

**WAYS AND MEANS COMMITTEE**  
**OF THE**  
**SUFFOLK COUNTY LEGISLATURE**  
**MINUTES**

A 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 Wednesday, October 3, 2012.

**Members Present:**

Legislator Rick Montano - Chairman  
Legislator Steven Stern - Vice-Chair  
Legislator Robert Calarco - District 7  
Legislator Lynne Nowick - District 13  
Legislator John Kennedy - District 12

**Also In Attendance:**

George Nolan - Counsel to the Legislature  
Legislator John Kennedy - 12th Legislative District  
Legislator Tom Cilmi - 10th Legislative District  
Gail Vizzini - Director Budget Review Office  
Robert Lipp - Deputy Director - Budget Review Office  
Craig Freas - Budget Review Office  
Ben Zwirn - County Executive's Office  
Tom Vaughn - County Executive's Office  
Paul Perillie - Aide to Legislator Gregory  
Kevin LaValle - Aide to Legislator Muratore  
Greg Moran - Aide to Legislator Nowick  
Ali Nazir - Aide to Legislator Kennedy  
Maria Barbara - Aide to Legislator Tom Cilmi  
Bob Martinez - Aide to Legislator Montano  
Justin Littell - Aide to Legislator D'Amaro  
Michael Pitcher - Aide to Presiding Officer Lindsay  
Laurette Mulry - Legal Aid Society  
Philip J. O'Reilly - Legal Aid Society  
Sabato Caponi - Legal Aid Society  
Mitch Pally - Long Island Builders Institute  
Rick Brand - Newsday  
All Other Interested Parties

**Minutes Taken and Transcribed By:**

Gabrielle Skolom - Court Stenographer

(The meeting was called to order at 10:00 a.m.)

**CHAIRMAN MONTANO:**

So we're going to call the Ways and Means Committee to order. We're going to start with the Pledge of Allegiance lead by Legislator Stern.

(Pledge of Allegiance)

Thank you. You may be seated. We have a rather busy agenda today. We're going to get right into it. We're also going to, more than likely, go into executive session. We have some legal matters that we're going to discuss, but we do have some cards today. There is no correspondence, right?

**MR. MARTINEZ:**

No correspondence.

**CHAIRMAN MONTANO:**

Okay. Do we have a copy of the Newsday editorial on the -- it was Sunday. Does anyone -- Mr. Besen (ph), do you have a copy of the Newsday editorial on the term limit case that came out Sunday?

**MR. BESEN:**

I do not have a copy.

**CHAIRMAN MONTANO:**

Have you seen it?

**MR. BESEN:**

(Inaudible.)

**CHAIRMAN MONTANO:**

Okay. I neglected to bring it this morning. I'm going to try and get everyone a copy, but in any event, you may want to look at Sunday's Newsday. There's a small editorial at the bottom of the page addressing the Spota case.

**LEG. NOWICK:**

What did it say?

**CHAIRMAN MONTANO:**

Well, it basically -- in my opinion, it reached the conclusion that that court was correct, but, you know, my opinion is that Newsday is not an appellate court, so, you know, I don't know where -- and then it also said at the end that the best area -- the best way to deal with term limits is to have the electorate have a choice. So we'll talk about that in exec, but I just wanted all of you to see that.

**MR. MARTINEZ:**

Massiel is going to get a copy.

**CHAIRMAN MONTANO:**

Oh, Massiel is going to get a copy. Great. All right. We're going to go -- before we go into executive session, I do have some cards, and we have some cards from the Legal Aid Society. Oh,

and before that, just for the Committee to realize, we have a new stenographer, Gabrielle Skolom. Welcome, and we look forward to working with you.

**MS. SKOLOM:**

Thank you.

**CHAIRMAN MONTANO:**

Laurette Mulry, and you're going to come up with your colleagues, right? Sabato Caponi and Philip J. O'Reilly. Good morning. How are you?

**MS. MULRY:**

Good. Thank you.

**CHAIRMAN MONTANO:**

Just put your names and associations on the record, please.

**MS. MULRY:**

Laurette Mulry, Legal Aid Society.

**MR. CAPONI:**

Sabato Caponi, Legal Aid Society.

**MR. O'REILLY:**

Philip O'Reilly, Legal Aid Society.

**CHAIRMAN MONTANO:**

All right. Generally, this is a public hearing, but we'll do it in the form of a presentation so that you can lay out what your issues are, and if we have any questions, then we can deal with them. Go ahead.

**MS. MULRY:**

I'll go first. Chairman Montano, Vice Chair Stern, Legislators Calarco, Kennedy, Nowick, and Counsel Nolan, good morning. Thank you for the opportunity to present here this morning on behalf of the Legal Aid Society. I do believe it's important that we are here and imperative that we speak to you because, of course, what the Legal Aid Society does is integral to the workings of the court and to the success of the justice system overall, and, of course, that falls within your jurisdiction as the Ways and Means Committee. So thank you for this opportunity. We would like to tell you our concerns about the proposed budget for the Legal Aid Society for 2013 so you can make an informed decision about that going forward; and, of course, I think we all can appreciate and acknowledge the fact that our justice system works most efficiently when you have equal quality and zealous advocacy on both sides.

And, of course, the Legal Aid Society is committed to providing that mandated service for the County, that of indigent defense. It is mandate, of course, through the United States Constitution and the State Constitution, but, of course, it's made obligatory to the County of virtue of Article 18(b) of the County Law and pursuant to the that law, it has created a County-based system of delivering mandated legal defense to those who cannot afford counsel. So as to assure meaningful and effective representation for those individuals in criminal court and also in certain family court proceedings in parent representation cases. And pursuant to a plan that was approved and adopted by the appellate division of the State of New York, Legal Aid Society is the primary provider of that service, of that indigent defense. If Legal Aid cannot take the case for reasons of conflict or

otherwise unable or unavailable to take the case, then that representation must be provided and it goes to a private attorney that is part of the assigned counsel plan or an 18(b) attorney. And, by the way, let me just say that our comments here are in no way to be construed as a criticism of or to impugn the integrity of the work that our brethren in the private bar perform because, of course, they provide a very valuable and quality representation for their clients as we do.

