

Nassau County Office of the Inspector General



NEC Contract Investigation Report

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Inspector General

November 30, 2020



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NASSAU COUNTY
OFFICE OF THE INSPECTOR GENERAL
Investigation Report

Nassau Equestrian Center at Old Mill, Inc.

Re: Item # E-77-20

Date Issued: November 30, 2020

"Good government is everybody's business"

Origin of Investigation

The Nassau County Office of the Inspector General (OIG) initiated an investigation regarding Nassau Equestrian Center at Old Mill, Inc. (NECOM), an entity which operates the Old Mill Horse Farm (the Farm) in Jericho, New York, pursuant to a license and operating agreement with Nassau County. In addition to being the incumbent licensee/operator, currently on a month-to-month basis, NECOM is also the prospective awardee of a new agreement which would allow NECOM to continue as licensee/operator of the Farm for at least 10 years. The investigation was based on several complaints received by the County Legislature, Administration, and the OIG, regarding the performance of NECOM under the initial/existing agreement, as well as concerns about the County's procurement process leading to the prospective new agreement.

Background

The Farm, commonly referred to as the Nassau Equestrian Center (NEC), is a Nassau County-owned approximately 42-acre horse farm on Route 106 in Jericho, New York. According to its website, NECOM offers at the Farm riding lessons, horse boarding and leasing, trail riding, private events, and a summer camp program.

The County purchased the Farm in 2008 for approximately \$12 million for open space purposes. On June 25, 2008, the County issued a Request for Proposal (RFP) seeking an entity to operate and renovate the property. The RFP ultimately resulted in a license and operating agreement between the County and NECOM. In April 2009, the County awarded a ten-year agreement, with two five-year renewal options, to NECOM. Nunzio J. Pizzirusso, also known as John Russo (Russo), is the president and owner of NECOM.

After NECOM became the operator in 2009, the County began receiving complaints regarding the care and treatment of the horses and the operations, maintenance, and safety

of the property. In June 2018, the County notified NECOM by letter that it was exercising its option not to extend NECOM's agreement. The County noted in its letter, however, that "[the] decision [was] not a reflection on the operations of NEC." On April 9, 2019, the County issued an RFP seeking proposals leading to a new agreement. NECOM was among the entities that submitted proposals. As of the date of this report, NECOM is operating on a month-to-month basis, pending the final outcome of the procurement process.

Results of OIG Investigation

The OIG received and reviewed complaints from several parties raising various allegations and concerns. Broadly, these fell into two overall categories; those pertaining to NECOM's performance under, or compliance with, the existing (2009) agreement, and those pertaining to the 2019 RFP procurement process for the next operator agreement. Upon reviewing these, OIG focused its investigation on the core issues identified and addressed in the *Findings* section below.

In the course of its investigation, OIG reviewed, among other things, the latest and prior RFPs, the existing agreement and prospective new agreement with NECOM, and its proposals. OIG obtained information from NECOM as well as the Office of Real Estate Services (ORES)¹, Department of Parks, Recreation & Museums (Parks), Department of Public Works (DPW), County Attorney's Office, Nassau County Fire Marshal's Office (FMO), the Nassau County Society for the Prevention of Cruelty to Animals (SPCA), the Town of Oyster Bay, and the Village of Brookville.

OIG attended three 2019 meetings of the evaluation committee that was in the process of reviewing the proposals, reviewed the committee's records, and was present during a proposers' walk-through at the Farm site. OIG staff returned to the facility on another date for an unannounced site visit. OIG staff communicated with three complainants, reviewed numerous documents, interviewed NECOM's president as well as current and former boarding tenants, proposers, and county employees, and met with the County Attorney's Office. OIG conducted an analysis of capital expenditure and financial reports supplied by NECOM, comparing these to provisions in the agreement.

NECOM cooperated with the OIG during the investigation. OIG also received the cooperation of Administration officials at numerous points.

¹ An office within DPW, formerly known as the Department of Real Estate Planning and Development. That department was responsible for oversight of the agreement. OIG in part requested that ORES provide it with any and all documents relative to Nassau Equestrian Center, and OIG reviewed the materials so provided.

OIG provided NECOM with this report's draft findings pertaining to the operator's performance under, and compliance with, the 2009 agreement. NECOM did not provide a written response to those findings. OIG provided the Administration with a draft version of this report, and received the written response of Parks Commissioner Eileen Krieb, which is attached as an appendix to this report.

Findings

PART I – OPERATOR'S PERFORMANCE UNDER / COMPLIANCE WITH THE AGREEMENT

Allegation: NECOM provides substandard care to boarded horses.

There were allegations to the effect that horses received inadequate or substandard care at NEC from NECOM. These allegations were not substantiated. In an interview, the Nassau County SPCA board president advised the OIG that he inspected NEC several times unannounced and found it clean and the horses well cared for. He also told OIG that there are no complaints about NECOM in the SPCA database, and that the only time he heard complaints about NECOM was while attending a meeting, at the request of the County, between Nassau County officials and complainants.

In January 2020, OIG staff conducted its own unannounced site visit at NEC. While OIG does not claim expertise in equestrian matters, its staff observed horses in stalls wearing equestrian blankets. The temperature inside the barns seemed warmer than the temperature outside. The stalls inhabited by horses appeared clean, lined with hay, and the feeders contained light green feed that was dry to the touch.

More significantly, also in January 2020, Parks engaged Cornell University Cooperative Extension of Nassau County (CCE) to conduct an unannounced inspection of NEC. CCE did so and, while it recommended some physical improvements, CCE was generally satisfied with the facilities and animal care provided by NECOM. CCE reported in part that:

All the animals appeared to be in healthy condition. There were no animals that exhibited symptoms of illness or un-thriftiness.² There is no reason to believe that animals are not receiving proper nutrition and care. The horses in the stalls all had clean and plentiful water and were slowly eating hay. The presence of properly labeled and organized medications and supplements

² The term "unthriftiness" in animals denotes a failure to grow or develop normally as a result of disease; not growing vigorously; not strong or healthy.

indicates that animals are receiving proper individual attention and care as needed.

CCE's report is attached.

Allegation: NECOM failed to comply with various provisions of the Licensing and Operating Agreement.

There was a range of allegations and concerns raised, some overlapping, to the effect that NECOM failed to comply with provisions of the agreement. Upon reviewing and consolidating these, OIG focused its investigation on the following allegations and concerns.

NECOM Failed to Submit Required Financial Records to County

There were allegations to the effect that NECOM was required but failed to submit quarterly and annual financial records to the County. It was claimed that for most years the County lacked NECOM's operator income and expense statement prepared by a Certified Public Accountant. While it is correct that NECOM was required under the terms of the agreement (sections 4.2(a) and 4.3) to submit financial statements, OIG found that they were in fact on file with the County. OIG received, among other things, copies of NECOM's quarterly and annual financial statements from both Parks and ORES. OIG believes the financial statements were received timely from NECOM. The County documented in 2016 a review of financial statements, and an ORES employee who oversaw the agreement from 2010 to 2013 told OIG that he recalled getting reports from NECOM regularly. Russo told OIG that he provided all financial reports timely and added that he submitted the same reports numerous times because the County kept misplacing them.

County Has No Record of Required Capital Improvement Spending

It was alleged that the County has no record of how much NECOM spent on capital improvements, although it was required to expend at least \$500,000 during the term of the agreement. While it is correct that NECOM was required under section 18.3 of the agreement to expend at least \$500,000, OIG found that NECOM did provide the County with records of capital expenditures. These were in the form of capital expenditure reports. Moreover, the County also received quarterly and annual financial statement reports. These documents collectively reflect that NECOM

expended more than double the required amount of \$500,000.³

NECOM failed to obtain County approval and failed to expend required amount for an Advertising and Promotional Program

There was an allegation that the County has no record reflecting its prior approval of any advertising or promotional program for activities at NEC, nor any information as to whether NECOM expended at least \$6,000 per year as required for that purpose. Section 7.4(a) of the agreement states:

Operator shall expend not less than \$6,000.00 per Operating Year to establish an advertising and promotional program for the activities at the Premises, provided that all brochures, media advertisement, and similar copy to be released, disseminated to the public or distributed in any manner shall be subject to the prior written approval of the Department. Operator shall submit documentation in a form acceptable to the Department, at the end of each Operating Year to substantiate expenditure of this amount. Operator shall have the right to print or to arrange for the printing of programs for all activities and events at the Premises containing any advertising matter except advertising matter which is indecent, in obvious bad taste, or which demonstrates a lack of respect for public morals and conduct. Operator may release news items to the media as it sees fit. If the Department in its discretion, however, finds any printed matter or releases to be unacceptable, then Operator shall cease or alter such printed matter or releases as directed.

