

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: HEALTH SERVICES

DATE: SEPTEMBER 23, 2015

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COMMITTEE MEMBERS PRESENT:

SUPERVISORS: SOKOL  
CONOVER  
FRASIER  
MCDEVITT  
WESTCOTT

OTHERS PRESENT:

PAUL DUSEK, COUNTY ADMINISTRATOR  
MARTIN AUFFREDOU, COUNTY ATTORNEY  
AMANDA ALLEN, CLERK OF THE BOARD  
FRANK E. THOMAS, BUDGET OFFICER  
SUPERVISORS BEATY  
BROCK  
DICKINSON  
GIRARD  
MERLINO  
SEEBER  
TAYLOR  
WOOD  
LLOYD COTÉ, ADMINISTRATOR OF THE WESTMOUNT HEALTH FACILITY  
MIKE SWAN, COUNTY TREASURER  
DAVID STRAINER, TOWN OF QUEENSBURY RESIDENT  
GEORGE STEC, TOWN OF QUEENSBURY RESIDENT  
TRAVIS WHITEHEAD, TOWN OF QUEENSBURY RESIDENT  
THOM RANDALL, *ADIRONDACK JOURNAL*  
DON LEHMAN, *THE POST STAR*  
SARAH MCLENITHAN, DEPUTY CLERK OF THE BOARD

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Mr. Sokol called the meeting of the Health Services Committee to order at 12:03 p.m.

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

Mr. Sokol reported there was no formal agenda for today's meeting, as the sole purpose was to discuss the change in ownership of the members of the LLC (Limited Liability Company) purchasing Westmount Health Facility. He requested that individuals limit their comments to a 5 minute maximum to ensure that everyone who wished to speak could do so. He informed that he had a prior engagement scheduled and needed to leave by 2 p.m. He stated that he would like to have Martin Auffredou, *County Attorney*, provide additional information regarding the change since a number of questions had been posed at the September 18<sup>th</sup> Board meeting from which Mr. Auffredou had been absent. He said following Mr. Auffredou's explanation comments would be allowed in the following order: first from the public; then from other Supervisors in attendance; and last from Committee members.

Mr. Auffredou advised the matter of the change of ownership within the membership of the LLC (percentage interests) related to the fact that the LLC, like any LLC, had member or membership interests. He said the County's contracts to sell Westmount and its lands were with separate LLC's. With respect to the asset purchase agreement, Mr. Auffredou informed the contract was with Warren Operation Associates, LLC which was the agreement that was pertinent to this discussion. He apprised Mr. Rosenberg had signed that agreement as the majority member of the LLC at that time. He continued Mr. Greenberg was a 45% owner of the LLC during this time frame and Mr. Rosenberg was 55% owner. He reported that Messrs. Greenberg and Rosenberg had decided, as was their legal right to do so, to

modify those ownership interests so that Mr. Greenberg became 100% owner of the LLC. He informed as with any LLC it was completely within their purview to do so. He remarked that he and Larry Paltrowitz, *Special Counsel for the County on the matter*, concurred that the County had no legal standing to dictate who were and were not members or what those ownership interests were. He indicated that it was common for attorneys to be involved in a number of transactions wherein by the time you went from contract to closing the membership interests changed and you usually did not know what those changes were; however, he said, in this case the County was aware of what the changes were. He apprised this was not a matter the County needed to consent to since it was not included in the agreement that they do so and because it involved an internal matter concerning the LLC. He commented in his view it was not a legal matter concerning the County, as the County had no legal standing to dictate who or what the membership interests would be. He mentioned the vetting of the members for purposes of the CON (Certificate of Need), financial wherewithal, etc. took place at the NYSDOH (New York State Department of Health) level, not with the County since there was no legal standing to do so. He pointed out there was no assignment of the contracts because they remained with the LLC's as negotiated, approved and executed therein; therefore, he noted, there was no change in the contracts. He mentioned the contracts were not being assigned since this was simply an internal business transaction concerning the members of the LLC, as was there right to do.

