was originally 650.

**LEG. LINDSAY:**

It was originally 650, we cut it to 500.

**MR. SPERO:**

That's correct.

**CHAIRMAN O'LEARY:**

Thank you, Legislator Lindsay. Mr. Zwirn, you have a comment.

**MR. ZWIRN:**

If I have might Mr. Chairman. There are a couple of items that I just saw quickly on here that had been recommended to be put off in later years by your own Budget Review Office that

concluded with the County Executive's Capital Budget. And those were both •• at least one or two in here that I can see that were included back into this bill; one being the airport hangar. And I don't know about the demolition out in Riverhead, I think it was suggested to be put off. But I do have Charlie Bartha here from Public Works and Carmine from the Budget Office of the County if they might have an opportunity since we're here, and Legislator Crecca said he doesn't mind sticking around.

**LEG. CARPENTER:**

We're here for the duration, Ben.

**MR. ZWIRN:**

Maybe they can speak to some of the specifics. When you're a judge, you'll be home by now.

**CHAIRMAN O'LEARY:**

Well, I mean, we're right smack in the middle of rush hour now, so I might as well extend this to address the issues.

**LEG. FOLEY:**

We're going to Andrew's for dinner later.

**COMMISSIONER BARTHA:**

My comment is probably one that nobody wants to hear, but as Legislator Lindsay asked me the other day whether I had a long Christmas list as a child, I'm making up for it now. The Project 5000, which is the relocation of LIPA facilities, a Suffolk County construction project, the County •• we have prevailed in our litigation with LIPA. However, LIPA is appealing that decision and has indicated they will not proceed with relocations at this time unless we continue the cost sharing arrangement. So this could jeopardize some highway projects.

**LEG. LINDSAY:**

So you want to add to the list?

**COMMISSIONER BARTHA:**

I told you I wasn't going to make anybody happy, but I thought it was important for you to know.

**LEG. CARPENTER:**

We can also add it in later.

**CHAIRMAN O'LEARY:**

Carmine.

**MR. CHIUSANO:**

Yeah. I just want to address maybe a few of the projects. Just so you are aware, 1768, there is no SEQRA in place for this project, and there's a question about the historic value of the building. And it does not appear that there will be a SEQRA in place for quite awhile, depending on how the process goes. So that's one of the reasons why it was moved to next year while that whole process was being worked out.

**LEG. LINDSAY:**

Can I comment on that?

**MR. CHIUSANO:**

Sure.

**LEG. LINDSAY:**

I don't want to interrupt you of your presentation, but before we get off of that project, if the project isn't ready the be moved forward, we won't sign contracts and we spend the money, right?

**MR. CHIUSANO:**

Well, actually the construction money is not to be appropriated until the SEQRA is in place.

**LEG. CRECCA:**

Can I jump in? How do you justify moving all of that money for the jail when you haven't even done the planning? You put all this construction money in 2004. You haven't even signed the document to build the jail, but you put millions upon millions of dollars in construction money in 2004. Call me crazy, but generally we do planning before we do construction money. So I mean, to say that in one breath and criticize us for something that really could get done in 2004

••

**MR. CHIUSANO:**

I think because the size of the project though, the magnitude of the jail project, in order to alleviate the burden on the taxpayers ••

**LEG. CRECCA:**

Tell me how it alleviates.

**MR. CHIUSANO:**

•• it was necessary to spread the money out over multiple years.

**LEG. CRECCA:**

Share with me how it alleviates the tax burden on taxpayers. Because if I appropriate money in 2004 for construction of a jail, it's my understanding that we will not issue bonds for that until we are ready to actually construct; is that correct?

**MR. CHIUSANO:**

That's correct.

**LEG. CRECCA:**

So I'm not relieving taxpayers, what I'm doing it I'm really being disingenuous with taxpayers by saying, you know what, we're going to appropriate the money this, but you are going to spend it all in outer years.