With respect to the allegation concerning the County's prior approval of any advertising or promotional program, OIG does not read the agreement as requiring prior "*program*" approval. It does, however, specify that "*all brochures, media advertisement, and similar copy . . . shall be subject to the prior written approval of the Department.*" OIG found no evidence in County records that NECOM sought or obtained prior written approval from the County for any disseminated material, nor found copies of any flyers or advertisements or any other promotional material.

With respect to the concern about expenditures, OIG found that financial records reflect the amount expended by NECOM for an advertising and promotional program fell far short of the total amount mandated.

Under the terms of the agreement, NECOM should have expended a minimum of \$60,000 over the course of the 10-year agreement (\$6,000 x 10). When OIG reviewed NECOM's

³ NECOM reported, in total, \$1,345,689. OIG saw no record, however, indicating that the County verified the accuracy of the amounts reported.

financial statements it discovered, however, that they reflect that the Operator expended only \$7,503 for advertising and promotion over the entire length of the agreement term, \$52,497 less than the minimum total required.

In response to an OIG question regarding the lack of advertising spending, Russo advised that he did not add up the expenses to see if NECOM was meeting the \$6,000 minimum annual requirement. He speculated that the expenses may have been categorized in the ledger in categories other than advertising. Russo admitted that the advertising campaign consisted primarily of maintaining a website and Facebook page, but stated that NECOM also prints flyers and advertises its camps in local newspapers.⁴ OIG found the website and two Facebook pages. Both Facebook pages had little activity.⁵

Russo also told OIG that the County had not requested documentation to support the advertising expenses and did not monitor or oversee its contractual obligation.

OIG learned that in 2016, i.e., when the agreement had been in existence for about seven years, the County conducted a review of the financial statements submitted by NECOM and in a memorandum, noted in part that the submitted records indicated that only approximately \$13,000⁶ had been expended for advertising and promotion. The memorandum goes on to observe, however, that, "*Since the operator has been operating at capacity advertising and promotional expenses were not needed.*" OIG did not find, however, any wording in the agreement indicating that the requirement regarding advertising and promotion disappears if the facility is operating at capacity (or in any other event). Moreover, it is not clear what "capacity" the memorandum was referring to. If the writer was asserting that all or most of the boarding stalls were occupied at the time in 2016,⁷ that narrow focus would address only one aspect of the overall NEC operation, and

⁴ As noted, OIG found no evidence in County records that NECOM sought or obtained approval from the County for any disseminated materials, nor found copies of any flyers or advertisements.

⁵ OIG located two NECOM Facebook pages. The first page, Nassau Equestrian Center at Old Mill, which is linked to its website, had no posts. The only activity on the page, as of October 20, 2020, was the addition of its profile photo and cover photo on July 19, 2014, and an update of the profile photo on April 27, 2019. There was no further activity from the page's owner. The second page, Nassau Equestrian Center, had more activity, but as of October 20, 2020 the most recent post from the page's owner was dated August 16, 2010.

⁶ This amount differs from the total of \$7,503 reflected in the financial statements, as it adds in the sum of \$6,056 in expenses that NECOM reported to the County in February 2012. The extent to which the \$6,056 amount may have already been captured within the \$7,503 total figure is unclear. Even if the figures of \$7,503 and \$6,056 were wholly exclusive of each other (which OIG believes unlikely), it would mean that NECOM only reported \$13,559 in promotional expenditures; \$46,441 less than agreed and required.

⁷ Moreover, even if all boarding stalls were occupied at that moment, that condition did not remain static. Records reviewed by OIG reflect that in April 2019 there were 22 vacant stalls, and in May 2019 there were 8 vacant stalls.

presumably overlook the purpose of advertising and promoting the other activities and events that the facility - acquired by the County for public benefit - could be providing to the public each year. It would therefore seem that the Operator's obligation to advertise and promote NEC's activities to the general public logically would remain pertinent and in the public interest.

County has no Financial Records Relating to a Reserve Fund

It was alleged that the County had no financial records from NECOM relating to a required Reserve Fund. OIG found that the 2009 agreement did in fact require that NECOM maintain and reinvest a Reserve Fund. Evidence indicates, however, that NECOM did not establish a Reserve Fund until October 2018, over nine years into the term. Section 4.1 of the agreement states:

In consideration of the County granting the exclusive right to occupy and operate the Premises, the Operator shall be obligated to maintain a Reserve Fund account to contain the "Applicable Percentage" of Gross Receipts derived from the operation of the Premises (as set forth in Exhibit "G" attached hereto and made a part hereof) and to reinvest said Reserve Fund back into the Premises and the operations thereon including, without limitation, funding Public Programs (as described in Section 6.1 herein) conducted at the Premises provided, however, that any such expenditure shall require the prior written approval of the County.

Agreement Exhibit G reflects that 2.5% of Gross Receipts should be set aside in the Reserve Fund, with a Guaranteed Minimum of \$140,300. Per NECOM's financial statements, its Gross Receipts for the ten-year period of the agreement (2009-2019) totaled \$4,514,409. Therefore, 2.5% of NEC, Inc.'s Gross Receipts is \$112,860, and the Guaranteed Minimum of \$140,300 should have been set aside in the reserve fund.

OIG learned that, in or about June 2016 (i.e., when the agreement had been in existence for about seven years), the County conducted a review of the financial statements submitted by NECOM. In a memorandum, the County noted in part that the Gross Receipts for the period of 2009 through 2015 totaled \$2,626,731 and, applying the fee rate of 2.5%,

“equated to \$65,618.00 that should have been put into a reserve fund for future applied improvements. This reserve fund was not established since the operator expended \$1.06 Million in the initial term of the contract. The operator was advised that gross receipts from 2016 thru the anticipated extended term of the contract agreement should be computed on an annual basis and the applicable amount placed into a reserve account and listed in its financial statements.”

According to the financial statements, the \$1.06 million expenditure cited above was for capital improvements.

The foregoing analysis failed to note, however, that the purpose of the reserve fund was not limited to future applied improvements to the premises, but also explicitly extended to “*the operations thereon including, without limitation, **funding Public Programs** (as described in Section 6.1 herein) conducted at the Premises . . .*” (emphases added).⁸ OIG observed that the agreement does not provide that expending funds on physical improvements equates to or subsumes “*funding Public Programs*”; rather, it explicitly identifies funding public programs as an objective in its own right. This wording was presumably grounded by the goal of ensuring that County residents were able to partake of programs and activities conducted in the “open space” acquired by the County in 2008.

In OIG’s view, the failure to maintain reserve funds for public programs cannot be fully offset by physical improvements and it is thus questionable whether all of the stated purposes of the reserve fund were satisfied.

It should also be noted that OIG found no evidence of written approvals for any expenditures of the Reserve Fund, whether for public programs or any other purpose. This raises the further question as to whether any portion of the belatedly established Reserve Fund was ever applied in furtherance of the public interest. Indeed, it is unclear to OIG what realistic purpose was served by the late creation of the fund.⁹

Moreover, while improvements to the premises are reflected in financial statements and capital expenditure reports, OIG saw no documentation or accounting similarly reflecting expenditures identified for “Public Programs” within the County’s records.

As noted, back in 2016 the County observed that the Reserve Fund had not been established and advised NECOM “*that gross receipts from 2016 thru the anticipated extended term of the contract agreement should be computed on an annual basis and the applicable amount placed into a reserve account . . .*” It was some two years later, in a letter dated September

⁸ Section 6.1 provides, in pertinent part that:

. . . The Operator covenants and agrees to conduct various public programs (“Public Programs”) at the Premises. Such Public Programs may include, without limitation, riding lessons, after-school programs, summer/vacation day camps, educational programs for schools and other organizations, programs for persons with Disabilities, Special Olympic equestrian events and horse and pony lease programs. Anticipated activities are to include: Boarder use, instruction, horse shows, polo, hayrides, public pony trails, trail riding, jumping, dressage, and boarding of other farm animals. The Operator may also allow a bonafide sponsor the use of the Premises to conduct Special Events that are of the same nature as the aforesaid Public Programs and anticipated activities, subject to the receipt of the Department’s prior written consent

⁹ It should be noted that the 2019 version of the agreement does not require a Reserve Fund.

2018, that NECOM advised the County that its Gross Receipts for a 13-quarter period spanning 2015-2018 were \$2,144,996 and calculated that 2.5% of that amount was \$53,624.90. NECOM also provided a bank record from the following month, showing two deposits in October 2018, totaling the 2.5% amount quoted in its letter. These October 2018 deposits appear to constitute NECOM's establishment of the Reserve Fund.

The foregoing information suggests that the Reserve Fund, although required by the agreement, was not established by NECOM until a further two years after the matter was called to its attention; remarkably, over nine years into the agreement term. If so, although the agreement term was an ample ten years, there remained only a relatively brief window of time, less than a year, left in which to draw down on and utilize the Fund.