Mr. Westcott inquired how the County's contract was tied to the Articles of Organization that were originally filed by the LLC stating that Kenneth Rosenberg would be the exclusive managing member of the company, and if there was a tie, how had it changed now from a legal standpoint. He stated he was wondering whether the County's contract was at all impacted by the change. Mr. Auffredou advised that the County's contract was not at all tied in with the Articles of Organization in the corporation. He said the signature page of the contract listed Mr. Rosenberg as the managing member and not the sole one. He explained that LLC's had managing members, which were typically the members who were in charge of the LLC. He pointed out managing; sole; and ownership members could change. He remarked in his view, although the Articles of Organization may have stated that Mr. Rosenberg would be the managing member consistent with the County's contract there was no impact on the enforceability of the contract.

Travis Whitehead, *Town of Queensbury Resident*, apprised he was pleased that Mr. Auffredou had stated "in my view" because he wanted to read exactly what was written in the Articles of Organization as follows: Section 5 Management: *"The business and affairs of the company shall be exclusively managed by Kenneth Rosenberg, the Managing Member of the company (Managing Member). The Managing Member of the company must be a member of the company. Neither the management structure nor this Section may be deleted, modified or amended without the State of New York Department of Health approval"*. He requested that Mr. Auffredou comment on this language and Mr. Auffredou responded that this did not alter his opinion whatsoever. Mr. Auffredou advised that this fell within the purview of the NYSDOH. He informed the answer to the question as to whether this impacted the County's contract was empathetically no. He commented he did not feel that Mr. Whitehead had set forth any argument to the contrary.

Mr. Whitehead informed in the Articles of Organization it was stated that *"Kenneth Rosenberg was spelled out as the managing member of the company must be a member of the company and that this could not be deleted, modified or amended in anyway"*. Mr. Auffredou remarked that he respectfully disagreed, noting the contract affirmed the change could not be made *"without the consent of the NYSDOH"* which did not provide the County with any legal standing in this regard. Mr. Whitehead inquired whether the County had reviewed the NYSDOH rules regarding this particular item to which Mr.

Auffredou replied in the negative and added nor would the County review such. Mr. Whitehead asked whether knowing or not knowing the rule would impact the validity of what may occur tomorrow and Mr. Auffredou replied in his opinion it would not have any impact.

Mr. Merlino advised he was not pleased with having to be present at today's meeting, as he felt this issue was getting carried away and too far out of hand. He mentioned Westmount could have been sold in February; however, he said, the sale did not go through. He indicated no one wanted to account for the fact that the Facility had cost the County over \$800,000 because it was not sold in February. He pointed out how the Board was always looking for ways to save the taxpayers money and yet they just cost them \$800,000. He noted the Facility could cost the County another \$600,000 if it did not sell within the next few months. He acknowledged he was not well versed in nursing home administration, but if the NYSDOH was willing to grant Centers a CON that should suffice. He stated he was optimistic that there would be no issues there; however, he remarked, this issue had been going on for too long with too many meetings and stalling tactics that had individuals accusing others of wrong doing which was of no benefit to the taxpayers of the County. He informed he was aggravated that he had to cancel two other meetings to attend the meeting today in order to voice his opinion on the matter. He commented he felt the matter should come to an end today and the County should move forward with the sale in hopes that it worked out the way they anticipated.