**MR. CHIUSANO:**

But keep in mind that the construction take place over a process of time, maybe one to two years. So the bonds would still be issued over that period. The bonds would not be issued •• it's not like when they appropriate •• when they have the total appropriation of \$116 million for construction that \$116 million in bonds are going to be issued at one time. It's going to issued in multiple bond issuances over a period of time of about two years.

**LEG. CRECCA:**

And you can't issue a bond, a single bond on construction, until all the construction money is appropriated, correct?

**MR. CHIUSANO:**

Yes. And until the SEQRA is in place.

**LEG. CRECCA:**

Okay. And when was the last year in the Capital Budget that you put construction money in for the jail, Phase I?

**MR. CHIUSANO:**

Phase one?

**LEG. CRECCA:**

Phase one, yeah.

**MR. CHIUSANO:**

The construction money would all in place in 2005.

**LEG. CRECCA:**

So then we wouldn't issues any bonds during this year's budget, correct, for construction?

**MR. CHIUSANO:**

For construction, that probably would be correct.

**LEG. CRECCA:**

And this can go to, Charlie, because I know it's more of a •• but there's no possible way •• to even expect the planning to be done in 2004 for the jail?

**COMMISSIONER BARTHA:**

The planning will not be completed in 2004.

**LEG. CRECCA:**

Do you think it will be completed in 2005?

**COMMISSIONER BARTHA:**

Late •• very late 2005 or early 2006. It depends on when we're authorized to proceeded with the design.

**LEG. CRECCA:**

I understand that. But, I mean, realistically even if we kept a great •• you know, good time

table on this, it's unrealistic that we would finish planning before the end of 2005. I mean, at least that's my understanding from speaking to both, you know, Corrections and Public Works and things like that.

**COMMISSIONER BARTHA:**

That's correct, since the funds have not been appropriated yet.

**LEG. CRECCA:**

So more realistically, we probably wouldn't issue bonds until 2006 on this, from a practical point of view schedule wise.

**COMMISSIONER BARTHA:**

That's correct.

**LEG. CRECCA:**

Okay.

**MR. CHIUSANO:**

I would also like to mention on Capital Project 3012, as Legislator Lindsay, indicated there is an issue with the state, and Probation is aware of it. Basically, they are indicating for the construction of juvenile detention facility •• juvenile detention center whether or not the County needs the facility. Without their approval, it is possible that it would not be certified, in which case it may be premature to be appropriating this additional \$1.5 million for construction. And this was not in the authorized budget. So this was one the two projects that was not authorized this year.

**LEG. CRECCA:**

If I may on that. I think it just makes more sense to address them as we go through them. In Public Safety earlier today, I don't know if you were present though, but the Director of Probation, and I don't want to go through all the testimony, made it very clear about the need to do this. I would also tell you as someone who is involved with the issue 2000 to present, that every correspondence we have from the state prior to this most recent correspondence indicates the need to build a facility, and actually not only encouraged Suffolk, but pushed Suffolk very hard saying that we needed a detention center here to deal •• and it was impacting other counties in the state. I can only tell you that from all the correspondence historically in

this •• in this, the would be only indication I can give for this what would appear to be immediate change in position is the fact that the state may have to pay about seven or \$8 million.

**MR. CHIUSANO:**

We're not arguing or disagreeing with the need for the facility. We're in agreement that we need the facility. What we're saying is that there's been sort of a change of heart in the state in the most recent communications. And there is •• in process they are working on justifying the need, but without state approval, it possible that the facility could •• would maybe not be operational unless they certificate it.

**LEG. CRECCA:**

Well, is there anything to indicate •• well, let me ask you this. Is the County Executive still committed to moving forward with the juvenile detention center regardless of what •• I'm not asking you to speak on the merits of the ••

**MR. CHIUSANO:**

All I know is that they're making the argument for the need working with Probation. So there is argument being made why we need this facility.

**LEG. CRECCA:**

Okay. Thank you.

**CHAIRMAN O'LEARY:**

Legislator Foley.