The County's 2016 analysis appears to find no adverse impact from the lack of timely compliance, but it is silent on, and thus appears not to have given consideration to, the effect, if any, of not reserving funds for public programs during (what was already) most of the agreement's term. Moreover, as noted, OIG saw no record in the County's files of expenditures from the Reserve Fund - or from any other funding source - for public programs during the entire ten-year course of the agreement. If this did not raise concern it logically raises a question as to the purpose of referencing "public programs" in that provision of the agreement.

NECOM failed to create a plan describing how it intends to make available programs, services and activities readily accessible and useable by individuals with disabilities

It was alleged that the County had no plan from NECOM consistent with section 8.5 of the agreement. Section 8.5 specifies that the Operator:

shall provide access to the Premises to disabled members of the public. The accessibility shall be clearly indicated by signs and included in all advertising by Operator. Operator shall include in its advertising and promotion materials, a plan that describes how it intends to make available programs, services and activities at the Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disabilities Act and any similarly applicable laws.

OIG's review of the proposal, agreement, and other records provided to OIG by the County did not reveal any plan describing how NECOM makes or intends to make NEC accessible and useable by the disabled, beyond a one sentence statement in its 2008 proposal. Under the heading of Riding Program for Children with Disabilities, it says: "*It is our plan to continue a program at OMF and assist in making this program a success.*"

OIG's review of NECOM's website and Facebook pages even as recently as October 20, 2020 did not reveal any references concerning accessibility or use by persons with disabilities, nor did OIG staff see a sign posted at the facility's entrance on Route 106 referencing the disabled. County records reviewed by the OIG also did not contain a copy of any advertising or promotional materials referencing access by disabled members of the public.

NECOM Failed to Obtain Prior County Approval of Capital Improvements

It was alleged that the County had no written requests from NECOM to perform capital improvements at NEC, and that NECOM had no written permissions to do so, even though the agreement specifies that all necessary approvals be in writing.

Review of the agreement confirmed that it required that NECOM obtain written approval of the County for contemplated capital improvements to the NEC premises. Section 1.1(a) of the agreement, which defines Capital Improvements, states in part that "*Operator must secure written permission from the Department to perform any Capital Improvement on the Premises.*" Section 2.2 additionally provides that "*All necessary approvals and permits must be in writing and signed by a duly authorized representative of the Department of Real Estate Planning and Development.*"¹⁰ Further, section 18.1(c) of the agreement provides:

In order to alter the Premises pursuant to subsection (b) of this Section, Operator must: (i) obtain the County's written approval for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings that may pertain to contemplated purchases and/or work; (ii) ensure that work performed and alterations made on Premises are undertaken

¹⁰ Section 2.2 of the agreement further provides that: "*Operator shall obtain any and all necessary approvals and permits required by federal state and county laws, rules regulations and orders...which are or may become necessary to lawfully occupy and operate the premises in accordance with the agreement...*"

NEC is located in the Town of Oyster Bay, with a portion within the Village of Brookville, but neither municipality had any record of permits for capital improvements at NEC. Both municipalities advised OIG that there should be permits on file if capital improvements or demolition were performed within their jurisdiction. In informal consultation with the County Attorney's Office, OIG was advised however, that such permits might not in fact be legally necessary. OIG deems the determination of this point as falling within the purview of the County Attorney's Office.

and completed in accordance with submissions approved pursuant to section (i) of this Section, in a good and workmanlike manner, and within a reasonable time; and (iii) notify the County of completion of and the making final payment for, any alteration within ten (10) days after the occurrence of said completion or final payment.

Despite the multiple expressions of the approval requirement, OIG found no record in the County's files of its written approval of capital improvements at NEC. At the end of this report is a list of capital improvements at NEC, as compiled by OIG based on information submitted to the County by the Operator in its capital improvements program reports, 2010 through 2018.

In response to an OIG query regarding obtaining approval from the County for capital improvements at NEC, Russo indicated that he received "verbal" approval from employees in ORES.

OIG found documentation on file that in December 2010, December 2012, December 2014, February 2016, and July 2018, NECOM submitted in writing to the County its Capital Improvements Program. The cover letter of the 2010 version explains in part that, "*The main objective of this presentation is to keep you abreast of the current and ongoing capital restoration improvements as per our license and operating agreement.*" Thus, the County was on notice of the improvements described in those reports even though the OIG did not find corresponding approvals for the improvements.

OIG discovered evidence of an instance where, although no written approval was found, the County was aware of the contemplated improvement in advance and apparently approved of it to some extent. This pertains to the large indoor training arena that was constructed in or about late 2015. OIG found an email from a DPW architect relating in part that in the summer of 2013, ". . . *I again visited the site to assist in determining the best location for a proposed indoor riding arena . . .*," suggesting the approval process in that instance may have been an iterative one. In any event, DPW only recently received the plans and photographs from NECOM's architect for the 2015 construction. DPW has indicated, however, that it is satisfied with the plans and will allow the ring to remain in place.

The foregoing information tends to corroborate Russo's statement that he received verbal approvals, at least to some extent. Nonetheless, such approvals do not meet the agreement's requirements for written approvals.

NECOM Failed to Adhere to Best Practices

There was a set of allegations, some general in nature and some specific, that NECOM failed to adhere to best practices, and professionalism, on a wide range of matters. The agreement references “best practices” in section 8.1, which states in pertinent part:

The Operator shall maintain and operate the Premises for the benefit of all County citizens and the general public in an attractive, accessible, safe, operable, sanitary and inviting manner consistent with the operations and best practices of comparable horse farm/riding stable facilities in the New York metropolitan area, and in such further manner as the County shall prescribe. . .

and in section 22.1 (b), which states in pertinent part:

The Operator shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Operator operates. The Operator shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence . . .

Given the general, limited language of the above provisions, OIG believes that the determination of what constitutes “best practices” and “professional manner” as to particular concerns is a matter of contract interpretation. OIG accordingly also believes that the interpretation of these contractual provisions for specific contexts would more properly reside within the purview of the County Attorney than the OIG.¹¹

OIG notes, however, that one of the “best practices” allegations concerned the lack of fire alarms and smoke detectors in barns and hay lofts. OIG learned that as a legal matter, fire code does not require smoke detection in barn areas. During its January 2020 site visit, OIG staff observed certain conditions at NEC that might constitute fire violations. OIG immediately reported its observations to the Fire Marshal’s Office (FMO). FMO personnel inspected NEC, found violations *not* deemed as “life safety,” and issued an Order to Remove Violations Forthwith, with a 15-day reinspection. FMO subsequently reported that all violations had been corrected. It should be noted that the violations did not concern fire alarms or smoke detectors, and the FMO reported that fire code does not require smoke detection in barn areas, due to temperature and environmental conditions.

FMO’s reports are attached.

¹¹ The Administration also received the same allegations concerning these matters.

No evidence that NECOM paid its employees Prevailing Wage Rate

One party expressed concern that there is “no evidence” that NECOM paid its employees, particularly the grooms, in compliance with the prevailing wage rate, in accordance with Section 8.8 of the agreement. However, even if there was evidence to support that concern, the County Attorney’s Office advised the OIG that the prevailing wage rate would not apply to NECOM’s employees.

County has no notifications of serious accidents which have occurred at NEC

It was alleged that the County had received no notifications of serious accidents that occurred at NEC. Section 8.6 of the agreement states in part:

Operator shall promptly notify the Department of accidents or unusual incidents occurring at the Premises. Such notice, including documents filed with any County, law enforcement or insurance agencies, shall be provided in writing within twenty-four (24) hours of the discovery of such accident or occurrence. Such accidents or incidents shall include, without limitation, damage to person or property, fire, flood and casualty. . .

OIG learned of two incidents at NEC during the agreement term that apparently meet the definitions of an accident and/or an unusual incident. OIG found no evidence, however, that the Operator, NECOM, notified the County of either matter, let alone within or even close to the required 24-hour period. The first incident allegedly occurred on July 15, 2010, when a child was thrown from a horse and injured. It appears that Nassau County learned of this matter on or about September 21, 2010 when a Notice of Claim was filed in connection with the incident, naming the County as a co-defendant.

The second incident allegedly occurred on January 29, 2013, when a horse slipped in mud and fell on a NECOM employee, breaking her leg. Records indicate that a Workers Compensation claim was filed on February 1, 2013. It appears that the County learned of this matter over a week after the incident, via a source other than NECOM. On February 6, 2013, a complainant notified a Nassau County Legislator of the incident. The matter was then referred to ORES and on the same day, ORES contacted NECOM to get an explanation.

