

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, Veterans Memorial Highway, Smithtown, New York, on Wednesday, January 26, 2011.

MEMBERS PRESENT:

Legislator Ricardo Montano - Chairman
Legislator Steve Stern - Vice-Chairman
Legislator Kate Browning
Legislator John Kennedy
Legislator Lynne Nowick
Presiding Officer William Lindsay - Ex Officio Member

ALSO IN ATTENDANCE:

George Nolan - Counsel to the Legislature
Gail Vizzini - Director - Budget Review Office
Robert Lipp - Deputy Director - Budget Review Office
Renee Ortiz - Chief Deputy Clerk of the Legislature
Ben Zwirn - County Executive's Office
Denis Brown - County Attorney's Office
Christine Malafi - County Attorney's Office
Paul Perillie - Aide to Majority Caucus
Linda Bay - Aide to Minority Caucus
Legislator DuWayne Gregory - 15th Legislative District
Jason Richberg - Aide to Legislator Gregory
Marge Acevedo - Aide to Presiding Officer Lindsay
Dot Kerrigan - AME
Diana Weir - Long Island Housing Partnership
Frances Picone - Young Adult Alliance
All other interested parties

MINUTES TAKEN BY:

Donna Catalano- Court Stenographer

(*THE MEETING WAS CALLED TO ORDER AT 10:25 A.M.*)

CHAIRMAN MONTANO:

We're going to call the meeting of the Ways and Means Committee to order starting with the Pledge of Allegiance led by Legislator Steve Stern.

SALUTATION

Let's just take a moment of silence for the New Year and all the men and women serving in the Armed Forces.

MOMENT OF SILENCE

Thank you. Have a seat. I want to welcome all of you to the first committee meeting of the Ways and Means Committee for 2011. And with that, we're going to get right down to business. I have no correspondence, but we do have two cards from members of the public. First one is Diana Weir from the Long Island Housing Partnership, and she is going to discuss Legacy Village. Diana, how are you? Happy New Year.

MS. WEIR:

Good morning. Happy New Year. Mr. Chairman, Members of the Committee, thank you for allowing me to speak. I think I'm going to be in two different areas here, because it's personal as well as you know, that we support affordable housing on Long Island. I really don't want to get into the political part of this, because it's above my pay grade, and you and the County Executive will finally decide the disposition of this property and what is to be done. And I wish you God speed with that.

But I do want to say just a couple of things. I think it's important that this process be allowed to go through. We did spend \$400,000 to have an Environmental Impact Statement, and I don't know how far along it is, but it must be pretty close to ending. And just a thought, we're not making any more land on Long Island. And this is a tremendous asset for the County and for the people of Suffolk County. So I just ask that you use judgment and caution in trying to dispose of this land quickly.

And I know what the issues are. And like I said, don't want to get involved in that. But we aren't making any more land. It is an important asset. And property values are about at the bottom of where they're going to be. So if I were a landowner, I would be waiting for those property values to go up, which they will inevitably. But I wish you God speed in your decision. And I thank you for allowing me to speak. And my question or request is that respectfully you table this and allow more time for judgment. Thank you so much.

CHAIRMAN MONTANO:

Diana, if you would, I believe Legislator Browning has some questions.

LEG. BROWNING:

Good morning, Diana.

MS. WEIR:

Good morning.

LEG. BROWNING:

You know the project is planned for my district, and you know I spoke with the developer about the affordable housing. And when I was told around \$300,000 for a unit, I didn't find that to be too

affordable. So one of the other concerns is the school district and the impact on the school district. And I think you may be aware about the AVR Development that's being scheduled, which is also in Longwood School District. So when you're talking about that much residential, it has a serious impact.

I do want to say thank you also Long Island Housing Partnership, because you guys have been working so hard in my district, especially in the Shirley-Mastic Community to take a lot of those foreclosures and turn them into first-time homeowner programs. But don't you think that's where we should be focusing our resources rather than open space, and especially in an area where Carmans River Watershed going on; some of that land could potentially wind up being environmentally sensitive and not qualify for development?

MS. WEIR:

I do agree with your point about the \$300,000 price. And as I mention, you know, prices are coming down, I mean, you know, sometimes throughout the Island. And that's why I mentioned about the sale of the land. So I don't know the disposition and the final disposition and whether it's a major development or you do sell it out of as an excess asset of the County, that's for you to decide. And respectfully, I will leave that up to you and the County Executive.

But I do feel important to keep that land until the values right and maybe let the environmental assessment go through -- the Environmental Impact Statement go through since we already paid for it. As far as, you know, the foreclosures and stuff, yes, we see a lot of that, and we are focusing as much as possible on that. But again, we are not making any more land. So we are now seeing, at least on our side, we're speaking to a lot of developers, including AVR. So we see that changing a little bit. And hopefully, that will come up, but again, I leave those decisions respectfully up to your board.

LEG. BROWNING:

And I think what the Presiding Officer has proposed is probably a better idea because it does create jobs, it could create jobs, not just for the building, but on a permanent basis where we would have some light industrial. And again, let's focus on our foreclosures. I mean, you know I am ready, willing and able to help and work with you to continue to do that. We need to make sure we need more money to do that.

MS. WEIR:

You've been a great partner, and we appreciate that. We're proud to be working with you. But again, I said these issues are left to the board. We support affordable housing wherever it's appropriate, but we feel that maybe we should wait a little bit on this and let some of the processes move forward. That's my own opinion. But I thank you for allowing me to speak.

CHAIRMAN MONTANO:

Diana, stay there. We have some questions from the Presiding Officer.

P.O. LINDSAY:

Good morning, Diana. How are you? I agree with you, I intend to table the resolution this morning until the EIS is done on a bigger project. Both could be before us at once. My intention is to get the greatest value from this property as we can. We think the deal for Legacy Village before us isn't very financially advantageous to the County. We think we could get more money selling it on the open market. And I don't want to -- I just want to excess the property. I want the private sector and the town to decide what's to be built there, when to be built there. It's a very simple resolution.

MS. WEIR:

I appreciate that, sir. Thank you for table it and allowing the process to more forward.

CHAIRMAN MONTANO:

Thank you. Next we have Frances Picone. And Frances is representing the Youth Adult Alliance Action Long Island, and she is going to discuss workforce housing mixed use centers.

MS. PICONE:

Good morning. Thank you for having me here today. Hi. This is my first time up here talking about this. Thank you for having me here today. As some of you may be aware, I was able to speak with the two County Executive's yesterday in a discussion regarding the Young Adult Alliance and our support and need for housing for young adults and young professionals on the Island for the future of Long Island.

As a young adult, I find it hard to afford a single-resident home here. I'm looking for a starter home, maybe a rental, a townhouse, a condo, and the supply is not there. The demand is there and the supply is not there, so I am for the development. I've been for a lot of the projects on Long Island that have this type of housing. I think it's a necessity and I believe that there are a lot of young adults as we noticed in the room yesterday when we were talking to the County Executives that there is a need.

We want to stay on Long Island. I'm born and raised here, I went to college here and I would love to live here and have a future here. And if you guys and everyone; the County Executives, the town officials could understand that and help us build it, then we will stay.

With regards to school districts, we know that that's an issue, but, you know, there are young kids here that are going to school, they're going to be educated in our school districts, and hopefully, you know, you keep them here. If you educate them -- why educate them here for them to go use that education elsewhere. You know, they should be here to build up with the future of Long Island. Thank you very much. Any questions?

CHAIRMAN MONTANO:

Thank you very much, but don't leave, because I think we have some questions for you. Legislator Browning.