**LEG. FOLEY:**

Thank you, Mr. Chair. Legislator Crecca's remarks are well taken. You know, it appears that the state certainly has a way of gumming up the works with initiatives we have in our County. So what rational, Carmine •• number one, have we asked the state why after all these years, it's been in the program for many years, now all of a sudden, they're coming up with some concerns, and also, did they list the reasons why we don't need •• are they saying they don't think we need it or are they saying categorically we don't need it? And if so, what reasons are they giving for us •• for them thinking that we don't need to move forward with this process, gives that we spend, what, close to \$12 million, Legislator Crecca, a year? Why are they saying these things?

**LEG. CRECCA:**

We've already spent a million dollars, just so you know, to date on the juvenile detention center or more.

**MR. CHIUSANO:**

To my knowledge, and I'm not thoroughly familiar, but basically they are saying that the numbers don't warrant the need for a juvenile detention facility. We're not in agreement with that, but that seems to be the main point.

**LEG. FOLEY:**

I just want to say through the Chair that in the past we've had some Correction's Commissioners attend meetings here. Can we get •• is it •• is it a Ms. \\_Portelli\\_, who's the person would be •• who would be the state people involved on the issue?

**MR. CHIUSANO:**

That's who the letter came from.

**LEG. FOLEY:**

This came from Ms. \\_Portelli\\_, a Thersea \\_Portelli\\_, Juvenile Detention Services.

**MR. CHIUSANO:**

Dated May 6th?

**LEG. FOLEY:**

I'm supportive of the resolution. I'm just saying why now are they coming up •• they're glad to tell us what we should do. Now they're telling us what we shouldn't do.

**LEG. CRECCA:**

If I may, Brian.

**LEG. FOLEY:**

Yes, please.

**CHAIRMAN O'LEARY:**

Wait. Wait.

**LEG. FOLEY:**

Through the chair.

**CHAIRMAN O'LEARY:**

Through me.

**LEG. CRECCA:**

I'm sorry. Through the chair.

**CHAIRMAN O'LEARY:**

Yes, you may, Legislator Crecca. You have been so out of order so many times.

**LEG. CRECCA:**

I have.

**LEG. FOLEY:**

He's preparing himself to be a judge, you see.

**LEG. CRECCA:**

March 2nd, 2000, Office of Family Services. This is their quote from the state, "The Office of Family Services clearly supports the reestablishment of a secure detention facility in Suffolk County. Your proposal for a 32 bed facility would certainly be a realistic for your community." August 30th, this is a letter again from OCFS to Probation, "Suffolk County youth saturates secure detention facilities state wide making it impossible for some smaller rural counties to get desperately needed beds. In essence, Suffolk County's problems impact the entire state disproportionately. Something other than a temporary solution must be done." September 5th, 2001, we write to them, "As you and your colleagues in the New York State Children and Family Services are aware, Suffolk County is eager to move forward towards its goal of building a secure detention center. We appreciate the support you've extended to us along this most challenging path." I can go on. October, 2001, a letter to the County Executive ••

**CHAIRMAN O'LEARY:**

We know you can go on, but we're going to try to cut this short.

**LEG. CRECCA:**

Well, anyway, they continue to write to us.

**CHAIRMAN O'LEARY:**

Legislator Crecca, you've made your point. You want to comment any further?

**MR. CHIUSANO:**

Again, we're not in disagreement with the thing, we're just sort of indicating there is an issue out there, and we really do need state approval to actually move forward.

**CHAIRMAN O'LEARY:**

You've made that point as well. You want to move along, any other ••

**MR. CHIUSANO:**

Just so you know, on 6011, the land acquisition for the Tier II Homeless Shelter. The reason why that was used as an offset in the County Exec's resolution wasn't to slow the project down, was more because the Department of Social Services indicated that they did not feel they would have a site in place before the year end, and that the appropriations would not be needed at this •• during this year. So we used that as an offset. But there is no intent to slow down the project. It just was based on the fact that they are going through the process, the selection process, and they did not feel it would be fully completed by year end.

**CHAIRMAN O'LEARY:**

Anything else, Carmine? I'm giving you every opportunity to respond.

