

Warren County Board of Supervisors

**SPECIAL BOARD MEETING
MONDAY, DECEMBER 28, 2015**



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 Lake George, New York, on December 28, 2015 at 10:00 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. Matters leading to the appointment of a particular person to the position of County Attorney.
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 Supervisors of such meeting.

Dated: December 21, 2015

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 10:02 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, Dickinson, Merlino, Strough, Seeber, Sokol, Beaty, Westcott, Thomas. Wood and Geraghty- 19; Supervisor Vanselow absent- 1.

Commencing the Agenda review, Chairman Geraghty announced an executive session was necessary to discuss matters leading to the appointment of a particular person to the position of County Attorney.

Motion was made by Supervisor Conover, seconded by Supervisor Simpson and carried unanimously to enter into executive session pursuant to Section 105(f) of the Public Officer's Law.

Executive session was held from 10:02 a.m. until 11:00 a.m. during which time Supervisor Vanselow entered the meeting.

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Upon reconvening, Chairman Geraghty announced no action was taken during the executive session.

Chairman Geraghty apprised upon his request Larry Paltrowitz, *Legal Counsel for the County*, was in attendance today to brief the Board on the closing for Westmount Health Facility. He inquired whether an executive session was required to discuss this matter and Mr. Paltrowitz responded part of the discussion concerned potential litigation involving Siemens. He continued, since possible litigation was one of the topics to be discussed he felt an executive session was required for that matter.

Supervisor Beaty requested that they discuss the closing during open session prior to calling for an executive session so anyone from the public wishing to speak on the matter could do so without having to wait for the close of the executive session.

Mr. Paltrowitz apprised they were progressing on the sale of Westmount so that the purchaser would take over operations effective January 1, 2016. He informed he had been working on the closing documents with the buyers legal counsel. He indicated his law practice had distributed documents relating to the closing this morning. He mentioned they were working on finalizing some of the information provided by the County in terms of the details concerning some of the accounts of residents who resided there, as well as portions of the actual closing statement. He advised the goal was to get this completed by the end of the day to proceed with the closing on December 31st.

Supervisor Beaty informed he did not have the documents in front of him, as they had only been emailed to the Board at 5:49 a.m. this morning and no hard copies had been supplied at today's meeting. He asked whether it was correct to state that the buyers would pay an additional \$100,000 because the closing was occurring on December 31st. Mr. Paltrowitz apprised the contract called for additional payments each month they were delayed in closing through December of 2015. He said the additional payment would be about \$90,000. Supervisor Beaty asked whether they buyer would be paying this additional payment and Mr. Paltrowitz replied affirmatively.

Supervisor McDevitt stated he had not had a chance to review the closing documents yet but would do so later today. He requested that Mr. Paltrowitz summarize the language as it related to Siemens and Mr. Paltrowitz replied he could not summarize that information, as it was a topic that should be discussed during an executive session.

Travis Whitehead, *Town of Queensbury Resident*, apprised the document he had a copy of indicated if the sale were to conclude in December, 2015 the price would not be \$800,000, but rather \$980,418 less \$61,000 for their share of the cost to reconnect back to the power grid. He questioned whether they were using the figures included in the contract and Mr. Paltrowitz replied affirmatively. Mr. Whitehead remarked he had just received copies of the documents this morning, as well; therefore, he said, he had more questions than answers. He mentioned one of the sentences in the certificate regarding representation and warranties included in paragraph C stated the following: *"that all conditions of sellers obligation to close the sale contemplated by the agreement have been satisfied or waived by seller"* and yet there was no description of what had or had not been waived. He encouraged the Board to make sure that they did not sign what he deemed to be a "blank check" but rather they strike that out of the contract or confirm exactly they were waiving before they acted upon it. He added it did not appear any action would be taken today.

Mr. Whitehead advised the only other point he wanted to make was that they referenced a deed from 1919 which stated that the prior owner sold the property to the County as a site for the establishment of a County Hospital in, by and for Warren County. He mentioned the County may want to seek an opinion as to whether or not that would still be true once it was sold to a private firm. He commented

if he were the heir of the individual who sold the property to the County in 1919 he would file a lawsuit concerning how it was sold under the condition that it be used for one purpose but would now be used for another.

Supervisor Seeber indicated she as well as several other Supervisor's had been requesting copies of the closing paper work for a few weeks but had only just been provided them this morning. She stated since the documents were provided to them this morning, she had not had a chance to thoroughly review them. She stated the County Attorney had advised them the closing documents were for informational purposes only, as there was nothing they could do to make changes to what was included in the documents since the sale had already been approved by the Board with a majority vote. She inquired whether changes could be made to the document and Mr. Paltrowitz replied affirmatively. He explained that he believed what the County Attorney meant was no further action was required of the Board, as all the necessary action had been taken to allow the closing to occur. He mentioned the asset purchase agreement contained the requirements of the County which was what they were proceeding to closing. He continued, if in fact there was some input the Supervisors wanted to provide in terms of a document, he was willing to review it, as his office had been working closely with the County Attorney's Office, as well as the County Administrator in compiling all of this information. He stated his law partner, Patricia Watkins, had been working on gathering all of the information in order to supply the documents the County had to prepare to the buyers legal counsel, as well as reviewing the documents the buyers legal counsel prepared prior to closing. He said there was no official action required but certainly any input provided pertaining to these documents would be considered. He informed the end result was that they would adhere to the terms included in the asset purchase and real estate purchase agreements which the Board had previously reviewed and approved.