LEG. BROWNING:

I think you heard me talk about Legacy Village plan being in my district. What do you think the biggest problem is with affordable housing? I have two children, one is 29, the other one is 26. Neither of them live here in New York. One, he's military, so that's why he is not here. However, why do you think that houses are not affordable here on Long Island?

MS. PICONE:

Well, I'm a college graduate. I am 28 years old. I've been passed the entry level position. I have a great job. I love what I do, but my salary does not allow for me to afford a house or put a down payment down. The high cost of living is a struggle. But I choose to live here. I want to stay here, but my salary does not allow me to pay for a house that's going to be \$3000 a month. I'm not married, I don't want to care for a lawn or fix light bulbs. I mean, I don't mind doing that in a condo or rental, but outside lighting and ladders and roofing, it's not what I can afford right now. Hopefully when I'm married and have kids, I can then upgrade to a single-family unit, but right now I just can't.

LEG. BROWNING:

But don't you think that the school taxes are probably the worst? You know, you're talking over

60%, close to 70% of a mortgage is school tax.

MS. PICONE:

I agree. And like I said, once I do have kids and married, then I will hopefully move to a single-family unit where then I would be paying taxes and then my kids would be going to the schools and my taxes will be going to those local schools. But right now, I am be renting -- I would like to rent, I would like to rent in these types of projects. I think that most of the -- the majority of the people that are in these starter homes do not have kids. If they do, they're paying taxes in a single-resident home.

LEG. BROWNING:

I can take you to a development in my district that that was what the intent was, but the people have called me, and they live in Longwood School District, and they've called me and said, "You know, I bought this as a starter with the intent to move out and buy a single-family home, but I couldn't afford it." And now they're living in a two bedroom apartment with sometimes three and four kids. So it's not always, you know, true that people can afford to move out of them. And that's in Longwood School District. You know, just be aware that if you put a thousand units of housing in one school district, it is going to have a serious impact on the school and property taxes are going to go up, and then you're going to say, "Well, I can't afford to live in Longwood School District, I'm going to have to move."

MS. PICONE:

We have one of the highest paying taxes here on Long Island. We pay a lot of taxes, a lot of money goes to our schools districts. Why would schools be rejecting kids? That's what their job is. They're supposed to take in kids and grow the schools, make them larger. So much money goes into those schools to begin with, they make a lot of money, they should be producing, they should be happy to have kids, not be pushing them away. As a business, in my company, we don't push clients away because we're too large or we don't have the capacity. There needs to be some change there.

LEG. BROWNING:

It costs \$17,000 to educate one child. Property taxes on one home does not cover that. And when you are -- the majority of your tax base is residential, it does have a serious impact.

MS. PICONE:

Maybe the taxes on Long Island, where the taxes are allocated -- I mean, I'm not as informed as many of you guys on how the system works, but I think that there may be some sort of, you know, problem there of how it's allocated, because we already pay so many taxes. So although there is that much money going to the schools to educate one kid, maybe we look at it from a different standpoint of figuring out how to make it work.

LEG. BROWNING:

Talk to your State Representatives, and talk to them about how they fund schools and the problem with property taxes.

MS. PICONE:

I've heard, you know, our new Governor speak, and there's a lot of reform going on there, so hopefully it will trickle down to Long Island.

CHAIRMAN MONTANO:

Mr. Presiding Officer Lindsay would like to ask you some questions.

P.O. LINDSAY:

Yeah. Frances, thank you for having the courage to come and speak your mind here today. I was in the audience yesterday and I heard you speak and I heard the County Executives speak. And there was -- I'm not saying untruths there, but what kind of got lost in the conversation is what we need to keep young professionals like you in our communities is more rental housing, more starter rental housing. And Legacy Village isn't that -- isn't that project. Legacy Village is for sale. The cost of a unit, like Legislator Browning stated before, is about \$300,000.

I mean, if that was the problem, we wouldn't have 10,000 units for sale on Long Island under \$300,000. What we need to keep you is we need projects like the Village of Patchogue has been buildings lately of rental units in the downtown area. The Towns of Islip and Brookhaven are planning a similar hub around the Ronkonkoma Train Station of building, you know, high-density rental housing. The Pilgrim State property where Mr. Wolkoff is planning 9000 units of rental housing in a downtown setting, a walkable community, that's the kind of communities we need to keep you here in Suffolk County.

But Legacy Village isn't falling into that category. And the reason that this reso is here is to try and get the greatest value out of the property. It's 255 acres and we are only getting about \$15 million from the developer for it. And it's underpriced, so that's what this is all about. It's not that we don't want this property developed, we do want it developed. I wanted it developed, I don't know about the rest of my colleagues. But I want to get out of the middle of it and I want to let private industry go in there, purchase the property at a fair market value and develop it for the best purposes that they think is marketable.

MS. PICONE:

What do you think best purpose would be, though?

P.O. LINDSAY:

Well, there's part of the property that's zoned industrial. I would assume that that will go forward and become an industrial park. Some of it is zoned residential. I don't -- you know, I mean, the town always has the purview of changing that a little bit. I don't -- I don't see -- you know, part of it's a solar park, which, you know, would really be up to the power company if they think that's doable, a park, an arena, which nobody seems to have an interest in. I just think the whole --

MS. PICONE:

Is there a need for all this on Long Island? I mean, according to the index, the main concern is housing. And taking up the, you know, land that we do have -- the problem here is I think, you know, after reading and doing a lot of research is that land is so expensive that the only way to make a dollar is to put those houses on the market 300,000. Why can't they be \$150,000, which is more affordable?

P.O. LINDSAY:

You've got to -- it would probably cost you \$150,000 in material today to build even a starter house without the labor. That isn't realistic unless there's huge subsidies from government, and government just doesn't have the money today. I think the model that the Long Island Index was talking about is the redevelopment of our downtowns that are transportation oriented, that have something that attracts people; has restaurants and shops and bars that our young adults, single adults, young professionals want to live in those types of communities because they're exciting, you know? Right now, there's nothing in Yaphank except the jail and Police Headquarters and County buildings.

MS. PICONE:

So bring some residents there and raise up the tax revenue.

P.O. LINDSAY:

But at what cost? At what cost? I mean, if you --

MS. PICONE:

Is there a way to change the plans to add a little more rental housing?

P.O. LINDSAY:

You know, I would certainly be open to that. But what I'm simply saying is that should be left up to the private sector. The County isn't in the land development business, the County isn't in the zoning business, that's the town's purview. You know -- you know, I just want to excess the property. I want to sell the property, I want to see it developed and see what the private developers come back with as ideas. But the idea before us now doesn't pay for us financially, in my opinion.

MS. PICONE:

Okay.

P.O. LINDSAY:

Thank you, Frances.

MS. PICONE:

Thank you. I still support it though. Affordable housing is necessary. If there's a way to make it more attractive --

P.O. LINDSAY:

I couldn't agree with you more.

MS. PICONE:

-- you know, to the younger market rather than a \$300,000 home.

P.O. LINDSAY:

The units -- the attached units I believe are identified to sell for \$300,000. You know, one of the problems here was when this was first conceived five years ago, it was a great idea, and I endorsed the idea; it was big and it was bold, and it's what we needed. And then the whole world turned upside down with this recession and market prices on housing just fell through the floor. So what was affordable five years ago, isn't -- you know, the open market has dropped the prices on housing so much that there's a whole bunch of homes in that category now, you know? Like you started off saying before, you're a single professional. I don't think you have interest in a home. I mean, I think what you need is a rental community.

MS. PICONE:

We're seeing no rentals being built.

P.O. LINDSAY:

Absolutely.

MS. PICONE:

You named a lot of projects before, but they're all being stalled.