**MR. CHIUSANO:**

On 7173 I just want to make you aware that there is already \$1.5 million available for the construction of the Timber Point maintenance facility. You would be adding \$1 million more to be constructing a maintenance facility or \$2.5 million.

**LEG. CRECCA:**

Is that factually correct, Budget Review?

**MR. SPERO:**

I'll check it.

**LEG. CRECCA:**

I'm just asking.

**CHAIRMAN O'LEARY:**

Okay. Are you looking up something, Jim?

**MR. SPERO:**

Yes.

**CHAIRMAN O'LEARY:**

Just a comment if I might. Quick math. These are additional appropriations of about \$42 million for Capital Projects?

**MR. ZWIRN:**

Forty nine.

**CHAIRMAN O'LEARY:**

Forty nine. Math wasn't my forte anyway. Forty nine million. Jim.

**MR. SPERO:**

I'm going to check further, but based on our write•up, it doesn't appear that previous funds were specifically designated to Timber Point, but I'll check into it further.

**CHAIRMAN O'LEARY:**

Legislator Crecca.

**LEG. CRECCA:**

That's okay. The intention was to designate them for Timber Point.

**MR. CHIUSANO:**

Just so you are aware, though, there really was 1.5 million designated, and there was an indication that there was a shortfall earlier this year of about \$600,000. And I believe the award on the maintenance facility was about 2.2 or \$2.3 million that they needed to build the

facility.

**CHAIRMAN O'LEARY:**

Okay. Mr. Zwirn, do you care to comment any further before we move on the motion?

**MR. ZWIRN:**

I just would like to say •• and I respect Legislator Lindsay's comments, and I appreciate going through the different projects. If it wasn't for a jail that we're required to build, we wouldn't be sitting here today having this conversation going back and forth. It might be limited to a couple of projects, but it wouldn't be on this scale. And I think to answer Legislator Crecca's questions to Carmine about why we're encumbering this money is to try to spread the cost out over a period of time, because it is so expensive a project. And not to build •• have to build a jail for \$200 million and have another 40 or 50 million in projects on top of that. Even though those 40 or 50 million in projects are the ones that the County taxpayers really want.

It puts us in a difficult •• we're not here trying to advocate, you know, taking tax dollars away from good projects that are going to improve quality of life and put it to a state mandated facility, which has a very small constituency. Especially people that are going to be there for more than a year, then there's no constituency. But we're put in this predicament. You know, we're fighting •• we're fighting for the taxpayers. I mean, we all are, but the County Executive is the Budget Office of this County, and he has to submit an operating budget taking all this into account and trying to keep taxes under control. Ultimately we all have to do that, but that's why we're here today, and that's why the process is so important to us on this side of the table. And I'm sure to your side. But this one didn't go the way we hoped it would, and I thank Legislator Carpenter for saying she is going to look into that. Thank you.

**CHAIRMAN O'LEARY:**

Legislator Carpenter.

**LEG. CARPENTER:**

I feel I need to respond to what you just said as far as the jail is concerned. The jail and the fact we need to address it didn't just happen. It didn't happen this year, it didn't happen last year or the previous couple of years before that. It has been coming for a long, long time. I've been a Legislator 11 years and Chairman of the Public Safety Committee for a couple of those years, and the situation with the jail is just something that we could not put off any longer.

And to use that as a reason for delaying any of these worthwhile projects would be unfair to the taxpayers.

And again, I'm going to go back to the Riverhead County Center. To not address that issue, to allow that building to continue to deteriorate further than it already has, again, I'm Legislators for 11 years, for 11 years that escalator hasn't worked in that building. It's absolutely an insult to the public and an insult to the employees that have to work in that building each and every day. So again, and I'm not going to go project by project, but believe me, those of us who have been working on this were very, very much aware and cognizant of the needs of the taxpayers. We all are. No one wants to see taxes go up, especially in this environment, and we all saw that with the school district votes last week.

