



**MINUTES
COMMITTEE OF THE WHOLE
SEPTEMBER 16, 2015**

MEMBERS PRESENT	MEMBER ABSENT	OTHERS PRESENT	
Alden H. Wolfe, Vice Chair	Patrick J. Moroney	Elana Yeger, Esq.	Laurence Toole
Jay Hood, Jr., Vice Chair		Laura Incalcaterra	Joan Silvestri
Christopher J. Carey		J. Guillermo Rosa	Stephen Powers
Harriet D. Cornell,		F.L.Gorman, Esq.	Thomas Humback, Esq.
Richard C. Diaz		Kristen Stavisky	Larry Sparber
Toney L. Earl		Shully Braunstein	Devora Allan, Esq.
Michael M. Grant		Paul Brennan	H. Todd Miles, Esq.
Douglas J. Jobson		Dr. David Freed	
Lon M. Hofstein			
Nancy Low-Hogan			
Joseph L. Meyers			
John A. Murphy			
Aney Paul			
Ilan S. Schoenberger			
Philip Soskin			
Aron B. Wieder			

Chairman Alden H. Wolfe called for the Legislature to move into the Committee of the Whole at 7:43 p.m., which was seconded by Legislator Douglas J. Jobson and passed unanimously.

The Legislature now resolved itself into a Committee of the Whole, Chaired by Alden H. Wolfe to discuss the following resolutions:

- 1. Referral No. 9485** – Ratifying The Authorization For Transfer Of All Right, Title And Interest Of Summit Park Facilities To The Rockland County Health Facilities Corporation.

ADDED SPONSOR: LEG. WOLFE

MOTION TO APPROVE AS AMENDED

WOLFE/JOBSON: M.V.

**AYES: 11 (CAREY, CORNELL, DIAZ, GRANT, HOFSTEIN, JOBSON,
LOW-HOGAN, MEYERS, MURPHY, HOOD, JR., WOLFE)**

NAYS: 05 (EARL, PAUL, SCHOENBERGER, SOSKIN, WIEDER)

ABSENT: 01 (MORONEY)

ACTION: LEGAL COUNSEL TO AMEND PURSUANT TO DISCUSSION

Mr. Humbach explained that the County is allowed to transfer to the LDC, also known as, the Rockland County Health Facilities Corporation, property by resolution. As a result of litigation that occurred in Orange County, the Court felt that all sales have to be approved by a two-thirds vote. The two-thirds vote provision in the County Law Section 215 should be applied to the LDC. That did not exist in 2013 and there was no reason to believe that a two-thirds vote was needed at that time. In resolution 192 of 2013 the transfer was accomplished by an affirmative vote of 11 instead of 12. Based on the new law as of 2015 we are asking for you to vote on this resolution.

Chairman Wolfe asked, what happens if this item does not pass.

Mr. Humbach replied, I would ask the body to move into a closed session, because the advice that he will give is legal advice. The reason that it is legal advice is, because it impacts the sale and there is litigation ongoing at this time. There is also client-attorney privilege.

Chairman Wolfe responded, I am hesitant to conduct any proceedings in a closed session, especially something as important as this. Everything with this Legislature happens in the sunlight and we are transparent. If you are not able to answer that question in a public setting that creates a problem.

Mr. Humbach stated that my privilege not only extends to this body, but also the County Executive.

Mr. Schoenberger expressed his concern that we have had a number of meetings with the County Executive, his staff and Mr. Humbach and all of this could have been explained during the leadership meetings. We are being told that the only way we can be told this information is in Executive Session. Mr. Chair, I agree with you, in an Executive Session the issue as vital as this affecting hundreds of people, patients and residents of the County and the financial impact of the County in the future should not be discussed in a private closed door meeting.

Chairman Wolfe asked, do we need to pass this resolution to proceed with the transaction?

Mr. Humbach, replied no.

Mr. Schoenberger asked for an explanation. If it is not necessary then why is it here?

Mr. Humbach stated that generally speaking, it would void hurdles that could occur and challenges that can happen that could cause great difficulty for this transfer.

Mr. Schoenberger stated that he has great reluctance to vote one way or the other on something, which I am now being told may not be necessary for us to vote on. I don't understand why it is here. I was told that it was important that this passed. The administration had taken the position that this resolution had to be passed. Now I am being told this doesn't impede the closing then I don't understand why it is here in the first place.