But I think it is important in this time of fiscal challenge to point out to you that there is a cost difference. When Legal Aid is assigned a case, and this is in all the courts of the County, we have those attorneys that are in those parts that are ready to take those cases, and they take that on in vertical representation, which means they take it from assignment through final resolution. That case, on average, costs approximately \$400 per case compared to an assigned counsel, which could cost somewhere in the thousands of dollars. Of course, that's just because they have travel expenses, overhead expenses, et cetera; so just because of that, we think it's important to look at the funding for the Legal Aid Society to assure that we have those attorneys in the courtroom to provide that very valuable service.

What other services does Legal Aid provide? Well, first of all, we do provide parole hearings; coverage in the parole hearings; we provide coverage for video conferencing, which saves the sheriff's transportation costs from the jails to the courts. We also provide screening in the family court and the East End courts to allow the judges to make an informed decision on ability to afford counsel. And also we have worked -- I see the County attorney here this morning. We have worked very closely with the County Attorney's office to assure that we get additional funding from the State through the Indigent Legal Services Fund. We have been approved for a grant of \$700,000 each of the next three years to assure continuation of a family court initiative and also a Spanish language access initiative for our clients.

So what I would like you to do, I'd like you to take a look at our budget and to look at the funding that's provided there. One of the harsh realities of the situation is that our operating costs are increasing. Our medical plan, unfortunately, as everybody else does, we have a premium increase that we're looking at. But the current budget does not account for that premium increase. Right now, our employees pay 20 percent towards their medical plan. We look at our counterparts in the D.A. or County Attorney's Office, and they do not pay any contribution towards their medical plan.

Furthermore, we don't have a pension plan anymore. We have a defined contribution plan, which is a less attractive benefit for our attorneys. So right now, we have this disparity, not only in pay, what the starting salary is, but also in the benefits that we can offer our attorneys when they are starting off. So, of course, this goes to the ultimate quality of representation, and that should be looked at as well. I know we provide wonderful training for our attorneys. When I came out of law school, you always wanted to go to Legal Aid because you know that you would have wonderful training and you would be trial-ready within a matter of months. Actually, this gentleman to my left here does a lot of that training for us, and he does a great job of that. So we're very proud of that, but it's getting increasingly hard to hire and maintain those attorneys because of the fact that we don't have parity in pay and/or benefits now. So again, we'd like you to look at our budget with that in mind, and try to at least allow us the increase in our premium for our medical, cost-of-living increase for our salary line, and if you could look at the pension as well because we have -- we've frozen our pension but we'd like to zero out that liability. So we do think that that's the fiscally responsible to do. These were measures we took on as self-mitigating to try to help out the County and save the County money, including getting into the New York State's health insurance program, which saved the County about \$600,000 last year. By the way, we were the first Legal Aid in the State to be included in that plan, so we're very proud of that.

So, of course, if you have any questions, I'm happy to answer them, and I'll pass the mike if anybody else wants to make a comment.

**CHAIRMAN MONTANO:**

Before questions, would you like to address us, Sabato or --

**MR. CAPONI:**

I'm more on the operations end, so you know, Laurette can explain much better than I can the financial aspects of it. The only thing I would add is that the dynamic we're beginning to see, which is of concern to us, is that nobody ever came to the Legal Aid Society thinking they were getting rich. All right? They came because they were dedicated to that, and a lot of people come for the experience and move on. We were always able in the past, though, to rely on people sticking around five years, eight years, nine years before the turnover. Since we've had to eliminate the defined benefits pension and as we've been passing more and more of the costs onto the attorneys, we're noticing the turnover rate is getting in the neighborhood of three years, two years; some people aren't even staying a full year anymore. So the incentive to stay and the impact it's having is that as we promote from within to the County court, where we're handling more serious cases, the felonies, the staff there is becoming more and more junior, and it's not at anything that we can't handle right now, but looking down the line, it seems like if we don't do something to stem the turnover rate, or at least the reduction of the years of the turnover rate, that it could pose a problem in the future.

**CHAIRMAN MONTANO:**

Phil, you want to say something?

**MR. O'REILLY:**

Yes, if I may. The County Exec --

**CHAIRMAN MONTANO:**

You've got to talk into the mike.

**MR. O'REILLY:**

Excuse me. The County Executive has proposed a cost to continue budget. This does not abide for any increases in our cost. It's basically a flat budget from this year into next year.

**CHAIRMAN MONTANO:**

So essentially the same dollar amount?

**MR. O'REILLY:**

Same dollar amount, yes, sir. Now, that's a little confusing because there were two grants on the ISLF fund totaling \$700,000 for the next three years, as Laurette spoke to. We have an operating \$308,000 that the legislator -- legislative authority gave us last year, and that 308 is being used towards that grant because this too -- one family court initiative and the Spanish-speaking initiative. If you looked at what the county exec's budget recommendation says, it looks like we're getting an extra \$700,000.

**CHAIRMAN MONTANO:**

But that's that grant money is what you're saying.

**MR. O'REILLY:**

Yes. We're not getting that, and indeed our cost for the 440-odd thousand dollars for the

Spanish-speaking is going to be added to our current budget.

**CHAIRMAN MONTANO:**

All right. So just so I'm clear, this \$700,000 is not an appropriation necessary for Legal Aid; it's for additional services you're going to be undertaking.

**MR. O'REILLY:**

Yes, it is that.

**CHAIRMAN MONTANO:**

So it's separate and apart from your cost to continue budget. Okay.

