

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: HEALTH SERVICES

DATE: APRIL 15, 2014

COMMITTEE MEMBERS PRESENT:

SUPERVISORS SOKOL
CONOVER
FRASIER
TAYLOR
MCDEVITT

OTHERS PRESENT:

REPRESENTING WESTMOUNT HEALTH FACILITY:

LLOYD COTÉ, ADMINISTRATOR
BETSY HENKEL, COMPTROLLER
KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD
PAUL DUSEK, COUNTY ADMINISTRATOR
MARTIN AUFFREDOU, COUNTY ATTORNEY
JOAN SADY, CLERK OF THE BOARD
FRANK E. THOMAS, BUDGET OFFICER

SUPERVISORS BEATY
BROCK
KENNY
MERLINO
SIMPSON
WESTCOTT

GRETCHEN STEFFAN, COUNTY HUMAN RESOURCES DIRECTOR
JOANN MCKINSTRY, ASSISTANT TO THE COUNTY ADMINISTRATOR
RONALD MONTESI, DEPUTY SUPERVISOR, TOWN OF QUEENSBURY
TRAVIS WHITEHEAD, TOWN OF QUEENSBURY RESIDENT
JAMES MACKEY, WARREN COUNTRY RESIDENT
MICHAEL MCCABE, TOWN OF QUEENSBURY RESIDENT
DOUGLAS AUER, WARREN COUNTY RESIDENT
TOM MAINWARING, WARREN COUNTY RESIDENT
STUART FIELD, TOWN OF QUEENSBURY RESIDENT
DAVID KLEIN, TOWN OF QUEENSBURY COUNTY RESIDENT
DON LEHMAN, *THE POST STAR*
THOM RANDALL, *ADIRONDACK JOURNAL*
CHARLENE DiRESTA, SR. LEGISLATIVE OFFICE SPECIALIST
FOR ALL OTHERS PRESENT, PLEASE SEE ATTACHED SIGN-IN SHEET

Mr. Sokol called the meeting of the Health Services Committee to order at 9:34 a.m.

Motion was made by Mr. Taylor, seconded by Mrs. Frasier and carried unanimously to approve the minutes of the previous Committee meeting, subject to correction by the Clerk of the Board.

Commencing, Mr. Sokol stated this meeting was a continuation of the weekly meetings to discuss the future of Westmount Health Facility. He noted the April 9, 2014 Health Services Committee Meeting had deviated from the topic and had become combative. He mentioned the April 3 and April 9, 2014 Health Services Committee Meetings had included several presentations and various comments from Supervisors and the public. Mr. Sokol apprised he had already made his decision on the subject and he asked if the Committee members required additional information. Mr. Taylor said he had already made his decision as well; however, he commented, he hoped today's meeting would remain civil and he stated he would leave the meeting if he heard any personal attacks against any individual. Mr. Sokol advised if a motion was carried in this Committee Meeting, the matter would be referred to the full Board of Supervisors for approval. He said the Committee members did not want to belabor the issue as the sale of Westmount Health Facility was important

to the County. He noted the Facility lost money on a regular basis and the uncertainty of the Facility's future was resulting in a decline in residents. He commented most of the Supervisors had given their opinions and he would open the floor to public comment.

Travis Whitehead, Town of Queensbury Resident, apprised that at the April 3, 2014 Health Services Committee Meeting, EnerNOC had presented a report which had been released to the County in January. According to the EnerNOC Report, he continued, there were elements of the Performance Assurance Contract which had not been accounted for. He noted the Performance Assurance Reports contained some inaccurate information. Mr. Whitehead informed that on April 4, 2014, Siemens Industry, Inc. had made a public statement in the *Post Star* indicating their willingness to sit down and discuss the issue with the Board of Supervisors. He explained the largest discrepancy in the EnerNOC Report pertained to the Guaranteed Savings Amount which had been based on numbers derived early in the process. He further explained the final wording in the document had replaced the section of text pertaining to the Guaranteed Savings Amount and had indicated the County would be made whole over a fifteen year period taking into account Medicaid Reimbursements and savings. He noted the contract pointed out that Siemens could not guarantee any Medicaid Reimbursements. He advised the Guaranteed Savings Amount in the final contract was written on June 28, 2004 and the Pro-Forma Amount had been written on June 3, 2004. He apprised the Guaranteed Savings Amount should have been more like \$256,000 per year, as opposed to \$181,440. He added this was a difference of approximately \$75,000 and over the eight years of the contract the difference totaled approximately \$655,000. He stated EnerNOC believed the County had every right to dispute this difference and he said he felt the County should look into the matter.

Mr. Whitehead advised another issue pertained to the Avoided Additional Laundry Stipulated Savings. He mentioned the contract stated neither the client nor Siemens could alter the stipulated savings amounts; however, he added, that was exactly what Siemens had done when they added additional avoided laundry costs. He pointed out over the course of eight years, Siemens had credited \$223,000 in Avoided Additional Laundry Savings which should not have been included. Those two elements, he continued, resulted in a discrepancy of approximately \$878,000. He explained the difference between the savings claimed by Siemens and the actual figures was approximately \$600,000 and Siemens should remit this amount to the County. He stated the County should pursue this claim aggressively and should have pursued it many years ago. Mr. Whitehead informed there were clauses in the contract indicating that the contract was between Warren County and Siemens Industry, Inc. and unless both parties agreed the rights of the County could not be transferred to a third party. He stated he had summarized his findings into two documents which he would present to Joan Sady, Clerk of the Board, for the record; *copies of both documents are on file with the minutes.*

Mr. Westcott echoed Mr. Taylor's comments about today's meeting remaining civil and not becoming personal. He stated there were three points he wanted to make regarding his opposition to selling Westmount Health Facility to The Centers for Specialty Care Group. He said he had reviewed the Siemens contract and had read the minutes from the April 3, 2014 Health Services Committee Meeting. He noted there were statements made at the April 3rd Meeting which appeared to indicate that the County could pursue a claim against Siemens. He advised his first point pertained to Article 12-2 of the Siemens contract which stated that neither the client nor Siemens shall assign or transfer any rights or obligations under the agreement. He opined if the County signed an agreement with The Centers for Specialty Care Group, the contract with Siemens would be null and void and the County would have no recourse with Siemens. The \$544,000 in savings referred to in the EnerNOC Report, he continued, was taxpayer money and the County should reclaim it.