Other Matters - Fingerprint checks

While not raised as an allegation, OIG observed in the course of its investigation that the agreement contains a fingerprinting requirement for certain employees. Section 21.1(b) of the license and operating agreement provides:

Consistent with Local Law 14-2003, and prior to the commencement of services, the Department shall ensure that all current and prospective personnel who, in carrying out this Agreement, will have unsupervised or regular and substantial contact with minors, are fingerprinted by the Nassau County Police Department. Where the criminal history record of any personnel reveals a conviction of a crime, the Operator shall, upon notice from the head of the department charged with administering the contract, remove such personnel from duties involving unsupervised or regular and substantial contact with minors. Within five (5) business days of making any changes that involve adding or removing personnel who have unsupervised or regular and substantial contact with minors, the Operator shall notify the Department head, in writing, that such addition or removal has occurred, and the basis for such addition or removal. Failure to comply with a lawful order of the Department to remove personnel from duty shall constitute a material breach of this Agreement.

NECOM maintains a summer camp program, advertised on its website as open to children aged 6 to 14 years old, and offers year-round lessons to all members of the public. According to Russo, NECOM's staff have contact with minors year-round but predominantly during summer camp. He related that there is one teacher and typically two assistants or "walkers" at summer camp who walk the horse while the children ride. Sometimes the "walkers" are minors themselves; some were previously students. In addition to instructing the summer camp participants, the teacher also provides lessons to members of the public including minors.

It therefore appears to OIG that NECOM has had personnel subject to the fingerprinting requirement, but when interviewed by OIG, Russo advised to the effect that, to his knowledge, none of his staff that worked with minors have ever been fingerprinted. Moreover, Russo stated that he was unaware of the law and agreement provision concerning fingerprinting.

OIG brought this matter to the attention of the County Attorney.

PART II - Procurement Process Relating to the 2019 RFP

There were allegations to the effect that the County's procurement process related to the April 2019 RFP was conducted in an improper manner, favoring NECOM, the incumbent operator. Upon reviewing these, OIG focused its investigation on the consolidated concerns identified below.

Objectivity of the Selection Process

It should be noted that OIG observed much of the proposal evaluation committee's process in real time, following the County's receipt of proposals in 2019. Based on those observations OIG has no reason to believe there were improprieties in the conduct of the committee. OIG witnessed three of the four meetings of the committee and was present during a proposers' walk-through of the facility. In addition, although none of the proposers filed complaints with the OIG, OIG nonetheless interviewed two proposers that a complainant had referenced.¹² These interviews did not result in information altering OIG's impressions of objectivity of the process.

There were allegations to the effect that the selection process was a "done deal" in favor of the incumbent operator, despite a "long history of problems," and concern that there would be no opportunity for the other proposers to explain their proposal and vision for the Farm. It was also pointed out that there were only five proposers.

It bears noting that the County could have, had it so chosen, entirely avoided the competitive procurement process by simply exercising the option to extend the existing agreement, thereby keeping the incumbent operator in place for at least five, and potentially ten, more years. While not obligated to do so, the County instead elected to commence a new selection process, issuing a new RFP and convening a multi-agency committee¹³ to review and evaluate the various proposals received in response.

Further, in the experience of the OIG, which has observed numerous selection processes in the County over the last year and a half, having "only" five proposers is by no means an unusually small or necessarily concerning quantity.

¹² A third proposer that the complainant subsequently referenced did not return OIG's telephone calls.

¹³ The selection committee included members from Parks, the SPCA and the Police Department's Mounted Unit.

OIG is aware that the evaluation committee in this instance did not have any of the proposers (including the incumbent operator), give a live presentation, and the decision as to whether to have live presentations is within the discretion of the committee. Live presentations can give an evaluation committee the opportunity to ask questions, seek clarifications, or explore potential concerns in an interactive setting. Written County policy clearly reflects that the committee determines the necessity of presentations.¹⁴ Accordingly, it is not an irregularity per se to evaluate proposals without inviting live presentations, nor does it render the resulting selection invalid.¹⁵

Others Proposed More Revenue

There was an allegation to the effect that two of the proposals submitted in 2019 offered much more revenue to the County than what the incumbent Operator offered. OIG reviewed the cited proposals and the records of the evaluation committee. From the record it appears that one proposer offered more revenue to the County and another offered more in capital expenditures but less in percentage of Gross Receipts. The record also reflects, however, that revenue is only one of the factors that the committee considered and evaluated in reaching its decision. The committee followed and documented a deliberative process, a significant portion of which OIG staff witnessed.

Vagueness of RFP

There were allegations to the effect that the 2019 RFP was unduly vague, lacking important and material information regarding the facility and deliberately omitting sources of revenue necessary to formulate a fully informed proposal. There was speculation that the incumbent operator was given “inside information” about the omissions, and that the vagueness was intended to give the County wide latitude in selecting the winning proposer.

¹⁴ See Countywide Procurement and Compliance Policy # CE-01-2019. For example, the policy provides in part, “*The committee has broad latitude to determine what steps are necessary to determine which proposer offers the best value to the County. If the committee believes that clarification is necessary, the committee may issue a written request for clarification. The committee may decide that presentations are necessary to understand fully the offers under consideration. ...*” (Excerpt from Appendix AA, Proposal Evaluation Committee Conduct, section 4).

¹⁵ In OIG’s view, as a general matter, it may be a beneficial practice to entertain live proposal presentations particularly in cases of extended duration; i.e., where there has been an incumbent for many years running and where the new award could result in the incumbent continuing in place for many more years. Such step may also reduce concerns about the objectivity of the selection process. OIG does not suggest, however, that the committee acted inappropriately in not having live presentations.

It was alleged in that regard that the RFP provided only a vague description of the property, with no descriptions of the contents, quantity of stalls, tack rooms, bathrooms, etc., and initially no mention of the indoor ring. One of the key examples given of material vagueness is that the RFP did not include the number of existing stalls. OIG found that while the RFP did not provide the number of stalls at the facility, the Addendum, issued to the proposers, did disclose the number of stalls. The OIG reviewed evidence which showed that all the proposers, except one, received the Addendum.¹⁶ OIG spoke to the proposer who did not receive the Addendum and was informed that the proposer had, however, counted the stalls during the site walkthrough. The walkthrough allowed the proposers to tour and observe the stalls and the various other features of the facility.

It was alleged that the RFP lacked information about the ability to build new stalls. OIG was also informed by a complainant that two proposers had asserted that they were not told that they could build additional stalls, and that one was told by a County representative at the walkthrough that no additional stalls would be allowed, that any new building would be impossible, and was advised not to even consider suggesting it. Contrary to the allegation, however, the OIG staff member witnessing the walkthrough did not hear any such comments. OIG additionally interviewed both proposers referenced in that allegation and learned that both were aware that they could build additional stalls; in fact, both of their proposals included the building of new stalls.

As to the RFP, it states that no new structures shall be constructed without the approval of the Legislature and the Village of Brookville. A potential proposer had cited this and raised in writing to the County the question whether there would be a limit of new stalls that may be added if a new barn was constructed, and also inquired as to any discussions by Nassau County and the Village of Brookville regarding this matter. In an Addendum issued May 3, 2019, the County responded that, “*No discussions have been held. All new construction subject to Nassau County Department of Public Works approvals and possibl[y] Village of Brookville.*”

Incorrect Information Given to Potential Proposers

It was alleged that the potential proposers were told at the site walkthrough that the indoor arena was not part of the facility, meaning that it would not remain when the incumbent operator left. During the proposers’ walkthrough on April 25, 2019, an OIG staff member in fact heard the Parks employee leading the walkthrough say something to the effect of,

¹⁶ The proposers who received the Addendum had downloaded the RFP through the County’s eProcure system. The proposer who did not receive the Addendum had not downloaded the RFP and did not sign up on the eProcure system until after the Addendum had been sent to the proposers.

the tents for the indoor arena and the summer stalls are not included as part of the facilities. However, about a week later on May 3, 2019, the County issued an Addendum stating in part that the indoor arena structure would remain on the property after the current contract expires. Additionally, the OIG noted that the proposals submitted by two proposers (who were referenced by a complainant) reflect that they understood that the indoor arena would be staying as part of the facility, as their proposals reference the future use of it.

It was also alleged that two proposers said that they never received a notice or notification about the Addendum and had to rely on hearsay about the arena. As noted above, OIG has seen confirmation that one of those proposers received the Addendum. As to the other, it appears that that proposer did not download the RFP and as a result would not necessarily receive updates or notice of addenda. In any event, however, that party's proposal does reference use of the indoor arena.