But when I tell you that this is something that we need to do, we need to do it. And as far as the constituencies of the jail, I will tell you that I have concern for those people that are in that facility, especially the employees in that facility. To the Sheriffs and Correction Officers and the others that work in that facility, it is absolutely inhumane. And if it wasn't for the dedication and the professionalism of the staff of the Sheriff's Department, if it had been any other County, I would not be surprised to see grievances being filed left and right. But we have professionals working for us in the County, and I think to those professionals we owe it to finally go forward with these projects.

**CHAIRMAN O'LEARY:**

Okay then. I think we've reached a point where we're going to move on the motion unless Mr. Zwirn has any closing comments?

**MR. ZWIRN:**

No. Thank you, Mr. Chairman.

**CHAIRMAN O'LEARY:**

Okay. On 1561 there is a motion to approve by Legislator Crecca, seconded by •• who was the second, Legislator Losquadro? Motion to approved by Legislator Crecca, seconded by Legislator Carpenter. On the question of the motion to approve? Hearing none, all in favor? Opposed? Abstentions? 1561 is unanimous. **APPROVED (VOTE:7•0•0•0).**

Thank you very much, Mr. Zwirn.

**MR. ZWIRN:**

Thank you.

**CHAIRMAN O'LEARY:**

All right. Let's go back to the agenda earlier. 1531, Bay Shore Ferry. I do have copies before me, and I think the committee does as well with respect to copies of the Charter. I do believe that there's a copy of the schedule here as well.

**LEG. FOLEY:**

If I may, Mr. Chairman.

**CHAIRMAN O'LEARY:**

Yes. Mr. Foley.

**LEG. FOLEY:**

Part of what was distributed, one of the documents states petition, cross bay ferry license. If you turn a few different pages, Mr. Duffy, through the Chair, it says Exhibit A, ferry services schedule. Now is that the ferry service schedule?

**MR. DUFFY:**

Correct. If I can just speak for a second.

**LEG. FOLEY:**

Yes.

**MR. DUFFY:**

I think the easiest way to look at this is if you look at Resolution 343 of 2003. This is the license that's now in effect for Bay Shore Ferry. If you look at the first resolve clause, it says that the petition of Bay Shore Ferry is hereby approved. Now, that petition is the petition you are referring to. The one dated •• I think it's the 16th of January 2003. And in there, the applicant indicated a schedule that he was running. What had then happened after that was that Mr. Hurley felt that that resolution gave him the authority to lease boats from another company. I was present when Mr. Sabatino •• it was a telephone conference between Mr.

Sabatino, the attorney for New York Waterway, Mr. Hurley, had a conversation in which both Mr. Sabatino and the attorney for New York Waterways did not feel that there was sufficient authority in Resolution 343 to lease vessels.

In response to that, Mr. Hurley submitted, I guess, the petition for ferry license modification, which was an amendment of the license that existed. This was a legal proceeding that Budget Review is usually only involved in when there is an establishment of rates or a modification of rates. This legal proceeding was being handled by Counsel's Office. I had assisted him on some of this. In this petition if you look, it's dated May 28th, 2003. There's also in Exhibit A, which details schedule. My understanding of what had occurred and why Mr. Sabatino amended Resolution 1531 was that during the process of going back and forth between New York Waterways, the schedule was changed, amended. In response to those amendments, there were a number of variations of 1531•2003, okay? What had occurred on, I guess it was Friday, Mr. Hurley had submitted a resolution basically adding those vessels, and in his original resolution, he referred to a schedule A, which would be schedule. Counsel indicated to him that there was no schedule A attached. He then indicated to us that he would be going back to the schedule that had been approved in Resolution 343•2003.

**LEG. FOLEY:**

Okay. Now we look at •• through the Chair •• 343 again.

**MR. DUFFY:**

In the first resolve clause, it indicates that the petition of Bay Shore Ferry is hereby approved. That would be the petition that you referred to.

**LEG. FOLEY:**

This petition. Now Exhibit A speaks of •• through the Chair •• speaks of Thursday through Sunday but we also know there's through Wednesday. Where's that in this Exhibit A?

**MR. DUFFY:**

It was not in Exhibit A.

**LEG. FOLEY:**

That's right.