The second point, Mr. Westcott continued, was that he felt the sale price of \$2.3 million for the purchase of Westmount Health Facility was low. He said he would like to see an independent review to ensure that amount was comparable for a facility of that size. He noted Michael McCarthy, of McCarthy & Conlon, LLC, had stated at the April 9, 2014 Health Services Committee Meeting, that the values of the property, plant and equipment at Westmount Health Facility was approximately \$3 million. He stated the per bed cost of \$28,750 for Westmount Health Facility seemed low and he noted Steuben County sold their 105 bed facility for \$11 million or approximately \$105,000 per bed. He acknowledged the Steuben County Nursing Home was a much newer facility and that he was not a real estate expert. He referred to the Cogeneration System as "an albatross around the neck of the County" and opined it should be decoupled prior to the sale of Westmount Health Facility.

The third point, Mr. Westcott commented, pertained to his concern with the guaranteed Medicaid reimbursements which were to be included in the agreement with Specialty Care. He questioned why the County should guarantee reimbursements for something over which they had no control. He commented the County was unsure of the continuation of Medicaid IGT (Intergovernmental Transfers) payments, yet they were willing to guarantee the receipt of Medicaid reimbursements for the Cogeneration System. He apprised the loss of IGT payments would cause a deficit of approximately \$650,000 and he noted this was a lesser annual loss than the Floyd Bennett Memorial Airport, which the County was in the process of expanding. Mr. Westcott stated he would like to see the Cogeneration System taken offline; Westmount Health Facility placed back on the grid; the cessation of all lease payments to Siemens; and the release of a new RFP (requests for proposals) for the sale of Westmount.

Mr. Beaty concurred with Mr. Westcott's analysis of the situation and stated this was a very important matter. He acknowledged this was the third Committee Meeting dedicated to the issue; however, he recommended, an evening Committee Meeting be scheduled to allow more input from the public who were unable to attend meetings held during the day. If the County decided not to schedule an evening meeting, he continued, he and Mr. Westcott were willing to schedule a Town Hall Meeting in the evening to allow members of the public an opportunity to voice their concerns and opinions. Mr. Beaty opined the separation of the Cogeneration System from the sale of Westmount Health Facility was paramount in his mind. He acknowledged four proposals had been received but he felt the reason there was only one bidder remaining was due to the Cogeneration System. He informed after removing their Cogeneration System, Saratoga County had received seven proposals for the sale of their nursing home. He referenced comments made by Mr. McDevitt at the previous Committee Meeting and Mr. McDevitt clarified that if the net operating income of a property was increased, the purchase price would also increase. Mr. McDevitt continued that if you capitalized an investment at 10%, or \$500,000 for example, in improving net operating income that would equate to an increase of \$5 million for the purchase price. Mr. Beaty reiterated his agreement with all three points made by Mr. Westcott and said that given the new information presented, he did not feel there was a rush to sell the Facility.

Douglas Auer, Warren County Resident, stated he and two others had attended Committee Meetings seven years prior but he had specifically stayed away from meetings since then, as the topic was very emotional for him and had cost him dearly over the years. He implored the Committee to not, at this time, sell Westmount Health Facility or enter into any agreement for same. He stressed the County would be putting upon the least able in our society to take care of themselves, simply because they were too old. He stated that seven year prior, he had requested for people like Messrs. Whitehead and Westcott to look into the Cogeneration issue. He said he possessed a video of himself presenting at a Queensbury Town Board Meeting requesting same. He said he had implored the County to bring in an independent person or firm to review the matter and this was not done until

after an investigation had begun. Mr. Auer surmised that the first thing new owners of Westmount Health Facility would do would be to shut down the Cogeneration operations and reconnect to the power grid. He noted the scrap value of the Cogeneration System in Saratoga County had been approximately \$60,000 and for a \$6 million facility, that was a penny on the dollar. He recommended the County not sell Westmount Health Facility until the Cogeneration issue was resolved.

Michael McCabe, Town of Queensbury Resident, said he had studied the Siemens contract and had read some of the prior Committee minutes. He asked if it was true that selling Westmount Health Facility and the Cogeneration System would cancel the contract with Siemens Industry, Inc. and Martin Auffredou, County Attorney, replied in the negative. Mr. Auffredou explained the proposal with The Centers for Specialty Care Group which had been developed by the negotiating team would not transfer the rights or obligations under the contract with Siemens. As an attorney, he continued, he did not see the connection between moving forward with the sale of Westmount Health Facility and forfeiting the County's rights and obligations under the contract with Siemens. He acknowledged there was a non-assignment clause in the contract but the County was not asking Specialty Care to assume any rights under the contract. He added the County was preserving all rights under the contract and he saw no reason why selling the Facility should null and void the contract.

Mr. Whitehead referenced the April 3, 2014 Health Services Committee Minutes wherein Paul Dusek, County Administrator, had noted both parties would also agree that the Performance Assurance Technical Support annual fee to Siemens Industry, Inc. would end upon execution of the contract. He read Article 4-8 from the Siemens Performance Assurance Contract, as follows:

The performance guarantee is dependent upon and is subject to the express condition that the client enter into and maintain, during the entire term of the performance guarantee period, the performance assurance TSP. If the client fails to enter into, breaches, cancels or otherwise causes the termination of the performance assurance TSP, this performance guarantee shall terminate immediately and be void and of no effect and of no force for effect.