Chairman Wolfe explained that he asked at the leadership meeting what action will be required in order for this transaction to go through by the end of September. This resolution was never mentioned at that meeting, which was on August 19th. We were told originally at the beginning of this process was that there would never be a need to bring anything back to the Legislature once we pass a resolution creating the LDC and transferring our rights to the LDC. What is ironic is that Ed Day voted against the original resolution. If had voted in favor of the resolution we wouldn't even be here talking about it. I felt it was important for the County Executive to be here to today, but he declined to come. It would have shown true leadership if he came and explained in his own words why it is important that this resolution be passed tonight.

Mr. Meyers stated that this is more as a technicality removing any potential legal obstacles. I think we should pass this. It is possible that lawsuits could be brought and could cost us time and money down the road. Since most of us are committed to sell the hospital at this point we should tidy up an issue or loophole that would allow a third party lawsuit to try to undo the sale.

I believe going into Executive Session is done to protect the body and the County from potential litigation and doesn't allow certain information to be used by other parties in court. The leadership meeting, quite appropriately happened behind closed doors and the public was not invited to that. There are many important discussions in our government process that are held behind closed doors. We should not say things publically that people could use against us in court.

Mr. Miles, Esq., from Harris Beach, council to the Rockland County Health Facilities Corporation. I think Legislator Meyers articulated very concisely the rationale why we think you should take action on this resolution. This is not controversial. It is our understanding that the Legislature is not opposed to this transaction. We are prepared to discuss with you in Executive Session. As you know, there is litigation pending by two parties who would like to stop the sale. I believe that both parties are present tonight and it would not be in the best interest of the County or the LDC or the transaction to have a discussion about the legal technicalities of the court decision. We are prepared to have a full discussion with you in Executive Session. There is also the issue of attorney-client privilege.

Chairman Wolfe asked, are there any legal impediments for the closing of this transaction at the end of this month?

Mr. Miles, Esq., from Harris Beach, by these resolutions you transfer to the LDC by a 99 year lease an option to purchase the real estate interest in the building. We have a contract with a purchaser with a closing date of September 30th. We would be able to convey a 99 year lease to the purchaser without this resolution, however, a great deal of effort has been undertaken by everybody involved on both sides in order to provide for a subdivision of the property and conveyance of title to the building. I will leave it to the purchaser the significance of title verses long-term lease is to the cost of financing. Anything that delays the transactions beyond the contract date of September 30th will have significant financial ramifications to the County in terms so of cost of operating the facility.

Everything we have done for the last two years is aimed at closing on September 30th. This is a technical step that we are asking you to undertake in order to ensure that we can close on September 30th. If it is not, given the fact that we have claimants in litigation trying to stop the sale, there may be additional basis for them to continue that litigation, which is something we do not want to incur. It would be in the best interest of the County for the Legislature to do this.

Chairman Wolfe asked, is the contract contingent on the purchaser securing financing

Mr. Miles, Esq., from Harris Beach, there is no financing contingency, however, the purchaser represented that he had the financial resources. He provided information that allowed us to substantiate that. The Department of Health also need to be convinced that he had the financial wherewithal. Having financing capabilities is not an issue here and is not a contingency. We expect to be able to close on September 30th.

Chairman Wolfe, so the financing would be for the convenience of the purchaser, not as a condition of the contract.

Mr. Miles, Esq., from Harris Beach, obviously, he has to have the financing in order to pay the purchase price.

Chairman Wolfe, it is not a contingency of the contract. It is not the County's problem it is the purchasers.

Mr. Miles, Esq., from Harris Beach, explained how he brings the money to the table is not a contingency, the price just has to be paid. If this resolution is not adopted there will be questions raised, because of the court decision. It is our advice to the LDC, and I believe the County Attorney's advice to you, that by adopting this resolution you eliminate any potential claims that may arise and ensure that we close on September 30th.

Mr. Schoenberger stated that he is not happy with the answers that I am getting. Mr. Miles, you said this is a technical step and yet when you explained it, it sounds far more involved than a technical step. The original authorization was for a 99 year lease with an option to purchase all the real and pertinent personal property. The question is, why whether in fact the LDC was actually conveyed the ability to purchase all the real and personal property, because of the decision that needed the 12 votes to sell the real property. Right now the LDC can only sell a 99 year lease.