**MR. DUFFY:**

My understanding of what Mr. Hurley's position is that if you look down in the notes, it indicates that his schedule is subject to demand. I cannot speak for Mr. Sabatino, but I know he basically was attempting with the ferries to tie things down to make it iron clad. That is why he changed resolutions that had the not to exceed language in them, that he set an actual rate. And in looking at the schedules, in doing the original 1531, was setting out a full schedule of what the Charter involved and what the schedule would be.

**LEG. FOLEY:**

I just want to know what the schedule would be if and when this •• if this other resolution is approved. That's all I'm asking for.

**MR. DUFFY:**

Based on my interpretation ••

**LEG. FOLEY:**

I don't want interpretation, I want a copy. I want a copy of how Thursday through Sunday reads and how Monday through Friday •• Monday through Wednesday reads. That's what we need.

**MR. DUFFY:**

All it would be here is the schedule that's Exhibit A, which was approved by Resolution 344. I would defer to Counsel.

**LEG. FOLEY:**

That Exhibit A is Thursday through Sunday, all other days would be on an as•needed basis, is that what you're saying?

**MR. DUFFY:**

Yes.

**LEG. FOLEY:**

Demand basis rather, for Monday through Wednesday.

**MR. DUFFY:**

Demand basis, yes.

**CHAIRMAN O'LEARY:**

Do we have a •• excuse me, Legislators Foley. Do we have a document in hand which basically attests to what the schedule is going to be going forward in the Year 2004 with respect to this particular service?

**MR. DUFFY:**

If would be Exhibit A that Legislators ••

**CHAIRMAN O'LEARY:**

Well, Exhibit A is not finalized, it's missing something, is it not?

**LEG. FOLEY:**

Exhibit A as of Resolution 343 of '03, correct?

**MR. DUFFY:**

Yes. It just lists the days Thursday through Sunday and then has a note that indicates that the schedule would be subject to change based on alteration and traffic demands.

**CHAIRMAN O'LEARY:**

All right. So then it's your interpretation that that schedule is going to be the schedule that the applicant is bound to going forward?

**MR. DUFFY:**

That would be my opinion, yes.

**CHAIRMAN O'LEARY:**

Is there anything in writing that would indicate that the dates that are inclusive for this calendar year, that schedule would be a part thereof?

**MR. DUFFY:**

It is just a general schedule effective Memorial Day through Labor Day.

**CHAIRMAN O'LEARY:**

But for the year 2003?

**MR. DUFFY:**

It is not limited to 2003. It is just limited through •• effective Memorial Day through Labor Day. It does not give a year. If Mr. Hurley had not come back in to attempt to amend his license, that would have been the schedule that would be in affect according to the resolution until December 31st 2008.

**CHAIRMAN O'LEARY:**

Counsel.

**MS. KNAPP:**

I actually do have a concern that I feel •• I've agreed with everything that Mr. Duffy has said except one thing. And to the extent that, you know, that •• this may illustrate why we need to be very, very explicit, my reading of the note at the bottom differs from Mr. Duffy to the extent that if I see a schedule and it says based on alteration of Long Island Railroad time table and traffic demand, my reading of that is that if the Long Island Railroad is severely delayed, then a ferry might wait until that railroad arrived. And to the extent that it says traffic demand, the only thing that would mean to me is that if there were very bad weather and there were •• there was no one on either side, he wouldn't run the ferry. I would not, never would I interpret that to mean anything other than very minor changes based upon very unusual circumstances. And if that's not the reading, then I think it does need clarification.

**CHAIRMAN O'LEARY:**

It is your advice then to us that this particular resolution requires an amendment regarding the schedule as posted?

**MS. KNAPP:**

I would apologize that •• that we didn't nail this down better, but it's only been in the last five minutes listening to Mr. Duffy that any other interpretation would have even occurred to me. So perhaps it is important to nail it down even more.