Mr. Whitehead acknowledged he was not a lawyer but he felt there was a concern that the Performance Assurance Contract would be canceled due to the sale of the Facility. Mr. Auffredou stated once an agreement for sale of the Facility was reached in principal, it would be necessary to fine tune some of the details going forward. He said some of the discussions would involve representatives from Siemens Industry, Inc., who had already indicated a willingness to meet and work with the County on this matter. He reiterated the County would not be waiving their rights to the contract by selling the Facility and in fact, he said, they were preserving those rights. Mr. McCabe said he hoped the County would secure a guarantee from Siemens that the contract would not be canceled due to sale of the Facility, prior to entering into an agreement for sale.

Mr. Westcott stated he was skeptical that Siemens would be willing to work with the County, as it would not be in their best interest given the fact that EnerNOC's report indicated Siemens had overstated the savings by approximately \$544,000 in their Performance Assurance Reports. Mr. Auffredou said he could only report on his conversations with a representative from Siemens, who had indicated that irrespective of the outcome of the EnerNOC Report they would be willing to meet and resolve issues.

Mr. Conover stated the issue went beyond preserving the County's rights under the Siemens contract. He commented the matter dealt with the generation of electricity which was utilized by the Facility and supposedly created a benefit. If the County sold the Facility to a third party, he noted,

and continued operations of the Cogeneration System was agreeable to them, that party then would become part of the discussions between the County and Siemens. He advised the buyer would want certain assurances, such as that the cost of continued operations of the Cogeneration System would result in a cost which was equivalent to being placed back on the power grid. He stated he had seen no information which would indicate the proposals received for purchase of the Facility would have been higher if the Cogeneration System had not been included. He commented there were many issues which needed to be discussed and worked out in the course of negotiations and during that negotiating period there would be many opportunities to cancel the sale of the Facility. He asked at what point both the buyer and the seller would be legally committed to the deal. He noted during the negotiations there would need to be a series of meetings in order to deal with several issues which might arise.

Mr. Dusek said he would defer to Mr. Auffredou to answer the question pertaining to at which point both parties would be legally bound. He explained the negotiating team had met with Specialty Care and had negotiated terms for a prospective business deal and it was for the Committee to decide if they wanted to proceed with the deal. He noted when two parties met and ironed out a business deal, the presumption was that the deal would move forward and both parties were acting in good faith. Once the County indicated their intention to proceed, he continued, Specialty Care would spend time and money on attorney fees for the drafting and reviewing of a contract. Mr. Auffredou agreed with Mr. Conover that there would be several meetings over the course of several months. In the current step, he continued, the Board of Supervisors was awaiting direction from the Committee. He advised deciding to move forward with the sale to Specialty Care was not a commitment and would not legally bind the County. He stated additional negotiations would be necessary on behalf of both parties. He said Specialty Care was a large group which would hire sophisticated attorneys and he pointed out the County had hired special counsel to represent their interests in the sale of Westmount Health Facility. Before we could get to that point, he continued, a consensus of the Committee members was required to move the matter forward. He noted the current proposed business deal was merely a framework for the contract between the County and The Centers for Specialty Care Group and would not be legally binding. At some point, he explained, the Board of Supervisors would vote on a resolution which would authorize the Chairman to sign a final contract and once the contract was signed by both parties, it would be a legally binding contract. He acknowledged there would be several terms and conditions of sale which had not yet been discussed in the Committee Meetings. Mr. Auffredou apprised he and Mr. Dusek would ensure that all the members of the Board of Supervisors were advised as to each and every detail of the contract prior to the execution. He noted the possibility that terms and conditions within the contract would allow either party to cancel the sale and that he anticipated it would be three to four months before a final contract would be available.

Mr. Westcott mentioned the \$1.6 million proposal from Affinity Skilled Living had been determined to be too low and the negotiations with LTC-Midwest had fallen through. He asked what had happened with the negotiations with Fort Hudson Health Systems and he noted the proposal had been viable and the representatives from Fort Hudson had been enthusiastic. Mr. Sokol replied that Fort Hudson was a local organization and the Committee had looked at their proposal seriously. He stated the representatives from Fort Hudson had wanted to apply for tax exempt status, meaning the property would not be placed back onto the tax rolls. In addition, Mr. Sokol noted Fort Hudson would not consider an increase in the amount of their proposal. Mr. Westcott asked the amount of the proposal from Fort Hudson and Mr. Dusek replied the offer had been \$2.05 million plus \$150,000 for additional property and he noted Specialty Care had not been interested in the additional land. Mr. Westcott asked if Fort Hudson had stated any other reason why they were unwilling to increase their proposal and Mr. Sokol replied in the negative. Mr. McDevitt said Fort Hudson's plans to apply

for tax exempt status and keep the property off the tax rolls had not been a determining factor for him. He stated he felt they were still a viable option for the sale of Westmount Health Facility and he hoped the Committee would reach out to them to determine if they were still interested. He apprised he did not feel comfortable voting on the proposed sale of Westmount Health Facility today and he felt the separation of the Cogeneration System from the sale was important. The complexity of the Cogeneration issue, he continued, was a major factor in his decision to not vote today and given the changes in the health care system he was opposed to guaranteeing the Medicaid reimbursements. He mentioned if the Committee voted today, he would be voting in opposition.

Ronald Montesi, Deputy Supervisor of the Town of Queensbury, asked if the proposal from Fort Hudson was contingent on the inclusion of the additional property and Mr. Dusek replied they had discussed the additional property but because Fort Hudson had been unwilling to increase their proposal, the discussions did not go far. Mr. Montesi noted the property in question was 23 acres which Fort Hudson wanted to purchase for \$150,000. He added when the Town of Queensbury rezoned the property, the value would be increased for use as office or residential housing space.