**MR. O'REILLY:**

Yes, but in the County Executive's recommendation, it's included in the amount of money appropriated to the Legal Aid Society.

**CHAIRMAN MONTANO:**

We get that. Thank you very much. A couple questions. First of all, I agree with you, Laurette. I actually clerked in Legal Aid when I was in law school, and then I went to work at the D.A.'s Office right after law school, and this was in the City of Philadelphia, and I've long been an advocate of parity in pay for Legal Aid lawyers. In Philadelphia, we didn't have Legal Aid. We had the public defender, which is the same concept, just a different name, and, you know, I've long advocated, as I said, that we eliminate that disparity that D.A.'s and Legal Aid or public defenders do the same work in the courtroom, and they should be paid comparable and equal salary, and I don't think we're there yet. How far apart are we?

**MS. MULRY:**

We have -- we have some ways to go.

**CHAIRMAN MONTANO:**

Now, with respect to the budget, just specifically, I understand that you were basically flattened out in terms of your appropriation this year.

**MR. O'REILLY:**

Yes.

**CHAIRMAN MONTANO:**

How much would you need to, not assume -- putting aside the \$700,000 appropriation from the State, how much is needed for you to keep pace with where you were as an organization last year; what is the dollar amount?

**MR. O'REILLY:**

Well, we have asked -- if you look at the handout, sir --

**CHAIRMAN MONTANO:**

I don't have the handout in front of me.

**MR. O'REILLY:**

Well, we know one thing is that the medical insurance has gone up. We have asked for an increase of \$220,000.

**CHAIRMAN MONTANO:**

Right, but give me a total number.

**MR. O'REILLY:**

\$1,441,117.

**CHAIRMAN MONTANO:**

One million four four one --

**MR. O'REILLY:**

One one seven.

**CHAIRMAN MONTANO:**

One one seven. That's pretty specific. We'll leave out the cents. Okay. So what you're asking for is, essentially, you would need a million and a half just to maintain your current status with the increase in costs and whatever salary adjustments are required and your increase in health benefits. Are we there?

**MR. O'REILLY:**

Yes, sir.

**CHAIRMAN MONTANO:**

Okay. I'm clear. Any questions from the Committee members? What's going to happen if you don't get it?

**MR. O'REILLY:**

Well, we have to pay the medical premium. We know that we got an increase of about nine percent April of this year. We got an increase coming in January when it's renewed, and that's estimated to be about nine percent. Now, right now, the employees pay 20 percent contribution to the medical. We will have to either cut salaries, cut positions, take money out of the pension allocation in order to make up that unless we charge additional contributions to the employees, which will cause a major problem. Right now, they pay 20 percent, as stated.

**CHAIRMAN MONTANO:**

Where is that outline you're referring to? Oh, here it is. Is that included in the outline? Because I honestly didn't get a chance to review it.

**MS. MULRY:**

It's there.

**MR. O'REILLY:**

Yes, it is. It's the first paragraph, actually, and then there's backup behind it.

**CHAIRMAN MONTANO:**

Okay. Legislator Stern just provided me with a copy. I'm pretty clear. I think you know that I've been on the issue with the 18(b) compensation for a while. I am an attorney. We've had many conversations about this. I'm very clear where I stand in terms of the parody. Obviously, the budgetary issues will be something that's decided by the Legislature. If we can agree on changing the recommended budget, you're clear, and I think everyone needs to be clear that the County Executive's proposed budget is simply what it is. And we had a saying here -- I don't know if it applies this year -- the County Executive proposes, and the Legislature disposes. We don't know

what's going to happen this year, but certainly I will be advocating to see that we can restore and at least put you where you were last year. I cannot see in this day and age that we can suffer a decrease in the work that you do, particularly since your work is mandated by the State. I mean, it's not something that we really have an option in. And, you know, the criminal justice system, obviously, is one of those areas where we have to pay special attention. Does anyone on the Committee have any questions or comments?

**LEG. KENNEDY:**

Yeah, I --

**CHAIRMAN MONTANO:**

Legislator Kennedy.

**LEG. KENNEDY:**

Yes. Thank you. And, you know, like yourself, Mr. Chair, I think most of us on the Committee know the good work that Legal Aid does. Let's talk about, if we can; first, medical. Tell me about where we're at today from where we were at last year before we were able to effectuate that change in NYSHIP or -- I'm sorry -- bringing you into NYSHIP and what that's done with the medical costs and range of coverage.

**MS. MULRY:**

Yes, sir. You know, first we have to thank you for your efforts and for Legislator Montano's efforts because, of course, with your support, we were able to get into the New York State Health Insurance Program. That was very important because at that time, we had private coverage through the Oxford Plan, and we were facing 30 percent increase in our premium that next year, that upcoming year. So when we got into that, it, of course, provided us coverage through the Empire Plan, which is very good comprehensive coverage for our employees and, though they pay 20 percent towards that plan, it was still a significant cost savings to our employees and to the County as well. In fact, it did save the County over \$600,00 in 2011 alone, so it was a considerable cost savings and then going forward, of course, it is a considerable cost savings for the County.

**LEG. KENNEDY:**

So we, and by the way, everybody across the Committee, thank you for the acknowledgment, but we got great support from all our colleagues on this. So your employees got medical coverage, you as an organization pay less collectively -- well, actually, we pay less because of what we had to provide for you. So that should have freed up, as you said, \$600,000, and, then, you pointed to the \$700,000 additional grant. That's 1.3 million through collaborative efforts here that get freed up, and yet we're looking at you still being reduced. I'm still working off your first sheet. So let's talk a little bit about your pension. The pension piece, I get confused sometimes. Are you in a private pension, or are you part of ERS? Are you part of the State pension?

**MR. O'REILLY:**

May I address that, please?

