

**MINUTES OF THE MEETING OF THE  
COUNTY OF WESTCHESTER  
BOARD OF ACQUISITION AND CONTRACT  
HELD ON THURSDAY, APRIL 12, 2012 AT 11:00 A.M.**

Acting County Executive	Kevin Plunkett
Chairman, Board of Legislators	Ken Jenkins
Commissioner of DPW/DOT	Jay Pisco
County Attorney	Robert Meehan
Deputy County Attorney	Jim Robertson
Commissioner of Finance	Ann Marie Berg
Deputy Commissioner, Dept. of Finance	Dennis Kelly
County Executive's Office	Christine Sculti
Budget	Patricia Haggerty
Board of Legislators	Anne Reasoner
Board of Legislators	David Tubiolo
League of Women Voters	Barbara Strauss
News12	John Goff
Secretary BAC	JoMary Vieira
Assistant Secretary BAC	Joan Cocciardi

**Mr. Plunkett presided.**

**Mr. Plunkett said, "The County Executive is out of the office on County business and has asked me as Deputy County Executive to preside at the meeting."**

**Mr. Plunkett continued, "Before we begin the meeting, has the Secretary checked the reception area to make sure that all members of the public who wish to attend this meeting have been invited into this conference room?"**

**Ms. Vieira confirmed that she had done so.**

**Mr. Plunkett said, "Before we start the meeting I would like to welcome Mr. Pisco back to the table and acknowledge that he is here and I would also think it appropriate to turn over the matter to the County Attorney and to his Deputy Mr. Robertson whomever would want to bring us up-to-date on the status of the litigation that was pending, which I understand was a decision in order issued yesterday from Acting Supreme Court Justice Barry Warhit, Mr. Meehan."**

**Mr. Meehan responded, "Yes, Mr. Chairman as you just mentioned on April 11<sup>th</sup> another order was entered by the Supreme Court Index #12-2584 where the court stated that the TRO has effectively been lifted because of the failure to publish the Local Law 6-2012 and the court concluded I am quoting from the decision 'having found that Local Law 6-2012 has not been properly enacted this cause finds that the Petitioners cannot meet their burden to show that they are entitled to a declaratory judgment mandating Respondents to comply with Local Law 6-2012. Accordingly, Petitioners application for further temporary relief is denied and the Board of A&C is to resume meetings in accordance with the ordinary course of business.' As you also know there was an Appellate Division modification of the original order and the Respondents appealed the original order and as a result of that appeal a modification of the TRO was issued. Now that the Supreme Court has vacated its own TRO we contacted the Appellate Division and we have a confirmation from the Appellate Division. The respondents have withdrawn the motion to appeal because there is no purpose in appealing the order any longer because it's vacated. The court confirmed that the order**

entered by the Appellate Division is therefore moot. So I enter you the decision of the court and an email that we received from the Deputy Clerk of the Appellate Division.”

Mr. Plunkett said, “Thank you Mr. Meehan. Let the record reflect that we will be entering into the record a decision order, an order to show clause filed and entered on 4/11/12 from the Honorable Barry Warhit that was just referenced by our County Attorney and #2 in the record today would be the email from Karen Tommer to Ms. Trentacosta of the County Attorney’s office recognizing that the Appellate Division matter has been withdrawn and there is no TRO or modified TRO in existence from the Appellate Division. Karen Tommer is the Deputy Chief Clerk Supreme Court of the State of NY Appellate Division Second Judicial Department. Accordingly Mr. Meehan we are prepared as I understand it to proceed with the A&C with Mr. Pisco being part of the meeting today.”

Mr. Meehan responded, “That is correct.”

Mr. Plunkett said, “The Chair recognizes Chairman Jenkins.”

Mr. Jenkins said, “The only thing that I would add to the reading from Mr. Meehan was the next sentence which says ‘nothing in this decision precludes the petitioners from following the proper procedure to enact Local Law 6-2012 and the following sentence which is with respect to any issues raised regarding whether at this juncture Jay T. Pisco may serve as a member of the Board of A&C absent the confirmation of his appointment by the BOL as this matter is unrelated to the request for temporary relief. This issue will not be determined until the underlying Article 78 proceeding is fully submitted,’ which will be in May. So I just wanted to add that in. That would constitute our normal objection with Mr. Pisco at this particular moment.”

Mr. Plunkett said, “The decision speaks for itself. We are prepared to proceed with the business of the County.”

Mr. Jenkins said, “We just wanted to note for the record we did get our questions out late. We were all busy with court proceedings. We apologize for not getting them to you in a timely fashion and that is why those items are being held over.”

**Acquisition & Contract.** Minutes of the meeting of 4/5/12 and the SEQR Review for agenda items.

J. Vieira

**Mr. Plunkett moved to receive and file the foregoing minutes and SEQR review, which were duly seconded and approved.**

1. (25622) **Board of Legislators** – Pursuant to Section 3(a)(xxi) of the Westchester County Procurement Policy and Procedures, to exempt from procurement an agreement with Mount Vernon United Tenants, Inc.

K. Jenkins

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

2. (25621) **Board of Legislators** – Enter into an agreement with Mount Vernon United Tenants, Inc., to provide a homelessness prevention and re-housing program, from 1/1/12 – 12/31/12, for an amount not to exceed \$58,000, under the listed terms and conditions.

K. Jenkins

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

3. (25625) **Board of Legislators** – Pursuant to Section 3(a)(xxi) of the Westchester County Procurement Policy and Procedures, to exempt from procurement an agreement with Volunteer Service Bureau of Westchester, Inc., d/b/a The Volunteer Center of United Way.

K. Jenkins

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

4. (25626) **Board of Legislators** – Enter into an agreement with Volunteer Service Bureau of Westchester, Inc., d/b/a The Volunteer Center of United Way to conduct both a program to encourage volunteerism, known as “Mobilizing More Volunteers”, and a program to assist local not-for-profits in handling additional volunteers, known as “Building the Capacity of Local Nonprofits”, from 4/1/12 – 3/31/13, for a sum not to exceed \$52,000, under the listed terms and conditions.

K. Jenkins

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

5. (25648) **Board of Legislators** – Pursuant to Section 3(a)(xxi) of the Westchester County Procurement Policy and Procedures, to exempt from procurement an agreement with El Centro Hispano, Inc.

K. Jenkins

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

6. (25647) **Board of Legislators** – Enter into an agreement with El Centro Hispano, Inc., for the provision of adult computer classes, from 1/1/12 – 12/30/12, for an amount not to exceed \$30,000, under the listed terms and conditions.

K. Jenkins

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

7. (25649) **CE/Youth Bureau** - Enter into an agreement with Student Assistance Services Corp. to operate the Mount Vernon High School Project Success Program, from 1/1/12 – 12/31/14, in a total amount not to exceed \$111,258, under the listed terms and conditions.

M. Cabaleiro

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

8. (25652) **CE/Youth Bureau** - Enter into an agreement with Westchester Community Opportunity Program, Inc., to operate the Youth Edutainment Services Program, from 1/1/12 – 12/31/14, in a total amount not to exceed \$207,693, under the listed terms and conditions.

M. Cabaleiro

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

9. (25654) **CE/Youth Bureau** - Enter into an agreement with Youth Voices Center, Inc., to operate the Power of Peace Program, from 1/1/12 – 12/31/14, in a total amount not to exceed \$132,039, under the listed terms and conditions.

M. Cabaleiro

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

10. (25415) **CE/Office for Women - 1)** Enter into an agreement with Legal Services of the Hudson Valley, for the provision of comprehensive civil legal services for victims of domestic violence, from 1/1/12 – 12/31/14, as described in Schedule A; **2)** Subcontract with Pace University, acting by and through the Women's Justice Center of the Pace University School of Law, to provide additional civil legal services for immigrant and non-immigrant victims through the Family Court Domestic Violence Legal Practicum in the Family Courts in White Plains and Yonkers; and **3)** Subcontract with My Sisters' Place, Inc., through its legal program to provide additional civil legal services in Yonkers to women victims, for a not to exceed amount of \$2,683,783, under the listed terms and conditions.

D. Balistreri

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

11. (25869) **Information Technology – OVER BY BOARD OF LEGISLATORS.** Request authority to enter into an agreement (IT-1233) with Atria Consulting, LLC, NYC, for the provision of the following information technology professional consulting services: Visual Basic .VB.Net; Java/JSP/J2EE for Criminal Justice Team and related County projects; Trunked Radio Technical Specialist, and Local Area Network Administration for DSS Systems provided by NYS, for a total amount not to exceed \$2,309,202, from 4/1/12 – 3/31/14, under the listed terms and conditions.

M. Beirne

12. (25983) **Information Technology – OVER BY BOARD OF LEGISLATORS.** Request authority to enter into an agreement (IT-1234) with Advantage Technical Resourcing, Inc., Norwood, MA, for the provision of the following information technology professional consulting services: COBOL for the Financial Systems and Human Resources Team; LINUX Server Admin Services for the County's server infrastructure and AIX systems at the Labs and Research facilities, for a total amount not to exceed \$526,310, from 4/1/12 – 3/31/14, under the listed terms and conditions.

M. Beirne

13. (25985) **Information Technology – OVER BY BOARD OF LEGISLATORS.** Request authority to enter into an agreement (IT-1236) with Computer SI Corporation, Norwalk, CT, for the provision of the following information technology professional consulting services: Hyland OnBase Programming services, for a total amount not to exceed \$180,000, from 4/1/12 – 3/31/14, under the listed terms and conditions.

M. Beirne

14. (25657) **Information Technology - Amend Agreement (IT-1186),** with Intergraph Corporation, Huntsville, AL, for software support and maintenance services (including upgrade) of the Fire and Emergency Medical Service Computer Assisted Dispatch System, and a Records Management System, licensed to and in use by the County's Department of Emergency Services, by extending the end date to 4/30/13, and increasing the amount by \$154,239, for a new total not to exceed amount of \$308,597, under the listed terms and conditions.

Beirne/Cullen

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

15. (25874) **Planning –** Approve a third amendment to the agreement with Westhab, Inc., for the Homeless Prevention and Rapid Re-Housing Program, in order to increase the amount by \$40,120, for a new total not to exceed amount of \$1,042,526.

E. Buroughs

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

16. (25616) **Social Services – OVER BY BOARD OF LEGISLATORS.** Request authority to enter into an agreement with the Mental Health Association of Westchester County, Inc., to operate the Single Homeless Assessment Center at Grasslands, to provide comprehensive assessments with an average annual capacity of 3,000 sessions and coordinate plans for treatment, housing and employment for homeless single adults, from 4/1/12 – 3/31/13, in an amount not to exceed \$622,020.

K. McGuire

17. (25618) **Social Services -** Authority for the County to exercise its first option to extend an agreement with All County Bus, LLC to provide transportation services for children placed under Article 1017, Article 1055 or children currently in foster care to transport them to and from court ordered visitation with custodial and/or non-custodial caretakers by extending the agreement for one (1) additional year, from 6/1/12 – 5/31/13, in an amount not to exceed \$170,000.

K. McGuire

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

18. (25725) **Social Services – OVER BY BOARD OF LEGISLATORS.** Request authority to amend a 2/17/11 Resolution to enter into an agreement with the Westchester Institute for Human Development for the provision of medical services to both foster children and children post-discharge from Westchester County foster parents, from 4/1/11 – 3/31/12, in an amount not to exceed \$197,011, in order to **1)** authorize the County at its sole option to extend the agreement for five additional one year terms at a price to be negotiated; **2)** enter into an agreement with WIHD to provide medical services for both foster children and children post-discharge from foster care, from 4/1/12 – 3/31/13, in an amount not to exceed \$274,391; and **3)** to subcontract with Night Nurse, LLC.

K. McGuire

19. (25620) **Health – OVER BY BOARD OF LEGISLATORS.** Request authority to enter into contract with New York State Department of Health to accept continued funding for the Primary Prevention of Childhood Lead Poisoning Program grant, for the second budget period, from 4/1/12 – 3/31/13, in the not to exceed amount of \$660,656.

S. Amler

20. (25646) **Health -** Enter into a contract amendment with the New York State Department of Health to increase the not to exceed amount for the Primary Prevention of Childhood Lead Poisoning Program grant, from 10/1/10 – 3/31/12, by increasing the not to exceed amount by \$1,439, for a new total not to exceed amount of \$960,423.

S. Amler

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

21. (25656) **Health – OVER BY BOARD OF LEGISLATORS.** Request authority to accept funding from the City of New York, pursuant to Part A of the Ryan White HIV/AIDS Treatment Extension Act, in the amount of \$6,500,000, from 3/1/12 – 2/28/13, and to enter into contracts for HIV-related services in the Tri-County region for the same period in a total amount not to exceed \$4,785,201, under the listed terms and conditions.

S. Amler

22. (25686) **Health** - Amend a 2/23/12 Resolution to accept funding from the New York State Department of Health for the Infertility Prevention Project Program Grant, by increasing the amount by \$131,996, for a new total not to exceed amount of \$164,995, and extending the end date to 12/31/16.

S. Amler

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

23. (25635) **College** – Amend a contract with Securitas Security Services USA, Inc., (No. WCC-09-709) to provide uniformed security services for Westchester Community College, from 1/1/11 – 12/31/11, by increasing the not to exceed amount by \$270,000, for additional security services required in 2011.

J. Hankin

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

24. (25639) **College** – Extend a contract with Securitas Security Services USA, Inc., (No. WCC-09-709) to provide uniformed security services for Westchester Community College, from 1/1/12 – 12/31/12, for two (2) additional one-year periods, with a not to exceed amount of \$1,846,958, under the listed terms and conditions.

J. Hankin

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

25. (25811) **College** – Contract No. WCC-11-605, with Earthkind Energy, Inc., for Construction Phase of Solar Panels on Physical Education Building Roof, Westchester Community College. Completed work and Final Contract Amount of \$219,000.

J. Hankin

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

26. (25815) **College** – Amend the Resolution approved on 6/16/11, for Westchester Community College to award Contract No. WCC-11-902, Physical Education Field Improvements, Phase II, Westchester Community College, Valhalla, New York to Ward Associates, PC, by changing the name of the consultant to BBS Architects, Landscape Architects and Engineers, PC.

J. Hankin

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

27. (25804) **District Attorney** – Enter into an agreement with the State of New York, to accept a grant in an amount not to exceed \$275,000 in State funds for the District Attorney to operate the Motor Vehicle Theft and Insurance Fraud Prevention Program, from 1/1/12 – 12/31/12, for an amount not to exceed \$279,660.

J. DiFiore

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

28. (25480) **Parks – OVER BY BOARD OF LEGISLATORS.** Request authority to enter into a license agreement with Powell Catering Services, Inc., Harrison, for the operation of the food and refreshment concession at Saxon Woods Park, White Plains, NY, from 4/15/12 – 12/31/14, under the listed terms and conditions.

K. O'Connor

29. (25668) **DPW/Transportation – OVER BY BOARD OF LEGISLATORS.** Contract No. 06-528-GC, with St. Francis Construction Co., Larchmont, for Pump Station Rehabilitation, North Yonkers Pump Station, New York, be amended to change end date to 12/31/12.

J. Pisco

30. (25669) **DPW/Transportation – OVER BY BOARD OF LEGISLATORS.** Contract No. 06-528-E, with E-J Electric Installation Co., Stamford, CT, for Pump Station Rehabilitation, North Yonkers Pump Station, New York, be amended to change end date to 12/31/12.

J. Pisco

31. (25670) **DPW/Transportation – OVER BY BOARD OF LEGISLATORS.** Contract No. 06-528-P, with S&L Plumbing & Heating Corp., Brewster, for Pump Station Rehabilitation, North Yonkers Pump Station, New York, be amended to change end date to 12/31/12.

J. Pisco

32. (25671) **DPW/Transportation –** Contract No. 06-528-HV, with S & O Construction Services, Inc., Pleasant Valley, NY, for Pump Station Rehabilitation, North Yonkers Pump Station, New York, amended to change end date to 12/31/12.

J. Pisco

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

33. (25675) **DPW/Transportation –** Contract No. 08-501, with Caladri Development Corp., to Replace Bus Wash System, Central Maintenance Facility, 475 Saw Mill River Road, Yonkers, New York, amended to change end date to 6/30/13.

J. Pisco

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

34. (25676) **DPW/Transportation –** Contract No. 08-559, with Fran Corp., d/b/a All Bright Electric to Upgrade the Existing Fire Alarm System, Michaelian Office Building, Parking Structure and Low Rise Building, White Plains, New York, be amended to change end date to 12/31/12.

J. Pisco

35. (25680) **DPW/Transportation –** Contract No. 11-510, with ELQ Industries, Inc., for Paving and Stormwater Improvements, Valhalla Campus, Valhalla, New York. Completed work and Final Contract Amount of \$67,737.

J. Pisco

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

36. (25681) **DPW/Transportation – OVER BY BOARD OF LEGISLATORS.** Contract No. 07-527, for Consolidation of Permitted Outfalls #8, #9 and #10, Westchester County Airport, Towns of Harrison and North Castle and Village of Rye Brook, New York. Request authority to advertise for bids.

J. Pisco

37. (25682) **DPW/Transportation** – Contract 10-555, for Repair and Upgrade of Pump Station Tower, North Yonkers Pump Station, Yonkers, New York. Authority to advertise for bids.

J. Pisco

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

38. (25683) **DPW/Transportation** – Contract No. 10-558, for Exhaust System Upgrade, 134 Court Street, White Plains, New York. Authority to advertise for bids.

J. Pisco

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

39. (25684) **DPW/Transportation** – Contract No. 12-212, for Countywide Boiler Maintenance, Westchester, New York. Authority to advertise for bids.

J. Pisco

**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

40. (25685) **DPW/Transportation** – Contract No. 12-509, for Resurfacing and Additional Improvements, New York Post Road, From Orawaupum Street to South Lexington Ave, City of White Plains, New York. Authority to advertise for bids.

J. Pisco

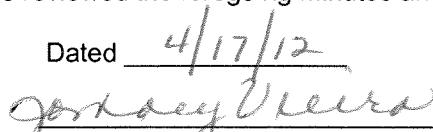
**Mr. Plunkett moved the resolution, which was duly seconded and unanimously approved.**

This meeting was recorded and an electronic copy of the minutes is on file with the Board of Acquisition and Contract.

There being no further business, the Chair declared the meeting adjourned. All approved resolutions are on file electronically with the Board of Acquisition and Contract.

  
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JoMary Vieira, Secretary

I have reviewed the foregoing minutes and have found them to be correct as written.

Dated 4/17/12  
  
\_\_\_\_\_  
JoMary Vieira, Secretary

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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**KENNETH W. JENKINS**, in his capacity as Chairman and Member of the Westchester County Board of Legislators, and Member of the Westchester County Board of Acquisition and Contract, **LYNDON WILLIAMS**, in his capacity as Vice-Chairman and Member of the Westchester County Board of Legislators, and **PETER HARCKHAM**, as Member of the Westchester County Board of Legislators

**Plaintiffs/Petitioners,**

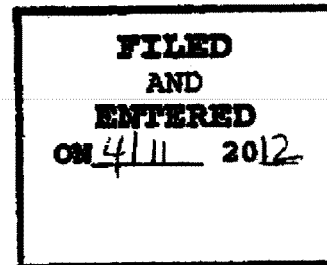
**-against-**

**ROBERT R. ASTORINO**, in his capacity as Westchester County Executive, and Member of the Westchester County Board of Acquisition and Contract, **JAY T. PISCO**, Individually and in his capacity as the purported Commissioner/Acting Commissioner of the Department of Public Works & Transportation and a purported Member of the Westchester County Board of Acquisition & Contract, and **ROBERT P. MEEHAN**, in his capacity as Westchester County Attorney,

**Respondents.**

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**WARHIT, A.J.S.C.**



**Decision and Order  
On Order to Show  
Cause**

**Index No.: 12-2584**

Petitioners filed an Article 78 proceeding pursuant to New York Civil Practice Rules and Law ("CPLR") and moved, by Order to Show Cause, dated March 25, 2012, for a Temporary Restraining Order and Preliminary Injunction requiring Respondents to comply with, implement and enforce Westchester County Local Law 6-2012. By Decision and Order, rendered March 29, 2012, this court declined to grant the specific temporary relief requested, which was to direct Respondents "to comply with, to implement and to enforce Westchester County Law 6-2012", but did order postponement of a meeting of the Board of Acquisition and Contract ("Board of A&C"),

whether Petitioner is entitled to the ultimate relief request, namely implementation and enforcement of Local Law 6-2012 by Respondents. The content of Local Law 6-2012 has historically been a subject of dispute between the parties.

The County Board of Legislators ("Board of Legislators") passed Local Law 6-2012 on November 29, 2011. The County Executive used his veto power on December 10, 2011. On December 22, 2011, the Board of Legislators overrode the County Executive's veto. Certified copies of Local Law 6-2012 were filed with the Westchester County Clerk and New York State. Receipt of same was confirmed by the County Clerk on February 27, 2012 and by New York State on February 29, 2012. Local Law 6-2012 was posted on the website maintained by the Board of Legislators, but was not published in a local newspaper.

In response to Petitioners' claim that Respondents are willfully failing to enforce Local Law 6-2012, Respondents have countered that their refusal to enforce the law is grounded in a belief that, since provisions of the law should have been subject to mandatory referendum, it is not valid. At this juncture, where only the issue is whether Petitioners are entitled to temporary relief, this court need not determine the propriety, or lack thereof, of Respondents' decision to simply ignore Local Law 6-2012, which they apparently disfavored, rather than mount a proper legal challenge to it.

However, as this court must consider Petitioners' likelihood of success, this court must determine whether Respondents correctly concluded Local Law 6-2012 is invalid. Respondents submit Local Law 6-2012 which, *inter alia*, removes the Commissioner of Public Works and Transportation as a member of the Board of A&C and replaces him/her with the Budget Director and removes inter municipal agreements from the purview of the Board of A&C, curtails the power of the County Executive and, therefore, was subject to mandatory referendum. Petitioners

instructed that: "[t]he question ultimately is whether the County Executive's ability to change the composition of the Board of Acquisition and Contract, through exercising his power to unilaterally remove the Assistant Commissioner of Public Works and appoint a new commissioner (who by virtue of his office, comprises 1/3 of the Board), is a power conferred (sic) on the County Executive as 'part of the framework' of the county's government or, in contrast, 'is merely a consequence of legislative policymaking' (Respondent's Supplemental Affirmation, Exhibit "N").

Accordingly, in considering whether Local Law 6-2012 should have been put to a mandatory referendum, this court must consider whether it curtails a power conferred upon the County Executive within the framework of the Westchester County government or merely a power he has had as a consequence of legislative policymaking .

To resolve this question, this court has looked to the Charter. Section 161.01 of the Charter establishes the Board of A&C, its membership and its duties (Charter § 161.01). The Charter set forth the membership of the Board of A&C to include the County Executive, the Commissioner of Public Works and Transportation and the Chairman of the County Board. As above discussed, Local Law 6-2012 seeks to alter the membership of the Board of A&C such that the Budget Director will sit rather than the Commissioner of Public Works and Transportation.

Respondents assert this substitution curtails the County Executive's power since, under the Charter he has unilateral authority to remove his appointee to the position of Commissioner of Public Works and Transportation whereas his appointee to the position of Budget Director is for a fixed term and may only be removed with approval of 2/3 of the Board of Legislators. In short, Respondents contend that altering the composition of the Board of A&C as Local Law 6-2012 does curtails the County Executive's authority to "control who the third member of the A&C is." (Respondent's Memorandum of Law, p. 18).

County were crafted with the intention of giving the County Executive a controlling interest on the Board of Acquisition and Contract. A mandatory referendum is not required to preserve that apparent coincidence.

It bears note that, under the framework of the Charter, the Board of Legislators is specifically empowered to: "[c]reate, organize, *alter*, or abolish departments, commissions, *boards*, bureaus, offices and employments *and/or transfer their functions and duties* (Charter § 107.21(1)(emphasis added); and see, Charter § 107.01). Local Law 6-2012 is not inconsistent with the framer's intent. Alteration of the membership of the Board of A&C falls squarely within this grant of authority.

Upon consideration of the Charter, this court finds the provision of Local Law 6-2012 which amends the membership of the Board of A&C to include the Budget Director and remove the Commissioner of Public Works and Transportation does not curtail any power delegated to the County Executive within the framework of Westchester County government (see, Mayor of the City of New York v. Council of the City of New York and Roberts, et. al, supra, p. 33; see also, Mayor of the City of New York v. Council of the City of New York, et. a., 280 AD2d 380, appeal denied, 96 NY2d 713 [2001]).