“Inside Information” Withheld

It was alleged that the incumbent operator had inside information that the other proposers did not, or somehow received preferential treatment, concerning the requirement to build a new pole barn. The complainant alleged in substance that the new agreement requires the building of a new 25 stall Pole Barn, but there was no mention of the barn in the RFP and none of the other proposers were informed of that requirement. It was further alleged that this barn will increase future earnings and County revenue, yet the other proposers had no opportunity to consider this requirement and adjust their bids accordingly. It was speculated that there was a “side deal” with the incumbent operator.

While the new agreement does require a 25 stall Pole Barn, it did not appear in the RFP because it was *not required* by the RFP; rather, that provision in the agreement was the *result* of the proposal that was selected. In other words, the agreement specified building the Pole Barn because that is what the prospective winning proposer *proposed* doing, *if* it was selected as the operator. That proposed improvement was subsequently incorporated into the resulting agreement. If another entity had been selected as the operator, then its proposed capital improvement(s) would instead have been written into the agreement. OIG saw no evidence that the proposal to build the barn was the result of a “side deal” or “inside information.”

PART III - Impressions that NEC is Not Sufficiently Operated in the Public Interest

The Farm was acquired for approximately \$12 million via Environmental Bond Act funds. The County Executive at the time stated, *“Old Mill Horse Farm is another excellent addition to the portfolio of properties we have acquired that will benefit the public for generations to come,”* and further explained, *“Importantly, the creation of a public-private partnership at this property helps relieve the burden of renovation, maintenance and management from the public purse while still allowing for public oversight.”*

In addition to the issues addressed in Parts I and II above, the OIG, during its review of the numerous allegations, identified an overarching theme, a general concern, regarding the extent of benefit provided to the public and the balance struck between private and public interests, under the Operator’s agreement. Some allegations seemingly reflected impressions that NEC has not been sufficiently operated in the public interest.

Impression: NEC is Operated as a Private Horse Farm on County Property

Unlike, for example, Suffolk County’s Old Field Farm equestrian facility, or Nassau County’s Crossroads Farm at Grossmann’s, which are operated by non-profit organizations on county land, NEC is operated by a commercial enterprise, NECOM, on County property.

There were allegations to the effect that NECOM has “virtually sub-leased” NEC to certain “high-end” trainers, effectively turning the County property into a training facility for their private use. It was further alleged in essence that approximately 60 of the 73 existing horse boarding stalls are under the control of those trainers, and not available for less than \$2,400 “full service board” (i.e., with trainer service) a month. It was claimed that unless a client is willing to board with, or pay the fees of, one of those trainers, a person apparently cannot get a stall. It was also claimed that a private business is being run out of NEC by two trainers who have the majority of the stalls at NEC.

OIG interviewed Russo as well as several boarding tenants and learned that the tenants execute a boarding agreement directly with NECOM, and pay their boarding fees directly to NECOM, not to the trainers. Thus, it is not correct to say that the tenants “board with” the trainers, or that the trainers sub-let the boarding stalls. While OIG found no evidence that any trainers “control” stalls, OIG ascertained that, as of May 2019, the clients of the two trainers referenced by a complainant accounted for 41% of the stalls. OIG additionally

found no evidence that a higher priced “full service board” rate exists.¹⁷ OIG has no evidence of specific individuals who attempted to get a stall but were denied because they would not use a “high-end” trainer.

OIG ascertained that the boarding agreements do not require that tenants use trainers. However, the tenants are not allowed to use trainers other than those approved by NECOM. Russo admitted to the OIG that he allows only certain trainers that NECOM deemed “qualified and well-known” to work on the property.¹⁸ There are five or six such trainers. The tenants pay the trainers’ fees directly to those trainers.

While OIG found no direct evidence that NECOM favors one type of border over another, OIG estimates that approximately 80% of the boarders use one of the trainers designated by NECOM. OIG also notes that NECOM charges an additional \$290 “monthly trainer ring use fee” for those boarders who use trainers at NEC. This means that NECOM makes more money from boarders using a trainer approved by NECOM.

While the trainers may not actually “control” or “sub-lease” the facility, the totality of the circumstances described above may have given some persons the perception of exclusivity and the belief that the County’s property is being operated largely for the benefit of private parties.

OIG notes that the proposed 2019 agreement addresses the issue of who may provide training services at NEC. It explicitly allows any certified instructor (trainer) based in Nassau County to provide lessons at NEC to their clients who are boarders at the facility. OIG believes this is a positive change.

Impression: Insufficient Indicia that NEC is a County Facility Open to the Public

A complainant expressed the view that NEC is not open to the general public. Obviously, that is not literally true. Both the 2009 and 2019 agreements contain repeated expressions regarding public access and public benefit of the Farm. Agreement section 8.1 begins with “*The Operator shall maintain and operate the Premises for the benefit of all County*

¹⁷ All boarders interviewed by OIG stated that they pay NECOM \$1,575.06 per month, which is comprised of \$1,160 for boarding and \$290 for use of the trainer ring, plus sales tax.

¹⁸ In its review of County records related to the 2009 agreement, OIG was unable to locate any documents either explicitly granting permission to restrict, or conversely, preventing the Operator from restricting, the pool of trainers operating at NEC. However, the Operator’s 2008 proposal states, in part, that “*Free lance instructors and veterinarians of your choice are welcome.*” Going forward, the language of the proposed 2019 agreement (section 6.4), provides that “the operator shall make reasonable time available at the premises to any certified instructor based in Nassau County so that the instructor may give lessons to their clients who are boarders at the premises.”

citizens and the general public . . .” Section 15.1 provides in part that “The Premises . . . shall be open to the public not less than six (6) days a week, from the hours of nine o’clock (9:00) A.M. to dusk” while Section 16.3 provides in part, “The Operator must maintain the Premises, including without limitation, the riding trails thereon in manner that they are open to the general public.”

When, however, OIG staff visited NEC, their visual impression, from the totality of the closed, gated entrance on Route 106 and adjacent signage, was that of a private business facility, rather than of a County-owned resource intended for access by the general public. Exterior signage included a small secondary “Preserved As Open Space” sign with a very small county seal, below the operator’s larger NEC sign. The larger sign identifies the facility as NEC but contains no indicia of County ownership, nor does the name of the facility even include the word “County” (e.g., Nassau COUNTY Equestrian Center).¹⁹ In OIG’s opinion, the existing signage, which lacks prominent text explicitly declaring “Open to the Public” and explaining that the facility is owned by and operated on behalf of the County, did little to offset the overall appearance that there was simply a private equestrian business beyond the gate (see photographs below).



Photo 1 - NEC entrance gate, 62 Route 106.

¹⁹ OIG notes that the style of the name, Nassau Equestrian Center, is similar to that of the privately-owned Bethpage Equestrian Center.



Photo 2 - Signage on Route 106 near entrance to NEC.



Photo 3 - For comparison: Signage at the Crossroads Farm at Grossmann's clearly identifying the property as County-owned.

Looking online, OIG observed that NEC's social media likewise did not effectively convey that it is a public facility of the County.²⁰

To be clear, OIG does not read the agreement as specifying that the Operator is required to declare in its signage or promotional media that the facility is operated on behalf of the County. OIG nonetheless believes that steps should be taken, in a manner determined by the County, to enhance the message that the Farm is in fact a County facility; that it is Nassau **County's** Equestrian Center; that it exists and is operated "*for the benefit of all County citizens and the general public.*"

Impression: Room for Improved Emphasis on Promoting and Ensuring Public Programs

Irrespective of the above complainant perceptions, the OIG, for its own part, developed the impression during its investigation that there is room for improved emphasis by the County in the area of NEC's operational benefits to the general public, its programs and activities.

Advertising and Promotion / Access by Disabled Persons

As discussed in Part I, both OIG and the County noted that the Operator's accounting reflects far less expenditure for promotion and advertising than the 2009 agreement required. Yet OIG saw no record indicating that the County was concerned that this might negatively impact public awareness and patronage of the facility. Rather, the County, in its 2016 analysis of financial statements, seemingly excused the apparent deficiency by indicating that "[s]ince the operator has been operating at capacity advertising and promotional expenses were not needed." Moreover, OIG found no record that the County took steps to ensure that the operator was in compliance with Section 7.4(a) of the agreement during the rest of the agreement term (2016-2019).

Irrespective of expenditure levels, OIG found no record that the County received, let alone approved, any promotional materials during the course of the agreement. OIG also found

²⁰ As recently as October 20, 2020, the only indication OIG found online that NEC has a connection to the County government is a photograph showing the entrance signage, which includes an outdated version of the small *Preserved As Open Space* sign. There were no posted statements in its social media to the effect that NEC is a County facility. The agreement does not, however, require the operator to post such statements.

Parks' section of the County's website has a link to a listing of open public spaces, which includes NEC, with a link to NEC's website.

no record that the County received the operator's defined plans for programs, services or activities readily accessible to disabled persons (apart from a single sentence in the 2008 proposal). Additionally, OIG found no record that the County made affirmative requests of the operator for any of the foregoing materials.