Mr. Conover reviewed several possible outcomes with a claim against Siemens Industry, Inc., including: Siemens agreeing their numbers were incorrect and paying the County; Siemens standing by their original numbers; Siemens consenting to the sale of the Facility and continuing the contract; and Siemens stating that sale of the property was a breach of contract. He noted the process of determining which outcome would be the case could take several months and could effect the Committee's standing pertaining to the sale of Westmount Health Facility. He stated he was not saying that the Cogeneration System and the sale of Westmount were directly connected; however, he added, he could not say they were totally different issues either. Mr. Auffredou asked if Mr. Conover's concern was that Siemens had the ability to block the sale of the Facility and he commented Siemens could not take the position that the County could not sell the property. Pertaining to the Medicaid reimbursements, Mr. Auffredou informed that only the County could receive the Medicaid reimbursements and not Specialty Care. He commented during the negotiations with Specialty Care the County had requested that they make the lease payments for the Cogeneration System and he noted the details on that issue had not been worked out yet. Mr. Conover asked what would happen if the details regarding Cogeneration lease payments and Medicaid reimbursements could not be worked out and Mr. Auffredou replied in that case, the County's conditions for moving forward with the contract would not have been met. Mr. Auffredou stated those details would not be worked out during negotiations unless the County made the decision to move forward with the sale.

Mr. Auer apprised that Siemens Industry, Inc. had insinuated that the Cogeneration System was not working to optimum levels due to the demolition of the former Department of Social Services (DSS) Building. He stated this was an entirely false statement and he said with absolute certainty that the inclusion of the former DSS Building on the System had cost the County more money because electricity was generated for a building which could not utilize the waste heat. He commented Siemens Industry, Inc. would continue to use the removal of the former DSS Building from the System in any negotiations between the County and Siemens regarding claims against the Performance Assurance Contract. He stated the burden of proof would be placed upon the County and the Cogeneration System would be gone because Specialty Care would demolish it. He apprised Specialty Care would not continue to operate the Cogeneration System because it would cost them more money. Mr. Auer offered to spend as much time as necessary in order to explain to the Committee members exactly how the Cogeneration System worked. He noted Mr. Whitehead was a P.E. (Professional Engineer) and would also have the ability to explain to the Committee members why the former DSS Building was actually costing the County more money.

Mr. Whitehead said he agreed with Mr. Auer's statements but he did not feel it addressed the matter at hand. He read from the July 18, 2007 Budget Committee Minutes, as follows:

Mr. Dusek explained the figures listed on the laundry facility were stipulated and therefore, were guaranteed. As for the Medicaid reimbursement figures, those figures were generated at the time the contract was produced and he had just confirmed with Mr. Cotton (Siemens Consultant for Medicaid) that although the anticipated amounts had not yet been received, they should be and would continue to be received throughout the contract. He noted that if the Medicaid reimbursement was not received as documented in the contract, the matter would be addressed and resolved between the County and Siemens. At this point, Mr. Dusek stated, from his review of the project he felt that it was perfectly reasonable to allow the project to proceed as planned and await the receipt of Medicaid reimbursement as estimated. In addition, he noted, the Medicaid reimbursement figures listed in the contract were estimated as the minimum reimbursement anticipated and it was entirely possible that the County would actually receive more than what had been projected. Mr. Dusek said that the numbers had been conservatively estimated by Siemens because it would not be favorable for their company should the actual Medicaid reimbursement received fall short of their estimated figures.

Mr. Whitehead commented the County had only received about 1/3 of the amount anticipated but he was unsure if the matter was addressed or resolved. He said he wanted the Committee members to be aware of one clause from the Siemens Performance Assurance Contract and he read from the contract, as follows:

The parties understand that Siemens has no control over Medicaid reimbursements. Article 4.1 of the Performance Guarantee is modified as follows: The final program will be such that once implemented it will produce onsite cogeneration plant and other improvements requested by client and described in this agreement, the entire cost of which, including the cost of the technical support program, will be offset in guaranteed energy savings and Medicaid reimbursements over a maximum fifteen year period. The parties understand that Siemens has no control over Medicaid reimbursements.

Mr. Whitehead said the County should never have given over by saying they would not hold Siemens to their numbers; however, he added, it was clear that the County expected to receive guaranteed energy savings over the maximum fifteen year period. He noted the Siemens contract he had quoted was written on June 28, 2004 and the Pro-Forma which had been in place at that point was written on June 3, 2004 which clearly had the \$256,000 figure included. He added the same dollar amount had been included in the EnerNOC Report which placed the County in a good position to say the \$655,000 was based on the guarantee and contractually Siemens should acknowledge that amount and should write the County a check well in excess of \$500,000.

Mr. Conover said it was safe to assume the buyer of Westmount Health Facility would not want to pay more for electricity than the cost of being on the power grid. He opined it might be necessary to explore the Siemens issue further before selling the Facility. He added there was a possibility that the Cogeneration System would have no effect on the sale of the Facility. Mr. Taylor stated he had previously commented he was willing to move forward with the sale; however, he continued, if the County did move forward with negotiations there would be several opportunities to cancel the sale, if negotiations were not going as anticipated. He said he was concerned about guaranteeing the Medicaid reimbursements but an analysis had been completed as to the costs associated with retaining and selling the Facility and he felt selling the Facility was an economic decision which was in the best interest of the taxpayers.

Mr. Dusek stated as County Administrator he was looking at the County's present situation. If the County had claims against Siemens, he continued, the right to those claims should be preserved. He noted this issue should be pursued by the County and resolved regardless of whether or not the Facility was sold. He apprised if the County retained Westmount Health Facility and continued operations, the Facility would continue to operate at a loss. He acknowledged it was unknown whether the IGT payments would continue and he pointed out the Multi-Year Financial Plan had been completed under the assumption that those payments would not continue. He advised he would rather not anticipate the receipt of IGT payments and be pleasantly surprised when they were received. Even if the IGT payments were received as anticipated, he continued, Westmount Health Facility would continue to operate at a loss.