Supervisor Beaty stated everyone could agree that the elderly were the County's most vulnerable citizens since they generally did not have a voice other than the Board of Supervisors. He remarked he was unsure who would look out for the elderly if the Board did not. He mentioned this whole process had commenced some time ago when they were told Mr. Rosenberg would be the owner of the Facility. He continued, Mr. Rosenberg visited with the Supervisors on two separate occasions, one of which was where he stated that he would be the one who was held accountable and responsible for the elderly at the Facility. Following this the Board approved by majority vote to move forward with the sale, he said. He reported a few days ago Mr. Rosenberg decided to sell his portion of the ownership in the LLC to Mr. Greenberg for what he believed to be a price of \$10. He questioned whether Lloyd Cote, *Administrator of the Westmount Health Facility*, had ever met Mr. Greenberg to which Mr. Cote replied in the negative. He asked Mr. Cote if he was aware of whether Mr. Greenberg had ever visited Westmount Health Facility and Mr. Cote replied he was unsure. He remarked although some would like to believe the NYSDOH was responsible for ensuring the proper care and safety of the elderly, it really fell upon the Board of Supervisors to do so, as they were the final line. He informed there were a significant number of County residents who were uncomfortable with Mr. Rosenberg's track record; however, the sale was approved by majority vote anyway. He commented he was unsure of how accurate it was to state that Mr. Rosenberg backed out as owner of the LLC at the last minutes due to having "too much on his plate" since he was a businessman. He stated Mr. Rosenberg commenting he had "too much on his plate" made no sense to him.

Mr. Beaty asked if Mr. Auffredou was aware of any existing violations or other things that would cause Mr. Rosenberg to withdraw his application to be the managing member of the LLC. Mr. Auffredou apprised his understanding was that the reason related to the fact that Mr. Rosenberg was focusing on other related matters. He pointed out there could possibly be a violation but he was not aware of the specifics of such. He said if there was a violation this could have contributed to the holdup of the matter. He stated Mr. Beaty would have to ask Mr. Rosenberg about this; however, he said, this could be one of the contributing factors. Mr. Beaty requested Mr. Auffredou clarify he was stating that violations may be why Mr. Rosenberg withdrew his application as managing member of the LLC and Mr. Auffredou replied that quite possibly could be a reason. He reiterated that was a question that would

have to be posed directly to Mr. Rosenberg. Mr. Beaty pointed out that Mr. Auffredou had just reaffirmed that the reason Mr. Rosenberg changed his mind at the last minute may relate to violations and their possible impact on the CON application with the NYSDOH. He apprised what was troubling to him was the fact that he had assumed all along that Mr. Rosenberg would be the majority owner of the Facility since he had presented it that way and had never indicated otherwise. Mr. Auffredou interjected he felt this was the wrong assumption since transaction was with an LLC, which was the legal entity the County was selling to. He clarified the transaction was between the County and the LLC, not with Mr. Rosenberg.

Mr. Beaty indicated it had been very clear that the County was selling the Facility to an LLC that would be managed by Mr. Rosenberg. He informed the video from the March 16<sup>th</sup> Health Services Committee meeting would support the fact that Mr. Rosenberg had implied he would be very involved with managing the Facility but now at the last minute he would no longer be taking on the role of managing partner. He stated he was uncomfortable moving forward with the sale since he was not aware of anyone having met with Mr. Greenberg, the new managing partner of the LLC.

Ms. Seeber advised she received a call regarding this change following last Friday's Board meeting from a woman whose father currently resided at Westmount. She stated the woman was incredibly upset with what was taking place and with what she had read regarding the matter in an article featured in *The Post Star*. She said as she attempted to better explain the situation to the woman she found herself getting frustrated with the way the Board had proceeded. She apprised that she disagreed with Mr. Auffredou's statement that this was just a transaction since she felt it was more than that, and she was well aware of the concerns of Warren County residents and the families of individuals who resided in the Facility. She remarked the vote to sell Westmount had been a very difficult one for her; she noted she spent a tremendous amount of time with Mr. Sokol, Paul Dusek, *County Administrator*, Mr. Auffredou and a whole host of other people trying to fully understand the impact of the Board's decision. She pointed out one of the deciding factors for her was that she had listened to Mr. Rosenberg and his staff during their presentation at the Health Services Committee meeting wherein they promised the Facility would be more than just an entity that they were consultants for, such as the nursing home that was referenced where a host of violations had taken place was. Upon reviewing the paperwork they filed with the NYSDOH, she said it appeared as though they would be an entity Centers would consult with; therefore, she informed, the changeover of owners was very significant to her and made her feel very differently about how she had voted. She mentioned she understood there was a financial strain on the County involved but she also thought even though it was an LLC they were changing the owner from the person who had made assurances to them regarding the residents care to someone they had never met. She said she was sympathetic to the fact that everyone had other places to be; however, she noted, she was delighted to be in attendance today so she could learn more and explain it to the best of her ability to her constituents. She remarked she did not feel the meeting today was a waste of time.

