

WAYS AND MEANS COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE
Minutes

A regular meeting of the Ways and Means 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 September 9, 2009.

MEMBERS PRESENT:

Leg. Lou D'Amaro, Chairperson
Leg. Brian Beedenbender, Vice Chair
Leg. Cameron Alden (not present)
Leg. Lynne C. Nowick
Leg. Vivian Vilorio-Fisher

ALSO IN ATTENDANCE:

George Nolan, Counsel to the Legislature
Sarah Simpson, Assistant Counsel
Barbara LoMoriello, Deputy Clerk
Lance Reinheimer, Assistant Director of Budget Review Office
Pamela Greene, Director of Real Property Acquisition & Management
Ben Zwirn, Deputy County Executive
Debra Alloncius, Legislative rep for AME
Paul Perillie, Aide to Majority Leader
Linda Bay, Aide to Minority Leader
Christine Malafi, County Attorney
Dennis Brown, County Attorney's Office
Leslie Baffa, Civil Service/Risk Manager
Ester Bivona
Tom Ryan, Aide to Leg. Vilorio-Fisher
Kara Hahn, Director of Communications
Alan Schneider, Director of Civil Service
And all other interested parties

VERBATIM RECORD TAKEN BY:

Diana Flesher, Court Reporter

THE MEETING COMMENCED AT 10:15 AM

CHAIRMAN D'AMARO:

Okay. We'd like to start the meeting. Good morning everyone and welcome to the Ways and Means Committee of the Suffolk County Legislature. To start off the meeting we ask you to rise and join the Committee in the Pledge of Allegiance led by Legislator Beedenbender.

SALUTATION

I'm going to ask everyone's indulgence this morning. We're going to take one bill out of order before even proceeding to the agenda or the public portion.

I also want to announce for the Committee members that after the regular agenda there will be an Executive Session. What I'd like to do is we have with us this morning Alan Schneider from Department of Civil Service who wanted an opportunity to speak on one of the bills pending before the Committee. It's a tabled resolution.

TABLED RESOLUTION

It is **1636 of 2009. It's a Charter Law to transfer print shop from County Department of Public Works to County Department of Human Resources, Personnel and Civil Service. (Alden)** I'm going to make a motion to take that bill out order.

D.P.O. VOLARIA-FISHER:

Second.

CHAIRMAN D'AMARO:

Second by Legislator Vilorina-Fisher. Thank you. All in favor? Any opposed? Abstentions? That motion carries. The bill is now pending before the Committee. And, Mr. Schneider, why don't you come on up and we'll afford you an opportunity to say what you would like to say in relation to this bill. Wherever you're comfortable is fine.

DIRECTOR SCHNEIDER:

Thank you very much, Legislator D'Amaro. I have a ten o'clock meeting at the union headquarters and this is the only way I would be able today --

CHAIRMAN D'AMARO:

You're late.

DIRECTOR SCHNEIDER:

I'm late, but this is the only way I would be able to speak out on this resolution.

Good morning, fellow Legislators. Thank you for allowing me the opportunity to speak. The resolution to take the print shop and the mailroom out of Public Works and move it to the Department of Civil Service and Human Resources, I am actually coming here to speak out against that move for two reasons: Number one, the print shop and the mailroom, the functions and responsibilities have nothing to do with personnel, human resources or civil service. It's in Public Works. It is to us the closest fit where the print shop should be.

For many, many years it was in the Department of General Services, which was a general catchall department for a lot of administrative functions. When that department was broken up in 1995, many of those functions were moved to me including telecommunications, information technology,

the print shop, the mailroom, couple of other functions as well.

We ran all of those operations from 1995 to the year 2005 when through the budget process first Telecommunications and Information Technology and subsequently the print shop and the mailroom were subsequently removed. Today Information Technology is the stand alone department. The print shop is with Public Works. I just believe where it is today is the appropriate place for where a print shop should be.

Secondly, all of my operation is in Hauppauge. The print shop and the mailroom is out in Yaphank. When the function was under our department, I had an individual who I've mentioned in front of the Legislature before, Paul Greenberg, who was 37 years in the County. And when I got all these periphery functions, what I did was move Paul out of his Director of Classification job and ask him to oversee all these functions for me. So in the following nine year period Paul took on all these functions and was the overall Director of each of the individuals functions and reported directly to me.

Paul retired in 2004/2005. We're in the 5th year since he retired. I did not fill Paul's position. He actually functioned as a deputy to me. I'm the only department head that doesn't have a deputy. And Paul's role was in effect my right arm. When he retired, we did not seek to fill his position. We divided the responsibilities up among other people in my department, but these functions were moved. So I did not have to worry about them.

With the function being in Yaphank, I don't have a person any more who can oversee the day to day operation. The only one that would be able to do that would be myself. And I certainly do not have the time to oversee a print shop and a mailroom. So, the only way, if the Leg chooses to do this despite what I'm saying today, obviously I'm going to do the best job I can to run the print shop and the mailroom, but I would probably have to go to the Budget Office and ask them to add a position to my budget who could serve in the role of over sighting the print shop and the mailroom.

So that is my feeling on it. I'd appreciate you taking that into consideration when you make your decision. And I'm happy to answer any questions.

CHAIRMAN D'AMARO:

Okay. Thank you. Who's overseeing the operation of the print shop right now, if you know?

DIRECTOR SCHNEIDER:

The print shop is overseen by people in Public Works. I would assume it's being overseen by -- they have a couple of deputies over there. They have administrative directors. I'm not sure of the hierarchy from the actual print shop to the commissioner. I don't know the answer to that.

CHAIRMAN D'AMARO:

All right. But one thing you do know the answer to is that if the print shop were moved under your jurisdiction, you would need additional personnel to oversee it.