P.O. LINDSAY:

Absolutely.

MS. PICONE:

You know, so I come out to support as many projects hoping that one will eventually stick.

P.O. LINDSAY:

There is absolutely a need for rental housing in our County, but this isn't it. Thank you.

MS. PICONE:

Thank you. Have a good day.

CHAIRMAN MONTANO:

Frances, don't leave. Legislator Kennedy would like to -- Frances, Legislator Kennedy would like to ask some questions if that's all right with you.

MS. PICONE:

Sure.

LEG. KENNEDY:

Thank you for coming out. And as a matter of fact, it is important that we hear from you. Like Legislator Browning, I actually have four children, none of who own a home here on Long Island. And it doesn't seem that long ago actually when my wife and I participated in the SONYMA Program, which was a way for young people to -- actually, we weren't that young -- to purchase a home with a subsidy on a mortgage interest rate. And as a matter of fact, Ms. Weir is very knowledgeable and give great guidance in how to walk people through the ability to acquire existing stock with a reduced mortgage rate and with a reduced down payment.

And I think some of what you are hearing from around the horseshoe here, we may not have the ideal setting right now in Suffolk County regarding a duplex that goes for \$800 a month with heat included for a young single professional who's earning 50 to \$60,000 out there in the market place. We would all like to possibly have that, but I think sometimes from a prospective purchaser's perspective, you do have to look at what you can have rather than what you might have. And what you can have are existing ranches and two-story homes and things like that that may be within the range of affordable and need what we used to call "you build sweat equity." You walk in the door and it's not all shiny and pretty. It may need paint, it may need plumbing, it may need grass cut, it may need a lot of things. But it's a way to get from paying somebody else for a place to live and go ahead and earn your own equity towards earning your own home.

And it's a concept that I think we need to continue to be cognizant of when we try to shape this opportunity for not only young people, but people of all ranges in our County. That's a phenomenal opportunity with 10,000 unoccupied units. It came from hardship. But what we should do is try to help yourself and others who are wanting to get into ownership opportunities and point to Long Island Housing Partnership, point to the Community Development Center out in Centereach, point to the other housing bridge advocacy groups that will help walk you through that process. I think it's important to keep that in the mix.

MS. PICONE:

I agree with you 100%, and that's why we bring the alliance together and the County Executives yesterday is to let the adults know that there are programs out there that we could go to. There's the Down Payment Affordable Program. And I think that we were stressing to the young adults that they need -- they don't know about these programs. It's not talked about. They just don't know about it. So we are there as the alliance to educate them and say, "There's this program, there's that program, there's an opportunity here to maybe afford," like you said, through SONYMA.

So we do try to engage that as well. So we don't just sit around saying, "Build, build, build." You

know, we are trying to find other vehicles to stay here. So I will do that. And my families are contractors. I've been looking in Farmingdale to find that ranch and to build from the ground -- you know, to fix it up -- over years can fix it up. So I don't just say housing, housing, housing and expect you guys -- or expect, you know, the private sector-public sector to just start building housing for us. We know that there's other ways to make living here.

LEG. KENNEDY:

Good. And we are here at any time if your group would like to access, certainly your local Legislator from the Farmingdale area or any of us are here. All my colleagues are pretty knowledgeable or we know where to go to get the information to assist you.

MS. PICONE:

Yes. We would like to know about that. Thank you.

CHAIRMAN MONTANO:

Some more questions, Frances. For your first time here, you are going great. You're a natural.

MS. PICONE:

Thank you.

CHAIRMAN MONTANO:

Legislator Nowick.

LEG. NOWICK:

Actually, not a question. I just have to say, whether or not we agree or disagree as to what you want -- and I know. I have a 28 year old daughter. She, however, found affordable housing, she moved home.

MS. PICONE:

I did the same home too.

LEG. NOWICK:

I just wanted to say, though, I have to applaud you for coming here and speaking as you are and taking on a few of us. You did a great job. And you just keep it up, and things will -- they will eventually turn around hopefully for the young people. I applaud you for coming here.

MS. PICONE:

Thank you. And I believe that it will turn around. I appreciate it. Thank you.

CHAIRMAN MONTANO:

You are not done yet, young lady. See what you started, Legislator Browning.

LEG. BROWNING:

No, just one last thing. I would like to echo what Legislator Nowick said, because you are doing a good job. I just don't want to see that you are being fooled by individuals telling you something that's maybe not necessarily completely true. What I would recommend is talk to Diana Weir who's sitting here and spoke before, because I can tell you, you can buy a home in my district for under \$200,000 with the Long Island Housing Partnership. You know, my son, when he was living here, I kept saying to him, "You know when you rent, you're flushing your money down the toilet." You know, if you buy, it's an investment, and investments are good and real estate is a good investment. So you should talk to Diana. Maybe working with the Long Island Housing Partnership might be a good way to go.

MS. PICONE:

Thank you.

CHAIRMAN MONTANO:

If I may, Frances, I want to thank you for coming here. You obviously have touched on an issue. We have been discussing this for many, many years, and you can see that this conversation could go on all week and we probably wouldn't solve it. But I agree with you. I have a daughter that's 32. When she told me that she was going to move to Atlanta, I panicked. Fortunately, they were able -- they are young professionals like yourself -- they were able to buy a house, and they moved into Farmingdale on the Nassau side, so she's here locally.

But too often it's the few, not the many. We are losing a lot of our bright, young, talented kids that are going to other regions. And we have got to address that issue. I want to compliment you one -- you know, what came out in Newsday. And I agree with you, by the way, I'm at the point now where I'm beginning to hate my lawn also because the kids are gone and I don't really want to do the work. You know, the rental market would suit me fine as long as I can then enjoy other parts of life as I get older. We are willing -- we are here to work with you. I think you did an excellent job representing yourself. You said this was your first time, so I expect it will not be your last. Just keep in contact with us. Great job. Thank you.

MS. PICONE:

Thank you thank you. I am interested in those programs. I will work with the different organizations here on Long Island to bring that to the database of 1500 young adults that we have signed up that continue to fight for housing here. Hopefully, we can get a home and keep them here. Thank you.

CHAIRMAN MONTANO:

Good job.

APPLAUSE

(*The following testimony was taken by Donna Catalano
& transcribed by Alison Mahoney - Court Reporters*)

CHAIRMAN MONTANO:

All right, next on the agenda under the presentation section, I just want to be clear. I had called the County Attorney and she had agreed to come here to discuss -- it's not a presentation, it's to discuss the recent developments concerning the representation by the Law Department of the County Executive's subpoena in the matter of People vs. George Guldi. I think we all know what the facts are there.

Thank you for coming, Christine. Would you like to make some statements first, or would you just -- what format would you prefer? Do you have anything that you want to say first and then we can go into some questions?

MS. MALAFI:

If you don't mind, I'd like to say something first.

CHAIRMAN MONTANO:

No, I don't mind at all. Go right ahead, the floor is yours.

MS. MALAFI:

Thank you. Good morning. Thank you for listening to me before I take your questions.

While at an event on behalf of the County, as the County Executive, the County Executive was served with a subpoena addressed to Steve Levy, County Executive, Dennison Building, 100 Veterans Memorial Highway, Hauppauge, New York. The subpoena pertained to a criminal proceeding in which the criminal defendant has been alleged to have forged an endorsement on a check and then used those funds for his own purposes. Upon receipt of the subpoena, the County Executive asked me what he should do with it. He told me that he had absolutely no knowledge of any of the facts or circumstances surrounding the forged endorsement and the crimes which had been alleged against that defendant. I told him to give me the subpoena for handling, just the way he would give my office any other subpoena served upon him as the County Executive, and just the way any other County elected official, department head or employee would give me for handling.