OIG recommends that going forward the County monitor and ensure compliance with the agreement provisions concerning advertising, promotion, and access by persons with disabilities.

Expenditures for Public Programs

As described in the discussion of the Reserve Fund in Part I, OIG saw no record reflecting expenditures, or requests for approval of expenditures, for "public programs" in the ten years of the agreement - nor an indication that this posed a concern to the County. OIG naturally presumes that the County had a valid reason for establishing the "public programs" requirement in the agreement. OIG was therefore surprised to see that the County's 2016 analysis, which appeared to find no adverse impact from the lack of compliance, did not address the effect, if any, of not reserving funds for reinvestment in public programs.

The new agreement entirely removes the requirement for a Reserve Fund (for public programs or any purposes). The County may well have concluded that such fund was no longer relevant for purposes of capital improvements. Nonetheless, OIG recommends that the County at least consider, if it has not already done so, whether there is a need going forward for the operator to reinvest funds, or be required to make certain expenditures, in furtherance of public programs.

Mandated public programs and activities

OIG reviewed the 2009 and 2019 agreements with respect to the Operator's obligations thereunder, and observed that there were specific permissive references to programs, events, and activities that the Operator *may* engage in. Moreover, both agreements and the associated RFPs expressed *anticipation* that the Operator would engage in various activities in the public interest. The Operator's proposals in response to the respective RFPs listed many anticipated programs and activities.²¹ OIG observed, however, that the

²¹ While the proposals NECOM submitted in 2008 and 2019 each identify a range of anticipated programs, activities and services that it will or might provide as Operator, neither the old or new agreements adopts or incorporates by reference the cited programs or activities as mandatory public programs. Rather, the agreements contain a merger clause stating that the agreement represents the full and entire understanding and agreement between the parties. OIG recognizes that, notwithstanding the agreement's merger clause, in the event of future disagreement between the parties concerning the operator's obligations, the parties might nonetheless look to the RFP and/or proposal.

extent and specifics of the Operator's mandate under both agreements to provide public programs was defined to a limited degree, namely the words, "to conduct various public programs."²² Thus, while the operator is obliged to conduct "various public programs," and is understandably allowed flexibility in doing so, it appears that the agreements do not set a measurable, objective "floor" level for gauging compliance.

This is not at all to imply that the existing operator failed to comply with the spirit or intent of the 2009 agreement's public program mandate. As stated earlier, OIG does not claim expertise in equestrian matters, let alone in the operation of a horse farm, but it would seem logical that the agreement should not be so open-ended as to what the operator is actually obligated to do regarding public programs.

OIG notes that the County has made improvements in the language of the 2019 agreement on other topics, such as allowing the use of "outside" trainers and the creation of a multi-agency advisory committee to address complaints. OIG recommends, with respect to the new agreement, that the County should also consider whether the interests of the public, particularly in such a long-term agreement, would be better protected by setting out more explicitly in a document the operator's mutually-agreed minimum obligations for the

²² Section 6.1 of the agreement, under USE COVENANTS, provides, in pertinent part that:

. . . The Operator **covenants and agrees to conduct various public programs** ("Public Programs") at the Premises. Such Public Programs **may include**, without limitation, riding lessons, after-school programs, summer/vacation day camps, educational programs for schools and other organizations, programs for persons with Disabilities, Special Olympic equestrian events and horse and pony lease programs. **Anticipated activities** are to include: Boarder use, instruction, horse shows, polo, hayrides, public pony trails, trail riding, jumping, dressage, and boarding of other farm animals. The Operator may also allow a bonafide sponsor the use of the Premises to conduct Special Events that are of the same nature as the aforesaid Public Programs and anticipated activities, subject to the receipt of the Department's prior written consent . . . (emphases added)

For its part, the Terms and Conditions of the RFP provided somewhat more specificity in this regard. They state, in pertinent part, that "*The Proposer shall provide equestrian activities including but not limited to, beginner and progressive English or Western style lessons and lessons in other disciplines if desired by the Proposer, public boarding of horses, all at approved rates on a sliding scale, as well as promotion of good horsemanship for the public. . . .*" (emphases added). The Terms and Conditions of the RFP are not, however, referenced in the agreement, which provides in Section 30.1 that, "*This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter thereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.*"

conduct of public programs. If it does so, the County could include a provision for approval of program changes as may become advisable over time.

Recommendations

OIG recommends that:

1. The County, now and in future, monitor and ensure compliance with agreement provisions concerning the fingerprinting of operator staff.
2. The County, now and in future, monitor and ensure compliance with agreement provisions concerning advertising, promotion, and access by persons with disabilities.
3. The County consider, if it has not already done so, whether there is a need going forward for the operator to reinvest funds, or be required to make certain expenditures, in furtherance of public programs.
4. The County take steps, for example, the use of prominent signage and social media, to enhance and publicize the message that the Farm is in fact a County facility; that it is Nassau **County's** Equestrian Center, which exists and is operated "*for the benefit of all County citizens and the general public.*"
5. The County consider setting out in more explicit, written form, the operator's mutually-agreed minimum obligations, going forward, with respect to the conduct of public programs.

Administration's Response

The Administration's response to our draft report is attached as an appendix to this report. Referring to our recommendations, the Parks commissioner stated in part that, "*We are taking them into consideration and are planning on incorporating them into the Department's management and oversight of the agreement.*"

The planned actions described by the commissioner appear to be generally consistent with our recommendations. In the case of our third recommendation however, while we referenced the context of *public programs*, the commissioner's response referred to *capital improvements*, and did not explicitly speak to the topic of reinvesting funds or making certain expenditures for *public programs*. We therefore invite the Administration to amplify its response accordingly.

Appendix:

- Cornell Cooperative Extension Report.
- Capital Improvement Expenditures - as compiled by OIG.
- Fire Marshal's Office report/correspondence.
- Response of Parks Commissioner Eileen Krieb.



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Memorandum

Date: January 29, 2020
To: Eileen Krieb, Nassau County Parks Commissioner
From: Greg Sandor, CCE-Nassau County, Executive Director
Re: *Old Mill Equine Center Walk Through-- summary*

As per your request please find summary below provide by Lisa Goldberg.

Overview:

A walk through of the Old Mill Equine Center was conducted on January 23, 2020 by Lisa Goldberg (4H Team Leader) and Michael Fiorentino (4H Educator) representing Cornell Cooperative Extension of Nassau County (CCE-NC). This walk through was at the request of Nassau County Parks Department to thoroughly look at the equine facility. The total walk through of the facility took about 1.5 hours. During this visit a visual only inspection of the property was conducted. Below please find some of the findings from the visit.

Facilities:

Upon arrival of the facility the facility appears to be clean and well maintained. The horse barn stables were of adequate size for the horses and in proper, working condition with no broken boards, nails sticking out, holes in flooring, etc. The lighting in the barns was adequate for periods when the horses are resting, however, staff should ensure that barn area is well-lit when working with the horses. Staff exhibited strong attention to detail when cleaning stalls and removing manure from animal facilities.

The ventilation in the barn stables should be improved – barn doors may be opened when picking-out stalls to reduce strong odors of urine and manure. Improper ventilation is a concern in the winter due to increased moisture in the air which may cause horses to exhibit symptoms of respiratory conditions. It would be recommended to improve the ventilation above the stalls to facilitate increased air movement to remove excess moisture and odors from the barn. Chilled animals would not be a concern with the increased ventilation as the draft would not be blowing directly on the animal and in most cases the horses were blanketed in the stalls.

All the riding areas and paddocks were well maintained during our visit and drainage seemed adequate. The indoor riding area does have an odor of mold upon entrance. Visually you can see discoloration on the fabric. This should be mediated or monitored so that it does not present a health hazard in the future.

It would also be recommended that each facility have a number or name to identify them so that when areas of concern are found it would be easier to identify the building.

Animal Care:

All the animals appeared to be in healthy condition. There were no animals that exhibited symptoms of illness or un-thriftiness. There is no reason to believe that animals are not receiving proper nutrition and care. The horses in the stalls all had clean and plentiful water and were slowly eating hay. The presence of properly labeled and organized medications and supplements indicates that animals are receiving proper individual attention and care as needed.

During the visit there were a few horses that exhibited mild symptoms of restlessness which is not uncommon in winter months when horses are unable to receive adequate exercise due to inclement weather conditions.

It is recommended that horses receive ample turn-out times so they may play and exercise outside of the stalls for a few hour periods throughout the week. This increase in exercise will provide additional stimulation to the horses and will greatly decrease the likelihood of developing disruptive stall behaviors such as stomping, which may damage stalls and cause injuries to the animal, chewing on wood, and cribbing.