Ms. Seeber apprised Mr. Auffredou had indicated to her a few days ago that a violation had been committed and Centers for Specialty Care was fined \$8,000 which was holding everything up. She stated she would like to know what the violation was and yet Mr. Auffredou indicated that they needed to contact them directly to ask them what it was. Mr. Auffredou interjected that he was unaware of what the violation was for. Ms. Seeber inquired how they would know to ask if they could not confirm whether a violation had been committed to which Mr. Auffredou reiterated he was unaware of what the violation was for. She remarked she understood others frustrations to the fact that this process had dragged on for some time; however, she said, she felt the need to publicly provide an explanation as to why she voted the way she did before. She apprised she was appreciative of the time and effort that had

been exerted towards the process; however, she stated, she was ashamed of the fact that they were looking at a last minute change with little information being provided to them. Mr. Auffredou advised he could not say for certain that the reason for the change in ownership was due to a violation, but noted this could be a factor. He informed he had not spoken to anyone from Centers for Specialty Care about the matter, this was something that he had heard; however, he noted, he did not have any evidence to support the allegation. He pointed out Mr. Greenberg was definitively affiliated with Centers for Specialty Care so he was certainly a known quality and quantity to them. He continued, with respect to Mr. Rosenberg, the County had absolutely no say in whether Mr. Rosenberg changed his ownership interest at any time either for the sale, after the sale, etc. Ms. Seeber questioned whether this meant that at any time they could change to an agency that was just a consultant to the Facility and Mr. Auffredou replied affirmatively. Ms. Seeber reminded the Committee that Mr. Rosenberg had stated he could not be held responsible for the violations at the nursing home they discussed since he was just a consultant.

Ms. Seeber questioned whether the LLC had any obligation to inform the County of a change in their ownership, as Mr. Rosenberg had taken the time to assure the County he would be held accountable for any issues, yet he did not notify the County of the change in ownership. She informed that Mr. Auffredou had indicated the notification about the change had come from the NYSDOH and not directly from Centers for Specialty Care. Mr. Auffredou interjected that he had never stated such, as the notification had come directly from Centers for Specialty Care last week. He remarked from his point of view Centers for Specialty Care had no legal obligation to inform the County about the change but they had. He stated he believed the reason they had notified the County related to the respect and high regard they had for the County since they had no obligation whatsoever to do so yet they felt it was the correct way to go about things. Ms. Seeber advised she had hoped they would have been notified more expediently so this discussion could have taken place much earlier than one day before the meeting with the NYSDOH.

Supervisor Brock inquired whether anyone in attendance had ever met Mr. Greenberg and Mr. Sokol replied that Mr. Greenberg may have been present for one of the initial visits by Centers for Specialty Care, but he could not say for sure. Mr. Taylor remarked he seemed to recall that Mr. Greenberg attended one of the initial visits Centers for Specialty Care made to the County. Mr. Beaty asked whether there were any meeting notes to support this and Mr. Sokol replied in the negative, explaining that it was not a formal meeting but rather just a visit from them.

Mr. Westcott advised he required legal clarification as to whether the Articles of Organization filed with Centers for Specialty Care's application assigning the managing partner from Mr. Rosenberg to Mr. Greenberg that would be reviewed at the meeting tomorrow by the NYSDOH had been handled in an appropriate legal manner. Mr. Auffredou replied he could not speak from the NYSDOH's perspective whether everything had been handled legally but he could state from the County's perspective everything had been done legally as it concerned the County. He stated he could not speak to what the NYSDOH reviewed, what their standard of review was, nor about the scope of their review since he was unsure of their process. Mr. Westcott questioned whether the representatives of the County would be reviewing this tomorrow to ensure it was handled in the proper way. Mr. Auffredou apprised he did not think this was something for the County to discuss at the meeting, as he believed this was a matter for the NYSDOH to address at some level. He continued, he was unsure of whether this was something that the NYSDOH had already dealt with or whether it was something they would be addressing tomorrow.