I made a motion to quash the subpoena served on the County Executive. My office has made motions to quash the requested trial or deposition appearance of the County Executive, other County elected officials, department heads and employees on a fairly routine basis. We have also made motions to quash subpoenas seeking County records and testimony in cases that do not involve the County, in Criminal Court cases as well as Family Court cases, matrimonial cases and personal injury cases.

The furor that has been raised simply because I did my job is astonishing. I would think that every elected official, every department head and every employee of the County would feel better knowing that if a criminal defendant seeking to distract the Criminal Court and criminal jury from facing and looking at the serious criminal charges against that defendant tried to call one of you into court, away from your duties, despite the fact that you knew nothing about the criminal allegations against that defendant, that my office would make a motion to quash that frivolous subpoena, just as was done here, that that would make you all happy and make you relieved knowing that I would stand behind you.

I have seen an Introductory Resolution seeking to direct me to cease my representation of the County Executive in connection with my motion to quash. First, the resolution says I made a motion to squash; it's not a motion to squash, it's a motion to quash. Second, the resolution takes one sentence from the Charter as its support, but omits a very important sentence from the first line of Charter Section C16-2, the Powers and Duties of the County Attorney. It reads, "The County Attorney shall be the attorney and counsel for the County and every agency and office thereof and shall have charge of all of the law business of the County and its agencies."

Criminal defendants make outlandish claims against the County, its elected officials, department heads, Police Officers, the District Attorney, prosecutors in the District Attorney's Office and even myself on a regular basis. Those unfounded claims do not form the basis of my decision to provide the legal representation that I am obligated to perform as the Suffolk County Attorney. Thank you.

CHAIRMAN MONTANO:

Thank you. I'm going to open it up for some questions. I just have a couple of very brief questions. First, you mentioned that you have made motions to quash in other criminal cases?

MS. MALAFI:

Absolutely, yes.

CHAIRMAN MONTANO:

Can you tell me how often and what type of cases we're talking about there?

MS. MALAFI:

This pile are copies of subpoenas served upon the County, its departments, officials in Criminal Court

cases. This is just -- and this is just some of them because I don't keep a file of criminal subpoenas, okay. They get served on the Health Department, on the Police Department, on the Social Services Department. A lot of times my office will contact the attorney who has served the subpoena to try to work it out so that we don't have to make a motion; that was impossible in this case. I furnished you, Chairman Montano, and Legislator Kennedy asked me for a copy of the motion to quash. It's about, what, seven, eight pages?

CHAIRMAN MONTANO:

Yes, I have it here, and if anyone on the committee would like a copy, we have copies for them. But I did read your paper on this.

MS. MALAFI:

It was fairly routine. This pile, which I'm not going to give to everyone because it's attorney/client. Other elected officials and department heads don't want to see -- don't want everyone to know some of the outlandish claims that are made against them. This is a pile of just some of the other motions to quash that my office makes on a routine basis. So yes, I've made other motions in criminal cases to quash subpoenas, yes.

CHAIRMAN MONTANO:

Okay. I had a question which I didn't get a chance to research. Under what section of the Charter, or what section of State Law do you rely on in terms of deciding to make the motion to quash in a proceeding? Is it the County Charter, is it the Municipal Law? Can you tell me on what basis you have decided that legally you should be the one to make the motion to quash the subpoena?

MS. MALAFI:

Well, the Suffolk County Charter, Article 16, Section 16-2 cites the power and duties of the County Attorney, the sentence that I gave you. The second sentence talks about defending civil proceedings. But that's not my only -- that's not my job. My job is not limited to only defending County employees and elected officials in civil proceedings. I am the attorney for the County and all the law business of the County. Anyone in this County who works for the County, who's elected to a position, sits on an agency or a board know that if they get served with a subpoena, they forward it to my office and we handle it for them; that's my job.

It's also -- just for background, the section of the Charter that I refer to comes from the authority granted to the County in County Law 500 and related sections.

CHAIRMAN MONTANO:

I have in front of me Article 2 of the Charter and it talks about indemnification of elected officials. Is that the -- are you familiar with that section?

MS. MALAFI:

Yes, but that pertains to when a defense is being provided to an elected official. And then the related subsections we apply to when an officer, a Police Officer or an employee, and that does not pertain here because I'm not defending the County Executive. I made a motion to quash a frivolous subpoena served upon him as the County Executive; they're two different things.

CHAIRMAN MONTANO:

All right. If, in fact -- well, actually, there are other Legislators that have questions, I may get back to you. So I think we'll start with Legislator Stern. Anyone else want to get on the list?

LEG. STERN:

Thank you, Mr. Chairman. Good morning.

MS. MALAFI:

Good morning.

LEG. STERN:

I'm looking at the County Code, this is 16-2 -- well, before that. If you go to Resolution 1030, you had stated that in, I think this is the fourth WHEREAS Clause, there is a quote regarding representation, the legal advisor -- the County Attorney, as legal advisor, has a responsibility to provide representation, quote, "In all matters involving an official act of a civil nature;" that's what you had alluded to before. But then you looked to Section 16-2 of the Code, which you've also cited. I'm looking at the paragraph. The first sentence of C16-2 says that the County Attorney shall be the attorney, and I'm taking out some of the language here, but it says, quote, "Of all law business." It's an introductory sentence and it's pretty broad. It says you are essentially the attorney and counsel for the County in, quote, "All the law business of the County and its agencies."

It then goes on to talk about a couple of specifics; "Shall prosecute and defend all civil actions." That's where the language in 1030 comes from in the second clause of 16-2. It talks about some specifics there, "Prosecute and defend all civil actions," etcetera, etcetera. It then goes on in the same paragraph, it states that, "The County Attorney shall perform such additional and related duties as may be prescribed by law and directed by the County Executive or the County Legislature." So again, it would seem to go back to a pretty broad description of what it is the County Attorney would do and the services that would be provided.

As I read it all together, yeah, I would think that the language in 1030 is pretty specific and pretty limiting. And I don't know if it really goes to the overall tenor and theme of 16-2 which I read to be pretty broad. I'm wondering if you can comment on that.

MS. MALAFI:

I agree with what you're saying. And I don't think that the resolution to which I referred can be given effect without the effect of it being that I'm not allowed in this resolution, so I shouldn't be allowed to answer criminal subpoenas when they're served on the Health Department? Should I be able to? Should I be able to answer criminal subpoenas served on the Health Department, the Police Department? We do it regularly, it's part of my job.

LEG. STERN:

Not only that, but if I could take it a step further. Based on the language in 16-2, you, as County Attorney, would perform such additional and related duties as may be prescribed by law and directed by either or both, the County Executive or the County Legislature. I read that to say that if there was this type of a situation that affected any member of the County Legislature, that we would have the ability to direct you to provide the same exact kind of representation. That's how I read it here. And going back to your earlier statement, I know you made it of a personal nature and that you would expect that we would have that expectation of you, but I think it specifically states that in 16-2.

MS. MALAFI:

It does. And I will not violate any attorney/client privileges, but I have made motions to quash subpoenas at trials of other Legislators. I have been asked and I have done it. And I have been -- I spoke with the District Attorney and he gave me permission to use him as an example in a couple of cases.

There are times that criminal defendants, in bringing lawsuits against the County, make outlandish claims. Your hair would fall out if you read these. I read them on a weekly basis. They claim conspiracies between the District Attorney and the County Executive, and sometimes even myself, to have people framed for, let's use as an example, drunk driving, just so we could seize their car, just

so that that person could get thrown in jail so that we could send somebody to beat them up. It's ridiculous. I would not look at that summons and that complaint and that allegation and say, "As a result of those allegations, I'm not defending anybody." That's not how it works.