**CHAIRMAN O'LEARY:**

Okay. I would suggest •• the applicant here in the audience and he is listening to what I'm going to say. I would suggest to bring this thing to closure that BRO, Kevin and Mr. Hurley get together for purposes of locking in a schedule that we can all peruse and accept as the schedule that will be authorized by this body going forward for this service to be provided by Bay Shore Ferry. What sort of time table can we get this done in with respect to putting together, what the schedule is going to be, is there something in writing that we can look at, peruse and digest. Is that something that's doable?

**MR. DUFFY:**

It depends what schedule Mr. Hurley wants to run. He had given Paul Sabatino indications in the earlier ••

**CHAIRMAN O'LEARY:**

Let's forget about earlier stuff. Let's try going forward from this point. In order for this thing to come to closure, it's the opinion of Counsel that the applicant has to submit a schedule that he is going to be utilizing for purposes of service being provided in the calender Year 2004. My suggestion to him is to provide that to this body through BRO and perhaps then we'll be able to bring this thing to some sort of closure.

**MR. DUFFY:**

I can't speak for Jim, but I would have no problem. We would just accept the schedule that he give us.

**CHAIRMAN O'LEARY:**

All right. Okay. So in light of ••

**MR. DUFFY:**

Jim is correcting me that he should submit it to the Clerk of the Legislature.

**LEG. CRECCA:**

Is there something wrong with the schedule that's there now?

**MR. DUFFY:**

What Counsel is a saying is that the schedule that exists today is the one on Exhibit A for the petition dated January 16th, which give a schedule time for Thursday through Sunday. And if I

interpret her correctly, she said that it would only be subject to minor change. That's what ••

**LEG. CRECCA:**

But if he's willing •• my own question, through the Chair.

**CHAIRMAN O'LEARY:**

Yes, Legislator Crecca.

**LEG. CRECCA:**

Is that if Mr. Hurley willing to abide by this schedule, there's nothing preventing us from moving forward on this bill, correct?

**CHAIRMAN O'LEARY:**

Mr. Hurley, perhaps you want to comment.

**LEG. CRECCA:**

I guess that's my question.

**MR. HURLEY:**

The way I interpret the schedule that I have is that it would be completely absurd for me to write a schedule in the beginning and then to be locked into that exact schedule as a grow a business. What I put in that schedule specifically was that based on the Long Island Railroad and traffic demand, I could increase that service. What I had given was a minimum of service. So I was providing a public benefit. I will be providing more of a public benefit by operating more ferries.

At this stage in the game, my competitor runs 17 ferries on Saturday, 17 right here. Okay. I think I'm running four maybe or five on Saturday. And my total trips maybe for the week are 15 or 16. Perhaps I might go to 19 or 20. I won't even •• I won't even match the number they run in one Saturday. So the issues •• I understand. Do you want me to •• I will give you a schedule that I will be very close to tomorrow if I can just get to getting my license modified so that I can run this summer. I don't want to be pitched out again so that come August •• you know, it seems like once again the goal posts are moving in the game again to benefit my competitors.

I have •• I have a competitor who has purchased a water taxi who is now operating on the exact same docks I operate on. And when they came to this Legislature, they got •• they got approval without ever having discussed that they a monopoly of the most large notion had just been created. And yet I try to lease one boat, and I get railroaded here. And I don't understand what it wrong with this body. This is not fair, this is not a level playing field.

**CHAIRMAN O'LEARY:**

Mr. Hurley, we were looking for clarification from you as the applicant, and basically ••

**MR. HURLEY:**

I will send •• I will send you a schedule tomorrow.

**CHAIRMAN O'LEARY:**

I'm not taking sides any way, shape or form, but your competitor as you characterized that particular firm does post a schedule.

**MR. HURLEY:**

I have read •• see, this is my problem. I have read every single one the their licenses that they have. I have never ever in their license that has been granted, which is part of my license seen a schedule, not one.

**CHAIRMAN O'LEARY:**

You just showed us one.

