

**VETERANS & SENIORS COMMITTEE**

**of the**

**SUFFOLK COUNTY LEGISLATURE**

**Minutes**

A regular meeting of the Veterans & Seniors Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on May 4, 2009.

**MEMBERS PRESENT:**

Leg. Steven H. Stern, Chairman  
Leg. Jack Eddington, Vice Chair  
Leg. Kate M. Browning  
Leg. Ricardo Montano  
Leg. Jay H. Schneiderman

**ALSO IN ATTENDANCE:**

George Nolan, Counsel to the Legislature  
Sarah Simpson, Assistant Counsel  
Lance Reinheimer, Assistant Director of Budget Review Office  
Benny Pernice, Budget Review Office  
Tim Laube, Clerk of the Legislature  
Brendan Chamberlain, Aide to County Executive  
Tom Ronayne, Director of Veterans Service Agency  
Holly Rhodes-Teague, Director of Office for the Aging  
Paul Perillie, Aide to majority leader  
Linda Bay, Aide to minority leader  
Deborah Harris, Aide to Leg. Stern  
Bob Martinez, Aide to Leg. Montano  
Catherine Stark, Aide to Leg. Schneiderman  
Debra Alloncius, AME Legislative Director  
Leo McGinity, Es., Greenwood Village  
Rick Brand, Newsday  
Jack Caffey, Aide to Presiding Officer  
Dennis Brown, County Attorney's Office  
And all other interested parties

**MINUTES TAKEN BY:**

Diana Kraus, Court Stenographer

## THE MEETING WAS CALLED TO ORDER AT 1:51 PM

### CHAIRMAN STERN:

Welcome everybody. We'll ask everybody to please rise and join us in the Pledge of Allegiance led by Legislator Browning.

### SALUTATION

I'd ask everybody to please remain standing and join us in a moment of silence as we remember all of our brave men and women fighting for our freedoms overseas in our thoughts and prayers.

### MOMENT OF SILENCE

### PUBLIC PORTION

### CHAIRMAN STERN:

I have one card in public portion. I have one card, Mr. McGinity.

### MR. McGINITY:

Yes, good morning members of the committee, Mr. Stern. I understand that Legislator Romaine who sponsored IR 1222 will not be present this morning. So I understand from Mr. Stern that this matter may be tabled or passed along until the next meeting.

But I would like to submit -- well, first of all let me say I'm the attorney representing Greenwood Village. Greenwood Village is the subject of this amended Local Law, IR 1222. What I'd like to do is submit for the Committee the package of materials that's given to perspective purchasers when they go to look at a place in Greenwood Village. I think it's an important part of the record.

And the second thing is, I understand from the last General Meeting that Mr. Romaine had some questions for my client. If they're written questions, I'd be happy to take them back and we can certainly provide answers to any of the questions that he might have. I don't know if the Committee's aware of any questions that Mr. Romaine would like to present to us.

### CHAIRMAN STERN:

Mr. McGinity, other than answering questions from members of the Committee, do you have any other prepared statements that you'd like to make?

### MR. McGINITY:

Yeah, I do. The text of this amended Local Law, many of the provisions that we would object to have already been ruled on by the appellate division. For example, the requirement that we give a long-term lease; that's already been rejected and thrown out. The requirement that homeowners be entitled to assign their lease, that's already been rejected and thrown out, so.

I understand that Ms. Malafi has had an opportunity to work with Mr. Romaine in crafting this amendment. But I think certainly before the Committee takes a vote on it or passes it along to the General Meeting, we would like to have an opportunity to speak with the Committee's Counsel to talk about the provisions of this amendment that have already been ruled on and rejected by the appellate division. And that's all I have to say.

### CHAIRMAN STERN:

Many questions, I'm sure. Mr. McGinity, if you could step back up, we'll start with Legislator

Montano.

**LEG. MONTANO:**  
Good morning, sir.

**MR. McGINITY:**  
Good morning.

**LEG. MONTANO:**  
We're learning how to use these microphones. Legislator Romaine is not here. He had faxed over some questions, 12 questions that my aide is going to present to you. I don't know that we necessarily need an answer today; if you want to take a look at them and address that. I think -- are you familiar with our procedures and how we operate as a Legislature in terms of passing resolutions?