I have a job. I have my duty and obligation as a lawyer for the County, as the County Attorney, is to take care of all the law business, all the law business for the County, its elected officials, its appointed officials, the people who voluntarily serve on the boards and agencies of the County and every County employee. There's been countless County employees that we have defended regularly, every single day in my office. And some of the claims, like I said, are bizarre. It does not mean that they're true and it does not mean that I'm not going to do my job.

CHAIRMAN MONTANO:

Anyone else? I have some questions, but I'll hold them. Legislator Lindsay.

P.O. LINDSAY:

Go ahead.

CHAIRMAN MONTANO:

Well, just when we had our conversation on the phone, I think I indicated to you that when I was serving as an Assistant Attorney General, one of the responsibilities I had was also to file motions to quash when Judges and State employees were subpoenaed, whether it be a Criminal or a Civil proceeding. So I'm somewhat familiar, very familiar with these motions. And I read your motion and I'm familiar with Section 16-2 and it's very broad. But I read Section 16-2 in conjunction with the other sections in the Charter, and also some of the case law I looked at really makes it, in my opinion, a situation where your duty to represent in any capacity really deals with an employee acting within the scope of his or her employment. Do you make that distinction in terms of motions to quash?

In other words, by example, if a DA, if an Assistant DA is served with a subpoena because a criminal defendant is making allegations, maybe there was prosecutorial misconduct, etcetera, etcetera, that Assistant District Attorney is acting within the scope of his employment. This case seems to be a little different. One of the requirements, I think, under Section 3510, which you say you didn't rely on in terms of making your decision to file the motion, talks about the County Attorney having the power to make the determination on first blush as to whether or not you should or should not represent the particular individual, but in this case it's somewhat, to me, different.

If what I've read and what I know about the case is accurate, and I'm not saying that it is, then it seems to me that the acts for which the County Executive was served would really be actions outside the scope of his employment, because what it -- and by the way, I agree with you that the subpoena on its face did not specify the nature of the testimony. And number two, the subpoena was, in fact, written in a fashion that it named Steve Levy, Suffolk County Executive, at his place of employment, which is the County Center. So -- and I've looked at some Attorney General opinions and some case law and they seem to follow the logic that your duty to represent a public official only kicks in when that public official is acting within the scope of his or her employment. Are we in agreement on that, or could you address that?

MS. MALAFI:

That specific analysis is done under the Article 35 of the Administrative Local Laws when there's a defense. When a subpoena is served, I look at who is named on the subpoena. And in general, if the subpoena has on it -- for example, I'll use this as an example. It says "Suffolk County Executive", okay? It has the address. He was served at a County function where he was appearing as the County Executive. And it appeared clear that it is a distraction, and it happens all the time, somebody is trying to distract from the nature of the criminal allegations that they are defending

themselves against, so that it's not about them being on trial for committing a crime, it's about what type of witnesses can they parade out to distract from that. There is nothing on the subpoena and there is nothing in the criminal charges that in any way implicate the County Executive or say he was acting outside the scope of his employment at any point. That's where it ends for me at this point to make a motion to quash.

I will tell you that people have been served with subpoenas to testify, or summonses in civil cases, where they're named official. If the allegations against them -- and I'll just use this as an example. A lot of times Police Officers will get sued with the County, and it will be their next door neighbor who says that the Police Officer didn't act as a Police Officer, "They hate me because I'm their neighbor." If that Police Officer, if I can tell just by reading that complaint, it doesn't have any facts or anything that make it obvious that they're outside the scope of their employment, I defend them. Because every County employee, elected official and department head deserves the benefit of the doubt when it comes to giving a defense or providing legal services and handling all the law business of the County, in my opinion. And that's my job and that's all I've done and that's all I have ever done.

CHAIRMAN MONTANO:

If the subpoena had been issued to Steve Levy with his home address and not listed him as County Executive, would you have taken the same posture in terms of defending him? Knowing -- and by the way, taking into account knowing what the nature -- and let's be very clear. I think -- I'm not saying that it's accurate, but what has been reported certainly, you know, gives question for pause. But if the subpoena had been served -- well, the service is not important; where he was served doesn't matter. Really what I'm looking at is the face of the subpoena.

If the subpoena had been served on Steve Levy at -- or not served on him, but had been issued to Steve Levy at his home address and made no mention of his title as County Executive, and indicated that he was being subpoenaed for purposes of providing testimony leading to the credibility of a potential witness, that's really -- when you go beyond the subpoena, the reality is that he's not, in my opinion, being subpoenaed as County Executive. And while he's performing official duties, he's being subpoenaed for something unrelated to his role, and certainly, if it were accurate, it would be outside the scope of his employment. So what would you do -- if that were the case, what would have been your position, if you have an answer for that.

MS. MALAFI:

If it was a subpoena for something doing in his private life, in all probability I would not have made the motion to quash. However, the allegations appear to be claiming it's something he did while he was County Executive as County Executive; that's first of all.

And second of all, part of my job is to help public officials and employees perform their duties during the time that they are on the public payroll. So I have to tell you, I don't think I would have, but it's second-guessing. I don't know, I'd have to know -- you know, it would have had to have happened.

CHAIRMAN MONTANO:

Okay, and that's a fair answer. Let me just digress for one minute and then I'll pass it over to my colleagues.

Again, if -- with a capital I and capital F -- if everything that we've heard is accurate, it seems to me -- let me backtrack. What is your relationship with the Ethics Committee today; are you the attorney for the Ethics Committee as we sit here today?

MS. MALAFI:

To the Ethics Commission?

CHAIRMAN MONTANO:

Ethics Commission, yes.

MS. MALAFI:

No, I am not.

CHAIRMAN MONTANO:

Okay. The question I was going to ask is that if everything that we've heard is accurate, then it would appear that along with what's going on in the criminal -- and I'm not saying that it is, but it seems to me that that would constitute also the possibility of -- could trigger the possibility of an investigation by the Ethics Committee. But you're no longer -- or the Ethics Commission. You're no longer associated with the Commission as counsel, pursuant to the law that we passed last year?

MS. MALAFI:

I am not acting as counsel until their \$80,000, or whatever was budgeted for them to pay for outside counsel, has run out.

CHAIRMAN MONTANO:

You're not acting or you are?

MS. MALAFI:

Not.

CHAIRMAN MONTANO:

Okay. Is anyone from your staff acting as Counsel in your stead?

MS. MALAFI:

Absolutely not.

CHAIRMAN MONTANO:

Okay. Thank you very much.

MS. MALAFI:

And can I just say one thing also?

CHAIRMAN MONTANO:

Sure, go ahead.

MS. MALAFI:

The allegations that are being made --

CHAIRMAN MONTANO:

And they're only allegations.

MS. MALAFI:

And whether or not they would be submitted to the Ethics Commission, I just have to say, on a weekly basis I get just as outlandish claims against other County officials and employees, and I do not report them to the Ethics Commission, because outlandish claims by people who are on trial for crimes do not warrant referral to the Ethics Commission.

CHAIRMAN MONTANO:

Right. Nor is it your job to refer to the Commission; am I correct?

MS. MALAFI:

Well, I'm prohibited to because I'm acting as the attorney for those people and it would be violating attorney/client privilege to report them to the Ethics Commission.

CHAIRMAN MONTANO:

Okay. Are there any Legislators that have questions? Legislator -- Mr. Presiding Officer, Legislator Lindsay?

P.O. LINDSAY:

Good morning, Christine.

MS. MALAFI:

Good morning, Legislator Lindsay.