**LEG. KENNEDY:**

Please.

**MR. O'REILLY:**

We've had a defined benefit plan in place for 20, 25 years. As -- the same as the State, the County, all of the local communities, libraries, this has gotten out of hand. The papers talk about it; all of the finance people talk about it. We froze it because we realize we could not continue it

without massive, massive amounts of money coming in to fund it. Right now, we are -- we had a hit with the market the same as the County had in 2008, et cetera. We were not fully funded for the purposes of terminating the plan, even though it's frozen. As it's frozen, no additional benefits go to the employees. Whatever they had is frozen, so the cost to the County to fund that, we are looking for a million dollars extra in order to bring the liabilities and the benefits that have been stated by the actuaries together and see if we can't dispose of it completely.

Now, I should -- with regard to our budget, I would like the people just to remember that if we don't spend it, we don't get it; and in 2011, the money that was saved from going into the Empire Plan and our turnover savings, close to a million dollars, was not claimed by us, and we did not receive those funds. If we get a flat budget, and whatever it is, that's what it is. We have to go through a lot of dealing to get a modification to our budget.

So last year, 2011, on December 31, we were shy in spending close to a million dollars, and that really, in effect, reduced our 2011 budget by that amount.

**CHAIRMAN MONTANO:**

Gentlemen, we're going to have -- with all due respect, we're going to have to move this along because we have the County attorney and Mr. Besen here. We need to go into executive session. We have another speaker. So could you wrap up, and then I think Legislator Stern has a question.

**LEG. KENNEDY:**

I'll be happy to defer, but what I'm going to do through the Chair is I'm going to make the request to BRO -- we don't have to do it right now. I'll be happy to go ahead and pick up and have the conversation with you, but especially to what Phil just spoke about, the fact that the agency actually received or claimed one million less than what they were -- what the adopted 2011 was is certainly something that I want to see and is going to be pertinent and relevant.

And the other thing that we're going to do is is, we have to see some kind of comparison. I agree with you: the private bar does a great job; but there's no doubt about it, an 18(b) attorney costs us more than it does to have you carry that same case, so we have to look at the dollars and cents. Mr. Chair, thank you.

**CHAIRMAN MONTANO:**

Thank you very much. Legislator Stern. No questions? All right. This is something that we are going to continue to discuss. I'm sure you will speak to all the Legislators individually, particularly those members that are on the operating budget, the bipartisan operating budget committee. Right, Lynne? Inside joke. Don't put it on the record. Anyway, I want to thank you very much for being here. We are aware of this. We are clearly, clearly looking at the numbers and seeing what we can do. And, you know, you have -- I think it's fair to say, you have a majority of our support; whether we can get this done is a separate issue, but we will be working with you. Good seeing you again. Thank you.

**MR. O'REILLY:**

Thank you.

**CHAIRMAN MONTANO:**

Okay. We have one more card. Mitch Pally. Mitch, how are you again?

**MR. PALLY:**

Good. How are you?

**CHAIRMAN MONTANO:**

And you're representing today the Long Island Builders.

**MR. PALLY:**

That, I am. And you want to talk on Resolution 1702.

**MR. PALLY:**

Yes.

**CHAIRMAN MONTANO:**

All right. You're on the clock. You have three minutes.

**MR. PALLY:**

Good morning. I won't take that long. Good morning, everyone, and thank you for giving me the opportunity. I'm here today on behalf of Long Island Builders Institute, and our strong support for legislative resolution 1702 introduced by Legislator Cilmi, which would create a rules and regulations procedure for Suffolk County for the first time. The rules and regulations created by our County departments having major impact on the health, welfare, and safety of every man, woman, and child living in Suffolk County now and in the future. Unfortunately, there is no process by which the public and the agencies are required to interact before the promulgation of rules, as there are by the State of New York, which has an actual procedure. It is our feeling that County departments should be required to interact with interested parties; should be required to post draft regulations on their websites; provide a comment period for people to comment on; anybody who wants to; take those comments into concern; and then draft final regulations based on those. That is the purpose of 1702, and that is why the Long Island Builders Institute, many of which our members are affected by a wide variety of regulations by County agencies. We support the resolution and the recommendation, and we would urge this Body and the full Legislature's approval of the resolution.

**CHAIRMAN MONTANO:**

Thank you.

**MR. PALLY:**

Thank you.

**CHAIRMAN MONTANO:**

I received a letter from you -- well, from the Long Island Builders. I don't know if my colleagues have received it. My legislative aide is making a copy for all the members of the Committee. We'll pass that out. Are there any questions? Okay. You still have a minute.

**MR. PALLY:**

No, I'm --

**CHAIRMAN MONTANO:**

Mitch, good seeing you again.

**MR. PALLY:**

I know we have other things too, and I wanted to make sure --

**CHAIRMAN MONTANO:**

Thank you. I appreciate it.

**MR. PALLY:**

-- you understand our strong support for this concept. Thank you.

**CHAIRMAN MONTANO:**

We do. And I believe that on that bill, the public hearing -- I don't believe, I know that the public hearing, according to my notes, was closed on 9 -- is that a 15 or a 13? Whatever day it was.

**MR. PALLY:**

Yes. Yeah, I got there too late that day.

**CHAIRMAN MONTANO:**

Oh, wait a minute. Counsel has it recessed; I have it closed.

**MR. PALLY:**

Oh. I thought it was closed also, but if it's recessed, I will come back to the full Legislature at the next hearing, but my understanding was that it was closed.

**CHAIRMAN MONTANO:**

Well, if it's recessed, we could not pass that out of Committee today. If it's closed, we could vote on it. We could table it. We could pass it out. We'll check that when we get to the agenda. Thanks, Mitch. It was good seeing you again.

**MR. PALLY:**

Okay. Thank you very much. Thank you.