**MR. McGINITY:**  
I'm not. Unfortunately, no.

**LEG. MONTANO:**  
Okay. What this proposal -- this has to be closed before the public -- for a public hearing.

**MR. NOLAN:**  
It's closed.

**LEG. MONTANO:**  
Oh, it's been closed. Okay. We'll probably pass it out of Committee today, send it to the full Legislature which will meet on Tuesday. And I think your arguments are better served for the full Legislature on Tuesday. And it may or may not be voted upon at that day.

So you have the questions there, again, they were proposed by Legislator Romaine. And, you know, yeah, that essentially -- you know, what I'd like to do is I haven't seen a copy of the decision and you say that the issues have already been addressed by the appellate division.

**MR. McGINITY:**  
Yes.

**LEG. MONTANO:**  
Now I'll take a look at -- I'll take a look at the case if you have it with you. Do you have a copy with you?

**MR. McGINITY:**  
I believe I do, yes.

**LEG. MONTANO:**  
All right. My aide will make a copy. We'll probably take this up on Tuesday. I'm a cosponsor with Legislator Romaine, but he's not going to be here today.

**MR. McGINITY:**  
Okay.

**LEG. MONTANO:**  
So with that said, I'll guess we'll talk on Tuesday.

**MR. McGINITY:**  
Okay. As I scan through the list of the 12 questions, these are things that I think my client would be very anxious to answer and provide. Is that a response that they can give in advance of the General

Meeting?

**LEG. MONTANO:**

Yes. You can answer -- you could put some answers on the record now if you'd like, if you want to take a quick look at them. If not you could also I'm sure submit a written response to the -- you send me one, I'll certainly read it and take a look at it.

**MR. McGINITY:**

Yeah, I think it might be better to respond in writing to each of the 12 questions. One issue that we have is our community manager, her mother was taken very ill on Friday so she's down in South Carolina with her today, so, I'd like her input.

**LEG. MONTANO:**

I understand. What I would do then is simply, you know, put your response and go on the web and get the -- or my aide can you give a listing of all the Legislators and you can e-mail us all a copy. I'd prefer that sooner than later because the meeting's Tuesday.

**MR. McGINITY:**

Yeah, we could do that probably by the end of this week I would think.

**LEG. MONTANO:**

Sounds good. Thank you.

**MR. McGINITY:**

Yeah, okay. Thank you. Any other questions?

**CHAIRMAN STERN:**

Legislator Browning.

**LEG. BROWNING:**

Good morning.

**MR. McGINITY:**

Good morning.

**LEG. BROWNING:**

You know, I've been to that planned retirement community on several occasions with some kids from the local high school. And I can tell you when I was there, I was a little surprised because the clubhouse was very delapidated; not in good shape. And Legislator Romaine had photographs here on our last Tuesday's meeting, with major road repairs that needed to be done showing cracks and holes in the drains. And, you know, I know that the last time the people from that community came here, they brought photographs that looked exactly the same. And I know that someone asked here on Tuesday there was a representative for you here, and she couldn't respond. She said *well, I can't respond, I can't respond*. So I'm hoping that you can respond because one of the questions was, have you done the work that needed to be done, all the repair work that needed to be done? Because as far as the residents are concerned, that, you know, they feel like they're paying more and they're getting much less. And we're hearing that a lot around here, getting more for less.

But at the same time, you know, their property values are dropping. Obviously the economy doesn't help the situation either. But, you know, at the same time, you know, they have a clubhouse, they have a pool. Am I not correct?

**MR. McGINITY:**

Correct.

**LEG. BROWNING:**

Yes. And the roadways are in horrendous condition. You know, have you fixed that? And if not when do you plan to have everything done?

**MR. McGINITY:**

Well, I think one issue that my client has both with respect to the original Local Law that we challenged in court and this proposed amendment is that we were never advised by Legislator Romaine or the Legislature that such a law was going to be proposed and our client's input was never sought with respect to any of the complaints that led to passage of that -- of that law. For example --

**LEG. BROWNING:**

Well, hold on a minute, that's got nothing to do with the question I asked you, whether -- that law has nothing do with what their current problem is. You know, they're paying monthly fees. They pay that rent. And they're supposed to get services with that rent. The residents are saying they're not getting the services. The clubhouse is not fixed. The pool's not in good shape. And the roadways are in bad shape. That's got nothing to do with what the law is. It's got to do with what they're currently paying and they're not getting the services they're paying for. That's what I'm asking.