Please let us know if we can be of further assistance, we appreciate continuing to work closely together and our on-going partnership.

Nassau Equestrian Center at Old Mill, Inc.
Capital Improvements Program
Expenditures as Reported by NEC

<u>Report Date</u>	<u>Report Time Period</u>	<u>Amount</u>	<u>Description</u>
12/20/10	April 2009-December 2010	\$ 9,000.00	Property clean up and tree work
12/20/10	April 2009-December 2010	\$ 10,000.00	demolition of old barn
12/20/10	April 2009-December 2010	\$ 8,000.00	demolition of seven barns and sheds
12/20/10	April 2009-December 2010	\$ 73,112.00	farm roadways and parking areas
12/20/10	April 2009-December 2010	\$ 169,078.00	fence project
12/20/10	April 2009-December 2010	\$ 64,528.00	design renovate and resurface all riding areas
12/20/10	April 2009-December 2010	\$ 4,040.00	renovation of all paddocks
12/20/10	April 2009-December 2010	\$ 5,000.00	riding arena drainage areas
12/20/10	April 2009-December 2010	\$ 1,500.00	restoration of hunt course
12/20/10	April 2009-December 2010	\$ 45,335.00	lower barn renovation
12/20/10	April 2009-December 2010	\$ 5,450.00	lower barn outdoor arena lighting
12/20/10	April 2009-December 2010	\$ 4,200.00	five stall courtyard barn renovation
12/20/10	April 2009-December 2010	\$ 5,150.00	two stall isolation barn
12/20/10	April 2009-December 2010	\$ 50,200.00	middle barn renovation
12/20/10	April 2009-December 2010	\$ 44,650.00	top barn renovation
12/20/10	April 2009-December 2010	\$ 4,900.00	green storage shed renovation
12/20/10	April 2009-December 2010	\$ 7,625.00	blacksmith shop renovation
12/20/10	April 2009-December 2010	\$ 6,000.00	main house renovation
12/20/10	April 2009-December 2010	\$ 36,750.00	caretakers house renovation
12/20/10	April 2009-December 2010	\$ 8,250.00	grounds master rotary finish mower
12/20/10	April 2009-December 2010	\$ 1,542.00	three year amortised financing
12/20/10	April 2009-December 2010	\$ 4,500.00	massey ferguson 175 perkins diesel
12/20/10	April 2009-December 2010	\$ 1,247.00	post hole digger auger
12/20/10	April 2009-December 2010	\$ 6,850.00	model 340a ford diesel front end loader
12/20/12	January 2011 to December 2012	\$ 14,500.00	caretakers basement improvement
12/20/12	January 2011 to December 2012	\$ 25,000.00	john deere 644c loader
12/20/12	January 2011 to December 2012	\$ 3,500.00	electric fence
12/20/12	January 2011 to December 2012	\$ 7,500.00	new bathrooms
12/20/12	January 2011 to December 2012	\$ 5,200.00	new supplements room
12/20/12	January 2011 to December 2012	\$ 110,800.00	new riding surface
12/20/12	January 2011 to December 2012	\$ 9,500.00	new tack room
12/20/12	January 2011 to December 2012	\$ 15,000.00	road surfaces
12/20/12	January 2011 to December 2012	\$ 8,500.00	hustler mower
12/11/14	January 2013 to May 2014	\$ 1,700.00	labor and 105 cubic yards of bluestone
12/11/14	January 2013 to May 2014	\$ 500.00	tree removal top barn
12/11/14	January 2013 to May 2014	\$ 900.00	bridel path clearing and mulch
12/11/14	January 2013 to May 2014	\$ 1,200.00	new furnace
12/11/14	January 2013 to May 2014	\$ 5,814.00	multigroomer
12/11/14	January 2013 to May 2014	\$ 649.00	eight foot york rake
12/11/14	January 2013 to May 2014	\$ 869.00	grading box
12/11/14	January 2013 to May 2014	\$ 1,250.00	650 lbs seed
12/11/14	January 2013 to May 2014	\$ 2,250.00	blacksmith shop work bench and cabinets
12/11/14	January 2013 to May 2014	\$ 750.00	cupola weather vane
12/11/14	January 2013 to May 2014	\$ 2,500.00	power garage door blacksmith shop
12/11/14	January 2013 to May 2014	\$ 5,500.00	new base for grand prix ring

12/11/14	January 2013 to May 2014	\$	1,750.00	12 attic fans
12/11/14	January 2013 to May 2014	\$	3,500.00	amish wood gazebo
2/1/16	June 2014 to February 2016	\$	850.00	clear overgrowth and mulch
2/1/16	June 2014 to February 2016	\$	2,850.00	leveled berm along 106
2/1/16	June 2014 to February 2016	\$	3,500.00	tree removal andtrimming
2/1/16	June 2014 to February 2016	\$	7,750.00	base material installed
2/1/16	June 2014 to February 2016	\$	1,750.00	installation of stockade fence
2/1/16	June 2014 to February 2016	\$	2,850.00	metal pipe fencing
2/1/16	June 2014 to February 2016	\$	1,000.00	pressure treated ground board
2/1/16	June 2014 to February 2016	\$	5,900.00	22,000 sf top cushion sand
2/1/16	June 2014 to February 2016	\$	1,800.00	6 halide lights and install
2/1/16	June 2014 to February 2016	\$	4,500.00	architect
2/1/16	June 2014 to February 2016	\$	30,000.00	megadome
2/1/16	June 2014 to February 2016	\$	25,000.00	megadome transport
2/1/16	June 2014 to February 2016	\$	1,500.00	removal of existing fencing
2/1/16	June 2014 to February 2016	\$	15,000.00	rough grade site
2/1/16	June 2014 to February 2016	\$	53,000.00	concrete footing
2/1/16	June 2014 to February 2016	\$	9,800.00	install frames
2/1/16	June 2014 to February 2016	\$	51,000.00	install fabric and hardware
2/1/16	June 2014 to February 2016	\$	3,500.00	new base amterial
2/1/16	June 2014 to February 2016	\$	7,500.00	FS Geotex footing
2/1/16	June 2014 to February 2016	\$	5,000.00	640' perimeter fencing
2/1/16	June 2014 to February 2016	\$	1,000.00	80' interior fence
2/1/16	June 2014 to February 2016	\$	2,700.00	640' water lines
2/1/16	June 2014 to February 2016	\$	500.00	four hydrants
2/1/16	June 2014 to February 2016	\$	15,000.00	16 halide fixtures
2/1/16	June 2014 to February 2016	\$	4,000.00	fix water main
7/1/18	March 2016 to June 2018	\$	144,900.00	new riding arena
7/1/18	March 2016 to June 2018	\$	10,500.00	irrigation system
7/1/18	March 2016 to June 2018	\$	10,650.00	chain link fence
7/1/18	March 2016 to June 2018	\$	25,000.00	gates and fence safety system
7/1/18	March 2016 to June 2018	\$	10,750.00	secondary pvc fence
7/1/18	March 2016 to June 2018	\$	3,300.00	lower barn shed a
7/1/18	March 2016 to June 2018	\$	1,650.00	lower barn shed b
7/1/18	March 2016 to June 2018	\$	675.00	lower barn tack room
7/1/18	March 2016 to June 2018	\$	3,750.00	parking area lower barn
7/1/18	March 2016 to June 2018	\$	39,100.00	massey ferguson m59 tractor w/ roller
7/1/18	March 2016 to June 2018	\$	14,750.00	new holland spreader
7/1/18	March 2016 to June 2018	\$	4,400.00	manure holding bins
7/1/18	March 2016 to June 2018	\$	2,650.00	main house skirt replacement
7/1/18	March 2016 to June 2018	\$	1,325.00	paddock lane water bucket valves
7/1/18	March 2016 to June 2018	\$	9,500.00	stall
			<u>\$ 1,345,689.00</u>	

Laura Curran
Nassau County Executive

Scott D. Tusa
Chief Fire Marshal



Nassau County Fire Commission
Office of Fire Marshal
1194 Prospect Avenue
Westbury, New York 11590-2723

Inter-Departmental Memo

To: Karen Taggart - County Executive's Office
From: Scott D. Tusa - Chief Fire Marshal
Date: January 9, 2020
Subject: Complaint - Nassau Equestrian Center

On January 7, 2020 this office received a complaint of multiple fire violations at the Nassau Equestrian Center. The complainant stated there was exposed wiring in the barn, gas cans not stored properly, expired fire extinguishers, extension cords in use, and no smoke detection.