**CHAIRMAN MONTANO:**

Okay. That completes our cards. Is there anyone that would like to address the Committee? Hearing none, we're going to move the agenda to the -- actually it's a presentation, and there are three -- what I'm going to do is, because we have two of the attorneys, I'm going to ask Mr. Stuart Besen, who is our counsel in the case Thomas J. Spota et. al. versus County of Suffolk, to come up. Mr. Besen, I just want you -- you can have a seat or the podium. How are you, Stuart?

**MR. BESEN:**

Good. Thank you, sir.

**CHAIRMAN MONTANO:**

I would just like to get on the record a public -- whatever public information is available on this case, and then I think we're going to make a motion -- or probably make a motion to go into executive session to discuss other aspects of this matter. But could you tell us where we're at on this litigation? I did pass out a copy of the editorial that Newsday wrote on September 28 to all the Committee members, so why don't you bring us up to date. Last time you were here, we did go into executive session during the pendency of the litigation, and now that it's been resolved, at least at this level, just tell us what happened.

**MR. BESEN:**

Yes. As I briefed you previously, there was a lawsuit commenced by the District Attorney, by the Suffolk County Sheriff, and the Suffolk County Clerk attempting to overturn term limits just for those three specific offices, specifically 27 -- Local Law 27 of 1993. Thereafter, the plaintiffs in the case made a motion for summary judgment. As I told you that, what we do, we cross moved for summary judgment. So since there really were no factual issues in the case -- it's just strictly a

legal issue -- is whether or not this County Legislature, through Local Law 27 1993 had the authority to impose term limits on specifically and exclusively the District Attorney's Office, the County Clerk, and the Sheriff, their argument being they are really State offices, they are constitutional offices, and they would really -- they would only be able to impose term limits through the State mechanism or the State Legislature. We cross moved to defend the law, that the law was constitutional on several grounds. On September 25, 2012, Judge Gazzillo issued a 36-page opinion granting the plaintiff summary judgment --

**CHAIRMAN MONTANO:**

Denying your motion?

**MR. BESEN:**

Denying our motion, granting the plaintiff summary judgment effectively stating that the law was unconstitutional and again exclusively for those three offices. I believe that I stated on the record that I would file a notice of appeal and then come to the Legislature for direction whether or not that appeal should be perfected.

**CHAIRMAN MONTANO:**

And just briefly indicate what is the status with respect to the plaintiff intervener or the citizen intervener.

**MR. BESEN:**

Yes. A gentleman named Peter Nicolls who tried to intervene in the case, his only real connection to it is that he's a Suffolk County voter and supports term limits. The judge denied his intervene action --

**CHAIRMAN MONTANO:**

Did he vote on the 1993 -- was there a referendum in 1993?

**MR. BESEN:**

There was. There was -- not only did the law pass, obviously, due to traditional mechanism of the County Legislature and the County Executive at the time, but there was a public referendum which was supported by the public.

**CHAIRMAN MONTANO:**

Did this petitioner-plaintiff or citizen-plaintiff vote in that referendum; did he allege that?

**MR. BESEN:**

I believe he did.

**CHAIRMAN MONTANO:**

Okay. Any questions? Did you file the notice of appeal?

**MR. BESEN:**

I have not. In the decision, the attorney for the plaintiff has to file a judgment.

**CHAIRMAN MONTANO:**

Has to file an entry of -- that hasn't been -- the notice of entry has not been filed?

**MR. BESEN:**

No, it has not. The judge --

**CHAIRMAN MONTANO:**

So the clock in which to -- the 30 days has not started?

**MR. BESEN:**

It has not started. No, it hasn't.

**CHAIRMAN MONTANO:**

Okay. Having no questions, there are some issues that I think the Committee would like to address, and I think they are more appropriate for Executive Session. Counsel, would you agree with that?

**MR. NOLAN:**

Yes.

**CHAIRMAN MONTANO:**

Okay. I'm going to make a motion that we adjourn into executive session. I need a second.

**LEG. STERN:**

Second.

**LEG. NOWICK:**

Second.

**LEG. KENNEDY:**

Second.

**CHAIRMAN MONTANO:**

I got three seconds. Wow. We'll take Legislator Nowick. All in favor? We are now adjourned -- we are going into executive session to discuss certain issues of the Spota versus County of Suffolk case and the legal -- what's the term; "strategy"? We'll be back.

(Committee met in executive session at 10:36 a.m.)

**CHAIRMAN MONTANO:**

I apologize for the delay. We had an extended executive session. We had an executive session. And now we're going to go -- I'm going to make a motion -- do we have enough -- all right. I need a Legislator and I apologize to the County Attorney for having to wait. We didn't think we'd run this long. I need a Legislator so we can go back into executive to discuss Burnett (ph) versus County of Suffolk and Glass, et. al versus County of Suffolk.

(Leg. Nowick entered the meeting at 11:04 a.m.)

Lynne, I'm making a motion to go into County Executive -- I mean, executive session with the County Attorney to discuss the other two cases that were filed against the County: Glass versus County of Suffolk and Burnett versus County of Suffolk, and we want to get an explanation of where we're at with respect to legal issues on these cases. Do I have a second?

**LEG. CALARCO:**

Second.

**CHAIRMAN MONTANO:**

Second by Legislator Calarco. All in favor? Opposed? Abstentions? We're moving into executive session. Mr. Cohen and Gail Lolis from the County Attorney's Office will be joining us in executive session. We'll be right out.

(The Committee met in executive session at 11:05 a.m.)

**LEG. STERN:**

Okay. We are back from executive session. So we are going to move to the agenda. So starting with the agenda, **IR 1341**, I am told has been stricken, so that is removed from our agenda.

Moving on to **IR 1526**.

**LEG. KENNEDY:**

Motion to table.

**CHAIRMAN STERN:**

Let me read the title. **Directing the Division of Real Property Acquisition and Management to subdivide and offer for sale a certain parcel of land. (Kennedy)** Motion to table by Legislator Kennedy. I'll second. All in favor? Opposed? Abstentions? **IR 1526 is tabled. (VOTE: 5-0-0-1, Leg. Montano not present)**

**IR 1598, Directing a Cost/Benefit Analysis of sale of Kermit W. Graf Building. (Schneiderman)** I'll make a motion to table.

**LEG. KENNEDY:**

Second.

**CHAIRMAN STERN::**

Second by Legislator Kennedy. All in favor? Any opposed? Any abstentions? **IR 1598 is tabled. (VOTE: 5-0-0-1, Leg. Montano not present)**

**IR 1702, Adopting Local Law No. -2012, A Charter Law to make transparent the County's rule making process. (Cilmi)** This is -- the public hearing was closed on September 13, so this is now before us.

**LEG. KENNEDY:**

Motion to approve.

**CHAIRMAN STERN:**

Motion to approve by Legislator Kennedy.

**LEG. CALARCO:**

Motion to table.

**CHAIRMAN STERN:**

Motion to table by Legislator Calarco. I will second the motion to table. Anybody else? Motion to table comes first. All in favor? Any opposed? Any abstention? **IR 1702 is tabled.** Note Legislator Kennedy's opposition. Anybody else? All right. **(VOTE: 4-1-0-1, Leg. Kennedy opposed, Leg. Montano not present)**

**IR 1708, Adopting Local Law No. -2012, A Charter Law requiring legislative approval of fee changes. (Cilmi)** Public hearing was closed on September 13. This is now before us.

**LEG. KENNEDY:**

Motion to approve.

**CHAIRMAN STERN:**

Motion to approve by Legislator Kennedy.

**LEG. CALARCO:**

Motion to table.

**CHAIRMAN STERN:**

Motion to table by Legislator Calarco. I'll second the motion to table. Tabling comes first. All in favor? Any opposed?

**LEG. KENNEDY:**

Opposed.

**CHAIRMAN STERN:**

Any abstention? **IR 1708 is tabled (VOTE: 4-1-0-1, Leg. Montano not present)**

**IR 1757, Establishing a Reapportionment Notification Program. (Gregory)**

**LEG. CALARCO:**

Motion to table.

**CHAIRMAN STERN:**

Motion to table by Legislator Calarco. I'll second. All in favor? Any opposed? Any abstention? **IR 1757 is tabled. (VOTE: 5-0-0-1, Leg. Montano not present)**

**IR 1840, Adopting Local Law No. -2012, A Local Law to expedite the return of blighted properties to the tax roll and productive use. (Anker)** Public hearing was closed on September 13. This is now before us. I will make a motion to table at the request of the sponsor.

**LEG. CALARCO:**

Second.

**CHAIRMAN STERN:**

Second by Legislator Calarco. All in favor? Any opposed? Any abstention? **IR 1840 is tabled. (VOTE: 5-0-0-1, Leg. Montano not present)**

#### **Introductory Resolutions**

**IR 1890, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Goorpersad Sookoo (SCTM No. 0500-066.00-02.00-069.000). (Co. Exec.)**

**LEG. CALARCO:**

Motion.

**CHAIRMAN STERN:**

Motion by Legislator Calarco. I'll second. All in favor? Any opposed? Any abstention? **IR 1890 is approved. (VOTE: 4-0-0-2, Legs. Nowick and Montano not present)**

**IR 1891, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Myron A. Hauptman and Ralph Delea, Trustees (SCTM No. 0200-189.00-01.00-010.000). (Co. Exec.)** I'll make a motion to approve.

**LEG. KENNEDY:**

Second by Legislator Kennedy.

Any questions? All in favor? Any opposed? Any abstentions? **IR 1891 approved. (VOTE: 4-0-0-2, Legs. Nowick and Montano not present)**

**IR 1892, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Refik Kavazovic and Rifat Kavazovic as joint tenants with the right of survivorship (SCTM No. 0200-658.00-02.00-011.000). (Co. Exec.)** I'll make a motion to approve and place on the consent calendar.

**LEG. CALARCO:**

Second.

**CHAIRMAN STERN:**

Second by Legislator Calarco. All in favor? Any opposed. Any abstention? **IR 1892 is approved and placed on the consent calendar. (VOTE: 4-0-0-2, Legs. Nowick and Montano not present)**

**IR 1893, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act Linda Meyer as the sole surviving heir of Orville Meyer (SCTM No. 0200-981.00-04.00-014.000). (Co. Exec.)** I'll make a motion to approve and place on the consent calendar.

**LEG. CALARCO:**

Second.

**CHAIRMAN STERN:**

Second by Legislator Calarco. All in favor? Any opposed? Any abstention? **IR 1893 is approved and place on the consent calendar. (VOTE: 4-0-0-2, Legs. Nowick and Montano not present)**

**IR 1894, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act West Hills Realty, LLC (SCTM No. 0400-194.00-01.00-067.000). (Co. Exec.)** Same motion.

**LEG. CALARCO:**

Second.

**CHAIRMAN STERN:**

Same second. Same vote. Is everybody good? **1894 is approved and placed on the consent**

calendar. (VOTE: 4-0-0-2, Legs. Nowick and Montano not present)  
**IR 1896, Sale of County-owned real estate pursuant to Local Law No. 13-1976 Gary B. Olsen and Theresa Olsen, his wife and Valentine Horvath and Renate Horvath, his wife (SCTM No. 0200-367.00-08.00-010.000). (Co. Exec.)** I'll make a motion to approve.

**LEG. CALARCO:**  
Second.

**CHAIRMAN STERN:**  
Second by Legislator Calarco. All in favor? Any opposed? Any abstention? **IR 1896 is approved. (VOTE: 4-0-0-2, Legs. Nowick and Montano not present)**

(Legislator Montano entered the meeting.)

**IR 1897, Authorizing the sale, pursuant to Local Law No. 16-1976, of real property acquired under Section 46 of the Suffolk County Tax Act John Gallagher (SCTM No. 0900-315.00-02.00-006.000). (Co. Exec.)** I'll make a motion to approve, place on the consent calendar.

**LEG. CALARCO:**  
Second.

**CHAIRMAN STERN:**  
Second by Legislator Calarco. All in favor? Any opposed? Any abstention? **IR 1897 is approved and place on the consent calendar. (VOTE: 6-0-0-0)**

**IR 1905, Authorizing certain technical correction to Adopted Resolution No. 616-2012. (Co. Exec.)**

**MR. NOLAN:**  
It's a very minor correction to a grant resolution. This can go on the consent calendar.

**CHAIRMAN STERN:**  
Thank you. So I'll make that motion to approve and place on the consent calendar. Second by --

**LEG. MONTANO:**  
Second.

**CHAIRMAN STERN:**  
Second by Legislator Montano. All in favor? Any opposed? Any abstention? **IR 1905 is approved and placed on the consent calendar. (VOTE: 6-0-0-0)**

**IR 1917, Approving payment to General Code Publishers for Administrative Code. (Pres. Off.)** Counsel says calendar for this as well.

**LEG. CALARCO:**  
Motion.

**CHAIRMAN STERN:**  
Motion by Legislator Calarco to approve and place on the consent calendar. I'll second. Anybody else? Approved? Any opposed? Any abstention? **IR 1917 is approved and placed on the**

**consent calendar. (VOTE: 6-0-0-0)**

**IR 1918, Approving payment to General Code Publishers for Administrative Code. (Pres. Off.)** Same deal?

**LEG. CALARCO:**  
Motion.

**CHAIRMAN STERN:**  
Same motion. Same second. Same vote. **Approved and placed on the consent calendar.**  
**(VOTE: 6-0-0-0)**

**IR 1931, Removing certain parcels from County auction list. (Romaine) motion to approve by Kennedy.**

**LEG. KENNEDY:**  
Motion to approve.

**CHAIRMAN STERN:**  
Motion to approve by Legislator Kennedy.

**LEG. MONTANO:**  
Explanation?

**CHAIRMAN STERN:**  
Any other motions before we call the administration? We have a motion to approve.

**CHAIRMAN MONTANO:**  
We need a second.

**LEG. CALARCO:**  
Motion to table.

**CHAIRMAN STERN:**  
Motion to table by Legislator Calarco.

**LEG. NOWICK:**  
Second.

**CHAIRMAN STERN:**  
Motion to table by Legislator Calarco. Legislator Nowick seconds the motion to approve, and I will second the motion to table, so both motions are before us.

**LEG. KENNEDY:**  
On the motion to approve, if I can.

**LEG. MONTANO:**  
If you may, John, I just asked for an explanation from Counsel.

**LEG. KENNEDY:**  
Sure.

**MR. NOLAN:**

Basically, there are five properties on the County's auction list for the October 23 auction. This resolution is seeking to remove five of the parcels, I think, with the ultimate goal of having them convey to the Town, I think for environmental purposes -- some administrative action may have already been taken on this, and the County Executive's office is here. That can address that.

**MR. VAUGHN:**

We have looked into this resolution. We were initially concerned about the second resolve clause in the resolution, which made it unclear and made it appear that the parcels were going to be given to the Town of Brookhaven without compensation. We asked the director of real estate, Jill Rosen-Nikoloff, to explore with the Town as to whether or not they were interested in the parcels. We have been told that the Town of Brookhaven is interested in the parcels, and that they would be happy to make us whole for the back taxes that are owed on the parcels.

In addition, if we were to transfer them via the 72(h) process, we would also strip off the TDR credits and keep those as well. In addition, we will be bringing forward, or we will be giving to Legislator Romaine to bring forward, a 72(h) resolution for these five parcels, which we would ask the Legislature to please consider and then vote either up or down. If the 72(h) resolution that's brought forward in the future is voted down, we would add them back to the auction list for next year. It is our understanding that the Town of Brookhaven will adopt resolutions to express their interest in these parcels after the October 9 general meeting, so we will lay the bill on the table and then amend it, or Legislator Romaine can lay the bill on the table and then amend it after the October 9 meeting, so we would ask that this be tabled at this time, please.

**CHAIRMAN MONTANO:**

John, you go.

**LEG. KENNEDY:**

That's fine, and thank you, Mr. Vaughn. I appreciate the explanation, and I also appreciate the Division of Real Estate reaching out and having enough dialogue. The one piece I didn't hear, are these today five parcels removed the auction list for October 23?

(Presiding Officer Lindsay entered the meeting.)

**MR. VAUGHN:**

My understanding is that in the past that all -- that when legislators have made requests for parcels to be removed from the auction list, they have been. It is our intention to get the resolution from Brookhaven Town and then move forward with removing them from the list. I also know that the auction list needs to be printed up, sir, and I'm not trying to give you a long answer on a short question, but the auction list needed to be printed up, and this is where I believe there was a question. The auction list needed to be printed up, and the parcels remained on that list when it went to printing. It is our intention so long -- I do believe we intend to remove these parcels from the list, but we will make a full determination on that as we get closer to the point of the actual auction. And the reason for that, sir, is that the Real Estate Division wanted to analyze any and all requests that came in at one point in time to make sure there was even enough parcels to go forward with an auction. We do believe -- we have been -- real estate has been told that the Town of Brookhaven is going to adopt resolutions asking for these parcels, and when they do, they will be removed from the auction lists.

**LEG. KENNEDY:**

Through the Chair, we have a representative from Division of Real Estate here.