P.O. LINDSAY:

You started out before about referring to a bill that has been authored. I think one of the reasons that the committee called you today is just to have this dialogue. It goes beyond the bill. I know I've gotten a number of e-mails, phone calls from citizens, former County employees, you know, right or wrong, saying that under the Charter it's pretty clear that it should be limited, your representation should be limited to civil cases, not criminal cases. And I just heard your explanation and in a minute I'm going to ask our Counsel to weigh in on that as well. Under your interpretation, would your representation of the County Executive go beyond just quashing the subpoena?

MS. MALAFI:

There is no representation needed after the subpoena is quashed.

P.O. LINDSAY:

Well, if it isn't. If it isn't quashed and he is directed to testify at this ongoing criminal case; would you continue to represent him?

MS. MALAFI:

He did not ask me to, that's first. Second, I don't believe that a witness in a criminal trial can have an attorney sitting next to them, so I don't see where my representation would continue after that.

P.O. LINDSAY:

Well, they might want legal counsel available to them.

MS. MALAFI:

We haven't crossed that bridge. The County Executive hasn't asked me for any counsel --

P.O. LINDSAY:

Okay. But whether he's asked you or not, your interpretation of the Charter, do you think it allows you to continue down that path of criminal -- of representation in a criminal trial?

MS. MALAFI:

For a witness? I have to tell you, I do not know. And I can tell you that we have had prior instances where people who work for the County have been subpoenaed in criminal cases, Federal and State. Specifically it's the -- when the whole paving contractors, the bid-rigging, those convictions, we counseled those employees about -- you know, they were worried and we talked to

them because they did not want to go out and get their own attorney and we talked to them. We did not sit next to them during any criminal testimony -- any testimony they gave during the criminal trial.

P.O. LINDSAY:

The only reason I ask you that -- and again, somewhere in the past, there's no doubt about it -- but I have an e-mail here about three former Legislators that were subpoenaed before a Grand Jury over an action that was going on in the Legislature, and at that point in time the County Attorney refused to represent them.

MS. MALAFI:

You're not allowed to have an attorney in the Grand Jury. And if you tell me that it was during my term, I would be surprised, because if somebody forwarded me a Grand Jury --

P.O. LINDSAY:

It wasn't in your term. It wasn't in your term.

MS. MALAFI:

Then I can't tell you, I would need to know the very --

P.O. LINDSAY:

Okay. And according to this e-mail, whether the attorney was in the Grand Jury room or not, you know, they spent like \$10,000 for legal advise, private legal advice before going into that proceeding.

MS. MALAFI:

We have --

P.O. LINDSAY:

So you disagree, you'd probably disagree with how the County Attorney at that time handled this.

MS. MALAFI:

No, not necessarily. I would need to know the specific facts. If it was an indictment against that Legislator, an indictment -- an investigation into that Legislator, that would be a different -- a different result. I don't know the facts, so I cannot say I would disagree with the County Attorney at that time.

I can tell you that we've had Civil Service workers of the County served with Grand Jury subpoenas and we sit with them and calm them down and go over what will happen in the Grand Jury proceeding and help them through it; yes, we do do that. And I think that that's what you would want us to do, help somebody who's being called in when all they've been doing is their official duties.

P.O. LINDSAY:

Well, I think the fuzzy part here is the part of the Charter that very specifically calls into case civil actions. And I heard your lengthy explanation of how you interpret it to go on to further sections and opens the door for you to expand that representation.

MS. MALAFI:

Well, I mean, when the Health Department is served with a subpoena in a Criminal Court case, I think everyone would expect me to help them with that subpoena. And you can't distinguish one client from another just because it's a Criminal Court subpoena.

P.O. LINDSAY:

Okay. Our Counsel, George, would you weigh in on this, please?

CHAIRMAN MONTANO:

Well --

MR. NOLAN:

Go ahead.

CHAIRMAN MONTANO:

Ms. Malafi, I just want to be clear. I have -- as I said, I have some of the cases, and one of the cases is in the matter of Allen Grecco who was a former employee. And there was an issue, and I believe it went to the Appellate Division and the Appellate Division denied his request for reimbursement. And I guess there was an issue of decision made by the County Attorney that we should not -- he was not entitled to representation because the actions that he took, and I'll read the statement, "The case ends with the alleged wrong-doing and the action was wholly personal in nature and fell outside the scope of Grecco's public employment and duties." And you're listed as the attorney in the Appellate Division, and I guess you inherited the case from the prior County Attorney. But this seems to be a case where you argued that we should not represent a County employee because the actions that were leveled against him were outside the scope of his employment. Can you explain your posture on that case?

MS. MALAFI:

Yes, I can. That was a defense that was denied by the prior County Attorney and I continued -- and I agreed with his position and I continued that position. That case is a case where he was -- where Mr. Grecco was being sued, so that's different. It falls within -- he's asking for a defense in a civil case.

And the actual allegations against him, when you read the complaint, were that he conspired with another person, Mr. Toussi, so that Mr. Grecco's title company would get work from Mr. Toussi outside of the County. All of the allegations dealt with -- almost all of them dealt with personal business; it was clear right in the complaint, it said it in the complaint. Here we're dealing with a subpoena that has no information on it other than the County Executive as County Executive was served with a subpoena.

CHAIRMAN MONTANO:

And I just want to be -- before I turn it over to Counsel, I just want to be clear on one issue that Legislator Lindsay brought up, and that is that right now -- by the way, what is the status of your application to quash the subpoena?

MS. MALAFI:

It was returnable yesterday and I believe the Court gave Mr. -- gave the defendant a couple of more days to submit papers. He'll submit papers, I'll have an opportunity to submit a reply paper and then the Court will decide the motion.

CHAIRMAN MONTANO:

Okay. Now, assuming for argument's sake that the Court permits the enforcement of the subpoena and the County Executive has to testify, you indicated earlier that the witnesses don't get attorneys and I understand that, but there are instances in which a witness would seek the advice of counsel in terms of answering prospective questions. For instance, an attorney, a witness may ask the attorney, "What do I say when they ask me or if they ask me this question," and the attorney could advise the witness, "Answer the question." You always advise your client to answer truthfully, but there may be some instances where an attorney would say, "Just to protect yourself, don't answer

the question. Maybe plead the Fifth Amendment." So there is a role for attorneys that go beyond the motion to quash in certain circumstances, depending on the acts that were alleged.

So I'm not clear in terms of if you -- if the Court should allow the enforcement of the subpoena and have the County Executive testify in that proceeding, will you be there? Is it your intention to be there to advise him, or do you simply walk away from the case at that point and tell him to seek private counsel?

MS. MALAFI:

I haven't thought about it because I have not been asked by the County Executive to provide any further representation. And I would have to -- it would depend on all the facts and circumstances surrounding why the Court would permit him to testify, because it is completely collateral and irrelevant and I don't believe I'll ever have to answer that question.

CHAIRMAN MONTANO:

All right. But you haven't ruled out the possibility that if the motion to quash is not successful that you would continue to represent the County Executive; is that what you're saying? And I don't want to put words in your mouth, but --

MS. MALAFI:

No, I have to say, I haven't thought about it beyond that because I feel very strongly that the motion to quash will be granted because the County Executive has absolutely no knowledge with respect to the facts surrounding the criminal allegations made against the defendant in that case.

CHAIRMAN MONTANO:

Okay, that you know of. I always say, as an attorney practicing 36 years, you win those you think you're going to lose, you lose those you think you're going to win. So we don't know where this is going, I have no idea where the Court is going. I do agree with you that the face of this subpoena is -- appears to be insufficient in terms of the information that would be asked of the County Executive were he to testify.