DIRECTOR SCHNEIDER:

I would need, Legislator D'Amaro, I would need one person who I could assign to basically oversee the -- oversee the print shop and the mailroom functions, yeah. I mean my staff right now is basically at the bear bones as is everyone else in this county. And the people that work for me, they're all liaisons to the various county departments, the school districts, the towns, the villages, the library districts. And they don't have the expertise that would be needed to oversee a print shop and mail room. I would have to get somebody who's got some specific knowledge of these areas.

CHAIRMAN D'AMARO:

Just one more question. When you say the transfer of an operation from one department to another, prior to today were you consulted with respect to whether or not you had the capacity or the personnel to carry out the function?

DIRECTOR SCHNEIDER:

Actually I was just given, I guess, you could say a heads up that a resolution might be put forth regarding this. And I mention that I don't think for me it would be a good idea or for the County. I just don't think a print shop and a mail room belongs to the Personnel and Human Resources operation. It belongs in Public Works. If not, in the General Services Operation.

CHAIRMAN D'AMARO:

All right. So, you've been consistent in what you've said here today. Then you don't think it's the right fit to move this particular operation into your department?

DIRECTOR SCHNEIDER:

I don't think it's the right fit. I don't have the resources to oversee it. But if the decision of the Leg is to move it, then, we will do the best job we can to make sure it works.

CHAIRMAN D'AMARO:

Okay. Legislator Viloría-Fisher. And then Legislator Nowick. Go ahead, please.

D.P.O. VILORIA-FISHER:

Thank you for being here. I just have a quick question. Regarding Paul Greenberg's position, he was protected by Civil Service, wasn't he? He had a Civil Service position?

DIRECTOR SCHNEIDER:

Yeah. Paul was in the -- for a longtime he was the Director of Classification for the department.

D.P.O. VILORIA-FISHER:

Right. And that's a Civil Service title.

DIRECTOR SCHNEIDER:

And then he moved into the administrative services title. It was a grade 37 position. It was the highest position in the department. Paul when he left was making approximately \$125,000. We save that money. It was not a one stop --

D.P.O. VILORIA-FISHER:

Actually you're giving me a longer answer than I asked for. And I know you're in a hurry.

DIRECTOR SCHNEIDER:

Okay, yeah, but Paul was in a -- Paul was in a protected Civil Service job, yes.

D.P.O. VILORIA-FISHER:

Okay. The reason I'm asking that is that I think there's concern regarding the independence of the person who's running the print shop. And I think that may be part of the impetus regarding this. There is protection for that person who's running the print shop. And so you -- but if you ask for Budget Review -- I mean our budget office for another position, then, I think it would probably not provide that kind of protection because it would be a new title. I don't know what kind of title it would be. Do we have a list? So I think we run into that kind of problem. Can you just comment on that? That's not really a question but am I correct we run into -- do we have a title for that position? And would you be looking for a Civil Service position if it were moved into your shop?

DIRECTOR SCHNEIDER:

I would, because I don't have provisional employees in my department so we would have to come up with an appropriate title.

D.P.O. VILORIA-FISHER:

You lead by example.

DIRECTOR SCHNEIDER:

We try to. We would try to come up with the most appropriate title at its lowest level to be able to oversee this operation. And by overseeing the operation, I really mean serving as a liaison for myself. I'm the only management employee in the entire department. And I would look to have someone as a liaison person to oversee the print shop in the mailroom.

Let me just go back during the years that it was under my jurisdiction, the main issues always came up because they do a lot of purchasing and there are a lot of contracts overseeing all of this. And just the day to day operations, supervision problems, etcetera, in that kind of operation that I would get involved in when it went above Paul's jurisdiction.

But today I don't have that luxury of having that person so that's why I say, yes, I would have to bring somebody in. We would look to get the appropriate title. We would bring somebody in from a Civil Service list. That person would be protected, but ultimately it wouldn't matter because the person would report to me. And, you know, I mean I serve as an independent officer of the County. And I understand what the general motivation was in making this move, but I can't look at it that way. I can only look at it from the standpoint of feasibility and also from the standpoint of how does this fit with what we do? It doesn't.

D.P.O. VILORIA-FISHER:

Okay. Thank you, Alan.

CHAIRMAN D'AMARO:

Okay, Legislator Nowick, please go ahead.

LEG. NOWICK:

I don't even know if this is the proper time to ask the question, but before I vote on this I just wanted to know does anybody -- was the print shop working okay? Is everything smooth at the print shop as you see it? Or does anybody know why we're moving it? Just a quick answer why would we be moving it from one to the other?

CHAIRMAN D'AMARO:

I don't know.

LEG. NOWICK:

If you know why, just enlighten me. Just before I vote so --

D.P.O. VOLARIA-FISHER:

The sponsor's not here, but I believe that there was a problem with the print shop choosing to edit or -- I'm not sure if I have all of the proper details on it, but there was a problem with a newsletter going out. And the print shop, I think, either editing or omitting something or holding back a news letter.

LEG. NOWICK:

So then the print shop was taking on too much of its own authority?

D.P.O. VILORIA-FISHER:

Yes. And, as I said, I don't have all the details. I wish Legislator Alden were here, but that was what I had understood to be his motivation. And that's why I was asking about the independence of the person who would oversee it.

LEG. BEEDENBENDER:

I'm not sure if that's exactly -- that wasn't exactly my understanding. I think what happened was that there was some information in the news letter that wasn't true. And Legislator Alden received a phone call to let them know that the information wasn't true, but I don't think it was stopped or delayed, although I wasn't there. But the version of the story that I heard was that there was

information that was believed to be incorrect, and a phone call was placed to Legislator Alden. And at that time I believe the newsletter was sent out as it was anyway without the correction. So I don't think there was an edit. I don't know if anybody else has that information.

MR. ZWIRN:

If I might.

D.P.O. VOLARIA-FISHER:

As I said, I didn't have all the details.