**MR. McGINITY:**

Okay. Well, it does in a way and this is what I was getting at, is that had someone come to us, to the community instead of Mr. Romaine proposing legislation, we could have addressed that. And we certainly would be happy to do that. It's in our interest to make sure that people are satisfied at the community so that they can sell their homes and their community stays fully occupied. We try to do that.

But one thing that I think you should bear in mind with respect to the maintenance fees that are charged monthly, is that because of the ownership structure of this particular community, the property taxes are bifurcated. There's a tax assessment that's made on the improvement, which the residents pay directly. But the property tax that's assessed on the land itself, including the lots under each of these homes that's owned is paid by Greenwood Village.

So, for example, if someone's paying \$800 a month in maintenance, you could figure about 350 to 400 of that monthly maintenance is going right to the County for property taxes. That's something I think may have been lost up to this point. But with respect to maintenance, sure, my client has every intention of doing that. If we could be apprised of a particular pothole or a, you know, a dilapidated condition, bring it to us. Call me or call the property manager. We'll take care of it.

**LEG. BROWNING:**

Well, I can tell you as a Legislator in my district, I know that generally when people come to us and the likes of your retirement community, they have contacted and complained. And that's why they went to their Legislator is because they felt they weren't getting -- were not getting the responses they needed. So -- and that's my understanding of what has occurred.

**MR. McGINITY:**

Well, I can't speak to that because I can tell you that Mr. Romaine has never contacted us. He called me when the case had been filed. He called me once. But he's never contacted my management office, ever, to express a complaint. If he had done that, you know, we could have had a meeting. We could have taken him around the community to say -- tell us exactly what it is that you need to be done.

And, you know, this is a New York Stock Exchange listed ownership company. This is not an irresponsible company or a company that has no means. So, I mean, if there's a complaint, let us know it first. And if we don't address it, fine, then there are other recourses.

**LEG. BROWNING:**

Well, I think we're on the record now, we've seen the pictures, we know there's problems. And you've been duly notified that they have complaints and we'd like to see that you fix them.

**MR. McGINITY:**

Okay. Are there copies of the photos that I might have? That I can take back to my client?

**LEG. BROWNING:**

I don't have the copies. Legislator Romaine has the copies. And, however, I think your maintenance manager, whoever it is that runs the facility and takes care of the maintenance, I don't think -- if he's driving around, I'm sure he'll find everything that's wrong by himself.

**CHAIRMAN STERN:**

Legislator Eddington.

**LEG. EDDINGTON:**

Yeah, I just wanted to add as I'm listening to you that I'm not sure that you're hearing -- maybe you did hear the last statement that the Legislator made because it's almost like we didn't realize or we weren't told and I want to make sure that it's clear. All you have to do is drive around. And if the managers haven't done that, then maybe they should, you know, read *In Search of Excellence* -- management by walking around. Because this has been presented to us a year ago for the same type of problems and we saw pictures then.

So it's a shame that the Legislature has to get involved in an issue that could have been resolved by literally walking around. So that's what you might want to take back to the management.

**MR. McGINITY:**

I certainly will, sir. But all I'm saying is that no one from the Legislature, particularly Mr. Romaine, if he's been dealing with these homeowners for years, has ever come to us. And I think that's probably the first thing he should have done is to say, look, we have these complaints by a number of homeowners, what are you doing about it? Set up a meeting, he can walk around with us and we can point out the things that he thinks are wrong.

**LEG. EDDINGTON:**

You see, and I don't agree.

**MR. McGINITY:**

That would be the preferred way.

**LEG. EDDINGTON:**

I don't agree. I don't think Legislator Romaine had to do that. This is -- we do this as a last resort when the people are not being listened to. And that's the case right now. It's not up to Legislator Romaine to call you and say, *hey, please do what you're supposed to do*, which is under your agreement. We come in when it's not being done. But we don't like to micromanage. But this is a situation where it's obvious, you can see that repairs haven't been done. And it's the elderly, the vulnerable people in our community. So I don't agree with your premise that Legislator Romaine should have come to you first and done it.