In regards to the February 20<sup>th</sup> Board meeting where Mr. Eisenberg was present representing Mr. Rosenberg and Centers for Specialty Care, Mr. Westcott reported that the meeting minutes quoted Mr. Eisenberg as stating *"that in the State of New York there was no such thing as a corporation owning a nursing home and that they needed to be owned by individuals"*. He questioned whether the Attorney listed in the contract with the County was the representative of the individual that owned the nursing home because at that time Mr. Rosenberg's name had not been mentioned in the contract. He continued, he was trying to determine the legality's of Mr. Eisenberg's comment when the contract made no mention of the individual, as the application filed with the NYSDOH had to include the individual that owned the Facility with the LLC contract being an instrument thereof. Mr. Auffredou explained that the LLC contract was an asset purchase agreement since the LLC was purchasing the asset which the County knew as the nursing home facility and the right to operate it. He advised that Mr. Eisenberg was correct in stating that an individual had to be the actual owner to be held liable for the ownership of the Facility; however, he noted, this was a matter between the individual and the NYSDOH.

Mr. Westcott informed he would like to address Mr. Merlino's statement from earlier in the meeting. He said he called for the meeting today to be scheduled because the meeting with the NYSDOH was taking place tomorrow and a number of the Board members had just been advised of the ownership change. He acknowledged Mr. Sokol for honoring his request and working to get the meeting scheduled. He stated the meeting provided an opportunity for all of the Board members to be updated regarding the change and not for a stalling tactic, as this was never his intention. He remarked he believed the sale would be approved by the NYSDOH at tomorrow's meeting but before that he felt it was their responsibility to the citizens of this community to get an update. He said it appeared to him that no one had ever met Mr. Greenberg, who would be the new owner of the Facility except for a slight possibility he attended one of their initial visits to the County. He commented it was the other Supervisors' prerogative to determine whether they were concerned with this or not; however, he said, it was of concern to him. He acknowledged and respected the fact that Mr. Greenberg could not attend today's meeting due to the Jewish Holiday but noted he would like Mr. Greenberg to attend a future meeting to introduce himself.

Supervisor McDevitt apprised he would like to echo Mr. Westcott's comments as he felt it was necessary for Mr. Greenberg to provide the County with an overview of his background and experience, similar to what he assumed Mr. Greenberg would be doing at tomorrow's meeting with the NYSDOH. He stated it was his understanding that New York State nursing homes were not permitted to be owned by corporations such as Centers for Specialty Care but rather by individuals who could demonstrate they had the financial means, character and competence to assume those responsibilities. He pointed out the New York State Attorney General had held these owners personally responsible; therefore, he advised, it was important Mr. Greenberg had the resources that he claimed to have, as well as the economic wherewithal to support Westmount Health Facility. He apprised the County as the seller, had not been provided with the opportunity to have discussions with Mr. Greenberg to make these assertions. He remarked under these circumstances he thought any seller would want to determine and ascertain whether Mr. Greenberg had the resources to support the Facility since he was the one that would be personally liable and held responsible for it. He inquired whether or not it was unreasonable to request a delay in the meeting tomorrow to enable Mr. Greenberg to come before the County so they had the opportunity to ask him some questions. He remarked he felt this was a reasonable request considering the situation.

