

Warren County Board of Supervisors

**SPECIAL BOARD MEETING
WEDNESDAY, MAY 7, 2014**



NOTICE OF SPECIAL MEETING TO THE MEMBERS OF THE BOARD OF SUPERVISORS OF WARREN COUNTY:

You are hereby notified that, I, KEVIN B. GERAGHTY, Chairman of the Board of Supervisors of the County of Warren, pursuant to the power vested in me by Rule A.3 of the Rules of the Board of Supervisors, hereby call and convene a special meeting of the Board of Supervisors of Warren County to be held in the Supervisors' Room in the Warren County Municipal Center, Town of Queensbury, New York, on May 7, 2014, at 9:00 a.m., for the purpose of considering, and if determined by the Board to be appropriate, voting on, or otherwise taking action on, the following matters:

1. Proposed Resolution Proceeding with Negotiations for the Sale of the Westmount Health Facility; and
2. To conduct such other business as may properly come before the Board of Supervisors.

The Clerk of the Board of Supervisors is hereby directed to call for the meeting and give written notice to all members of the Board of Supervisor of such meeting.

Dated: April 28, 2014

KEVIN B. GERAGHTY, CHAIRMAN
Warren County Board of Supervisors

The Board of Supervisors of the County of Warren convened at the Supervisors' Room in the Warren County Municipal Center, Lake George, New York, at 9:00 a.m.

Mr. Kevin B. Geraghty presiding.

Salute to the flag was led by Supervisor Conover.

Roll called, the following members present:

Supervisors Conover, Monroe, Girard, McDevitt, Taylor, Brock, Kenny, Frasier, Simpson, Vanselow, Dickinson, Merlino, Strough, Seeber, Sokol, Beaty, Westcott, Thomas, Wood and Geraghty - 20.

Chairman Geraghty noted the purpose of the meeting was to consider a proposed resolution regarding proceeding with negotiations for the sale of the Westmount Health Facility. He asked Joan Sady, Clerk of the Board, to distribute copies of the proposed resolution to the Board Members, noting that it was identical to Resolution No. 217 of 2014 which had been presented at the April 18th Board Meeting, but failed due to a lack of majority vote. Chairman Geraghty advised that because the proposed resolution had not been mailed to the members of the Board of Supervisors three days prior to the Special Board Meeting, a motion was necessary to waive the Rules of the Board in order to consider it.

Motion was made by Mr. Conover, seconded by Mr. Monroe and carried unanimously to waive the Rules of the Board requiring that a resolution be in writing and mailed to each Supervisor three days prior to any Special Board Meeting. Mrs. Sady noted this would be Resolution No. 221 of 2014.

Chairman Geraghty called for discussion on the proposed resolution.

Mr. Strough stated one of the prevalent concerns expressed had been how the sale of the Westmount Health Facility would impact the ongoing criminal and civil investigations on the co-generation facility; he noted that information provided at a recent hearing had made it very clear that the sale of Westmount would have no impact on the aforementioned investigations. He added they had received strong assurances that both investigations would maintain their integrity and proceed with all due vigor. Mr. Strough advised that a second concern, which was equally important in its need of a response, was the contractual language dealing with the future Medicaid payments to the new owners of the Westmount Health Facility. He stated that the Board had been assured that the word "guaranteed" was not an accurate term to use in describing what the contract language should say; he added that the contract language was still under consideration and would be written in a manner that better protected the County's interests. Mr. Strough continued that a third concern related to the proposed selling price for Westmount which might not be the best value available to Warren County, given that the Facility was tied to a co-generation plant which appeared to have a higher operational cost than what electricity could be attained for if purchased from a utility provider. He stated that at this point, after reviewing comparable market prices, receiving assurances that the existing co-generation plant had little impact on the bids offered, and estimates indicating that the price offered was the best deal for the County, he still had some concerns about this matter. Mr. Strough cited another ongoing concern as being the burden of cost borne by the Warren County taxpayers in sustaining operations at the Westmount Health Facility, which would be diminished with its sale. He concluded that after considering of all the aforementioned concerns, and the inquiries he had received from his constituents, he believed it was in the best interest of the residents of Warren County to proceed with contract negotiations, and he stated his support for the proposed resolution. Mr. Strough added that once the final contract was available, they could make their decision whether or not to proceed with the sale, at which time he said he felt they would have much more information available to them.