**MR. McGINITY:**

Well, sir, you know, I don't want to argue with you. But I think as you said, legislation should be a last resort; understandably so. But Mr. Romaine's strategy or tactic in the past has been to write letters to the homeowners to say *come down to this meeting to talk about a law that I'm going to propose*. But he never told Greenwood Village he's proposing the law. So I'm not sure that's the way to get, you know, the fullest, you know, and most fair factual hearing. That's really my point.

But if I could have the pictures, I'll certainly take it up with the community.

**CHAIRMAN STERN:**

Legislator Montano.

**LEG. MONTANO:**

Thank you, sir. We have the decision here. What was this, motion for declaratory judgement or how did this get to the -- what was your procedural process in terms of getting this to the appellate division?

**MR. McGINITY:**

It started off life as an Article 78 petition, a special proceeding.

**LEG. MONTANO:**

It's Article 78, okay.

**MR. McGINITY:**

Right. And then the Supreme Court converted it to a declaratory judgement. And that's with the appellate division --

**LEG. MONTANO:**

Okay.

**CHAIRMAN STERN:**

Okay. Members of the Committee now have a copy of the court decision in front of them. We will make another copy and submit it to the Clerk to make it part of the record. Okay. We'll have the opportunity to distribute a copy of the decision to other members of the Legislature.

**MR. McGINITY:**

Okay.

**CHAIRMAN STERN:**

Before us is IR 1222. And although, Mr. McGinity, of course, the decision rendered by the court invalidated some of the provisions of the law that the Legislature previously passed, in the general gravamen in the decision was that although some of these provisions are either inappropriate, inadequate or rise to a level of being arbitrary and were stricken, that -- that it also allowed the opportunity for the Legislature to reexamine the issue and to draft other provisions that might, you know, might pass muster in the future.

And that is my understanding that Legislator Romaine has worked with the County Attorney's Office to draft alternative provisions that perhaps next time around if a court is examining the provisions of this law, would in fact pass. And, of course, ultimately that would remain to be seen.

But, what I'd like to do is ask our Counsel to take us through some of the changes in these provisions. George, maybe you can tell us what was there before and what is there now.

**MR. NOLAN:**

Well, first let me say the Counsel is correct that this case was originally born in the Supreme Court. At the Supreme Court level the law was upheld in its entirety. Then the community owners brought the case to the appellate division. And there are many provisions in the law, most of which were upheld by the appellate division, but there were three or four provisions that were struck down.

And I believe what Legislator Romaine is trying to do with this law in conjunction with the County Attorney's Office was to draft alternative language that if challenged would pass court muster.

So I'm just going to go through the provisions that were stricken down and what the new language

is. The original law required the planned retirement community to offer every homeowner a long-term lease for 99 years with the homeowner having the sole option to cancel the lease on 90 days notice. And the court said this interfered with the operator's right of enjoyment of his property and was unreasonable. So new language has been drafted, which states that a homeowner will have an opportunity to sign a long-term lease and has the option to cancel for reasonable cause.

Secondly, section -- yes.

**CHAIRMAN STERN:**

George, before you go on, reasonable cause has not been defined in this provision. Correct?

**MR. NOLAN:**

That is correct.

**CHAIRMAN STERN:**

Okay. So that would be a facts and circumstances type of an analysis that goes beyond this Legislature that would have to be something that would be considered at the time.

**MR. NOLAN:**

Right. And if they -- if one of the homeowners cancelled the lease, it would be up for a court to determine if it was a reasonable cancellation.

**MR. McGINITY:**

I'm sorry, may I just address that? I think I can probably clarify the point.

**CHAIRMAN STERN:**

Mr. McGinity, I'm going to have Counsel continue to read through, you know, the changes and then we'll come back.

**MR. McGINITY:**

Okay. Thank you.