In regards to the application required by the NYSDOH to approve a change in ownership of facilities, Mr. McDevitt advised he felt they were appropriate since they required the buyer to indicate exactly what their purpose was and how they would come up with the funds required to make the purchase. He mentioned there was a character and competence consideration included in the application. He remarked the fact that Mr. Greenberg was not present at today's meeting would testify to his character. He indicated he had some concerns relative to Mr. Greenberg's application to the NYSDOH concerning his economic competency. He stated he would ask Mr. Greenberg how it was possible that Westmount Health Facility on a ground lease would pay Darryl and Darryl Hagler \$550,000 a year. He explained that Mr. Hagler would be providing \$1.5 million of the \$2.3 million purchase price and in return would receive \$550,000 a year. He pointed out in less than three years Darryl and Darryl would recoup their entire investment. He remarked he was questioning Mr. Greenberg's economic competence since the figures did not make any sense to him from that perspective.

In conclusion, Mr. McDevitt stated that the latest evaluation by the NYSDOH of the nursing home Mr. Greenberg was involved with in Corning, New York was disturbing, as they were cited for over 30 deficiencies when the State average was only 5.3. He noted Westmount Health Facility's last evaluation only contained 2 deficiencies which was below the State average. He remarked his bottom line was he would like to see Mr. Greenberg come forth and give the Committee and opportunity to discuss matters with him.

Mrs. Frasier advised her only comment was that if the LLC had not come forward and notified the County of the change in ownership this discussion would not be taking place today. She pointed out although they had no obligation to notify the County they did so because they felt compelled to and yet their actions were being called into question today. She commented she believed it was time to move forward with the matter, as there had been far too many delays already.

Mr. Sokol asked Mr. Conover if he had anything to add and he replied in the negative indicating that he had already cast his vote in favor of the sale.

Mr. Merlino apprised he understood Mr. Westcott's heartfelt sentiment and concern for the individuals who resided in the Facility; however, he said, he wondered why no one had requested information from Mr. Greenberg when he was listed as 45% owner of the LLC in February, as he felt individuals were seeking mechanisms in which to delay the sale. He remarked he believed it was time to move forward since the delay was impacting the entire County. He said the residents in the Town of Lake Luzerne could not afford any additional taxes and he pointed out the \$800,000 the County had already expended on this would substantially impact the 2016 County Budget. He indicated it was important to take into consideration the other needs of the County such as the roads, etc.

Mr. McDevitt commented that, as stated before, if they were dealing with clothes, automobiles or commodities they dealt with on a daily basis he would wholeheartedly concur with Mr. Merlino; however, he noted, this case involved vulnerable human beings which was why these issues were so important. He affirmed this should not be about money since it involved elderly family members festering in a nursing home that would be impacted as stated in the application by the reduction of staff and benefits of 27%. He said when this occurred the responsibility for administering care for the residents was placed upon the aides. He remarked he was unsure why they were so focused on money when they were dealing with lives.

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Mr. Westcott stated he felt inclined to respond to Mr. Merlino's comments about indications that Mr. Greenberg owned 45% of the LLC having been made in February. He said he was unaware of this fact, as the first time he was aware of Mr. Greenberg being mentioned was at the September 18<sup>th</sup> Board meeting. He said he reviewed the minutes of the February 20<sup>th</sup> Board meeting and noted that Mr. Greenberg was not in attendance, nor was the matter addressed at the March 16<sup>th</sup> meeting of the Health Services Committee. He reminded the Committee the only thing Mr. Rosenberg shared about the ownership of the LLC was that he would be the majority owner. He reiterated Mr. Greenberg's name first materialized at the September 18<sup>th</sup> Board meeting.

Mr. Brock inquired whether they could request that Mr. Greenberg visit the Westmount Health Facility to meet the families and put their concerns at ease so they could move forward with the sale in a positive manner to which Mr. Dusek replied affirmatively. He remarked having dealt with the representatives of Centers for Specialty Care he felt rather optimistic that Mr. Greenberg would honor this request and he stated he would be delighted to relay it.

Mr. McDevitt inquired whether he could make a motion and Mr. Sokol replied in the negative advising this was not the intent of the meeting.

As there was no further business to come before the Health Services Committee, on motion made by Mrs. Frasier and seconded by Mr. Conover, Mr. Sokol adjourned the meeting at 12:42 p.m.

Respectfully submitted,  
Sarah McLenithan, Deputy Clerk of the Board