When I voted on this in April of 2013 we sold only the nursing home and then a few months later the hospital to the LDC. As that time your office represented to this body that we only needed a majority vote to effectuate that transfer. I understand why that reason was given and I am not saying that it wasn't right at that time. Fast forward to August of this year and the Appellate Division says that you cannot transfer the title of the property except by the two-thirds vote. Wednesday morning, August 19th at 8:30 am, we met at the County Executive's office, including five Legislators. Mr. Villard from your office represented Orange County in the very decision that the Appellate Division rendered against Orange County that it requires a two-thirds vote. That decision was rendered on August 5th or 6th and no one told us about the Appellate Division decision.

I am disturbed the you as the attorneys for the LDC, also our Bond Council, as the attorneys representing Orange County doesn't tell us that there is something very relevant to the sale. If we do not pass this resolution is it the intention of the LDC to go forward with the consummation of the sale?

Mr. Miles, Esq., from Harris Beach, stated that he would have to discuss with the LDC what the consequences would be.

Mr. Schoenberger thinks that you should be discussing that with us. I was opposed to the LDC. I said publically at the time that LDC's do not work out well and I used my hometown of Ramapo as a reference. I was assured that what happened in Ramapo would never happen here. I was told there would be open and transparent discussions and we would be working together as a team, and we did, until January 1, 2014 and then there was no more team. We were left in the dark and had short meetings. I voted for the sale of a hospital and nursing home for \$40,000,000. The first highest bidder dropped out so then they accepted the second lowest bidder, which I understood. Now its \$32,000,000. I don't think I would have voted to sell for \$32,000,000.

For at least a year we have been asking about the department chargebacks to the hospital, all of which is adding to the deficit this hospital has. If you are transferring out a hospital, nursing home and over 400 employees, what about all of the other departments that provide services to the hospital/nursing home that are charged back to the hospital/nursing.

There was a press release dated July 23, 2014 that said that the acquisition price is \$36,000,000; \$24,000,000 for the nursing care center and \$12,000,000 for the hospital, including Long-Term Acute Care Hospital/LTACH. It also said that Rockland County will earn and estimated \$10,000,000 after all legacy costs, legal bills, fees and relocation costs are paid. Now the price is \$32,000,000. What is the real number?

I asked the County Executive at least three times what his full backup plan was if it did not close on September 30th. I asked if he had an alternative plan if it didn't close on September 30th. I asked how much money is in the 2016 budget for the hospital. He said, "zero dollars."

Now, I am wondering what is going on. Everything I hear has changed. I am in a quandary and I am very uncomfortable with the way this is being handled. This was a joint Legislative/Executive process until December 31, 2013. As of January 1, 2014 it changed. There has been no openness, no transparency and they only tell us what they want. Now, we are being asked to pass this resolution. I am very disturbed by this whole process.

Mr. Gorman, Esq., Harris Beach, explained that there is a seven member board of the LDC, three of whom are appointed by the Legislature. Those board members are privy to every nuance and detail of this transaction since they were appointed in 2013. It is my understanding that every member of the Legislature and your counsel can find out any information about the transaction, concerns and whatever else from the three board members. I have not heard from anybody on this Legislature at this point, or from any of the LDC board members, that there was any concerns about information not being conveyed or concerns not being addressed. We thought it was your understanding when we set up the LDC your appointed board members would provide information.

Mr. Grant suggested to the committee that they remove any reference to Sympaticare and replace with language that speaks to a contract buyer.

They don't have the best interest of the County at heart. They don't have the best interest of our patients and resident at heart. They don't have the best interest of our employees, who must at some point in time reconcile their future. The buyer committee in contract giving people the opportunity for employment, and I expect them to live up to that. I don't think that they have so far.

Mr. Chairman, I ask to amend to remove any reference to Sympaticare.

Chairman Wolfe accepted the amendment.

**2. Referral No. 9162 – Abolishing Positions In The Rockland County
Department Of Hospitals.**

ADDED SPONSOR: LEG. WOLFE

MOTION TO APPROVE AS AMENDED

WOLFE/HOFSTEIN: M.V.

