NASSAU COUNTY LEGISLATURE

COMMITTEES MEETING

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RICHARD NICOLELLO

PRESIDING OFFICER

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C. WILLIAM GAYLOR, CHAIRMAN

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PUBLIC WORKS AND PARKS COMMITTEE

County Executive and Legislative Building

1550 Franklin Avenue

Mineola, New York

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Monday, April 3, 2023

3:18 p.m.

TAKEN BY: KAREN LORENZO, OFFICIAL COURT REPORTER

A P P E A R A N C E S

LEG. C. WILLIAM GAYLOR III	Chair
LEGISLATOR JOHN GIUFFRE	Vice Chair
LEGISLATOR LAURA SCHAEFER	
LEGISLATOR JAMES KENNEDY	
LEGISLATOR SIELA BYNOE	Ranking
LEGISLATOR ARNOLD DRUCKER	
LEGISLATOR CARRIE A. SOLAGES	

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MICHAEL PULITZER Clerk of the Legislature

A L S O A P P E A R E D

CHRIS LEMOINE, LEGISLATIVE AFFAIRS

KEVIN HARDIMAN, COUNTY ATTORNEY'S OFFICE

KEN ARNOLD, PUBLIC WORKS

CHAIRMAN GAYLOR: At this time I'll call the Public Works and Parks Committee to order. I'll ask the Clerk to call the roll.

CLERK PULITZER: Thank you, sir. Roll call. Legislator Carrie Solages?

LEGISLATOR SOLAGES: Here.

CLERK PULITZER: Thank you. Legislator Arnold Drucker.

LEGISLATOR DRUCKER: Here.

CLERK PULITZER: Ranking Member Siela Bynoe?

LEGISLATOR BYNOE: Here.

CLERK PULITZER: Legislator James Kennedy?

LEGISLATOR KENNEDY: Here.

CLERK PULITZER: Legislator Laura Schaefer?

LEGISLATOR SCHAEFER: Here.

CLERK PULITZER: Vice Chairman John Giuffre?

LEGISLATOR GIUFFRE: Here.

CLERK PULITZER: Chairman C. William Gaylor, III?

CHAIRMAN GAYLOR: Present.

CLERK PULITZER: We have a quorum, sir.

CHAIRMAN GAYLOR: Thank you.

There is one item on the Addendum Clerk Item 140-23. May I have a motion to suspend the Rules?

LEGISLATOR GUIFFRE: So moved.

CHAIRMAN GAYLOR: Moved by legislator Giuffre, seconded by Legislator Schaefer. All in favor, please signify by saying, "Aye".

(Whereupon, all members of the PW and Parks Committee respond in favor with, "Aye".)

CHAIRMAN GAYLOR: Any opposed?

(Whereupon, no verbal response.)

CHAIRMAN GAYLOR: No. The Rules are now suspended.

Clerk Item number 140-23 is a local law to amend Chapter 12 of the Nassau County Administrative Code in relation to the Department of Public Works approval

of building permits and curb cuts pursuant to Section 239-F of the New York State General Municipal Law.

May I now have a motion? Moved by Legislator Kennedy, seconded by Legislator Bynoe.

The Item is now before us. We will let the Administration talk first. Then we'll turn it over to questions.

MR. LEMOINE: Hi. Good afternoon, legislators. Chris Lemoine from the Administration.

CHAIRMAN GAYLOR: How are you doing, Chris?

MR. LEMOINE: All right. How are you guys doing?

CHAIRMAN GAYLOR: Good. Thank you.

MR. LEMOINE: Excuse me, how are you legislators doing? I apologize.

Clerk Item 140-2023 is a proposed local law that amends Local Law 5-2021 with respect to the processing and approving of General Municipal Law 239-F, applications for building permits and

curb cuts.

Primarily, the proposed local law focuses on two areas:

First, the law would allow for 239-F applications submitted to DPW to be accompanied by self-certification statements by New York State licensed professional engineer or architect.

Second, consistent with New York General Municipal Law 239-F, it would provide DPW with ten working days from receipt of the 239-F building permit application to either approve, disapprove or approve with stated conditions, the application.

CHAIRMAN GAYLOR: Okay. So just a couple of questions. So the current state law already allows for the ten days, correct?

MR. LEMOINE: That's correct.

CHAIRMAN GAYLOR: All right. So this is a way to fast track these applications?

MR. LEMOINE: Yes, that's correct.

By giving the ability of the applicant to submit a self-certification statement. Correct.