Mr. Westcott thanked Mr. Strough for his comments, noting that they were well said. He apprised that on May 1st he and Supervisors Beaty and McDevitt had held a Town Hall Meeting regarding the potential sale of Westmount Health Facility which was attended by about 40 people. Mr. Westcott advised he had put together an abbreviated report on the information provided at the Town Hall Meeting which he felt was important for the Board of Supervisors to review before voting on the proposed resolution; *copies of the report were distributed to the Board Members and a copy of same is on file with the items distributed at the Board Meeting.* Mr. Westcott proceeded with a brief review of the report, during which he noted that those who opposed the proposed resolution were supportive of the sale of the Westmount Health Facility, but not the process being employed or the deal currently proposed to sell the Facility to Specialty Care. He stated that the decision to move forward exclusively with Speciality Care was decided behind closed doors and did not involve a vote of the Board of Supervisors on the options available for the sale. Mr. Westcott concluded that all things considered, he would be willing to accept the \$2.3 million sale price proposed for the Westmount Health Facility; however, he added, he was unable to support the deal with Speciality Care based on the guaranteed Medicaid funding issue, the lack of acknowledgment that the co-generation facility had caused serious issues for other bidders, such as Fort Hudson, and the way in which the bid process was handled.

Paul Dusek, County Administrator, stated that he would like to make some clarifications with regard to the information provided in Mr. Westcott's report. Referring to the portion of the report pertaining to Westmount's legacy costs, Mr. Dusek pointed out that these costs were based on an assumed sale closing date of December 31, 2014; however, he explained, that closing date was now being projected as March 31, 2015 and this change would actually reduce the legacy costs projected for 2015 from the \$464,593 listed in the presentation to about \$348,000. With reference to the "Status of Sale" information, which reflected a \$2.3 million bid from Specialty Care and a \$2.2 million bid from Fort Hudson, Mr. Dusek stated that while the figure provided for Specialty Care was accurate, Fort Hudson had actually bid \$2,050,000. He clarified that Fort Hudson had offered an additional \$150,000 to purchase the 23 acres of land adjoining the Westmount campus, while Speciality Care had not made any offer for the acreage.

Mr. Dusek pointed out that Mr. Westcott's report indicated the RFP (*Request for Proposal*) for the Westmount sale had been authorized with the intent of selling the nursing home to a buyer that would "invest into a health care campus"; however, he continued, it did not note that as part of their purchase proposal, Specialty Care had committed to funding a market study for the property adjoining the Westmount campus to determine what it could be used for in terms of elderly care, which presented an additional value on top of their \$2.3 million bid. Mr. Dusek said that Specialty Care had agreed Warren County would be involved in determining the parameters of the study and they had also indicated that if opportunities were determined through the study, they might be interested in pursuing them, while acknowledging that Warren County was not obligated to sell the property to Specialty Care. Finally, he referred to the "Predicted Medicaid Reimbursement" portion of the report which indicated predicted Medicaid reimbursements of \$2,754,870 for 2014, as represented by the Westmount Comptroller. Mr. Dusek advised that this number varied drastically from the \$3,137,198 figure provided in his reports, leading him to contact Betsy Henkel, Comptroller for Westmount Health Facility, to question whether she had provided this figure; he said Ms. Henkel had responded that she could not recall sharing any different figures with regard to Medicaid reimbursements, other than the \$3,137,198 which was included on a spreadsheet she had shared with both Mr. Westcott and Travis Whitehead, Town of Queensbury Resident. Mr. Dusek concluded that this variation dramatically changed the figures presented, which consequently affected Mr. Westcott's presentation.