I have one technical question for you. Now, even though the underlying action is a criminal proceeding, it's my impression, and I haven't researched this, that the motion to quash is, in reality, a civil proceeding in that it's brought pursuant to the CPLR and not the Criminal Procedure Law. Am I accurate in that or am I --

MS. MALAFI:

Yes, you are.

CHAIRMAN MONTANO:

Okay, thank you. George?

MR. NOLAN:

Okay, just on that last point. In fact, I think because the charges are pending, there's a criminal action going, the motion to quash would be considered criminal -- a criminal proceeding or part of a criminal proceeding.

I think the problem is -- I listened to the County Attorney and it sounds like there's many instances where she's provided legal assistance to County employees. But the Public Offices Law and the Charter and Chapter 35 of our Code all talk about civil proceedings obviously for actions within the scope of employment. We can go further. We could go beyond, you know, just civil proceedings and provide representation, but I think we have to amend our law to give the County authority -- the County Attorney the expressed authority to deal in these type of circumstances. So

that's my opinion. I think if the County Attorney wants to go into a criminal proceeding and provide representation under certain circumstances, I think we should look at our law and we should think about expanding its scope to give her the express authority to do that.

CHAIRMAN MONTANO:

Legislator Kennedy has some questions.

LEG. KENNEDY:

Yeah. Thank you, Chairman Montano. And thank you for being here today, Christine, to talk to us.

I've been listening to my colleagues and to yourself talk about the process, and I think this is one of those areas where we do have to look at the substantive matters that are in play, but the process, I think, is extremely important. And I think I follow how you laid out, how you, as the attorney for the County, view a subpoena when presented and the analysis that goes into that that compels your action, and it sounds like to me that it's a fairly wide parameter that's set; You're the central point for receipt, it's a review of the document, and barring anything truly, I guess, incredible, you analyze it and you perform. Is that pretty much what you've laid out to us?

MS. MALAFI:

Yes, and I -- yes, it is. And if a subpoena is served somebody at the County and it's by their, you know, lawn maintenance company suing them for money owed because we didn't pay them for mowing a lawn, I would not respond to that subpoena. And I do not believe that the Charter or any County law needs to be expanded to, quote, "permit me" to do what I've been doing and all County Attorneys have been doing for the last 50 years, 60 years. Because the reason, in my opinion, that the first sentence of the Power and Duties of the County Attorney in the Charter doesn't say -- it says I have charge of all the law business of the County, it doesn't say all the civil law business, because sometimes the reality is we get served with subpoenas in a Criminal Court action. You don't need a special section to tell me that I should respond to those subpoenas. I'm not defending anyone in a criminal case; never have and I would not.

LEG. KENNEDY:

Okay. And just the other thing is we utilize that term subpoena often and throw it around, but it really is a somewhat broad word in description that actually has multiple iterations that underly it.

There is the Subpoena of Documents, the duces tecum which we're familiar with. Or any of us as attorneys, merely under our own signature, can issue what we call a subpoena, which then, I guess, seeks to compel somebody to appear; much different than a court-ordered issued subpoena where there's been a more substantive evaluation, if you will, of the underlying matters; correct?

MS. MALAFI:

Yes. But I get routinely notices from defense attorneys in criminal cases that they're going before a Judge to get a so-ordered subpoena for County witnesses and County employees; we appear on those just as well to say, "You should not issue a subpoena for this reason or that reason," to the Judge. We do it all the time.

LEG. KENNEDY:

Okay. All right, so, again, it seems that in this case you were following something that's really been a fairly routine function and protocol since you've become our County Attorney for the past five, six years, whatever it's been.

MS. MALAFI:

Yes, I would agree. It's an absolute routine procedure in my office. And as far as I can see, it's always been a fairly routine procedure in the County Attorney's Office.

LEG. KENNEDY:

Okay. Thank you. Thank you, Mr. Chair.

CHAIRMAN MONTANO:

Before we get to Legislator Nowick, I have to clarify something that I just said. And Counsel just provided me with a case that I didn't see before we had -- before I made my last comment, and it talks about whether or not a motion to quash is civil in nature and criminal.

And this is a 2nd Department decision -- yes, 2nd Department decision, 1984 case, I haven't Shepardized it. It talks about a subpoena filed in a Grand Jury proceeding which is construed as civil in nature, if the court has both criminal and civil jurisdiction, which I don't think is the case here. I think this case -- this Court only has criminal jurisdiction. But it does say, "A motion to quash a subpoena issued in the course of a criminal action is a proceeding criminal in nature." So it's kind of inconsistent in terms of where it's at. But by looking at this case law, I would have to reverse myself and say that the issuance of this subpoena is actually criminal in nature, even though it may be brought under the CPLR; that's something that you may want to take a look at if, in fact --

MS. MALAFI:

Well, this --

CHAIRMAN MONTANO:

Are you familiar with the case?

MS. MALAFI:

No, but a Grand Jury subpoena is completely criminal in nature. It's the only thing the Grand Jury does. This -- the court in which this subpoena was issued is the County Court in Suffolk County; County Court has jurisdiction over civil and criminal matters. I have to tell you, I think it's probably a hybrid because the CPLR is part of an Order to Show Cause, which is what we made here, but it's in a criminal case, so I think it's a hybrid. To be honest with you, even if it's --

CHAIRMAN MONTANO:

I wouldn't disagree with you, but I wanted to point out both sides of that. And that's something you should consider in the event the subpoena is, in fact, upheld, because there you're now treading into another category which I think, you know, I would caution you to look at before you make a determination on that. And I know you haven't made a determination because we're not at that bridge yet, so we're not crossing it. Legislator Nowick?

LEG. NOWICK:

Christine, thank you for coming. We have four lawyers over here and four laymen over here, so forgive me if a lot of this I just don't understand.

CHAIRMAN MONTANO:

No, we don't understand it either.

LEG. NOWICK:

I see that.

*(*Laughter*)*

Just clarify, when a subpoena is issued, particularly this one, who actually writes out the subpoena? Does the attorney -- who creates the subpoena?

MS. MALAFI:

The attorney or, in this case, the pro se criminal defendant.

LEG. NOWICK:

Well, that's the thing; the pro se criminal defendant creates a subpoena, but it sounds like maybe one of the mistakes was that he puts on the title "Steve Levy, Suffolk County Executive." In my opinion, that means he is serving Steve Levy as Suffolk County Executive; is that what you see?

MS. MALAFI:

Yes, that's what I see, but I do not agree that it was necessarily a mistake. I think that --

LEG. NOWICK:

Well, I'm being kind. I'm being kind. But what do they say when you have your own -- you appear as your own attorney? You have a "what" for your attorney. So I'm not even going to go there. Okay, so that you -- that was Steve Levy as Suffolk County Executive, and that was just what I wanted to clarify.

MS. MALAFI:

To use -- to bring it closer to home, in one of -- in somebody's Legislative District, let's say you had a constituent that you were dealing with on a regular basis, and that person -- that person didn't like, you know, how you were responding to them or what you were doing for them. And let's say that person was brought up on criminal charges, completely unrelated to you being Legislator, okay, those criminal charges had nothing do with you, you had nothing to do with the underlying criminal charges. Let's just say, for example, the person is arrested for committing arson and burning down their house, and that person in their mind decides that you have something to do with the criminal charges brought against them and you were served with a subpoena at your house, but you tell me that the only contact you had with this person during the whole time period is as a Legislator; would you ask me to represent you to quash that subpoena because you had nothing to do with the underlying case? I think you would.