CHAIRMAN GAYLOR: Okay.

All right. Is there any debate or discussion? All right. Legislator Bynoe?

LEGISLATOR BYNOE: Hi, Chris.

MR. LEMOINE: Hi, how are you, Legislator?

LEGISLATOR BYNOE: All righty. So it really it takes the period from 30 days to ten?

MR. LEMOINE: That's correct. It's going to bring the period down. The Local Law 5-2021 provided for 30 days, made it 30 days. The state law, though, talks of ten working days. So we're going to ten working days, correct. General Municipal Law 239-F, I think it's B, subdivision two, provides for ten working days. That's what the state law provides for.

LEGISLATOR BYNOE: Okay. Is there a requirement for us to be in concert with

the state law? Is that why we're trying to amend this from 30 to ten?

MR. LEMOINE: Well, we're trying to amend it to fast track the process. Because the Administration continuously -- it's a constant concern, a constant complaint that the Administration continuously receives about the length of delay in processing.

LEGISLATOR BYNOE: So we're going to reduce it to ten?

MR. LEMOINE: Again, that's in compliance with the state statute. Correct.

LEGISLATOR BYNOE: Okay. And so how long is it taking us on average in this moment?

MR. LEMOINE: Um, I don't have those numbers exactly. I think it's a case by case basis and it depends. From the Administration standpoint, I can only I can only tell from the Administration standpoint, it's taking way too long to do these applications. I have Ken here as

well. He might be able to dive into the timetables. It's case by case.

LEGISLATOR BYNOE: Is it safe to say that it's taking more than ten calendar days?

MR. LEMOINE: Yes. Yes. Well, I refer to Ken on that part of it.

CHAIRMAN GAYLOR: Can I interject just one question? Would it be would it be safe to say that it's averaging eight months to a year per application?

MR. LEMOINE: I mean, I would defer to Ken on that, but I know that the process is very lengthy in time in general.

COMMISSIONER ARNOLD: Good afternoon. Ken Arnold, Public Works.

Currently, the Department turns around a review in 30 days as required by the 2021 ordinance. We have multiple review processes as their plans are rejected and they come back to the office.

LEGISLATOR BYNOE: Mr. Arnold, so

you're saying we're turning them around on average on 30 days.

COMMISSIONER ARNOLD: As required in 30 days.

LEGISLATOR BYNOE: As required in 30 days. So this ten day period, do we think we'd meet that ten day period?

COMMISSIONER ARNOLD: Remember, now the applicant is self-certifying. So they're basically doing part of the review for us. They're coming in saying that they've met our requirements.

LEGISLATOR BYNOE: So actually what we're doing right now is then kind of almost deregulating this and allowing it to be a self-certification; is that correct?

COMMISSIONER ARNOLD: That's correct.

LEGISLATOR BYNOE: So what is the fee that we currently --

COMMISSIONER ARNOLD: I think it's $1800. I don't have it in front of me. But for the review, it's I think it's

about $1800.

LEGISLATOR BYNOE: And how many of these do we get in about a year?

COMMISSIONER ARNOLD: We get a couple hundred.

LEGISLATOR BYNOE: Couple hundred per year. Okay. And so we're going to forego this $1,800 fee?

COMMISSIONER ARNOLD: No. We are still collecting all the fees because we're still engaged in the process.

LEGISLATOR BYNOE: So we're going to collect the $1,800 fee and we're going to also then require that our residents pay for a certified licensed individual to do the self-certification?

COMMISSIONER ARNOLD: Well, they're already paying because that person doing the design is the same person that will self-certify. So it's their design consultant that will be required to certify that they've completed the documents as required. So the engineer that they're hiring to build, say a

7-Eleven, is the same person that will certify that they've met all our requirements. So there should be no additional cost because they already need an engineer or architect to submit a package to the Town.

LEGISLATOR BYNOE: So they're going to have the ability to do this within the ten day window; is that correct? I just want to understand it. When they submit it, they'll automatically self-certify. Is that what you're saying? And then you'll approve it within the ten days.

COMMISSIONER ARNOLD: The way the ordinance is currently written, they will submit it. I have ten days to render a decision back. Depending on my decision, they can still self-certify and move forward on the project.

LEGISLATOR BYNOE: So then what's what's our role, since we're going to collect $1,800; what's our role?

COMMISSIONER ARNOLD: Well, my staff would still comment on each application,

but I have ten days to do it to make sure that it meets the requirements of the Department. Whether I approve it or I decline it, they can still serve self-certify move forward. But it gives my office the opportunity to look at the the plan set.