Ms. Seeber stated it was obvious that Supervisors Beaty, McDevitt and Westcott had put a lot of effort into the report presented and she noted that one thing the Board Members had continued to ask for was for information to be provided in advance for review. She said there was a lot of information in the report to consider and she wished she had received it in advance of the meeting so that she could have reviewed it more thoroughly. Ms. Seeber said she had spoken with other Supervisors who had spent a lot of time seeking clarification on this issue to address questions from constituents, and while she was hearing a variety of information from other sources, she was troubled by some of the information provided in Mr. Westcott's presentation because it differed from the information secured over the past few weeks. She stated that while she had received quite a few emails asking her to consider the Medicaid guarantee language, or information regarding a criminal or civil investigation, she had been very clear in responding that it was not her job to act as an investigator or prosecutor, but rather to look at the facts, review them, and work collectively with the rest of the Board Members. Ms. Seeber commented that one of the biggest factors in this decision was that the County was currently losing more than \$26,000 per week by running Westmount. She stated her understanding that the resolution proposed was simply to proceed in negotiating a contract with Speciality Care for the potential sale of Westmount, meanwhile any additional questions or concerns of the Board would be addressed and she asked if this was a correct assertion. Martin Auffredou, County Attorney, responded that Ms. Seeber was correct in her understanding of the resolution proposed; he noted that

it was precisely the same resolution presented at the April 18th Board Meeting which had failed at that time. Mr. Auffredou said the resolution was carefully crafted to implement the intent of the Health Services Committee to provide many opportunities to review this process again as they moved forward. On behalf of himself, Mr. Dusek and Larry Paltrowicz, Special Counsel, Mr. Auffredou assured the Board Members that they would keep the Supervisors apprised of developments throughout the contract process and would bring forth any issues requiring Board input or guidance at future Committee and Board Meetings. He commented that there would be a lot of details to discuss and big decisions to make along the way and he advised the Board of Supervisors would make the final decision on the sale of the facility, as well as to authorize the Chairman of the Board to sign the necessary contract. At this point, Mr. Auffredou clarified, they were simply giving instruction for administrative staff and special counsel to move forward with negotiations with Speciality Care for the sale of the Westmount Health Facility.

Mr. Kenny commented that if they were to separate the co-generation facility from Westmount and re-connect to grid electricity, they would still be responsible for the lease payments to Siemens, unless the County entered into protracted litigation, which they would likely lose. He then noted that if they were to re-bid the Facility sale without the co-generation plant they might receive lower bids, as evidenced by Fort Hudson's bid which did not include consideration for the co-generation. Mr. Kenny concluded that Fort Hudson's bid had been \$250,000 lower than Specialty Care's, and he advised that, as per the County Treasurer, the Facility would yield \$15,000 annually in property taxes, which would equate to a total loss of more than \$500,000 over a 20-year term if the Facility were sold to Fort Hudson.

Mr. Westcott responded to the comments made by Ms. Seeber, indicating that he had sent his report on Monday to 2,200 people and he said he believed the members of the Board of Supervisors were included in this group. Ms. Seeber replied that she had not received the report and must not be included in his email distribution list; the majority of the other Supervisors indicated that they had not received the report either. Mr. Westcott apologized for this oversight and said he would double check his database. With respect to the bids received, Mr. Westcott stated that the bid from Fort Hudson included the desire to sit down and cooperatively work on the health care campus concept, but Fort Hudson was never offered this opportunity and now they would never know what Fort Hudson's true investment would have been. He added that the potential expansion could have included taxable property and services for Warren County, and therefore, he said he felt it was fair to state that Fort Hudson's bid was \$2.2 million because they had never determined what the true investment would have been. Mr. Westcott noted that this decision was made behind closed doors without any input from the Board of Supervisors. In terms of separating the co-generation facility, he said the Board Members could agree to disagree on this matter; Mr. Westcott stated his opinion that they should separate the co-generation plant and deal with that issue separately, as various reports received had pointed out a variety of issues that they should meet with Siemens to address. In the meantime, he concluded, they should set out to find a buyer that would fulfill the vision they had intended to find in the RFP.