On January 8, 2020 fire marshals were assigned to inspect the above location. The fire marshals met with John Russo (owner/operator) and performed an inspection of all the barns, riding arena, and maintenance garage. It was found that there were portable fire extinguishers at every exit door. The extinguishers had inspection tags indicating they were last serviced in December of 2018. Therefore, a re-inspection of the extinguishers was due by January 1, 2020. In the presence of the fire marshals Mr. Russo arranged, with a NCFM licensed contractor, to have the extinguishers serviced on January 9, 2020. The inspection found that two extension cords were in use and the presence of uncovered electrical connection boxes. The inspection also found **heat trace wire** wrapped on water piping. **Heat trace wire** appears to be an extension cord to an untrained eye. However, it is used to prevent water pipes from freezing and is acceptable under the code. One gas can was found stored in the maintenance garage. This is also acceptable to fuel power equipment. Code does not require barn areas to have smoke detection due to temperature and environmental conditions.

An Order to Remove Violations Forthwith was issued. As the listed violations are not life safety violations the site will be re-inspected in 15 days for compliance.

This office is charged with providing fire safety for the residents of Nassau County. I can be contacted by any County agency in need of fire inspections. For emergency conditions this office is available 24/7. Routine inspections are scheduled in accordance with manpower availability.

Respectfully submitted,

Scott D. Tusa

From: Uttaro, Michael F <muttaro@nassaucountyny.gov>
Sent: Tuesday, April 28, 2020 7:14 PM
To: Krieb, Eileen A <EKrieb@nassaucountyny.gov>
Cc: Tusa, Scott D <stusa@nassaucountyny.gov>
Subject: RE: NC Equestrian Center " Old Mill Farms"

1/23/20 FM 49 (Kelleher) & 52 (Talento) on a follow up inspection of the location. met w/ John Russo (owner) all previous violations have been corrected. The extension cords have been removed and the one on the exterior going to the light pole had the ends cut off to make it inoperable. All portable fire extinguishers have been serviced and weather proof tags have been used. No new violations observed.

Michael F. Uttaro
Assistant Chief Fire Marshal
Inspection Bureau
Deputy County Fire Coordinator
Public Information Officer / Public Affairs Liaison
Nassau County Fire Marshal's Office



Nassau County Public Safety Center
1194 Prospect Ave.
Westbury, N.Y. 11590

516-573-9994 Office
516-573-9072 Fax
516-742-3170 (24hr.) Emergency
<http://www.nassaucountyny.gov/agencies/FireComm/firemarshal.html>

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LAURA CURRAN
NASSAU COUNTY EXECUTIVE



EILEEN KRIEB
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PARKS, RECREATION & MUSEUMS
EISENHOWER PARK - ADMINISTRATION BUILDING – EAST MEADOW, NEW YORK 11554
www.nassaucountyny.gov/parks

November 24, 2020

Re: OIG Investigation Report
Nassau Equestrian Center at Old Mill, Inc.
Item # E-77-20

Inspector General Franzese:

The Department of Parks is in receipt and has reviewed your investigation report concerning Nassau Equestrian Center at Old Mill, Inc., and Item # E-77-20.

We thank you for your recommendations for monitoring and ensuring compliance with agreement provisions now and going forward, and we are taking them into consideration and are planning on incorporating them into the Department's management and oversight of the agreement. Below are your recommendations, followed by the Department's response.

1. The County, now and in future, monitor and ensure compliance with agreement provisions concerning the fingerprinting of operator staff.

The agreement cites that, consistent with Local Law 14-2003, and prior to the commencement of services, the Department shall ensure that all current and prospective personnel who, in carrying out this Agreement, will have unsupervised or regular and substantial contact with minor, are fingerprinted by the Nassau County Police Department. The Operator will be directed to report to the Department of Parks the results of all such fingerprinting, including those of new employees as they are hired, if it is determined that the employees will have unsupervised or regular and substantial contact with minors.

2. The County, now and in future, monitor and ensure compliance with agreement provisions concerning advertising, promotion, and access by person with disabilities.

In the new agreement, the County has established an oversight committee, in the form of an Advisory Board, that will include representatives of the Parks

Department, Nassau County SPCA, and the Nassau County Police Department's Mounted Unit, which will add an additional layer in monitoring and ensuring compliance by the vendor with agreement provisions. Along with County staff who will be monitoring of finances and compliance with the terms of the contract, including advertising, promotion, and access by persons with disabilities, the Advisory Board will be tasked with ensuring this compliance.

3. The County consider, if it has not already done so, whether there is a need going forward for the operator to reinvest funds, or be required to make certain expenditures, in furtherance of public programs.

Rather than requiring reinvestment, the operator is instead paying to the County 9.5% of gross receipts with a guaranteed minimum license fee. This fee is significantly higher than the previous investment percentage. Pursuant to the new agreement, the Operator will continue to maintain the property and will invest additional funds into capital improvements.

4. The County take steps, for example, the use of prominent signage and social media, to enhance and publicize the message that the Farm is in fact a County facility; that is it Nassau County's Equestrian Center, which exists and is operated "for the benefit of all County citizens and the general public."

Effective upon signing of the agreement, the County intends to work with NEC to produce prominent signage that clearly indicates Old Mill Farm is a County facility, available to the general public. Old Mill Farm-Nassau Equestrian Center is listed on the Park's website with the County's Open Spaces, and states that "the property is open to the public..." The County will additionally publicize Old Mill via social media and utilize additional methods of promotion to ensure County residents are made aware of the Farm and its programming.

5. The County consider setting out in more explicit, written form, the operator's mutually-agreed-upon minimum obligations, going forward, with respect to the conduct of public programs.

Parks will inform the Operator that the schedules referenced in Section 6.11 of the new agreement must include proposed public programming and will request that any additions be reported to the Department on an on-going basis. The new agreement also provides use of the indoor rink by the NCPD Mounted Unit. Moreover, sections 8.7 and 16.1 give the Department the ability to work with the Operator to provide for additional public programming at the initiation of Parks, if deemed necessary.

Sincerely,



Eileen Krieb
Commissioner

Department Parks, Recreation & Museums

LAURA CURRAN
NASSAU COUNTY EXECUTIVE



EILEEN KRIEB
COMMISSIONER

COUNTY OF NASSAU
DEPARTMENT OF PARKS, RECREATION & MUSEUMS
EISENHOWER PARK - ADMINISTRATION BUILDING - EAST MEADOW, NEW YORK 11554
www.nassaucountyny.gov/parks

December 3, 2020

Nassau County Office of the Inspector General
One West Street
Mineola, New York
Attn: Inspector General Franzese

Re: OIG Investigation Report
Nassau Equestrian Center at Old Mill, Inc.
Item # E-77-20

Dear Inspector General Franzese,

I write in reference to your third recommendation of the Investigation Report of the agreement with Nassau Equestrian Center at Old Mill, Inc. (Item # E-77-20). Thank you for your invitation to amplify the response concerning requiring a reserve fund to reinvest funds or make certain expenditures for public programs.

The reserve fund that was part of the original agreement was established as a way for the County to potentially realize some financial benefit through reinvestment back into the Premises and operations, including Public Programs. When evaluating the terms for the new contract, the County decided to eliminate the reserve fund requirement.

Instead, the County decided that the Nassau Equestrian Center should pay the County 9.5% of gross receipts, as a license fee (with guaranteed minimum payments). This business decision is viewed as more beneficial to the County, considering that Public Programs are already required under multiple sections of the new contract itself.

The following are the applicable sections:

Section 6.1 of the new contract states: "The Operator covenants and agrees to conduct various public programs ("Public Programs") at the Premises. Such Public Programs may include, without limitation, riding lessons, after-school programs, summer/vacation day camps, educational programs for schools and other organizations, programs for person with Disabilities, Special Olympic equestrian events and horse and pony lease programs." Hence, the Public Programs must be offered regardless of the creation of a reserve fund.

Please note that Public Programs include horse and pony lease program, thereby allowing certain charges by the Operator while providing Public Programs.

Section 6.5 allows for a Public Program that is focused on public safety. Specifically, Nassau County Police Mounted Unit to use the indoor rink for training purposes.

Section 6.8 already provides for a Public Program in that Veterans, First Responders and their families will receive a 20% discount on all boarding, lesson and camp fees.

Section 6.11 requires the submission of the yearly operating schedule to the Department for review and approval. Parks can determine, during this review, whether the Operator has scheduled sufficient Public Programming to satisfy the agreement requirement. This section is considered be key to facilitating the use of the Center to conduct Public Programs.

Section 8.7 requires the cooperation of the Operator respecting these events, thereby having the Premises open for Public Programs.

Section 16.1 gives the County the right to permit out to third parties for public programs or hold the public program itself.

I hope this sufficiently explains and amplifies the Department's earlier response. As always, I am available for further discussion, if needed.

Sincerely,



Eileen Krieb

Commissioner

Department Parks, Recreation & Museums