CHAIRMAN D'AMARO:

All right, Mr. Zwirn, can you shed some light on that?

MR. ZWIRN:

Yeah, I think Legislator Beedenbender's portrayal is what happened. There was a -- word got back to the County Executive that there was some information going out that we believe was inaccurate. And we notified the Legislator that he might want to change it beforehand because it was not correct. I don't believe anything was done, but it was not censored; it was not edited. But there was a phone call made and that may have precipitated this. But this has happened periodically. We get -- a bill like this get's filed, I think, over the last several years asking to have the print shop moved.

D.P.O. VILORIA-FISHER:

Was the newsletter held up, though, Ben, for a while all of this was transpiring?

MR. ZWIRN:

That I don't know. But I know all the newsletters that were scheduled to go out, went out. I know that.

CHAIRMAN D'AMARO:

Legislator Nowick, any other questions?

LEG. NOWICK:

No, that's it.

CHAIRMAN D'AMARO:

Okay.

DIRECTOR SCHNEIDER:

If I could just add one thing?

CHAIRMAN D'AMARO:

Sure.

DIRECTOR SCHNEIDER:

I just want to stress something. I mean I know the print shop. I know the mailroom. I know the employees because they work for me ten years. And whatever is being discussed here regarding newsletters certainly had nothing to do with any of the employees of the print shop or the mailroom. These are very, very hard working dedicated employees who work in a very confined atmosphere. The people that do the mail -- the mailroom work are the people you see getting this mail enter-office throughout the County. I hold all of them in the highest regard and certainly none of the -- whatever transpired with the newsletters had anything to do with any of the print shop or mailroom employees.

D.P.O. VOLARIA-FISHER:

I don't think I implied that.

CHAIRMAN D'AMARO:

No, I don't think you did.

D.P.O. VOLARIA-FISHER:

I don't think I implied that.

CHAIRMAN D'AMARO:

No.

DIRECTOR SCHNEIDER:

No.

CHAIRMAN D'AMARO:

All right. Thank you. The bill is pending before the Committee. You know, there may be a controversy or squabble over one of the newsletters in particular dealing with Legislator Alden. I know he's the sponsor of the bill and unfortunately he's not here today. But what we have before us is the Commissioner of the department that would be the receiving end of the print shop. And you're telling us that it's not the right fit, you don't have the person to oversee it, and that you prefer that it not come into your department. So on that basis, I'm going to offer a motion to table this bill. Seconded by Legislator Beedenbender. On the motion, anyone? I'll call the vote. All in favor? I'm sorry.

LEG. NOWICK:

Abstain.

CHAIRMAN D'AMARO:

Any opposed? Okay, Legislator Nowick abstains. The motion carries and the resolution is tabled. **(Vote: 3-0-1-1. Leg. Alden not present. Leg. Nowick abstains)**

Alan, thank you.

DIRECTOR SCHNEIDER:

Thank you very much for moving this up for me. I appreciate it. Thank you.

CHAIRMAN D'AMARO:

Yeah, happy to accommodate, no problem.

PUBLIC PORTION

Okay, we're going to go back now to the regular order of the agenda. The next item is the public comment section. All right. And I do have one card this morning and it is submitted by Ester Bivona. Ms. Bivona, good morning, welcome back. And the Committee appreciates you taking the time out of your busy day to come down here and help us out a little bit. So please go ahead. You have three minutes.

MS. BIVONA:

Thank you. First of all, I just would like to share with the Committee that this is Ovarian Cancer Awareness month. I am an ovarian cancer survivor. I was diagnosed when I was 55 years old. I am now officially a survivor; however, there are many people who are not. Ovarian cancer is the deadliest form of gynecologic cancer. I have a friend who unfortunately was diagnosed at age 28 and died just short of her 35th birthday last week.

What I would like to do is share with you some information on ovarian cancer. I ask you to share it with all the women that you know, all the women that you love and please take it seriously. It is a very silent killer of women.

My second reason for being here today is to speak on introductory resolution 1574, which directs the tax receivers to include a statement on interest and penalty calculations on the tax bill. If you look at your tax bill, by law that statement is on the back of the bill as it is listed in the law directly. It is exactly the language of the law. We also in my town, which is Huntington, have it on our instruction sheet. We have it included in a flier that we give out to new owners. And we have it on our reminder letter that goes out in April to the taxpayers.

I was here about two weeks ago and we talked about the MTA legislation. And you're asking -- we've been directed to add a very long statement to the back of our tax bill for MTA. We can't do that. I mean, we have been told by the printer that it will not fit. And I find that adding yet another statement to the back of the tax bill is just wasteful and inappropriate. And I would hope that you would take that into consideration when you review this legislation. Thank you.

CHAIRMAN D'AMARO:

Yes. Ester, if you have a few more minutes, we might have a few questions. Legislator Beedenbender wanted to go. Go ahead.

LEG. BEEDENBENDER:

Thank you, Ester. This statement is on there already, though, right?

MS. BIVONA:

Absolutely.

LEG. BEEDENBENDER:

It's on the back.

MS. BIVONA:

Yes.

LEG. BEEDENBENDER:

So this would just put the same thing on the front.

MS. BIVONA:

Well, it doesn't say where we put it, but, yeah.

LEG. BEEDENBENDER:

Okay. But it's on there?

MS. BIVONA:

It's already on there. And actually the legislation -- the language of the legislation is incorrect. It talks about assessing interest and penalties calculated with a starting date of February 1st. The penalty is imposed as of May 31st. The interest is calculated on the tax plus the penalty so the language is really not right and it's a little confusing.

LEG. BEEDENBENDER:

I think that might have been amended because I believe our colleague who is a former tax receiver brought that up. I believe Legislator Nowick brought that up earlier. I think that might have been amended. So it says May 31st now. I seem to remember that discussion.