**MR. NOLAN:**

The second provision that the court rejected was a requirement that all homeowners consent to a change in the communities rules and regulations. So the law has been amended to require a three quarter's vote of the homeowners. And also requires the consent of the operator of the community, but that consent will not be unreasonably withheld by the operator.

Thirdly, the original law afforded homeowners the unrestricted right to sell their homes and assign their land leases. And the court said such provision would allow the homeowners to sell or assign their rights to people under 55 years old. And the court felt this interfered with the operators right of enjoyment and was unreasonable. So that language has been changed to now the homeowner would have a right to sell their home or assign their land lease without unreasonable or arbitrary restrictions by the operator of the community.

And finally the original law called for criminal penalties for those -- for any violations of the law and trouble damages. On civil penalties the court said this was unreasonable so the law now calls for a civil penalty of \$500 for each day that a violation continues. And those are the changes.

**CHAIRMAN STERN:**

Thanks, George. Before we go to Mr. McGinity, does anybody in the Committee have any questions of our Counsel regarding the changes? All right. Mr. McGinity.

**MR. McGINITY:**

Okay. Thank you, Mr. Stern. The first provision talking about a long-term lease, which has to be offered to each of the perspective purchasers, the court looked at that and threw that out as a

restriction on our client's use and enjoyment of the property. Just re-characterizing it from a 99 year lease to a quote, long-term lease isn't something that solves that.

But in any case, I think it's important that the Committee understand kind of how this community operates. The residents own their homes. These are permanent structures that can't be removed from the property. If you allow a homeowner who comes into the community to terminate a lease for whatever reason, whatever reason, what happens then? What's the next step? They're living in their house. The house can't be obviously removed from the property. The resident can't be evicted from a home that he or she owns. So what happens? What is to prevent a homeowner from simply terminating their lease for the sole purpose of saying I'm not going to pay anymore rent? I don't think that particular provision has been thought through, with all due respect. Because once you have somebody who's in their home, on the community, you can't allow them to terminate a lease that obligates them to pay rent. You just can't do it.

**LEG. MONTANO:**

What were your other points?

**MR. McGINITY:**

Okay. Well, the second is, let's see, homeowner has the unrestricted or has right to sell his or her home in a planned retirement community. Now again, when somebody wants to sell their home and they have a buyer, they can terminate their lease. As soon they find a new buyer, they terminate the lease, the lease gets, you know, a new lease gets signed by them, by the new purchaser. There's no problem with someone terminating their lease if they don't want to live in the community anymore. There's a problem with them terminating their lease if they want to stay in the community because then they have no further obligation to pay rent or the charges that they agreed to pay when they first moved in.

Now the second one is -- the next is 383-7, sale of homes and the new language says that a homeowner has the right to sell his home, which we have no objection to, without unreasonable arbitrary restrictions being placed thereon by the community operator. Now, the community operator, when new buyers, new perspective buyers come in, they screen for things. First is age because this is a 55 plus community. The second is credit history. And the third is criminal history. Those are the only criteria that our client imposes on new purchases.

So whether this Committee or the Legislature would consider that to be unreasonable or arbitrary, I'm not sure why we want to leave that up to a judge or a court at some point.

And then something that Counsel didn't address, there's a new section, 383-10d, which requires the community manager to give basically an accounting of how the charges were compiled. I'm not aware that there's a similar requirement imposed on any other manager of senior communities in the County. The Committee would know better than I do how many there are. There has to be dozens if not hundreds. But this law would make Greenwood Village the only senior community that has to give an accounting of its charges.

And last, 383-12, the new language says there'll be a fine of \$500 for each day a violation exists. Well, if you look at the appellate division decision, they equated the fine provision, they struck out all the other penalties, but they equated the fine provision to Real Property Law section 233w, which talks about manufactured home parks. And a violation of that section, according to the New York State Legislature, is punishable only by a fine of \$500; not \$500 per day, so.

**LEG. MONTANO:**

I would like to get your arguments or your position in writing. So if you can get that to us as soon as possible that would be good.

**MR. McGINITY:**

I will do that.

**LEG. MONTANO:**

And I think the Chairman suggested that he'll send it to the Clerk of the Legislature so it'll be part of the record and then we'll take it up on Tuesday.

**MR. McGINITY:**

Very good. Okay, thank you very much.