**CHAIRMAN MONTANO:**

Before we get there, I have a question. Can we do that?

**LEG. KENNEDY:**

Okay. Sure.

**CHAIRMAN MONTANO:**

So you're recommending that we table the bill, and your intention is to strip these parcels from the list in October?

**MR. VAUGHN:**

Yes.

**CHAIRMAN MONTANO:**

All right. But what happens if somehow that doesn't happen and they do remain on the list? So what I'm suggesting, maybe, is that if you don't have any objection to the substance of the bill, would you be opposed to a discharge without recommendation so at least it's there? My concern is that, you know, the road to disaster is sometimes paved with the best of intentions, and I don't doubt your intentions, but I think what you're saying is that -- and I think what Legislator Kennedy is saying -- is that we want the properties off the list; is that correct? Can you comply with that?

**MR. VAUGHN:**

Yes, we can remove the parcels from the auction list. We believe that the Town of Brookhaven is going to provide -- is going to express an interest. They've sent an e-mail to Jill Rosen-Nikoloff saying that they're going to adopt that. Our ultimate desire, sir, was to make sure we at least were recouping our back taxes on it.

**CHAIRMAN MONTANO:**

I understand that, and I would not vote -- and you know, I would not vote in favor of any transfer without the payment of the back taxes. We've had that debate many times, and I voted against parcels that were being given away. We should get at least our back taxes, but I just want to be clear that what you're asking us to do today is to table this, but you're also stating on the record with no uncertainty that these properties will be removed from the auction list, so we don't have to revisit this issue, and there's not going to be any follow-up; am I correct? John, are you happy with that?

**LEG. KENNEDY:**

No, I appreciate that, Mr. Chair, but I also will go to your first suggestion, and I'd be happy to withdraw my motion to approve and instead put forward a motion to discharge without recommendation and allow Legislator Romaine, then, to go ahead and have the contact with Brookhaven Town, make sure that that's fully before the administration because the viewing process for these auction parcels has actually started already. It began on Monday, and I have the book in the office. I don't have this before me.

**CHAIRMAN MONTANO:**

Here's my point: If we're certain that this is going to be removed, these properties are going to be removed, I don't want to get into a debate at the general session with Legislator Romaine explaining 15 ways from Sunday why they should be removed when, in fact, we already have a commitment.

Is that what you're telling me?

**MR. VAUGHN:**

Yes, sir. Our -- and I would just like to reiterate that we are going to be either -- our office or we are going to give to Legislator Romaine to lay on the table a bill that contains these five parcels for a 72(h) resolution --

**CHAIRMAN MONTANO:**

Since it was his bill, I think courtesy dictates, you know, you pass it on to him.

**MR. VAUGHN:**

And we certainly agree with that.

**CHAIRMAN MONTANO:**

And, yeah, and I think that is a good practice. But I don't want to pass this out and have a debate on Tuesday when we have so much other business if I am assured that these properties will be dealt with. Right now, we can't even give them to Brookhaven because I don't have a resolution accepting them, so we're really putting the cart before the horse, are we not?

**MR. VAUGHN:**

Correct.

**CHAIRMAN MONTANO:**

Our point here is that these properties must be removed from the auction list.

**MR. VAUGHN:**

That is completely understood.

**CHAIRMAN MONTANO:**

And we got that. So, John, with all due respect, I would simply table it. If this does become an issue, then I'll be joining you when you start hollering.

**LEG. KENNEDY:**

Thank you.

**LEG. STERN:**

Tom, I think you had said this. Let me just confirm what you had said. If and when these properties are then 72(h)'d over to the Town that we would maintain the TDR credits. There's no downside to the County in making that kind of transfer if we deem the TDR credits with a value that we might want to maintain that the way it's suggested going forward here would not adversely affect that.

**MR. VAUGHN:**

Yes, sir. I had spoken to Jill Rosen-Nikoloff this morning after you and I spoke prior to the commencement of this Committee, and she explained to me that when we did transfer via 72(h) and did receive the money for our back taxes that we would be taking the TDR credits off of them, and that way, the County would have them at their disposal.

**CHAIRMAN MONTANO:**

So we have a motion to table with the representations from the County Exec's office, so I'm going to move the question -- well, first, we had a -- first goes the motion to table. All in favor? Opposed?

**LEG. KENNEDY:**

Opposed.

**CHAIRMAN MONTANO:**

One opposed. Lynne, are you opposed to this?

**LEG. NOWICK:**

Yes.

**CHAIRMAN MONTANO:**

So we have three in favor. Two opposed. No abstentions. Legislator Lindsay, are you part of the meeting today?

**P.O. LINDSAY:**

Yes.

**CHAIRMAN MONTANO:**

All right. Are you in favor of tabling this?

**P.O. LINDSAY:**

Yes.

**CHAIRMAN MONTANO:**

The vote is four to two. The issue is resolved, and I think that concludes the agenda. Have a nice day, everybody. **Tabled (VOTE: 4-2-0-0, Legs. Kennedy and Nowick opposed)**

**MR. NOLAN:**

(Inaudible.)

**CHAIRMAN MONTANO:**

Oh. You got to be kidding me. All right. I'm going to make a motion to go into executive session for the third time. Jobel Arevalo Castillo versus County of Suffolk and Francine Baranello Lippman versus County of Suffolk. What's this Board of Elections? Oh. It's Suffolk County -- this is against the Suffolk County Board of Elections. Oh, I want to hear this. All in favor? Opposed? Let's go.

(The Committee met in executive session at 11:52 a.m.)

**CHAIRMAN MONTANO:**

All right. We're back on the record. We're out of executive session. We had a -- we discussed two cases. The names are already on the record. I guess we're hereby adjourned. Would that be sufficient? Okay. We're hereby adjourned. Thank you very much.

(The meeting was adjourned at 12:26 p.m.)