LEGISLATOR BYNOE: And we think it's in good conscience that we that we collect this $1,800, even though it seems as though we're passing the buck, we're passing it on bearing the responsibility of the of the applicant?

COMMISSIONER ARNOLD: Well, I mean, we're still going through our process. So we still have the same obligation, just ten days to do it. Not all applicants are going to look to self-certify either. I mean, that's up to the applicant what they decide to do.

LEGISLATOR BYNOE: Because what I saw in the prior law was that if we delayed the process in any way, we acknowledged that we were bearing some of

the burden by reducing the fee to the applicant. So now we're not going to accept any of the responsibility and then charge the full fee -- of any delay, is what I'm saying, in the process. Because if they apply if with the self-certification --

COMMISSIONER ARNOLD: Yes.

LEGISLATOR BYNOE: And for whatever reason, we still delay it.

COMMISSIONER ARNOLD: Well, no. Self-certification they would move forward.

LEGISLATOR BYNOE: But you said that there's still a review process.

COMMISSIONER ARNOLD: For the first ten days. Once you pass ten days, the self-certification, they can move forward without --

LEGISLATOR BYNOE: It will automatically kick in and their certification will --

COMMISSIONER ARNOLD: Yes.

LEGISLATOR BYNOE: Without any

review then.

COMMISSIONER ARNOLD: Correct.

LEGISLATOR BYNOE: Without any review.

COMMISSIONER ARNOLD: Right. The Department has the has the chance to comment on the first ten days and the project moves forward.

LEGISLATOR BYNOE: So if part of that plan is fatal, there's a fatal error in whatever they designed and they go ahead and they move forward based on this self-certification, then who's liable for any type of cost that is borne to then the applicant?

COMMISSIONER ARNOLD: I'd let the County Attorney answer that question.

LEGISLATOR BYNOE: Because if we're passing the buck, I don't understand.

MR. HARDIMAN: Good afternoon. Kevin Hardiman from the County Attorney's Office.

What's written into this proposed law, is an insurance provision for them

to provide to the County that they are insured at a certain level to protect us as a county from anything that they may not be doing properly once they've self-certified. So there are built in provisions into the local law. And it's something that New York City has done for many years at this point. It's something that we feel confident we can do and we've provided some fallback for us with regard to the insurance provisions to kind of cover us for any liabilities that may be had and there is Hold Harmless language as well.

LEGISLATOR BYNOE: Okay. So there's some ability for us to be protected in this process. And moreover, I guess, in the event that the licensed professional in some way, I guess, erroneously advised their client, they wouldn't seek to come to us directly. They'd have to go after them for malpractice in some kind of way?

MR. HARDIMAN: If they're certifying the plans, meeting the laws in the state

of New York and our local laws and otherwise, they are on the hook for that up to the point that the suit would go.

LEGISLATOR BYNOE: I think I'm going to yield there with my questions in the moment. Thank you.

COMMISSIONER ARNOLD: To clarify one thing, too, is the current way 239 works is I have ten days to act on the submittal. If I don't, the applicant can move forward without me. That has not come up in my history of doing this work. That's why we went to 30 days with our comments. So, currently, right now an applicant could move on without me if I don't respond in ten days. But the towns usually don't let that happen.

LEGISLATOR BYNOE: So they can move -- Currently, they can still move ahead with --

COMMISSIONER ARNOLD: The 239 in the state law says after ten days, without without self-certification, but the towns want my comments. So this kind of helps

that whole process.

LEGISLATOR BYNOE: Okay. That makes better sense to me. Thank you very much.

CHAIRMAN GAYLOR: Legislator Drucker.

LEGISLATOR DRUCKER: Thank you, Chair. I just want to piggyback a little bit on Legislator Bynoe's questions because I'm a little bit confused too.

If the design expert is the one who is providing the self-certification, then that's not the applicant. That's a third party that's doing the self-certification, correct?

COMMISSIONER ARNOLD: The design professional is working for the applicant.

LEGISLATOR DRUCKER: But there are representative. They're are third party. They're not the actual applicant.

COMMISSIONER ARNOLD: Correct.

LEGISLATOR DRUCKER: It's really kind of a misnomer to say it's a self certification. If it's a third party

employed and hired by the applicant to complete their job by certifying to you that the job is compliant with all of your requirements, right?