And I think the fact that your position as a County Legislator led to the service of the subpoena would be something to consider. So, you know, we all deal with different people every day. I personally have been accused of arranging with Police Officers to have cars seized. People make outlandish claims. The fact is is that that claim is being made against me because I am the County Attorney and I prosecute the forfeiture laws, the DWI forfeiture laws.

LEG. NOWICK:

I do understand that, and I do agree with what you're saying, and I wanted to thank you for coming here just to explain to all of us, because it really isn't fair when you see your name in Newsday and you don't have a chance to at least defend yourself. And as Legislators, again, we do have attorneys here, but -- and they understand a little more, although they say they don't, but for us, at least it gives us an opportunity. But I think that most of us are out of our league here and probably the real answers will come from a court and not us. But thank you for coming and explaining.

MS. MALAFI:

You're welcome. And if any one of you have any questions about what my office does or how my office runs, you can call me and I will answer.

CHAIRMAN MONTANO:

Any questions? Legislator Lindsay.

P.O. LINDSAY:

I know that and I appreciate that, Christine. But I think because of all the press and the furor about

this, this needed to be done in a public forum, that we had to hear your explanation.

MS. MALAFI:

And I understand that. But I don't think that the recent press comments about me doing something wrong were fair, especially in light of the fact that no one asked me. Not one call; I didn't get one phone call in my office to ask me, nothing. And instead, I have to, you know, have my neighbors and everyone else read a newspaper article that insinuates that I did something wrong when I did not.

CHAIRMAN MONTANO:

Ms. Malafi, I want to thank you for coming here. And as I indicated when I called you, you said you would be here, there wasn't a need for a letter or anything like that; we appreciate that. These are some involved issues. We will follow what is going on there and once the Court makes its determination, then I guess, you know, the next stage will begin. And if the Court should quash the subpoena, that will be the end of it; and if they don't, then you have some decisions to make with respect to further representation.

And you know, I don't know if you've had time to look at the -- some of the case law that's out there, but some of the case law does talk about the illegality of let's say the County or the municipality paying for representation where acts are committed outside the scope of the employee's employment, it could be considered numeration which, in essence, could be -- at some later point, involve a request for the value of your services to be paid back to the County. I don't know if you keep records of your time and effort on this case; have you done that?

MS. MALAFI:

Yes, we do.

CHAIRMAN MONTANO:

Okay. And are there other attorneys in your office that have also worked on this case?

MS. MALAFI:

One.

CHAIRMAN MONTANO:

One, okay. And you're maintaining your records in terms of your log and how many hours you've devoted to this issue.

MS. MALAFI:

Yes. And I again repeat, the County Executive has not asked me to do anything further than the motion to quash that was made.

CHAIRMAN MONTANO:

Thank you very much. And thank you for your frankness in the questions.

We're going to move on to the agenda. Christine, is there anything you wanted to say before you leave? Do you want to make a final statement?

MS. MALAFI:

No, just thank you for listening to me. I appreciate it.

CHAIRMAN MONTANO:

We appreciate your being here. All right. With that, I'm going to go into the resolutions. The first Tabled Resolution, **1838, Adopting Local Law No. -2010, A Local Law to ensure fairness in**

the County's disposition of property acquired under the Suffolk County Tax Act. (Schneiderman)

I believe the public hearing was closed a while back. I'm going to make a motion to table.

LEG. STERN:
Second.

CHAIRMAN MONTANO:

I have a second. Any further motions? All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 6-0-0-0).**

1883, Adopting Local law No. -2010, A Local Law declaring as surplus and authorizing the execution of a contract for the sale of ~255 acres in Yaphank to Legacy Village Real Estate Group, LLC for mixed use development. (Co. Exec.)

I believe public hearing is still open. I'm going to make a motion to table for public hearing.

LEG. STERN:
Second.

LEG. BROWNING:
Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 6-0-0-0).**

1941, that resolution was reassigned to Budget and Finance, so it's no longer on our docket.

2018, Adopting Local Law No. -2010, A Local Law to promote the preservation and integrity of the Pine Barrens Core area by prohibiting the redemption or conveyance of vacant or unimproved Pine Barrens Core parcels acquired by Suffolk County by tax deed. (Co. Exec.)

The public hearing is closed, but I'm going to make a motion to table. Do we have a second?

LEG. KENNEDY:
Second.

CHAIRMAN MONTANO:

Seconded by Legislator Kennedy. Any other motions? All in favor? Opposed? Abstentions? Motion to table carries. **TABLED (VOTE: 6-0-0-0).**

2045, Adopting Local Law No. -2010, A Charter Law to limit campaign donations by members of the Ethics Commission. (Cooper)

The public hearing remains open. I'm going to make a motion to table for public hearing, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 6-0-0-0).**

2100, Directing modernization of the County Financial Disclosure Form. (Co. Exec.)

I'm going to make an application motion to table, do I have a second?

LEG. BROWNING:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Browning. All in favor? Opposed? Abstentions? Motion carries.

TABLED (VOTE: 6-0-0-0).

2208, Adopting Local Law No. -2010, A Local Law implementing the Charter Commission recommendation regarding the terms of the Presiding Officer and Deputy Presiding Officer. (Romaine)

The public hearing was closed on 12/21.

P.O. LINDSAY:

Motion to table.

CHAIRMAN MONTANO:

I'll second that. All in favor? Opposed? Abstentions? Motion carried. **TABLED (VOTE:**

6-0-0-0).

2236, Declaring as surplus and authorizing sale of real property in Yaphank pursuant to County Law Section 215. (Presiding Officer)

P.O. LINDSAY:

Motion to table.

CHAIRMAN MONTANO:

Second that. All in favor? Opposed? Abstentions? Motion carries. **TABLED (VOTE: 6-0-0-0).**

INTRODUCTORY RESOLUTIONS

2245, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Florence Fazio (SCTM No. 0908-007.00-01.00-034.000). (Co. Exec.)

I'm going to make a motion to approve and place on the Consent Calendar, seconded by Legislator Stern. All those in favor? Opposed? Abstentions? Motion carries. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 6-0-0-0).**

2246, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Richard M. Poitras and Patricia L. Poitras, his wife (SCTM No. 0100-206.00-02.00-039.000). (Co. Exec.)

I'm going to make a motion to approve.

LEG. STERN:

Second.

CHAIRMAN MONTANO:

Seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carried.

APPROVED (VOTE: 6-0-0-0).

2247, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Frank Perri And Jennie Perri, his wife (SCTM No. 0200-596.00-04.00-022.000). (Co. Exec.)

I'll make a motion to approve, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 6-0-0-0).**

2248, Authorizing the sale pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Marianne Gray and the estate of Beverly S. Emery, by Dana S. Emery, Administrator, as tenants in common (SCTM No. 0900-288.00-01.00-070.000). (Co. Exec.)

I'll make an application to approve and place on the Consent Calendar, seconded by Legislator Stern. All in favor? Opposed? Abstentions? Motion carries. **APPROVED** and placed on the **CONSENT CALENDAR (VOTE: 6-0-0-0).**

2266, Resolution No. -2010, Authorizing certain Technical correction to adopted Resolution No. 1324-2006. (Romaine)

LEG. KENNEDY:

I'll make a motion.

CHAIRMAN MONTANO:

Motion. I'll second that. All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 6-0-0-0).**

Finally, **1001, Setting date for Special Election to fill vacancy in the 6th Legislative District. (Lindsay).**

I'll make an application motion to approve, seconded by Legislator Stern. Any other motion? All in favor? Opposed? Abstentions? Motion carries. **APPROVED (VOTE: 6-0-0-0).**

There being no further business of the committee, I hereby adjourn. Thank you.

(*THE MEETING WAS ADJOURNED AT 11:47 A.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY