

## WARREN COUNTY BOARD OF SUPERVISORS

**COMMITTEE: HEALTH SERVICES**

**DATE: JANUARY 5, 2015**

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**COMMITTEE MEMBERS PRESENT:**

SUPERVISORS SOKOL  
CONOVER  
FRASIER  
TAYLOR  
MCDEVITT

**OTHERS PRESENT:**

LLOYD COTÉ, ADMINISTRATOR, WESTMOUNT HEALTH FACILITY  
BETSY HENKEL, COMPTROLLER, WESTMOUNT HEALTH FACILITY  
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  
GIRARD  
MERLINO  
MONROE  
SEEBER  
SIMPSON  
STROUGH  
VANSELOW  
WOOD  
MICHAEL SWAN, COUNTY TREASURER  
TRAVIS WHITEHEAD, TOWN OF QUEENSBURY RESIDENT  
KATHY GERAGHTY, TOWN OF WARRENSBURG RESIDENT  
DIANE WOOD, TOWN OF THURMAN RESIDENT  
DON LEHMAN, *THE POST STAR*  
CHARLENE DiRESTA, SR. LEGISLATIVE OFFICE SPECIALIST

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Mr. Sokol called the meeting of the Health Services Committee to order at 10:32 a.m.

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

Copies of the agenda were distributed to the Committee members; *a copy of the agenda is on file with the minutes.*

Mr. Sokol said there were a couple of resolutions for consideration to be moved to the January 5, 2015 Organization Meeting immediately following this meeting. He requested Martin Auffredou, County Attorney, to explain the first resolution for consideration.

Mr. Auffredou stated the first item was to introduce proposed Local Law No. 2 of 2015, entitled "A Local Law Superceding County Law Section 215 and Authorizing Private Sale, without Bidding, Public Advertisement or Auction, of Certain County Owned Real Property in the Town of Queensbury and Determining the Real Property is not Required for Public Use" and authorizing a public hearing thereon. He recalled the County had undergone an elaborate Request for Proposals (RFP) process in order to sell Westmount Health Facility. He said the County had determined the RFP process was the best option to achieve the desired results and objectives, compared to placing the property up for auction. He explained it was now necessary to adopt a local law to supercede County Law Section 215 and he noted this had been done in the past for the sale of other County-owned properties. If

adopted, Mr. Auffredou continued, this local law would officially authorize the sale of Westmount Health Facility. He noted the contracts the County had entered into with the Centers for Specialty Care were contingent upon the adoption of this local law. He stated the local law set forth the terms and conditions of the sale at \$2.3 million and identified the buyer of the nursing home and the additional acreage. He noted the local law also contained the provision that the sale of Westmount Health Facility was subject to a referendum of petition as provided by law. He stated the local law contained all of the essential terms necessary to move the process forward. He advised if the resolution was adopted at the Organization Meeting immediately following this meeting, the public hearing would be held at the February 20, 2015 Board Meeting.

Travis Whitehead, Town of Queensbury resident, said he understood the need for this local law was to declare the property as surplus and not needed for the use of Warren County but he questioned why this local law had not been adopted two years ago before the release of the RFP. He stated this local law would require a two-thirds majority vote of the Board of Supervisors and he speculated the way of getting around the two-thirds majority vote was questionable. He opined the public deserved to have the public hearing held at a time when they would be able to attend, before the County sold a nursing home that the public had requested constructed in 1980.

Motion was made by Mr. Conover and seconded by Mr. Taylor to introduce proposed Local Law No. 2 of 2015, entitled "A Local Law Superceding County Law Section 215 and Authorizing Private Sale, without Bidding, Public Advertisement or Auction, of Certain County Owned Real Property in the Town of Queensbury and Determining the Real Property is not Required for Public Use" and authorizing a public hearing thereon.

Mr. McDevitt stated that in the interest of transparency, he saw no reason why a public hearing could not be held in the evening to ensure the public was made aware of the pending sale of Westmount Health Facility and the terms and conditions of the sale. Mr. Sokol said he did not think there would be any harm in holding an evening public hearing and he suggested the Chairman of the Board could determine a date and time. Mr. McDevitt asked if this would mean that two public hearings would be held on proposed Local Law No. 2 of 2015. Paul Dusek, County Administrator, replied in the negative and explained the County would either hold the public hearing during the February 20, 2015 Board Meeting or they would schedule a Special Board Meeting in the evening.

Mr. Conover expressed members of the public could send letters, emails or call the County with comments on the proposed local law. He said this was the age of modern communications and anyone wishing to express their opinions had ample opportunity to do so. He stated he was not convinced there was a need to schedule an evening public hearing. Mr. Beaty agreed with Mr. Conover; however, he said, it would be more transparent to hold an evening meeting. Therefore, Mr. Beaty continued, he agreed with Mr. McDevitt that a Special Board Meeting should be scheduled in order to hold the public hearing in the evening to allow members of the public who worked during the day an opportunity to attend. He opined that personal attendance at a meeting held more weight than sending an email or letter. Mr. Brock agreed there was the possibility for members of the public to email or send a letter; however, he continued, holding the public hearing in the evening would make the process more transparent and legitimate. Mr. Taylor agreed with Mr. Conover and he mentioned an article written by Don Lehman which had appeared in *The Post Star*, and discussed the possibility of evening meetings. Mr. Taylor explained the article had indicated that most of the evening meetings held by municipalities were poorly attended. He stated the County had been fully transparent in this process. He opined that evening meetings were not usually attended by a good representation of the general public and were mostly attended by groups of people with a vested interest in the outcome. Mr. Conover mentioned this process had been ongoing for about three years

and Mr. Dusek agreed and added it had been a very public process. Mr. Conover stated all of the steps of this process had gone through the appropriate Committees and were reported by the media. He opined it was unnecessary to schedule an evening public hearing on this matter and he felt the regular monthly Board Meeting was sufficient.

Mr. Sokol called the question which was carried by majority vote, with Mr. McDevitt voting in opposition, to introduce proposed Local Law No. 2 of 2015, entitled "A Local Law Superceding County Law Section 215 and Authorizing Private Sale, without Bidding, Public Advertisement or Auction, of Certain County Owned Real Property in the Town of Queensbury and Determining the Real Property is not Required for Public Use" and authorizing a public hearing thereon. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the January 5, 2015 Organization Meeting.*

Mr. Beaty asked if this resolution would be presented to the full Board of Supervisors and Mr. Sokol replied the resolution to introduce the local law would be presented at the Organization Meeting immediately following this meeting. Mr. Dusek explained the public hearing would be held at the February 20, 2015 Board Meeting. Mr. Beaty asked if it was definite that the public hearing would be held at the February 20, 2015 Board Meeting or if the matter was still up for debate. Mr. Dusek stated it was planned to have the resolution presented at the Organization Meeting but the matter of when the public hearing would be scheduled could be discussed further during the Meeting.

Mr. Auffredou said the next item on the agenda concerned a Universal Settlement of Medicaid rate appeals. He said it had come to his attention a couple of weeks prior that the New York State Department of Health (NYS DOH) and associations representing nursing homes throughout NYS had negotiated a proposed settlement of 5,777 Medicaid rate appeals. He advised there were 7 Medicaid rate appeals which pertained to Westmount Health Facility. He said some of the appeals were quite old, as there was one from 1990; one from 1996; one from 1997; and the remaining four spanned from 2002 through 2007.

Mr. Auffredou stated he and Betsy Henkel, Comptroller for Westmount Health Facility, had reviewed a considerable amount of documentation with respect to the proposed settlement and had participated in a webinar presented by LeadingAge. He said it was difficult to determine what the Medicaid rate appeals were for. He explained he had spoken to a representative at LeadingAge who indicated it was not uncommon for nursing homes to not have the details on these specific rate appeals which were included in the settlement. Mr. Auffredou indicated he had filed a FOIL (Freedom of Information Law) request with the NYS DOH to get the necessary information and the request was still pending. He explained NYS was making \$850 million available for this Universal Settlement of Medicaid rate appeals which would be payable over five years in annual installments of \$170 million. He further explained Warren County would receive \$339,000 payable in five annual payments of approximately \$68,000.