COMMISSIONER ARNOLD: Correct. It's not a outside firm doing it independent. It's the design firm doing the self-certification.

LEGISLATOR DRUCKER: So you're saying that the design professional is really acting in agency with the applicant, like an agent of the applicant.

COMMISSIONER ARNOLD: Working for the applicant, yes.

LEGISLATOR DRUCKER: So the current charter states that under the current law, if you don't issue comments within 30 days, then it says that, "if the Commissioner fails to make a report within ten working days -- well, it was 30 days -- of such receipt approval shall be granted upon receipt of the self-certification by the qualified

design professional". So prior to this law. All that was required was within 30 days a professional/design expert would provide their certification and then you had to comment within the 30 days. So basically we're just shortening the time period from 30 to 10?

COMMISSIONER ARNOLD: No, the prior version, I had 30 days to render a comment and get back to the applicant or the design professional. And if I didn't, then we reduced the fee. There was no self-certification in the previous version.

MR. LEMOINE: Sorry, under the previous version of the bill, if they didn't act within 30 days, there could be a self-certification, under the previous version of the 2021 bill. Yes.

LEGISLATOR DRUCKER: Right.

So if there was no comment made within the 30 days, that application did not require a self-certification. It was just based on whatever was submitted

prior, thereto; is that correct? So they didn't need a self-certification. They just relied on the merits of their application and hope that Ken's office would respond in 30 days.

MR. LEMOINE: Correct, Legislator.

(Whereupon, off the record discussion.)

LEGISLATOR DRUCKER: So I think we're a little confused, guys.

So the prior legislation, the way I read it, was there was a self-certification mechanism allowed. You just had to do it within 30 days. Now, the self-certification mechanism has been shortened to ten days. And so what are we accomplishing? Just shortening it by 20 days.

LEGISLATOR GUIFFRE: Not to interrupt. That's not my understanding. My understanding is there is no self-certification process now.

LEGISLATOR BYNOE: I agree with you, Legislator Giuffre, insomuch that Ken

Arnold just answered affirmatively to your point. I asked the question prior, was there a self-certification process? And he said there was not. They would have moved forward without self-certifying.

LEGISLATOR GUIFFRE: No, no. They can't move forward. That's the problem.

LEGISLATOR BYNOE: I was just told that they could. So somebody clarify that.

COMMISSIONER ARNOLD: So in the '21 version, I misspoke, if the fee went down to zero, they could self-certify.

LEGISLATOR BYNOE: They could self-certify.

COMMISSIONER ARNOLD: Yes. If the time elapsed to such an extent that there was no longer a fee to collect, they would self-certify.

LEGISLATOR BYNOE: Before you said there wasn't.

COMMISSIONER ARNOLD: I made a mistake.

LEGISLATOR BYNOE: Was there an indemnification clause in the prior law?

COMMISSIONER ARNOLD: Not to the extent that what exists right now.

LEGISLATOR BYNOE: Did it exist in any form?

COMMISSIONER ARNOLD: No.

LEGISLATOR BYNOE: Thank you. Sorry. I'm sorry.

COMMISSIONER ARNOLD: Sorry I misspoke on that.

LEGISLATOR DRUCKER: I'm not sure I understand any better, but I'll get there.

I'm just trying to understand the process because I deal with this sometimes with clients in the New York City Building Department. If there is no self-certification process, then the applicant is left with what, physical inspections by your office to determine or clarify whether they are in compliance?

COMMISSIONER ARNOLD: Currently,

today?

LEGISLATOR DRUCKER: Yes.

COMMISSIONER ARNOLD: We have to approve the plan set.

LEGISLATOR DRUCKER: And if there is no self-certification process, then you have to approve it based on physical inspections, I guess.

COMMISSIONER ARNOLD: No.

the issue at hand is the amount of submittals it takes to go back and forth till we get an approved set of plans and each submittal could take 30 days of review.

LEGISLATOR DRUCKER: Okay. So then you you satisfy your obligation by issuing certain commentary and that kind of restarts the clock, so to speak.

COMMISSIONER ARNOLD: Correct.

LEGISLATOR DRUCKER: Okay. Thank you.

CHAIRMAN GAYLOR: All right, Ken. Just so I'm clear, my understanding from looking at the data is that the insurance

limits going forward will be no less than $5 million per claim, $10 million in the aggregate. Is that your understanding?

COMMISSIONER ARNOLD: Yes.

CHAIRMAN GAYLOR: All right. If an applicant does self-certify, you do have the ability to audit and will do audits, I would imagine, spot audits?