CHAIRMAN D'AMARO:

Well, the amended copy I have says "please be advised that any unpaid tax payment due on May 31st shall be assessed interest and penalties calculated with a starting date of February 1st." Is that

correct?

MS. BIVONA:

No. The -- only the interest is calculated back to February 1st. The penalty is assessed as of May 31st.

LEG. BEEDENBENDER:

Okay.

CHAIRMAN D'AMARO:

If the penalty is assessed on May 31st --

MS. BIVONA:

After May 31st, the next business day.

CHAIRMAN D'AMARO:

June 1st, let's say, next business day. And it's not immediately paid, does interest begin to accrue also on the penalty?

MS. BIVONA:

Yes.

CHAIRMAN D'AMARO:

It does. But does the interest accrue from February 1 on the penalty also or does it accrue from June 1?

MS. BIVONA:

No. It's a flat penalty charged -- for example, you have a thousand dollar tax bill and you owe penalty on that of \$100.

CHAIRMAN D'AMARO:

On June 1st?

MS. BIVONA:

As of June 1st.

CHAIRMAN D'AMARO:

Right.

MS. BIVONA:

The interest is calculated on that \$1100.

CHAIRMAN D'AMARO:

From February 1.

MS. BIVONA:

From February 1.

CHAIRMAN D'AMARO:

Okay. So in effect you're paying interest on the overdue amount and the penalty from February 1?

MS. BIVONA:

Yes.

CHAIRMAN D'AMARO:

Interest and penalties.

LEG. NOWICK:

Lou.

CHAIRMAN D'AMARO:

Legislator Nowick.

LEG. NOWICK:

Hi, Ester. Thank you for coming. I have copies of at least two tax bills. One is from the Town of Smithtown; one is from the Town of Huntington. I don't think it could be any more clearer on the back, but -- and, Ester, you will agree with me nobody every flips it over, but it is there. You can't have it all on the front but it is so -- it is clear those penalties are listed quite -- almost the same way on the Town of Huntington and the Town of Smithtown. And I think from -- there was testimony not long ago that every tax -- I think Lynn {Azzara} said every bill in Suffolk County does have that information.

MS. BIVONA:

It's required.

LEG. NOWICK:

It's clear, yeah.

MS. BIVONA:

It is required by state law.

CHAIRMAN D'AMARO:

So you feel the tax bill makes it very clear that if I don't pay my second half tax by May 31st, the back of the tax bill tells me that I will incur a penalty beginning on -- that I will incur a penalty, that interest will accrue on the penalty, an overdue amount retroactively to February 1st?

MS. BIVONA:

Yes.

CHAIRMAN D'AMARO:

That's on the bill.

MS. BIVONA:

Yes, and with all the other materials that we send out to the taxpayer. We do -- for the most part most towns send out a reminder notice in April. And that also states that payments after May 31st must be made to the Suffolk County Treasurer including penalty and interest. And some people refer them back -- to the back of the tax bill. We have it on our bills. We have it on our website. I don't know where else to put it.

LEG. NOWICK:

Lou, if I may. Let me just read you and I think it's pretty clear. "Second half to be paid at this office." That's the Tax Receiver's Office "without penalty until June 1st", whatever year it is. "After which date all bills must be paid to the Suffolk County Treasurer" and it gives the address, you know, "plus penalty of 5% interest on total unpaid taxes and penalty at the rate of 1% per month or part thereof from February 1st."

CHAIRMAN D'AMARO:

From February 1st. It says February 1.

LEG. NOWICK:

And then it says a "\$20 tax sale advertising charge per item will be included after August 31st." That's just a little known fact.

CHAIRMAN D'AMARO:

All right. Well that clarifies it in my mind. Are there any other questions? All right.

LEG. BEEDENBENDER:

I'll offer a motion to table.

CHAIRMAN D'AMARO:

Motion to table by Legislator -- well, I don't think that we've reached that part of the agenda yet so --

LEG. BEEDENBENDER:

Right. I'm sorry.

CHAIRMAN D'AMARO:

So, Ms. Bivona, thank you very much. That was very helpful to clarify that for us. All right. Is there anyone who would like to address the Committee this morning? Anyone else? Okay, for the record there's no response.

PRESENTATIONS

All right, the next part of the agenda are presentations. I have invited the Suffolk County Attorney's Office, and the Suffolk County Attorney's present this morning, Christine Malafi, to update us on the status of the litigation that was authorized by the County against the various smoke shops at the Poospatuck Indian Reservation for back sales tax as damages as well as injunctive relief compelling those smoke shops to collect sales tax going forward on the sale of cigarettes.

So I've invited the County Attorney here this morning to give us a quick update on the status of our own litigation and also to fill us in on a couple of other lawsuits that are relevant to our litigation, how they affect what the County is trying to do. So, Ms. Malafi, good morning and welcome.

MS. MALAFI:

Good morning. Thank you. The sale of cigarettes -- untaxed cigarettes by Indian reservations across the state have been in the paper recently. So I thought that instead of everyone guessing how each of these cases affect the County's litigation, I would just come in and give you an update.

Presently the County has two litigations pending with respect to sales of untaxed cigarettes on the Poospatuck -- two lawsuits. The first lawsuit is against the smoke shops on the Poospatuck Indian Reservation which are operated by members of the Poospatuck Reservation but are not operated by the tribe itself. They sell bulk cigarettes to anyone who comes into the shop without applicable sales tax so without New York State sales tax or Suffolk County sales tax being added in.

In that lawsuit, which we started in January of this year, the defendants have made a motion to dismiss based upon what they claim to be sovereign immunity; that the County has no authority over anything that happens on the reservations.