Mr. Auffredou informed that capital appeals for the Cogeneration Plant were excluded from the settlement although the County was required to list outstanding capital appeals on the Universal Settlement Participation Survey. He requested authority to submit the Universal Settlement Participation Survey to the NYS DOH. He advised the Survey required submission by January 9, 2015 although LeadingAge wanted to submit by January 7, 2015. He explained completion of the Survey indicated Warren County's interest in participating in the settlement and was non-binding. During the process, Mr. Auffredou commented, the response from the FOIL request to the NYS DOH would be received and further information would be available. Ms. Henkel pointed out the settlement would be subject to the 6.8% NYS Assessment Tax. Mr. Conover questioned the Assessment Tax

and Ms. Henkel explained that Medicaid and Private Pay nursing homes residents were subject to a 6.8% Assessment Tax on the daily room rate. Mr. Conover asked if this settlement was an administrative remedy resulting from a global appeal with the NYS DOH through the courts or a review process. Mr. Auffredou replied affirmatively and explained that through this settlement there would be certain litigation concerning Medicaid rate appeals which did not involve Warren County. He said if Warren County did not participate in the Universal Settlement the funds from the Medicaid rate appeals would not be realized. He said the purpose of the Universal Settlement Participation Survey was to express Warren County's interest in participating and to receive further information. He noted he would be the point person for the settlement and would advise the Committee accordingly.

Motion was made by Mr. Conover, seconded by Mrs. Frasier and carried unanimously to authorize the County Attorney to submit a completed Universal Settlement Participation Survey concerning the settlement between the NYS DOH and nursing homes throughout NYS including Westmount Health Facility for Medicaid rate appeals and reimbursement litigation and designating the County Attorney as the Point of Contact for the County. *A copy of the resolution request form is on file with the minutes and the necessary resolution was authorized for the January 5, 2015 Organization Meeting.*

Mr. Sokol noted there was a pending item on the agenda pertaining to the Year 8 Performance Assurance Report from Siemens Industry, Inc. Mr. Auffredou suggested the item continue to be placed on hold because the County had been focusing on the contracts and local law for the sale of Westmount Health Facility. He said the next step would be to discuss some of these issues including the Year 8 Performance Assurance Report.

Mr. Whitehead stated he had downloaded and reviewed hundreds of pages of information from the NYS DOH and had filed a FOIL request for some information. He said he had reviewed a lot of the Certificate of Need (CON) applications. He informed that Ontario, Richmond and Washington Counties all had facilities which had been purchased by the Centers for Specialty Care. In each case, he continued, the Centers for Specialty Care had intended to make the facilities profitable by cutting the fringe benefits of employees and by reducing the staff on average by 25%. He commented that he saw a pattern of the Centers for Specialty Care changing the list of facilities they owned and "cherry picking" the facilities which were up for inspection by the NYS DOH. He stated one of the Centers for Specialty Care facilities in Long Island had three deaths in the last year which were attributed to negligence and substantial fines had been imposed as a result. He noted the Centers for Specialty Care now failed to list this facility with the NYS DOH as one of the properties they owned even though it remained on their website. Mr. Whitehead reported the Fulton County facility owned by the Centers for Specialty Care had large fines imposed in 2013 for elopement issues. He mentioned that in 2013 the NYS DOH had imposed a total of \$217,000 in fines on 628 different nursing homes, 23 (4%) of which were owned by the Centers for Specialty Care. He noted the fines assessed against the Centers for Specialty Care in 2013 represented 25% of the total of all the fines imposed. He advised he had spoken to the Essex County Ombudsman following the sale of their nursing home to the Centers for Specialty Care who had advised she had been warned by State Officials to be leery of this company. Mr. Whitehead stated it was disconcerting to him that Warren County had not asked these questions about the Centers for Specialty Care. He thanked the Committee members for allowing him to speak on this matter.

Mr. Dusek reminded the Committee members that he and Lloyd Coté, Administrator of Westmount Health Facility, had visited several nursing homes owned by the Centers for Specialty Care. He noted the homes were selected by himself and Mr. Coté and were visited without prior notification. He said

Mr. Coté had performed inspections of areas which would not have occurred to him, such as the laundry room where Mr. Coté looked for odors and other issues which would be tell tale signs of an improperly managed nursing home. Mr. Dusek mentioned the furnace rooms and basements were inspected and it was noted that members of management were seen talking to staff and knowing their first names. He said everything that they observed indicated the Centers for Specialty Care were actively involved with the care of their nursing homes. He pointed out a few of the Supervisors had visited the Fulton County nursing home. He expressed the County had completed their due diligence with regard to the sale of Westmount Health Facility. He advised if there was statistical information on record then the NYS DOH would consider it. As far as Warren County was concerned, he continued, they had walked away from the visits with a very positive impression of the nursing homes.

As there was no further business to come before the Health Services Committee, on motion made by Mr. Conover and seconded by Mrs. Frasier, Mr. Sokol adjourned the meeting at 10:57 a.m.

Respectfully submitted,  
Charlene DiResta, Sr. Legislative Office Specialist