**CHAIRMAN STERN:**

Legislator Browning.

**LEG. BROWNING:**

You know, the more we talk about this, the more I think how, you know, these retirement communities just don't work. You know, when I buy the home and I lease the land and the lease is pretty low when I first buy it, but the next owner is going to buy the home and now the lease has been raised astronomically. I just -- the more I see about it, I would never -- to be honest I would not encourage anyone I know to move to a community like this. I think, you know, I know you have to pay property taxes. And I know there's, you know, the maintenance that's paid for.

However, there are a number of the seniors that were here said that there's a lot of the maintenance that used to be covered is no longer covered. And, you know, I just think that these poor senior citizens, I feel, are getting ripped off. And this idea of buying a home, leasing the land, it's just not working. And I would seriously discourage people from ever doing this. It doesn't work. And it's just costing them more money than it's worth.

## **TABLED RESOLUTIONS**

**CHAIRMAN STERN:**

Alright, let's do this. We've been carrying on a conversation among ourselves and with Mr. McGinity. Mr. McGinity was up as part of the public portion. We've been talking about 1222, but let's get 1222 before us. **(IR 1222, adopting local law number 2009, a local law to improve protections to residents of planned retirement communities - Romaine)** So for discussion purposes, I am going to make a motion to discharge without recommendation on IR 1222.

**LEG. MONTANO:**

I'll second it.

**CHAIRMAN STERN:**

Seconded by Legislator Montano. 1222 is now before us. On the motion? Anyone, anyone? All right.

This is a resolution that has come before us as a result of litigation that has been and now decided regarding the earlier provision that we had passed. With the courts if not explicit instructions and certainly implicitly the gist of the decision is that, you know, there can be reasonable provisions in place to protect those consumers and those residents of this type of community.

And so in working with the County Attorney's Office, Legislator Romaine has introduced 1222 that seeks to remedy much of what's going on in this particular community. But I think also, you know, sets an important example for other similarly situated communities if they came about in the future. And it includes language like reasonable cause, prohibiting, you know, unreasonable or arbitrary restrictions. You know, this is the type of language that although doesn't necessarily answer a question given a set of specific facts and circumstances, at the very least, this is the kind of language that gives opportunity to a resident to be able to have his or her case heard and ultimately decided in accordance with the underlying intent of this legislation.

So there may be additional questions. There may be other answers or potential changes that come about as a result of conversations that hopefully happen between now and the time that the full Legislature, you know, considers this bill.

But I think it is appropriate to discharge without recommendation at this point and continue the conversation and have answers to many of these questions that Legislator Romaine has asked us to get out to, you know, to the owner.

So, with that, I will call the vote on the motion to discharge without recommendation. All in favor? Any opposed? Any abstention? Motion carries. **Discharged Without Recommendation (VOTE: 5-0)** This will be on the agenda before the full Legislature at our next session. Legislator Montano.

**LEG. MONTANO:**

Sir, just note that it could be amended, I think, up until today, George?

**MR. NOLAN:**

Until 5 o'clock.

**LEG. MONTANO:**

So there might be some amendments that are put in. So just make sure that you have the latest version of the bill.

**MR. McGINITY:**

Okay. And we can get that online if it's amended?

**LEG. MONTANO:**

I believe so. Right, George?

And if you call the Chairman, I'm sure that if it is amended, it'll be amended by -- to be voted on Tuesday, I understand it has to be amended by 5 o'clock today. So if you call the Chairman, I'm sure that he'll send you a copy of the amended version once it's out.

**MR. McGINITY:**

Okay. Would it then come back to committee or it goes right to the general meeting?

**LEG. MONTANO:**

No. It's going to go right to the general session.

**MR. McGINITY:**

Okay. Thank you.

**CHAIRMAN STERN:**

Okay. Anybody else, anybody else? Okay. I'll take a motion to adjourn.

**LEG. MONTANO:**

Motion to adjourn.

**CHAIRMAN STERN:**

Okay. Legislator Montano, second by Legislator Browning. All in favor? We are adjourned. Thank you.

**THE MEETING WAS CONCLUDED AT 2:20 PM  
{ } DENOTES SPELLED PHONETICALLY**