They made the same motion in a lawsuit brought by New York City against the same defendants. And that motion was denied by the Court. The Court said there is no sovereign immunity for the smoke shop owners because it's not the tribe running the smoke shops. And there is a question as to whether or not state law applies. We anticipate since the case was assigned to the same judge that we will get the same order denying the motion to dismiss. We're waiting for that.

The second case was brought in June of this year against the cigarette wholesalers who sell to the reservation in bulk saying that you can't -- because of the way New York State tax law is written for cigarettes, what happens is before the wholesaler sells them to the smoke shop, they're supposed to have a stamp on the package that says that the New York State sales tax was paid. And the sales

tax is then passed along at each step of the way.

It's our position that when the wholesaler sells the amount of cigarettes that they sell to the smoke shops on the reservation, they know that everyone is circumventing the New York State sales tax and hence the Suffolk County sales tax and that they shouldn't be doing that. We've asked the Court to enjoin them from selling in bulk to the Poospatuck Reservation.

One of the wholesalers has made a motion to dismiss. The court has said -- has denied the motion to dismiss and has told the wholesalers to make a motion for summary judgement in the case so that it can just be flushed out without having to go through discovery. And that's where we are with that case.

New York City has the same -- like I said, the same two pending cases. And they are a little bit ahead of us. They started their lawsuits about a year before we did. And in their case against the smoke shops on the reservation, they were just granted a preliminary injunction prohibiting the Poospatuck Indian Reservations from selling untaxed cigarettes for 30 days unless it's to a member of the tribe. So as of right now the Poospatuck Indiana Reservations are under court order not to sell untaxed cigarettes. The judge gave the stay barring the sale for 30 days while the Indian Reservation smoke shops go up to the Second Circuit Court of Appeals and ask for a further stay pending appeal.

They have not -- the Indian Reservation smoke shops have not made that motion yet. We've already been in contact with the New York City Department of Law and told them that Suffolk County will participate as amicus in that appeal to have the stay remain in effect.

And in speaking to New York City and in speaking with other entities that are trying to help us along with this issue, we have been told that the numbers will document, once the sales -- the bulk sales and the individual sales on the reservation stop, that the businesses in the surrounding area in Suffolk County will see an increase in cigarette sales which means an increase in the tax collected by the State and Suffolk County.

I want to mention one other case. Upstate New York the Cayuga Indian Nation was successful in a lawsuit against the state. The Fourth Department of the Appellate Division, which is the intermediate Appellate Court in New York State, issued an order saying that New York State could not force the Indian Reservation smoke shops to collect the state sales tax. That case made the papers as a win for the Indian Nations.

The federal court in issuing the injunction in the New York City case specifically had that case in front of it and said they are not following the Fourth Department case, that the Fourth Department case was wrongly issued, that the dissent in the Fourth Department case should be found to be the prevailing legal opinion. And so the Fourth Department case siding with the Indian Nations should not affect our cases at all. That case, not only is it our position it was wrongly decided, that case was based only on the New York State tax law. Our lawsuits are not based solely on the New York State tax law. They are also based on the federal cigarette -- Contraband Cigarette Trafficking Act, so we have a different basis, where our our lawsuits are based on federal law as well as state law. So we feel very confident in the ultimate success of our lawsuits.

And just to give you an idea of how much money is involved in our case, one of the defendants who run a smoke shop on the Poospatuck Indian Reservation was convicted a couple of years ago for violating the tax laws in the sale of cigarettes. And the federal government seized \$64 million cash that he had sitting in various bank accounts. So it's a very profitable business.

We are working with the Suffolk County Police Department and the US Attorney's Office for the Eastern District to make sure that that money is not distributed on the final order of forfeiture without us at least getting to put in our two cents to see if we can get some of that forfeited money.

CHAIRMAN D'AMARO:

Okay, couple of questions. The litigation that's pending right now that was commenced by the County of Suffolk is solely in federal court. And there's a sister lawsuit that came earlier from New York City that's very similar under the same federal statutes that we're using in our litigation as the city is using as well. And there's that recent federal court decision that now says quite clearly that the federal courts believe under federal law that the smoke shops are under an obligation to collect sales tax when selling cigarettes to non-tribal members. That may or may not be appealed. We're still waiting to hear whether or not the defendants, the smoke shops are going to appeal that particular ruling. Is that correct?

MS. MALAFI:

Yes, we're waiting for the papers. But according to newspaper reports their attorney said that they will be appealing.

CHAIRMAN D'AMARO:

Okay. Now let's assume -- so you have that on one side, the federal courts seem to be coming down in favor of collection of sales tax under the interpretation of federal law. On the other side you have a state court, Upstate New York, siding with the non-collection of sales tax. But the federal courts are saying that case is wrong. And if it goes to the Court of Appeals, the highest state court, the federal courts are urging that highest court in New York State to disregard that decision and side with the dissent and overrule it in effect; correct?

MS. MALAFI:

Yes.

CHAIRMAN D'AMARO:

So it seems like our litigation at least is in a strengthened position with these various cases that are coming down; is that correct?

MS. MALAFI:

Yes.

CHAIRMAN D'AMARO:

Okay. What happens if the state court litigation proceeds to an appeal -- the Court of Appeals, the New York State Court of Appeals says *we're not going to listen the federal courts, we're going to uphold the Fourth Department decision, the various smoke shops do not have to collect sales tax*. At the same the federal court ruling gets upheld saying they do under federal law. How do you resolve the conflict? How does that affect Suffolk County? House does it affect our action to collect the damages which, in effect, are the sales tax due over the last several years?

MS. MALAFI:

We are still proceeding based upon the federal law. So the federal court has the ability to even disregard the New York State Court of Appeals and wind up in the United States Supreme Court, I assume. I will say that the federal lawsuit -- I'm sorry, the federal law does refer to the state law to collect taxes. And the problem is that the New York State Tax Law expressly states that Indian Reservations can sell untaxed cigarettes to other members of the Indian Nation. But they must collect sales tax against non-Indians. And that is what we've been relying on and that's what the federal court relies on.

In the state actions the theory is that because the New York State Department of Tobacco and Firearms has not implemented a system to collect those taxes on cigarettes sold to non-tribal members, that it's unenforceable. And it's always been the City's position and our position that that simply's not the case. The New York State Tax Law is not dependent on a separate mechanism for the collection. It's already in there. There's already a mechanism in place that satisfies the federal law. And that is our argument in the federal court.

CHAIRMAN D'AMARO:

Okay, so we're proceeding along then with that litigation. Ultimately if there's a conflict between the federal court decisions and the state court decision, it has a good chance of going all the way up to the United States Supreme Court for a final resolution on this issue.

I just want to ask you one other question. During the debate of the bill, which I was the prime sponsor of, to commence the litigation, we heard testimony from the head of the tribe, in fact, claiming sovereign immunity. And you mentioned in your opening remarks that, in fact -- I think you said the federal courts have now determined that sovereign immunity, which would shield these smoke shops from a lawsuit, in fact does not apply to these privately owned smoke shops. It only applies if a tribe were running the shops and, I assume, deriving a profit from the shops themselves, which they don't do. So that initial claim of sovereign immunity, are we past that now or is that something that can still stop this dead in its tracks?

MS. MALAFI:

There's a possibility it could stop it in its tracks because there is a separate motion in our case on the same basis. We assume that since the same judge is hearing the motion to dismiss in our case, that they will find that there is no sovereign immunity. It's the same tribes, the same arguments. The tribe made the motion, even in the face of the denial of their motion, the city case. So we do not see it as an obstacle at all. We're just waiting for the order denying the motion.

CHAIRMAN D'AMARO:

And that motion is pending for a decision right now in our case?

MS. MALAFI:

Yes.

CHAIRMAN D'AMARO:

Okay. Final question for me. If we win, we're claiming damages. What's the likelihood of collecting them and how much would they be?

MS. MALAFI:

I do not know the numbers. We're still waiting for the paper work from the New York State Department of Tobacco and Firearms with respect to the exact amount of cigarettes that have been sold to the reservation. There's paper trail for every carton of cigarette that sold. We're still waiting for the state. I just spoke with someone from the state last week. And they said they were still gathering all the information. And then it would just be a matter of calculations. I can't tell you what our likelihood of success with collecting the money once we get it on paper. But, like I said, at least one of the defendants in the lawsuit had \$64 million sitting in various bank accounts that was seized by the federal government. So I'm assuming that some of these other defendants have money sitting other places. And if we need to follow it to see if they put it in other people's names, transferred money, if it's hidden, you know, we'll do everything we can to try to find it.

CHAIRMAN D'AMARO:

Okay. Thank you. Are there any questions from any member of the Committee? If not, Christine, thank you for bringing us up to date.

MS. MALAFI:

Thank you.

CHAIRMAN D'AMARO:

I appreciate it.

TABLED RESOLUTIONS

Okay. The next item on the agenda are tabled resolutions. The first is resolution number **1574 of**

2009, directing town tax receivers to include a statement on interest and penalty calculations on tax bills. (Alden)

LEG. BEEDENBENDER:

Motion to table.

CHAIRMAN D'AMARO:

Motion to table by Legislator Beedenbender. I'll second. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

INTRODUCTORY RESOLUTIONS

The next section on the agenda **Introductory Resolutions, 1728-2009, authorizing certain Technical Corrections to Adopted Resolution No. 565-2009. (Co. Exec.)**

LEG. BEEDENBENDER:

Motion.

CHAIRMAN D'AMARO:

Motion to approve and place on the consent calendar by Legislator Beedenbender. I'll second. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present and placed on Consent Calendar)**

No 1729-2009, approving payment to General Code Publishers for administrative Code Pages. (Pres. Off.) WAYS & MEANS

LEG. BEEDENBENDER:

Motion to approve and place on the consent calendar.

CHAIRMAN D'AMARO:

Motion so made. I'll second. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

1733 of 2009, this is for sale of County-owned Real Estate pursuant to section 72-n of the General Municipal Law (the Central Islip Union Free School District) (SCTM No. 0500-099.00-02.00-082.000). (County Executive). This property is located in Islip, being used by the school district or acquired by the school for highway purposes. I'll offer a motion to approve.

LEG. BEEDENBENDER:

Second.

CHAIRMAN D'AMARO:

Second by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

1734-2009, authorizing the sale, pursuant to Local Law No. 16-1976, of Real Property acquired under Section 46 of the Suffolk County Tax Act Kathy Swedalla (SCTM No. 0400-238.00-02.00-025.000). (County Executive) I'll offer a motion to approve and place on the Consent Calendar. This is a redemption as a matter of right. Second by our Vice Chair Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries. (Vote: 4-0-0-1. Leg. Alden not present)

1735-2009, authorizing the sale, pursuant to Local Law No. 16-1976, of Real Property acquired under Section 46 of the Suffolk County Tax Act Suffolk Environmental Property Holding Corp. (SCTM No. 0200-984.60-03.00-030.000). (County Executive) I'll offer the same motion, same second. And without objection same vote. (Vote: 4-0-0-1. Leg. Alden not present)

Next is **1736-2009, authorizing the sale, pursuant to Local Law No. 16-1976, of Real Property acquired under Section 46 of the Suffolk County Tax Act Robert Stanzoni a/k/a Robert J. Stanzoni (SCTM Nos. 0200-852.00-03.00-022.000, 0200-853.00-01.00-081.000, 0200-853.00-08.00-058.000, 0200-881.00-03.00-033.001, 0200-881.00-04.00-037.000, 0200-937.00-06.00-025.000, 0200-978.90-04.00-057.001, 0200-978.90-04.00-057.002).** (County Executive) Same motion, same second, same vote. (Vote: 4-0-0-1. Leg. Alden not present)

Okay, next is **1738-2009, authorizing the sale, pursuant to Local Law No. 16-1976, of Real Property acquired under Section 46 of the Suffolk County Tax Act Stanzoni Realty Corp. (SCTM Nos. 0200-823.00-08.00-046.000, 0200-853.00-02.00-014.000, 0200-978.90-04.00-052.000).** (County Executive) Same motion, same second, same vote. (Vote: 4-0-0-1. Leg. Alden not present)

1739-2009, sale of County-owned Real Estate pursuant to Local Law No. 13-1976 James Prianti and Nancy Prianti (SCTM No. 0200-882.00-02.00-043.000). (County Executive) This is a parcel in Brookhaven sold to an adjoining owner for \$3500. It's a forty by a hundred. I'll offer a motion to approve.

LEG. BEEDENBENDER:

Second.

CHAIRMAN D'AMARO:

Second by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries. (Vote: 4-0-0-1. Leg. Alden not present)

1763-2009, Adopting Local Law No. -2009, A Local Law to amend Resolution No. 673-2009, A Local Law Requiring Fairness in Cooperative Home Ownership. (County Executive) Requires a public hearing. I'll offer a motion to table, seconded by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries.

1767-2009, sale of County-owned Real Estate pursuant to Local Law No. 13-1976 Wayne Robinson and Cathy Robinson, joint tenants with rights of Survivorship (SCTM No. 0200-426.00-06.00-077.001). (County Executive) This is a property located in the Town of Brookhaven being sold for \$750. I did have a question on this. Ms. Greene, good morning.

MS. GREENE:

Good morning, Mr. Chairman.

CHAIRMAN D'AMARO:

Good morning and thank you for joining the Committee this morning. I just wanted to ask you, I looked at the tax map and it seems that although this property adjoins the successful bidder, it barely adjoins. It seems that it runs to a different street. And I was questioning whether or not it would be appropriate to sell to a property owner who, in effect, I think had access to another street through this parcel if you're familiar with it. Unless I'm reading the tax map wrong, it seems to me that this adjoins back to back, as we say, as opposed to adding onto your side yard or your front yard. And would that create more problems than it solves?

MS. GREENE:

There were only two adjoining property owners identified to whom the bids were sent. And there was no response from the other adjoining property owner. So this person is contiguous to that lot; to that property.

CHAIRMAN D'AMARO:

The adjoining owner -- the successful bidder's property fronts on Hudson Street; is that correct?

MS. GREENE:

Their address is 22 Hudson, correct.

CHAIRMAN D'AMARO:

Right. And the property that we are auctioning fronts on Clark Street, doesn't it?

MS. GREENE:

Let me just verify with the tax map if you can give me one minute.

CHAIRMAN D'AMARO:

Sure, take your time.

MS. GREENE:

Correct, the subject parcel is fronting on Clark Street. And the successful bidder is on Hudson Street. I do have in the background, and I don't know if it was also supplied to you, a note that a deed covenant will be included. Do you have that? *Per covenants and restrictions in the deed the subject premises will be conveyed as one common parcel.*

CHAIRMAN D'AMARO:

Right. It would not -- it would not -- it would be the standard covenant that we put on these auction properties. But if the lots on either side that front on Clark Street are developed, let's say, are single family homes, is it going to create a problem for those homeowners giving someone who lives on Hudson Street access through their side yards to another street? It just seems to me that that may create problems for those adjoining owners. Although those adjoining owners on Clark Street would probably -- must have been invited to bid.

MS. GREENE:

Yes. Again, the parcel, as you can see, is 15 by 98, so I don't believe there will be any allowance for a road opening for any municipality that would require a minimum lot size.

CHAIRMAN D'AMARO:

Right. But if I live on Hudson Street and I bought this property, I could walk through that property to Clark Street, in effect, through my -- the two adjoining neighbors' yards.

MS. GREENE:

Correct.

CHAIRMAN D'AMARO:

You know, I think it just might be a privacy issue to sell something that's configured in this way. Would you have any opinion on that?

MS. GREENE:

Just looking at the aerial, if you have that, I can provide that for you. And it does show that it does adjoin their backyard. It doesn't look like there would any type of disturbance with vegetation or pavement.

CHAIRMAN D'AMARO:

All right. Thank you, Ms. Greene, I appreciate your help on that. I just don't think that it really makes sense to in this type of cookie cutter subdivision to give someone fronting on one street access to the other street right through people's back yards, so.

LEG. BEEDENBENDER:

Mr. Chairman, I apologize for not having the answer for this right now. This is a parcel in my district. And I would appreciate the opportunity just to -- if we can table it one cycle. I'm not sure what the bidder, his intentions are, but I know this neighborhood particularly well. And it is pretty

cut up. And I'm not sure what this access would be for, if it's going to cause a problem; so I just would like the opportunity to talk to a couple of the neighbors and see what we can find out.

CHAIRMAN D'AMARO:

So that's a motion by Legislator Beedenbender to table, seconded by Legislator Vilorio-Fisher. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

Next is **1768-2009, Sale of County-owned Real Estate pursuant to Local Law No. 13-1976 George Doumanis (SCTM No. 0200-056.00-03.00-020.001)** Property located in Brookhaven. It's a tiny parcel selling for \$10. I'll offer a motion to approve. Is there a second?

LEG. BEEDENBENDER:

Our budget problems are solved.