**AYES: 11 (CAREY, CORNELL, DIAZ, GRANT, HOFSTEIN, JOBSON,
LOW-HOGAN, MEYERS, MURPHY, HOOD, JR., WOLFE)**

NAYS: 05 (EARL, PAUL, SCHOENBERGER, SOSKIN, WIEDER)

ABSENT: 01 (MORONEY)

ACTION: LEGAL COUNSEL TO AMEND PURSUANT TO DISCUSSION

The committee made the following amendment pursuant to discussion:

RESOLVED, That the positions listed on the attached Schedule "A" are hereby abolished, effective October 1, 2015, or the day after the consummation of the closing in accordance with the purchase and sale agreement dated July 16, 2014, including any subsequent amendments, whichever is later; and be it further

RESOLVED, notwithstanding anything to the contrary, no abolishment's shall be effective until and unless the closing is so consummated; and be to further

RESOLVED, the County Attorney shall provide notice of any scheduled closing date to the Legislature and the unions through their representatives

**3. Referral No. 9162/9007 Transferring And Establishing Positions In
Several Departments.**

**ADDED SPONSORS: CAREY, CORNELL, DIAZ, EARL, GRANT, HOFSTEIN,
JOBSON, LOW-HOGAN, MEYERS, MURPHY, PAUL,
SCHOENBERGER, SOSKIN, WIEDER, HOOD, JR.,
WOLFE**

MOTION TO APPROVE

WOLFE/SCHOENBERGER: UNAN.

4. **Referral No. 7577** - Ratifying Memorandum Of Agreement Between The County Of Rockland And The Rockland Association Of Management (R.A.M.) Providing Additional Terminal Leave Benefits For Employees Terminating From County Employment As A Result Of The Abolishment Of Positions In Connection With The Sale Of The Summit Park Nursing Care Center And The Summit Park Hospital

ADDED SPONSORS: CAREY, CORNELL, DIAZ, EARL, GRANT, HOFSTEIN, JOBSON, LOW-HOGAN, MEYERS, MURPHY, PAUL, SCHOENBERGER, SOSKIN, WIEDER, HOOD, JR., WOLFE

MOTION TO APPROVE

WOLFE/EARL, GRANT: UNAN.

5. **Referral No. 7345** Ratifying Memorandum Of Agreement Between The County Of Rockland And The Civil Service Employees Association, Inc. (C.S.E.A.) Local 1000 American Federation Of State, County And Municipal Employees Union, AFL-CIO Rockland County Unit Rockland County Local 844 Providing Additional Terminal Leave Benefits For Employees Terminating From County Employment As A Result Of The Abolishment Of Positions In Connection With The Sale Of The Summit Park Nursing Care Center And The Summit Park Hospital.

ADDED SPONSORS: CAREY, CORNELL, DIAZ, EARL, GRANT, HOFSTEIN, JOBSON, LOW-HOGAN, MEYERS, MURPHY, PAUL, SCHOENBERGER, SOSKIN, WIEDER, HOOD, JR., WOLFE

MOTION TO APPROVE

WOLFE/CAREY, EARL, GRANT, JOBSON, PAUL: UNAN.

- 6. Referral No. 2873** - Approving Purchases In Excess Of \$100,000 From New York State Industries For The Disabled, Inc. (NYSID) Of Janitorial Services And Supplies For The Dr. Robert L. Yeager Health Center With Services To Be Provided By NYSID'S Member Agency Jawonio, Inc. In An Amount Not To Exceed \$203,573.44 For The Period From October 1, 2015 Through December 31, 2015 With All Purchases To Be Made By Formal Purchase Order [Department Of General Services - Division Of Purchasing] (\$203,573.44).

ADDED SPONSORS: CAREY, CORNELL, DIAZ, EARL, GRANT, HOFSTEIN, JOBSON, LOW-HOGAN, MEYERS, MURPHY, PAUL, SCHOENBERGER, SOSKIN, WIEDER, HOOD, JR., WOLFE

MOTION TO APPROVE

MURPHY/ENTIRE LEGISLATURE: UNAN.

Legislator Alden H. Wolfe moves to rise and report back to the full Legislature the results of the Committee of the Whole, at 11:00 p.m., which was seconded by Legislator Harriet D. Cornell and passed.

Respectfully Submitted,

Darcy Shapin-Greenberg, Proceedings Clerk