Mr. Dusek acknowledged Mr. Whitehead's comments that the Facility would break even if IGT payments were received and the Facility was placed back on the grid; however, he continued, there would still be a loss in the General Fund because IGT payments required matching funds. County nursing homes were being sold all over New York State, he explained, because they were all operating at a loss under County ownership. He advised the Medicaid System was stacked against the Counties and County wages and benefits were not competitive with the private sector. When the 2014 Budget was completed, he said, they had projected enough Surplus Funds to cover the losses for the year; however, he noted, Betsy Henkel, Comptroller for Westmount Health Facility, and Mr. McCarthy had informed the amount of Surplus Funds would not be as much as had originally been anticipated. He explained the Facility was operating at a loss due to a number of open beds (currently there were 8 or 9 open beds) and because there were fewer private pay residents.

Mr. Dusek stated there were two separate issues: the first of which was preserving the rights to any claims under the contract with Siemens; and the second was deciding whether to continue operating Westmount Health Facility at a loss or to sell the Facility. Regardless of whether the Facility was sold or not, he continued, the County would still address the claims under the Siemens Performance Assurance Contract. He said the critical decision was whether to sell the Facility or to continue to operate it at a loss. He noted if the sale took nine months to a year to finalize, then the Facility would continue to cost the County money during that time period. He stated if the decision was made to sell Westmount Health Facility, he would push for a quick sale in order to limit the amount of money lost by the County. Mr. Dusek asked the amount of Surplus Funds the County had anticipated using for Westmount in 2014 and Ms. Henkel replied approximately \$700,000. Mr. Dusek asked the amount of money currently in the Surplus Fund and Ms. Henkel replied approximately \$125,000. In 2010 when he became County Administrator, Mr. Dusek said, they had worked very hard to increase the amount of the Surplus Fund, and he would hate to see it continue to rapidly deteriorate because the County failed to deal with the issue. He stated if the Committee decided not to move forward with the sale, the losses would continue and they would need to determine other ways to cut costs.

Mr. Westcott requested the Committee consider pursuing the claims with Siemens Industry, Inc. immediately. He said \$544,000 was a lot of money and he saw no reason to delay the process. Mr. Auffredou responded the County could start the procedure to pursue the claims and he added he did not feel that was the issue before the Committee today. The current issue, he continued, was whether or not the Committee wanted to move forward with the sale of Westmount Health Facility to The Centers for Specialty Care Group. He said if the Committee wanted to discuss pursuing the claims against Siemens then some fine tuning was necessary as several different dollar amounts had been quoted by different people. He explained the matter would need to be examined much more thoroughly and the Committee would need to decide whether or not to retain special counsel to assist in the process of pursuing the claims. He stated Siemens Industry, Inc. was a large company

that would hire some high powered attorneys to represent their interests. Mr. Auffredou mentioned Mr. Dusek had emphasized from the beginning that if there were claims they would need to be pursued; however, he added, further discussion would be necessary before the County could determine exactly what those claims were.

Mr. Beaty advised the County begin the process of pursuing the claims immediately. He said he was frustrated with the excessive amount of discussion and he was ready to take action. He advised EnerNOC had already examined the Cogeneration System and had supplied the County with a report which suggested items to look into. He commented the Floyd Bennett Memorial Airport lost approximately \$1 million per year and everyone accepted that but when Westmount Health Facility was determined to be losing approximately \$700,000 per year, action was taken right away to try to sell it. He opined separating the Cogeneration System from Westmount Health Facility and releasing a second RFP for the sale of the Facility would result in better options. He reiterated that when Saratoga County decoupled their Cogeneration System it had resulted in the receipt of seven proposals for the purchase of their nursing home. Mr. Sokol pointed out Saratoga County had a ten year contract with Siemens which had expired by the time they sold their facility.

James Mackey, Warren Country Resident, asked if Specialty Care had been provided with a copy of the EnerNOC Report and Mr. Dusek replied affirmatively. Mr. Mackey asked if Specialty Care had access to that report prior to the business deal which had been presented. Mr. Auffredou explained there had been two EnerNOC Reports and Specialty Care had received the Task 1 Report, Cash Flow Analysis, when it became available in December of 2013. He further explained the Task 2 Report, presented at the April 3, 2014 Committee Meeting, and all of the other documents from that meeting were provided to the counsel for The Centers for Specialty Care Group. Mr. Mackey repeated his question and asked if the Reports were provided after the business deal was made and Mr. Auffredou replied the Reports had not been available at the time and he added a business deal had not been agreed upon but the framework for a possible business deal had been ironed out.

Mr. Taylor stated it was important to determine the exact dollar amount for any claims against Siemens before making a decision to pursue the claims. He explained if the cost involved in pursuing the claims was more than the amount of the claims then it would not make sense to pursue them. Mr. Auffredou stated that was an excellent point and he said the amount reported by EnerNOC was \$63,369 but there were several areas for which EnerNOC had suggested further investigation would be warranted. He opined the Committee was not in a position today to determine if they should move forward with pursuit of the claims. He said information, such as the exact dollar amount of the claims and the cost of pursuing those claims, needed to be determined before the process was commenced. He stated the pursuit of claims against Siemens and the sale of Westmount Health Facility could both move forward at the same time.

Mr. Whitehead asked if it would be possible to present reports on a regular basis about the progress of the claims process. He said Mr. Conover had suggested the Committee would be able to have a sense of whether or not the arguments were being well received within a few months. He stated discussion with Siemens had been ongoing since 2007 and he had not seen any reports on the matter since that time. Mr. Auffredou responded if there was a decision made to sit down and discuss the matter with Siemens, it would be a good framework to move forward. He said he felt the County would need to discuss the matter with special counsel. He noted it was within reason to suggest that the Committee could be provided with periodic status reports regarding discussions with Siemens; however, he added, it would be out of the ordinary to disclose too much information while the discussions with Siemens were ongoing.