**MR. HURLEY:**

This is schedule, I post a schedule. This is not their license. That's my license you are looking at. When you get a license of their's, you will not see a schedule embedded in the license. It won't be Schedule A. They don't need to do it. They just sort of hand these things to you, like, oh, this is what we ran last year. So to try to change, I'm in this different game where I can't change, because I'm locked into a schedule because I've made it part of my license because I had to. They give you what they've done and change and sort of, you know, move ••

**CHAIRMAN O'LEARY:**

Kevin, correct me if I'm wrong. The previous applicants, do they submit a schedule along with

the ••

**MR. DUFFY:**

What they do is what Mr. Hurley had done, they submit the schedule as part of their petition. And if he is referring to Fire Island Ferry, what Fire Island Ferry normally does is as part of their petition they attach their schedule as an addendum, an exhibit behind it. And as I said with Resolution 343, the first resolve clause in that says that the petition of Bay Shore Ferry is hereby approved, which is approving the schedule which is attached.

**MR. HURLEY:**

Well, then we should go back, because if my ••

**MR. DUFFY:**

That was the question that I think Counsel asked you to on Friday, are you willing to run with the schedule that's shown in the petition. If you were, then at a point, that's the schedule that's in effect. If you wish to change from this, then what they're indicating is that they want you to supply something different. That's why I think Mr. Sabatino went through all those gyrations, because you wanted something different than was shown in your petition.

**MR. HURLEY:**

How do I do this? How do you want me to give you the schedule that will this year? Can I give it to you tomorrow so that on Tuesday of next week we can vote this thing? Vote it down if you want, just let me get closure.

**LEG. CRECCA:**

We can approve this today, because it's only an exhibit. And we can take the exhibit as long as we get it before the 8th before it's actually approved.

**MR. HURLEY:**

And I'll read it to everybody.

**CHAIRMAN O'LEARY:**

Would that satisfy your concern?

**MR. HURLEY:**

You can't stop me every single time I get here. You have done it consistently.

**LEG. CRECCA:**

My question to Counsel is we can approve •• we can •• there's a motion to discharge without recommendation. We can approve the •• we can move forward on that motion and have a new Exhibit A attached to it. And if we're not satisfied with the new Exhibit A, we don't approve it on the floor. As long as we're satisfied with the new Exhibit A that he can file with the Clerk tomorrow before 4:18 p.m. Then •• you know, then I don't think there's a problem. But, I mean, there is a benefit to moving forward on this in the fact that the summer season is upon us. And, you know, it would behoove the residents of that area to have the additional ferry service and the competition there.

**CHAIRMAN O'LEARY:**

Okay. Thank you, Mr. Hurley.

**MR. HURLEY:**

Thank you.

**CHAIRMAN O'LEARY:**

Kevin, you have anything to add before we move on this motion to discharge without recommendation?

**MR. DUFFY:**

No.

**CHAIRMAN O'LEARY:**

All right. There's a motion to discharge without recommendation. Motion was made by myself, seconded by Legislator Losquadro. On the question of that motion? On the motion itself, all those in favor? Opposed? Abstentions?

**LEG. CARPENTER:**

Abstain.

**LEG. FOLEY:**

Abstain.

**CHAIRMAN O'LEARY:**

One abstention, two abstentions.

**LEG. FOLEY:**

Mark me as no.

**CHAIRMAN O'LEARY:**

One no. Motion passes.

**LEG. LOSQUADRO:**

One no, one abstention.

**CHAIRMAN O'LEARY:**

One abstention •• no, two abstentions, one no. Did you abstain? Legislator Foley, did you abstain?

**LEG. FOLEY:**

I'm a no.

**LEG. LOSQUADRO:**

He changed to a no.

**CHAIRMAN O'LEARY:**

Four (sic) in favor of the motion to discharge without recommendation, the motion passes.

**DISCHARGED WITHOUT RECOMMENDATION (VOTE:5 • 1 • 1 • 0) (Opposed; Legis Foley)  
(Abstention; Legis. Carpenter).**

It will be before us on June 8th, Mr. Hurley. I suggest you take care of business with BRO with respect to your schedule.

Any other business before we adjourn? Meeting stands adjourned.

**(\* THE MEETING WAS ADJOURNED AT 6:00 P.M.\*)**

**\\_ \\_ DENOTES BEING SPELLED PHONETICALLY**