This court is not persuaded by the opinions rendered by two of County Attorney Meehan's esteemed predecessors that substituting the Budget Director for the Commissioner of Public Works would be subject to a mandatory referendum, since these opinions, rendered respectively in 1997 and 2002, were authored prior to the 2007 Court of Appeals decision and, thereby, could not have considered the present status of the law (see, Matter of the City of New York v. Council of the City of New York and Roberts, supra).

Additionally, Respondents contend a mandatory referendum is required for Local Law 6-

110). Moreover, inter municipal agreements are not specifically discussed within Chapter 161 of the Charter. This court finds there is a dearth of support for the position that the County Executive was intended, by the framework of county government, to have input as to whether these agreements are or are not presented to the Board of Legislators for approval.

Accordingly, this court finds that with respect to inter municipal agreements, Local Law 6-2012 merely regulates the operation of government and does not curtail a specific power intended for the County Executive within the framework of government (see, Mayor of the City of New York v. Council of the City of New York and Roberts, supra, p. 33). It cannot be ignored that under New York State Law, inter municipal agreements require approval by a county or municipality's governing body (General Municipal Law § 119-o[1]).

Nevertheless, although Local Law 6-2012 is not subject to a mandatory referendum, as it “[c]hanges a provision of law relating to public bidding, purchases or contracts”, it is subject to the provisions of section 209.171(2) of the Westchester County Administrative Code and Municipal Home Rule Law § 24(2)[b]) (see, Charter § 209.171(2)).

Where a matter is the subject of referendum on petition, commonly referred to as a permissive referendum, the Clerk of the Westchester County Board of Legislators is required, as soon as practicable after the adoption of the local law, to publish notice of that law, on at least one occasion, in at least one newspaper and is further required to publish a statement that the local law is subject to a permissive referendum (Westchester County Administrative Code § 209.211). Subsequent to the adoption of Local Law 6-2012 by the Board of Legislators, the Clerk of the Board did not publish notice of the law and did not publish a statement that the local law was subject to a permissive referendum (Westchester County Administrative Code § 209.211).


Petitioners assert they relied upon legal advice of the County Attorney's Office in

of Legislators, as this matter is unrelated to the request for temporary relief, this issue will not be determined until the underlying Article 78 proceeding is fully submitted.

All of the findings of fact and determinations of law rendered herein are specific to this court's determination regarding whether Petitioners have met the legal threshold for temporary relief and all of the findings and determinations of law rendered herein shall be subject to reconsideration once the underlying Article 78 proceeding becomes fully submitted.

The foregoing constitutes the decision, order and judgment of the Court and is so ordered.

Dated: White Plains, New York  
April 11, 2012

  
\_\_\_\_\_  
Hon: Barry E. Warhit  
Acting Supreme Court Justice

ALEXANDER E. EISEMANN, ESQ.  
Attorney for the Petitioners  
20 Vesey Street, Suite 400  
New York, New York 10007

ROBERT F. MEEHAN  
WESTCHESTER COUNTY ATTORNEY  
Attorney for the Respondents  
148 Martine Avenue, 6<sup>th</sup> floor  
White Plains, New York 10601  
By: James Castro-Blanco, Esq.  
Chief Deputy County Attorney

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**Meehan, Robert**

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**From:** Karen Tommer [ktommer@courts.state.ny.us]  
**Sent:** Wednesday, April 11, 2012 4:31 PM  
**To:** Trentacoste, Linda  
**Cc:** aee@eisemannlaw.com; Castro-Blanco, James; Meehan, Robert  
**Subject:** Re: Jenkins, et al v. Astorino, et al - App. Div. No. 2012 -03038

Dear Ms. Trentacoste:

This will confirm receipt of the Westchester County Attorney's letter dated April 11, 2012, withdrawing the pending order to show cause which is returnable before this Court on April 18, 2012. Accordingly, as per your request, the order to show cause signed by Justice Cohen, which contained a TRO on consent of the parties, has now been marked withdrawn. Upon withdrawal of the order to show cause, the TRO contained therein automatically falls and is no longer in effect. As I stated in our telephonic conference call a few moments ago, this Court will not be issuing any written orders on the order to show cause since it has been marked withdrawn.

If I can be of any further assistance in this matter please do not hesitate to contact me, on notice to all attorneys.  
Thank you,

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