COMMISSIONER ARNOLD: Yes.

CHAIRMAN GAYLOR: All right. Now, currently, when you do your approval of plan sets, do you send them out to a third party agency that you have on retainer?

COMMISSIONER ARNOLD: No. All our reviews are done in-house for this.

CHAIRMAN GAYLOR: Okay. All right. Does anybody else have any comment or questions up here? Legislator Giuffre, the floor is yours.

LEGISLATOR GUIFFRE: Is the county an additional insured on the policy? The $5 million/$10 Million policy?

COMMISSIONER ARNOLD: That would be

the intent. Yes.

LEGISLATOR GUIFFRE: Okay. I mean, you and I have spoken about 239-F's. So as Deputy Commissioner Bill Nimmo and I.

COMMISSIONER ARNOLD: Yes, right.

LEGISLATOR GUIFFRE: So I got an education on 30 days; 30 working days, right?

LEGISLATOR GUIFFRE: Because of requests from my constituents, particularly in Floral Park. My constituents would view this as progress. So to speed up some of the projects that are being held up due to 239-F delays.

Thank you.

CHAIRMAN GAYLOR: All right. Do we have any public comment?

Ms. Mereday.

MS. MEREDAY: Good afternoon, Meta J. Mereday. With regard to the self-certification, I am always concerned coming from a procurement background. I thought somebody said earlier that they're not expert in procurement

policies and things of that nature. But I am, and having worked with organizations that have had challenges and New York City as well as New York State, there are state legislators that are trying to roll back the self-certification because the number of abuses that have gone unchecked. That is my concern. As I again look through these documents and see the numbers of compromise and settlements that are the taxpayers overburdened with on a regular basis, I'm concerned about that. And the fact that it becomes so easy. Unfortunately, people of color, women, veterans, they have to go through lengthy processes just to get a certification for the person that they are, the gender they represent and the nation that they protect. So I think that we need to look seriously at this process.

And since we are talking about curb cuts, in Baldwin we are now living in a disaster area. With these curb cuts and

these street approvals, I don't know who actually reviews that process or actually comes out there in the middle of the day to see the traffic. We only have one line, Grand Avenue, which we call Grand Prix, and that's a whole 'nother issue, which is why I come here regularly to address this Body with regard to what we're doing to support the officers who have to stand guard to protect everyone that has to cross that dangerous and even more dangerous thoroughfare.

But those curb cuts that were a part of somebody's design will now have to be re-evaluated because we're going to soon have at least two developments off of Grand Avenue that will require those same curb cuts, those beautiful lights and those bricks that we're paying for, to be dug up all over again. And that means the $2.9 million that we had to fight this Body to get to fix Grand Avenue is now another waste of money.

So I'm asking that we look over this

process seriously when we talk about this self-certification process. Because, again, we're paying too much money out here for these lawsuits, for these contractors that we're bringing in with sanctions and connections, we're not looking at the diversity that's involved. We're not looking at what's happening to the residents in these communities where these curb cuts are being laid out and not followed up. You're not working with your planning departments to see what new projects are coming in.

And again, anybody can feel free. This would be a good time to go down Grand Avenue -- actually, an hour ago. When our high schools and three elementary schools get let out at the same time, and we now have to go down in one lane on a one road that services so many people going between the north and south shore. Thank you.

CHAIRMAN GAYLOR: Thank you, Ms. Mereday.

Do we have any other public comment?

(Whereupon, no verbal response.)

CHAIRMAN GAYLOR: Any opposed?

(Whereupon, no verbal response.)

CHAIRMAN GAYLOR: The item passes unanimously. There's no other business in front of the Committee. May I have a motion to adjourn?

LEGISLATOR KENNEDY: So moved.

CHAIRMAN GAYLOR: All right. Legislator Kennedy, seconded by Legislator Drucker.

All those in favor?

(Whereupon, all members of the PW and Parks Committee respond in favor with, "Aye".)

CHAIRMAN GAYLOR: The committee is now adjourned. We'll be followed by Health.

(Whereupon, the PW and Parks Committee is adjourned, 3:43 p.m.)

C E R T I F I C A T E

STATE OF NEW YORK)

: SS.:

COUNTY OF NASSAU)

I, KAREN LORENZO, a Notary Public for and within the State of New York, do hereby certify:

That the above is a correct transcription of my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of April, 2023.

Karen Lorenzo

Karen Lorenzo

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