Tom Mainwaring, Warren County Resident, said his understanding was that the contract with Siemens was a bad contract and there were indications the County was owed money from Siemens. He stated he saw no reason why the Committee would not authorize the pursuit of the claims against Siemens. He expressed that he was bothered by the Committee's inability to resolve the issue of whether or not the IGT payments would be received. He advised the issue should be resolved as it would be a \$2 million difference.

Stuart Field, Town of Queensbury Resident, urged the Committee not to vote on the issues today and instead, to schedule an evening Committee meeting to allow more input from members of the public. He stated there were enough members of the public with concerns about these issues to warrant an evening informational meeting prior to voting.

Mr. Conover stated he was not aware of any information or comments from any of the representatives of the companies which had expressed an interest in purchasing the Facility to indicate that their proposals would have been higher if the Cogeneration System had not been included. Mr. Dusek noted the Cogeneration System had been included in the information released with the RFP. Mr. Conover asked if any of the companies had indicated their proposal would have been higher if the Cogeneration System was not included and Mr. Dusek replied in the negative. Mr. Dusek reminded the Committee members that at the April 9, 2014 Committee Meeting, Michael Swan, County Treasurer, who was experienced in evaluating nursing homes, had indicated that a purchase price of \$2.3 million was consistent with the value of Westmount Health Facility. He added Mr. McCarthy had also indicated he felt the proposal was consistent with the value of Westmount which would sell for \$3 million, at most. Mr. Dusek pointed out the difference between the proposal of \$2.3 million and the highest estimated value of \$3 million was \$700,000 and Westmount Health Facility was losing \$700,000 per year, so any type of delay in trying to obtain a higher sale price could result in further losses and no gain. He noted if the County was committed to selling the Facility, it was better to sell sooner rather than later in order to limit the losses. Mr. Dusek pointed out that on a \$40 million tax levy, the 2% tax cap was \$800,000 and the County was trying hard to reduce taxes and consolidate services.

Mr. McCabe said if the Cogeneration System was contributing to higher costs at the Facility, the potential buyer would need to take that fact into consideration and possibly reduce their proposed price. Mr. Dusek commented the buyer had been given the first EnerNOC Report pertaining to the cash flow analysis in December of 2013. He said he had wanted the first report in order to determine if the Cogeneration System would be sustainable for a potential buyer. He advised that when the negotiating team had met with Specialty Care, they had discussed approximately \$20,000 in improvements to the System. He noted the EnerNOC Report had indicated that within a \$10,000 to \$20,000 difference per year, the Cogeneration System was comparable to being on the power grid. He added Specialty Care had agreed to continue operation of the Cogeneration System for the next seven years in order to ensure continued receipt of the Medicaid reimbursements. Mr. Dusek informed that New York State was in the process of making changes to the Medicaid System and converting to a Managed Long Term Care System which would impact the Medicaid reimbursements; however, he continued, they had every reason to believe that the Medicaid reimbursements would continue over the next seven years and would equal the lease payments which was why the buyer was willing to agree to continue operating the Cogeneration System for at least seven years. He noted the change to Managed Long Term Care would cause changes to the Medicaid payments and the plan was to have Mr. McCarthy, Mr. Auffredou and the special counsel hired by the County to assist with further negotiations for those particular contract provisions. Mr. McCabe asked if Specialty Care would be tied into the Medicaid payments to help offset their operating costs and Mr. Dusek replied in the negative. Mr. Dusek explained that Medicaid payments to the Facility were

based on the number of Medicaid residents in the Facility and it was allowable to charge off certain capital improvements made to the Facility against Medicaid. He noted the improvements to the Facility not only included the Cogeneration System but also a list of other improvements which were made at that time. Early in the project, he continued, Medicaid had decided they would not pay the charge offs for capital improvements to nursing homes. He mentioned that Saratoga County had challenged this decision and won and Warren County had been among the Counties that had reaped the benefits. He added Warren County was anticipating the receipt of \$131,000 which had been awarded on appeal. He explained the County had to continue to appeal each year and await a decision; however, he noted, the precedent to pay the charge offs for capital improvements had been set when Saratoga County won their first appeal. He opined Specialty Care would have more bargaining power and clout to appeal decisions due to the size of their organization. Mr. McCabe asked why the County was guaranteeing Medicaid reimbursements and Mr. Dusek explained Specialty Care was buying a facility with power and as long as the costs were comparable, they had no preference between Cogeneration and the power grid; however, he continued, they would not be willing to assume the liability of the Cogeneration System lease payments if they would not receive the Medicaid reimbursements.

Mr. Whitehead displayed a copy of the first EnerNOC Report which had been distributed in December of 2013. He noted the first page of the Report included various scenarios of projected costs for electricity production over the next eight years. He added the lowest cost scenario presented had been if the Facility returned to the power grid and did not continue lease payments and Medicaid reimbursements. He noted all of the other scenarios presented were at least an additional \$500,000, including the existing scenario which assumed the receipt of \$1.2 million in Medicaid payments and would still result in a shortfall of \$498,092 over the next eight years. He opined if he were representing Specialty Care, he would not agree to continued operation of the Cogeneration System at an additional cost of almost \$500,000 over the course of eight years. Mr. Dusek commented this was a very complicated issue and he explained if it were possible to simply walk away from the Cogeneration System lease and place the Facility back on the power grid, then that analysis would be correct. He noted that scenario assumed the County could walk away from all of the contractual obligations associated with the Cogeneration System and not face a lawsuit for recovery of those monies. He stated the EnerNOC Report also showed an improved operating scenario in which for the period of January 1, 2015 through the end of 2021, the difference between continued operation of the Cogeneration System and returning to the power grid was relatively minimal. Mr. Dusek apprised Specialty Care had their accountants review this information and they were satisfied the costs were comparable assuming the lease payments were made and the Medicaid reimbursements were received.