Mr. McDevitt opined that moving forward with the proposed resolution weakened their legal position and he commented that this action would actually take them in a direction that they could not veer away from. He said there was one specific clause that concerned him, which he assumed would be resolved in negotiations, pertaining to the ability for Speciality Care to discontinue operations after five years. Mr. McDevitt stated that this language was contrary to the intent of the RFP which had sought to develop a health care campus intended to meet the responsibility of taking care of elder citizens. He concluded that giving Speciality Care a five-year exit strategy to walk away from the Facility was irresponsible.

**WARREN COUNTY BOARD OF SUPERVISORS
SPECIAL BOARD MEETING
WEDNESDAY MAY 7, 2014**

Mr. Beaty stated that the language “guarantee of Medicaid payments” came from Mr. Dusek. Secondly, he said he shared Mr. McDevitt’s concerns with the five-year exit strategy which he said seemed to indicate that Warren County was not only against developing a health care campus, but that they also wanted to eliminate the facility they had now. He said this action would put the County’s most vulnerable citizens at risk after five years as they would have nowhere to go if the Facility closed. Mr. Beaty then stated that if this resolution was approved, he felt Mr. McDevitt should be included on the negotiating committee. He noted that a few years ago Mr. Sokol had asked that Mr. McDevitt be involved in the process, and while he did not know why this had not come to fruition, he strongly endorsed Mr. McDevitt’s inclusion as the County would benefit from his real estate expertise, as well as the other various assets he would provide.

There being no further discussion, Chairman Geraghty announced that a motion was necessary to bring the proposed resolution to the floor, following which a motion was made by Mr. Conover, seconded by Mr. Girard and carried unanimously. Mrs. Sady advised the proposed resolution would now be Resolution No. 222.

Chairman Geraghty called for a vote on resolutions, following which Resolution Nos. 221 and 222 were approved. *(Note: A roll call vote was taken for proposed Resolution No. 222 which passed by a majority vote of 737 for and 263 against, with Supervisors McDevitt, Vanselow, Beaty and Westcott voting in opposition)*

Chairman Geraghty offered privilege of the floor to anyone wishing to address the Board of Supervisors.

Mr. Whitehead commented on the dispute regarding Medicaid figures, noting that the 2014 figure presented in the report as \$2,754,870 was based on an 18-year projection, while the \$3,137,198 was based on a 25-year projection, so essentially both figures were correct; however, he pointed out, no one expected the co-generation facility to be in operation for 25 years and therefore 18-year projections had been requested. Mr. Whitehead stated that this was a small issue, but he wanted the numbers represented to be correct. His point in addressing the Board today, he stated, was to express his concerns relating to FOIL (*Freedom of Information Law*) requests and the fact that he continued to experience a great deal of difficulty in obtaining information from the County which was included in documents that should be available to the public. Mr. Whitehead stated that Robert Freeman, Executive Director of the New York State Department of State’s Committee on Open Government, had provided a number of opinions indicating that documents scheduled for public release at future meetings should be made available as soon as they are received by the governing body and could be marked as draft, or with some other designation, when released prior to a certain meeting. He apprised that he had filed disputes on two matters relating to information sought regarding environmental reports applying to the Airport and he said he was concerned that this information continued to be withheld. Mr. Whitehead stated that he did not like to speculate on the information included in the reports and hoped to get them as quickly as possible, in accordance with FOIL regulations.

There being no one else wishing to address the Board of Supervisors, on motion made by Mrs. Frasier and seconded by Mr. Simpson, Chairman Geraghty adjourned the meeting at 9:34 a.m.