Supervisor Seeber asked what the deadline for providing information to those documents was and Mr. Paltrowitz replied the deadline for providing input would be December 31st. He added he was unsure of what information the Supervisors wanted to provide in terms of the documents. As an example, he stated the deed had been prepared in accordance with the documents that were there and reviewed by the buyers title insurance company who issued a report that impacted the buyer and their good title on the property. He noted no issue had been raised with regard to any reversionary provisions such as Mr. Whitehead had referenced. He said he could not imagine there being an issue with the deed; he appraised it had been his office's responsibility to prepare the deed, the accompanying affidavits and documents that have to go along with deed in order to transfer the real property. He reiterated upon reviewing the documents if there was anything the Supervisors wanted him to consider including they could do so up until the day of the closing.

Supervisor Westcott requested that Mr. Paltrowitz respond to Mr. Whitehead's comments regarding the "blank check" and striking the waiver language from the document. Mr. Paltrowitz stated first and foremost it was not a "blank check", as the asset purchase and real estate purchase agreements were the documents that were beholden to both parties. He informed standard language went into the certifications, required for the closing. He explained in order to close there had to be representations that were made by the seller and the buyer which stated that they had occurred or they were being waived so that no one had a claim after the closing. As far as this particular transaction was concerned, he mentioned he would have to review all of the representations that were made by both parties; however, he noted, both parties were adhering to the representations that had been made. He added there was no blank check that was out there, as the County was going to receive what was anticipated pursuant to the asset purchase and real estate purchase agreements. He continued, the buyers would receive a transfer of the assets that were referenced in the asset purchase and real estate purchase agreements.

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Supervisor Westcott informed he would review the documents and confer with Mr. Whitehead to determine whether Mr. Paltrowitz's explanation made sense within that context. He apprised his interpretation of what Mr. Paltrowitz just stated was that it was a necessary provision and the County was protected by those other provisions within the document and deed that represented what the Board voted for and Mr. Paltrowitz concurred.

Claudia Braymer, *Supervisor Elect, 3rd Ward for the City of Glens Falls*, apprised she wanted to reiterate that Supervisor Seeber and some others had been requesting these documents for some time now. She said this was a very important transaction to all the citizens of the County. She remarked while she appreciated that Mr. Paltrowitz had been working with the County Attorney and County Administrator to review the documents to ensure they were ready for closing she felt they deserved an opportunity to review them. She mentioned as Supervisors they could not afford to have any mistakes occur; therefore, she said, as Mr. Paltrowitz's clients she felt they should have been afforded the opportunity to review them prior to rushing to close. She commented she believed the proper way to handle the matter if necessary was to hold off in order to allow for the Supervisor's and Warren County citizens an opportunity to thoroughly review them, as there were a number of citizens who also had expertise and knowledge on the matter. She pointed out she was well aware that the County had already lost money; however, she said, the contracts with Siemens were written in terms that heavily favored them, as every single provision included in them that could have favored Siemens did so. She mentioned she did not know of the standard provision Mr. Paltrowitz was referring to; however, she said, if it was something that could be redacted from the contract then it should be, as it did not necessarily have to be included. She requested that they all get a chance to review the documents before they closed on this transaction which was important to the citizens of the County.

Mr. Whitehead apprised he concurred with the majority of what Mr. Paltrowitz had stated and the fact that no further action was required on the Board's part, as there was a point in time when there was a two-thirds vote as required by County Law 215. He continued, the County had an agreement; however, he said, his point was if anything in the agreement were to be changed or waived, which was the same as making changes, then the Board would have to go back through that procedure again and obtain a two-thirds vote which he did not feel they would achieve today. He informed he wanted to ensure those words "or waived" be stricken from the document because if what Mr. Paltrowitz had stated was true and there was no change then there was no reason to include the wording "or waived" in the documents.

Chairman Geraghty announced an executive session was required to discuss potential litigation with Siemens.

Motion was made by Supervisor Simpson, seconded by Supervisor Frasier and carried unanimously to enter into executive session pursuant to Section 105(d) of the Public Officer's Law.

Executive session was held from 11:14 a.m. until 12:16 p.m.

Upon reconvening, Chairman Geraghty announced no action was taken during the executive session.

There being no further business to come before the Board of Supervisors, on motion made by Supervisor Dickinson and seconded by Supervisor Merlino, Chairman Geraghty adjourned the Board Meeting at 12:17 p.m.