

<b>Matter of Friends for Long Island's Heritage</b>
2007 NY Slip Op 33703(U)
November 8, 2007
Supreme Court, Nassau County
Docket Number: 9423-05/
Judge: Ira B. Warshawsky
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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. IRA B. WARSHAWSKY,  
Justice.**

**TRIAL/IAS PART 12**

In the Matter of

INDEX NO.: 019423/2005

Application for Judicial Dissolution of  
Friends for Long Island's Heritage,

Petitioner.

The following papers read on this application:

County of Suffolk's Affirmation in Opposition to Petitioner's Claim for Capital Improvements of John R. Petrowski, Affidavits & Exhibits Annexed.....	1
Exhibits G-O to Affirmation in Opposition.....	2
Affirmation in Response to Suffolk County of Edward Zinker, Affidavit & Exhibits Annexed.....	3
County of Suffolk's Reply Affirmation in Opposition to Petitioner's Claim for Unamortized Capital Improvements of John R. Petrowski & Exhibits Annexed.....	4

By leave of the court, respondent County of Suffolk submitted written argument in opposition to petitioner's plan for dissolution, specifically the inclusion of funds due from Suffolk County for unamortized capital improvements in the amount of \$607,376.00 in it's schedule of restricted assets. After a careful review of the argument submitted in favor and against the aforesaid claim, the court determines that said amount has been improperly included in Friends' schedule of unrestricted assets, dated December 15, 2006, and it is disallowed.

By decision dated November 8, 2007, the background of the Friends for Long Island's Heritage and its relationship with Nassau County was summarized. The relationship with Suffolk County by contrast, seemingly did not begin with collecting objects for the benefit of a county museum. Petitioner did assist the Division of Museum Services by operating museum stores and raising funds for museum projects and educational programs under an "Interpretation Agreement" (the Interpretive, Educational and Merchandise Services License Agreement.) From 1987 through 2004 petitioner administered the Landmark Preservation Program of Suffolk County counting 35 units comprised of historical structures, parkland residences and historic sites such as the Big Duck, the St. James General Store and the Elwood School House, and architecturally distinguished structures.

A contract governed petitioner's duties: the Landmark Preservation Agreement. In sum, petitioner was to repair, maintain and improve the units according to their official historical designation and to use the properties. As they did in Nassau County, petitioner performed its duties with the assistance of private donations and public grants. In this regard, capital funds received by or allocated by the County to restore landmark structures were sometimes assigned to petitioner for administration.

Sundry contractual provisions controlled: expenditures were to be allocated to either capital investment or maintenance; the cost of construction materials used was to be identified and credit given if the vendor was the County; pre-approval of construction was to be sought from the County, see paragraph 6.; construction was to be according to the historical period of the building and whether designated or "landmarked." The interior of certain properties was improved to make them habitable, and the tenants were denominated "licensees." See paragraph 18. Monthly licensing fees inured to the benefit of petitioner to be applied to the program. See paragraph 5.c). Significantly, petitioner covenanted to maintain careful records of all expenditures and the source and amount of all funds received under both the Interpretative Agreement and the Landmark

Preservation Agreement which the Suffolk of County maintains they failed to do. In 2004 an audit was conducted and upon a review of the final report both license agreements were terminated for cause.

Suffolk County relies upon paragraph (3) of the Landmark Agreement. Section (3)a) provides that the County ultimately maintained control of the properties and could, in its judgment, for the enhanced functioning of the County, withdraw an individual landmark structure from the Landmark Preservation Program. In the event that it did so, and where a capital improvement had been made by petitioner to such structure, "FRIENDS shall be reimbursed for such improvements less amortized basis of 10% of the value of such improvements for each year after such an improvement over a ten (10) year period" Landmark Preservation Agreement at paragraph (3) a).

Conversely, the following paragraph, (3) b), treats with termination of the entire agreement upon petitioners failure to perform the provisions of the Landmark Agreement, for any cause whether it be a failure to "timely fulfill its obligations" or to adhere to any of the specific terms. Petitioner was to be given 30 days notice and an opportunity to cure. Notice was given on August 17, 2004 advising petitioner that it had 1) retained profits of \$967,975.00 which should have been reinvested in historic properties and interpretive programs, 2) failed to keep books of account and records of activities in sufficient form, 3) not maintained the interior and exterior of four structures, 4) failed to reinvest licensing revenues into historic properties and failed to account for the distribution of such funds, 5) failed to pay for utility services, and in items 7) through 15) submitted incorrect, unorthodox, incomplete, unauthorized deductions and missing accounts concerning nearly all of the financial circumstances of the management of the Suffolk County properties under the Landmark Agreement, and had submitted unreconcilable schedules for capital improvements allegedly performed. Upon petitioner's failure to cure, notwithstanding an effort to do so on September 16, 2004, the Landmark Agreement was terminated.

Contrary to petitioners' position the Landmark Agreement makes no provision for credit for unamortized capital improvements where it's termination is due to breaches by petitioner. There is no textual support for the inclusion of unamortized capital expenditures, assuming some were made, in the termination clause of the Landmark Agreement, and it is, therefore,

ORDERED that the sum of \$607,376.00 itemized as unrestricted assets constituting unamortized capital improvements due from the County of Suffolk is disallowed.

In closing, petitioners' opposition warrants comment. Petitioner argues that the County never insisted on submission of each proposed repair or improvement for approval, and should not be heard to claim it as a breach now. In response, it must be stated that it is old law that a local government unit cannot be estopped from asserting its own rules. Parkview Assocs. v City of New York, 71 N.Y.2d 274, 282 (1988).

Dated: November 8, 2007

  
J.S.C.

**ENTERED**

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