LAUGHTER

CHAIRMAN D'AMARO:

Second by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

Next is **1769, Sale of County-owned Real Estate pursuant to Local Law No. 13-1976 David Kachmar and Kathy Kachmar (SCTM No. 0500-048.00-02.00-037.000). (County Executive)** This is property located in Islip; it sold for \$2200 to an adjoining owner. It's an irregular shaped parcel not subject to any type of -- or conducive to development. I'll offer a motion to approve, second by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

The next is **1770-2009, sale of County-owned Real Estate pursuant to Local Law No. 13-1976 Jarn, LLC (SCTM No. 0200-973.80-06.00-002.000). (County Executive)** Property located in Brookhaven, sold to an adjoining owner for 13,200. And I did have a question on this parcel as well, Ms. Greene. This is a parcel located in Brookhaven that's 50 by a 100. It seems to be part of a residential subdivision, although I don't have an aerial. And I wanted to know whether this was considered for development of workforce housing.

MS. GREENE:

Let me just find it on there. We are very aware of your proposal, Legislator D'Amaro. And it does also require that there be a requirement for a front footage for a road. So I'm just going to see if it is on a paper street or if it's on a developed street.

CHAIRMAN D'AMARO:

It looks like it fronts on an open road. It's a corner lot. The side yard street may be a paper street. It's being sold to a corporate purchaser. And that purchaser owns lot three, the adjoining lot. Do you know if that lot is developed?

MS. GREENE:

I can show you the aerial and again the front 50 part would be on what is not a developed street. So normally that is what lets us not have it follow your Local Law Three because it doesn't meet that front foot requirement, but if you'd like, I can either show you the aerial --

CHAIRMAN D'AMARO:

All right. So you're saying that -- how do you say it this? Eck Street, E-c-k, that is not an open road?

LEG. BEEDENBENDER:

The aerial's behind it.

CHAIRMAN D'AMARO:

That's interesting the adjoining owner doesn't have any road access to lot number three. And if this gives access to the open street, then is the bidder aware of the covenant that would restrict development?

MS. GREENE:

Mr. Chairman, did you want to see the aerial?

CHAIRMAN D'AMARO:

I have it. Thank you.

MS. GREENE:

This would be substandard according to Brookhaven zoning.

CHAIRMAN D'AMARO:

I'm sorry?

MS. GREENE:

This would be considered substandard according to Brookhaven town zoning code.

CHAIRMAN D'AMARO:

Right. But my law specifically was crafted to accommodate substandard -- slightly substandard parcels minimum 50 by a 100.

MS. GREENE:

Correct.

CHAIRMAN D'AMARO:

And this lot fronts on an open road. The subject lot fronts on an open road whereas the bidder's lot has no access.

MS. GREENE:

In the Division's review for compliance with Local Law Three, we are very aware of making sure that the property fronts on a 50 foot approved road, that it is in conformity with the surrounding area. In reviewing this, we would probably have surmised that from the aerial this is a vacant lot surrounded by vacant lots, across from vacant lots on a paper street.

CHAIRMAN D'AMARO:

It's on a paper street. It looks like it's an open road that fronts along the side.

MS. GREENE:

The arrow pointing to what would be the southern boundary?

LEG. BEEDENBENDER:

Yeah, I think the difference here is that, I think, Legislator D'Amaro's saying that the longer edge of the property faces what is a -- appears to be an actual street. The shorter side of the property faces what is a paper street. And I guess the question we would have here is which one are you using? I mean 50 by 100 isn't substandard. I mean there are 50 by 100 lots in Brookhaven, especially in this area.

MS. GREENE:

But town zoning, that would be considered substandard.

CHAIRMAN D'AMARO:

Right, it would be. But it may have likelihood of succeeding in getting a variance given the character of the surrounding community. And this lot does have access to a public road. It does front on a

public open street. So if we're selling the lot to an adjoining owner that landlocked with a covenant that you cannot develop the parcel that gives you access to a street, I guess the question is what's the point? I question whether or not the owner, the bidder here knows that the terms of sale would include a covenant prohibiting any improvement of the parcel. The bidder may believe that if I pick up this parcel, I gain access to the street and I can develop the parcel. And that would not be the case.

MS. GREENE:

The resolution requires that any development be in conformance with local zoning.

CHAIRMAN D'AMARO:

Well, the successful bidder would get a standard parcel, a conforming parcel. The problem is it would have a covenant on it that you can't develop it. All right. What I would recommend is maybe we can table this for a cycle just to think it through and take a closer look at it. I'm going to offer a motion to table 1770 of 2009, second by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)** Ms. Greene, thank you.

The next **resolution is 1776-2009, Adopting Local Law No. -2009, A Charter Law updating the Suffolk County Charter as recommended by the Charter Review Commission.**

(Presiding Officer) Requires a public hearing. I'll offer a motion to table, seconded by Legislator Nowick. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

1778, Adopting Local Law No. -2009, A Local Law implementing the Charter Revision Commission's recommendation regarding the terms of the Presiding Officer and Deputy Presiding Officer. (Presiding Officer) This requires a public hearing. Motion by Legislator Vilorio-Fisher to table, I'll second. All in favor? Any opposed? Abstentions? Motion carries. **(Vote: 4-0-0-1. Leg. Alden not present)**

I'll offer a motion now to proceed into executive session to discuss the possible settlement of pending litigation.

LEG. BEEDENBENDER:

Second.

CHAIRMAN D'AMARO:

Second by Legislator Beedenbender. All in favor? Any opposed? Abstentions? Motion carries.

EXECUTIVE SESSION FROM 11:10 AM TO 11:30 AM

CHAIRMAN D'AMARO:

Okay. We're out of Executive Session back on the record. And for the record in the case of {Taffner} versus McDermott and County of Suffolk the Ways and Means Committee in Executive Session has unanimously approved a settlement of that action.

No other business before the Committee, I'll offer a motion to adjourn, second by Legislator Beedenbender. All in favor? Opposed? Abstentions? We're adjourned. Thank you.

**THE MEETING CONCLUDED AT 11:30 AM
{ } DENOTES SPELLED PHONETICALLY**