David Klein, Town of Queensbury Resident, distributed a packet of four handouts to the Committee members; *copies of same are on file with the minutes*. Mr. Klein stated he supported the sale of Westmount Health Facility but he did not feel the time was right. He said he had met Supervisor Taylor when the City of Glens Falls was trying to initiate a municipal power company and they had both been on a committee that was in opposition. He stated the committee had taken the stand that government should not compete with the private sector. He apprised he felt the Facility should not be sold until the County recovered their funds from Siemens Industry, Inc. and until it was determined why the County had entered into an unfair contract which had cost \$4.2 million to date. He said he had a contract with the County to complete a NYSEDA (New York State Energy Research and Development Authority) funded energy audit for all of the County facilities. During the energy audit, he continued, it was determined the energy costs for Westmount Health Facility were approximately \$143,000 per year. Now, he said, in addition to the \$143,000 per year, the Facility's energy costs were \$430,000 to \$505,000 more per year due to the Siemens contract and additional utility costs. He stated prior to the Siemens contract there had been no independent technical

evaluation completed. He apprised the County needed to hire technical experts to determine why they entered into the contract and how they could make the best of the current situation.

Mr. Klein advised Genesee County had decided to be placed back on the power grid but did not take their Cogeneration System offline. He noted Genesee County switched off and on between the power grid and use of the Cogeneration System based on which one was more economical at the time. He stated electricity could not be produced cheaper than it could be purchased unless there was a thermal heat load. He said the County should not sell Westmount Health Facility until they "cured the deficiency" which was reducing the sale price and not until all efforts to find a better purchaser were exhausted. Mr. Klein said he had been advised that lowering the Facility's operating costs by \$100,000 would increase the sale price of the Facility by \$1 million; however, he continued, he had completed some research and determined the increase in the sale price would be closer to \$750,000. He said at the January 9, 2014 Committee Meeting, Mr. Dusek had distributed a handout pertaining to comparable sales of County nursing homes and he commented three out of the four comparisons had an incorrect sales price listed. He added the handout had not included Steuben County which had 105 beds, no Cogeneration System and sold for \$11 million. He noted Steuben County's nursing home had also been purchased by The Centers for Specialty Care Group. He commented the County needed to do what they could to ensure they would get the best sale price possible for Westmount Health Facility.

Mr. Klein apprised there had been a heated discussion at the April 9, 2014 Committee meeting pertaining to the NYSERDA funded energy audit. Mr. Sokol interjected and requested that Mr. Klein keep his comments limited to the topic at hand. Mr. Klein advised the same problem was occurring now as had occurred in 2002 which was that a lawyer was reviewing the contract without the benefit of technical assistance. He added now the same lawyer was trying to sell the nursing home and get rid of it as soon as possible which would null and void any recourse pertaining to Siemens. He said the situation needed to be thoroughly evaluated and the County needed to ensure they did not repeat the same mistakes. Mr. Klein said the statement that the demolition of the former DSS Building had somehow caused the Cogeneration System to be less efficient was untrue. He explained the former DSS Building had electric heat and therefore had no use for the waste heat provided by the Cogeneration System. He noted the County's losses on the Cogeneration System had been significantly reduced by the demolition of the former DSS Building. He commented the County had spent over \$4 million on costs to Siemens and additional utility costs. He stated the County wanted to sell the nursing home without correcting the defects which were effecting the sale price. He implored the Committee to delay the decision to sell the Facility as long as they could.

Mr. Conover asked if the RFP had included the Cogeneration System and what requirements of the purchaser had been included. Mr. Dusek responded the RFP had been a complete write up of the Facility and had described the Cogeneration System and the adjoining property. Mr. Conover asked if there had been anything included in the RFP, such as a requirement that the purchaser assume total responsibility for the Cogeneration System. Mr. Dusek stated the RFP simply identified what exactly was being sold. Mr. Conover mentioned Specialty Care had been provided all of the available information regarding the Cogeneration System and his understanding was that as long as the cost of operating the System was comparable to being on the grid they were amenable to continued operations. Mr. Dusek advised the lease payments to Siemens Industry, Inc. had to be made and it seemed fair to Specialty Care that they would make the lease payments and in turn collect the Medicaid reimbursements. He reiterated the accountants for the buyer had reviewed the materials and determined that over the next seven years the lease payments and the Medicaid reimbursements would balance out. He added if the payments and reimbursements balanced out, then \$2.3 million was a reasonable price for Westmount Health Facility.

Mr. Auer asked what the proposed \$20,000 in improvements to the Cogeneration System were and he commented it was not possible to complete an improvement of that nature which would improve the efficiency of the System. Mr. Dusek replied he was uncertain what the specific improvements pertained to as the discussion had been between Siemens and EnerNOC. Mr. Auer insinuated that Siemens Industry, Inc. was not above bribery and he mentioned Siemens had paid \$1.6 billion in fines in 2008 related to bribes paid during the course of business in Germany. He voiced his opinion that Siemens Industry, Inc. was an evil company. Mr. Mackey interjected in 2003 the Chairman of Siemens and all of the top executives had been fired because bribery had become rampant throughout the company. Mr. Auer said the scandal had been so large that last year the objective counsel for Siemens had issued a white paper report requesting any employees with knowledge of wrong doing come forward without the risk of termination. He reiterated he would be happy to sit down and explain the Cogeneration System to anyone who was interested. He commented that Mr. Klein was a P.E. Structural Engineer and Mr. Whitehead was a P.E. Electrical Engineer and both were capable of explaining, as well.

Gretchen Steffan, County Human Resources Director, stated that from an operations point of view, the delays and indecision regarding the future of Westmount Health Facility were making it difficult to recruit and retain employees. She noted the uncertainty was also causing concerns among the existing staff members. She pointed out there was a shortage of nursing professionals in the area and Westmount Health Facility was competing with other nursing homes and hospitals to hire these professionals. She added area nursing homes were all competing to keep their beds filled and the current trend at the national level was to attempt to keep people in their homes as long as possible. Another popular trend, she noted, was the selection of assisted living facilities as an alternative to nursing homes. She mentioned that Medicaid reimbursements were not paid in a timely manner and it was not unusual to await a reimbursement for two years or longer. She noted that two years ago, New York State had changed the reimbursement rate, meaning the amount which was being awaited was not necessarily the amount received. Mr. Sokol thanked Ms. Steffan for pointing out the compassionate point of view which was often overlooked.

Mr. Conover expressed the consensus of the Board of Supervisors was that they wanted to sell Westmount Health Facility. He voiced his opinion that the question before the Committee today, given the vast amount of new information concerning the Cogeneration, was if there was anything within the new information which in any way effected the County's ability to proceed with the sale of Westmount Health Facility. He stated based on the advice given by the County Administrator and County Attorney, it seemed the County could proceed with the sale and preserve their interests relative to the Siemens contract. He voiced his opinion that it was important to ensure the potential buyer of Westmount Health Facility be made aware of the County's concerns pertaining to the Siemens contract and the Cogeneration System. He stated he did not see an issue with continuing with the sale of Westmount Health Facility as long as there was the possibility of cancelling the sale up until the contract was signed or that "exit strategies" were included in the process. He said he did not see any reason why the County could not proceed with the sale of Westmount Health Facility as long as they preserved all of their rights and options regarding the Siemens contract, as well as all of the taxpayers' rights.

Mr. Sokol asked if Mr. Conover was prepared to make a motion and Mr. Conover replied he would as long as it was understood that he wanted to ensure the inclusion of exit strategies for the County and full disclosure to the potential buyer of all the County's concerns regarding Siemens Industry, Inc. and the Cogeneration System. Mr. Conover added he would also like County staff to be instructed to pursue the claims process against Siemens Industry, Inc. with regards to the Cogeneration Performance Assurance Contract. He added if it was necessary to keep the two items separate, he was prepared to make two separate motions.

Motion was made by Mr. Conover and seconded by Mrs. Frasier to proceed with the sale of Westmount Health Facility, contingent upon the inclusion of exit strategies for the County and full disclosure to the potential buyer of all the County's concerns regarding Siemens Industry, Inc. and the Cogeneration System and authorizing County staff to pursue the claims process against Siemens Industry, Inc. with regards to the Cogeneration Performance Assurance Contract.

Mr. McDevitt reiterated his concern that it would be a mistake to move forward with the sale of Westmount Health Facility today. He said issues had been raised for the last couple of years pertaining to the Cogeneration and those issues had not been resolved. He voiced his opinion that the County's position was weakened by going forward with even a tentative agreement. He stated representatives from Fort Hudson should be contacted to determine if there was still an interest in purchasing the Facility. He said he suspected the Medicaid reimbursement guarantee, as far as a prospective purchaser was concerned, was directly tied to the Cogeneration System. He noted the potential buyer's accountants had somehow determined that the Siemens lease payments and the Medicaid reimbursements would be a wash; however, he stated, he did not feel comfortable with Warren County guaranteeing Medicaid reimbursements to any potential purchaser. He agreed with Ms. Steffan that morale among the employees of Westmount Health Facility was down and the uncertain future of the Facility discouraged potential employees from assuming positions with the Facility.

Mr. Taylor asked if it would be appropriate to request an executive session to discuss matters pertaining to the Siemens contract prior to voting on the motion. Mr. Auffredou replied it was necessary to state the purpose of the discussion for an executive session. He explained that executive session would be appropriate to discuss pending or proposed litigation regarding the Siemens contract or a particular performance issue.

Mr. Auffredou asked if the motion to move forward with the sale of the Facility included contract negotiations, as well as contract preparation and drafting. He said he believed that was the next step in the process and noted he felt Specialty Care was waiting for the County to initiate this next step. He asked if the County was ready to sit down with Specialty Care to iron out details and commence circulating draft copies of a contract. He asked Mr. Conover if this was the intention of his motion and Mr. Conover replied affirmatively.

Mr. Sokol stated some excellent questions had been posed and answered. He said the goal was to save the taxpayer's money and he hoped all of the details could be ironed out in future meetings.

Mr. Sokol called the question and the motion was carried by majority vote, with Mr. McDevitt voting in opposition, to proceed with the sale of Westmount Health Facility, including contract negotiations, preparation and drafting, contingent upon the inclusion of exit strategies for the County and full disclosure to the potential buyer of all the County's concerns regarding Siemens Industry, Inc. and the Cogeneration System and to authorize County staff to pursue the claims process against Siemens Industry, Inc. with regards to the Cogeneration Performance Assurance Contract. *The necessary resolution was authorized for the April 18, 2014 Board Meeting.*

Mr. Conover expressed his hope that Mr. Dusek and County staff members would immediately begin to pursue the claims against Siemens Industry, Inc. Mr. Sokol noted the next Health Services Committee Meeting would be on Friday, April 25, 2014 and he asked Mr. Auffredou if any information would be available on the claims process by then. Mr. Auffredou stated he would like to meet with Mr. Sokol and Mr. Dusek to discuss his recommendations and strategies pertaining to the claims process. He noted the Committee could enter into an executive session at a future Committee Meeting to discuss those strategies.

Mr. Klein suggested either he or Mr. Whitehead should be party to those discussions as they had an understanding of the issues. He said he would be happy to volunteer his time to assist the County in resolving the issue. Mr. Sokol commented that Mr. Whitehead had been working closely with Committee members to assist in resolving the matter. Mr. Conover mentioned EnerNOC had specifically referenced Mr. Whitehead and the work he had completed pertaining to the Cogeneration System during their presentation to the Committee.

As there was no further business to come before the Health Services Committee, on motion made by Mr. Taylor and seconded by Mrs. Frasier, Mr. Sokol adjourned the meeting at 11:46 a.m.

Respectfully submitted,
Charlene DiResta, Sr. Legislative Office Specialist