NOTICE OF SPECIAL MEETING

Notice Is Hereby Given That The Legislature Of Rockland County Will Meet In Its Chambers In The Allison-Parris County Office Building, New City, New York, On January 30, 2013 At 6:00 P.M., Pursuant To Rule 149-5 Of The Rules Of The Rockland County Legislature. The Subject Of This Special Meeting Shall Be: The Legislature Resolves Itself Into A Committee Of The Whole To Review The Report Commissioned By The County Executive: An Appraisal Of A Skilled Nursing Facility And Long-Term Acute Care Facility – Summit Park Hospital And Nursing Home Care Center, As Prepared For Marcus & Millichap.

Very truly yours,

LAURENCE O. TOOLE
Clerk to the Legislature

Dated at New City, New York
This 24th day of January 2013

The Legislature of Rockland County convened in a special session pursuant to the adjournment of the January 28, 2013 meeting.

A Roll Call being taken (6:13 p.m.), the following Legislators were present and answered to their names:

Nancy Low-Hogan
Jay Hood, Jr.
Douglas J. Jobson
John A. Murphy
Aney Paul
Philip Soskin
Aron B. Wieder
Alden H. Wolfe, Vice Chairman
Harriet D. Cornell, Chairwoman

Late: Legislators Christopher J. Carey (6:20 p.m.), Toney L. Earl (6:17 p.m.), and Michael M. Grant (6:18 p.m.)

Absent: Legislators Edwin J. Day, Joseph L. Meyers, Patrick J. Moroney, Ilan S. Schoenberger and Frank P. Sparaco

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Honorable Harriet D. Cornell, Chairwoman, led in the Salute to the Flag.

Honorable Nancy Low-Hogan, Legislator, District 17, delivered the invocation.

Chairwoman Harriet D. Cornell called for the Legislature to move into the Committee of the Whole at 6:15 p.m.

Legislator Alden H. Wolfe moved to convene as a Committee of the Whole, which was seconded by Legislator Douglas J. Jobson and passed.

The Legislature now resolved itself into a Committee of the Whole, Chaired by Harriet D. Cornell to discuss the following resolutions:

A. COMMITTEE OF THE WHOLE

1. **Referral No. 9485 -** Review The Report Commissioned By The County Executive: *An Appraisal Of A Skilled Nursing Facility And Long-Term Acute Care Facility – Summit Park Hospital And Nursing Home Care Center*, As Prepared For Marcus & Millichap.

MINUTES
COMMITTEE OF THE WHOLE
JANUARY 30, 2013

MEMBERS PRESENT
Harriet D. Cornell, Chairwoman
Alden H. Wolfe, Vice Chair
Christopher J. Carey (Late 6:20 p.m.)
Toney L. Earl (Late 6:17 p.m.)
Michael M. Grant (Late 6:18 p.m.)
Jay Hood, Jr.
Douglas J. Jobson
Nancy Low-Hogan
John A. Murphy
Aney Paul
Philip Soskin
Aron B. Wieder

MEMBER ABSENTS
Edwin J. Day
Joseph L. Meyers
Patrick J. Moroney
Ilan S. Schoenberger
Frank P. Sparaco

OTHERS PRESENT
Laurence O. Toole
Mary Widmer
Elana Yeger
Mark Myers
Charles Hilding
Joshua Jandris
Richard Maloney
William Renc
John Fella
Susan Rutledge
Vincent Abbatocola
Suzanne Barclay
Darcy Casteleiro
Ron Levine
Sean Mathews
Media

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Chairwoman Cornell

Tonight we have with us the consultants who were hired by the County Executive branch to report to the County an appraisal of the Skilled Nursing Facility And Long-Term Acute Care Facility at Summit Park. We have with us three people who have flown in from Chicago to talk with us from the nationally known firm of Marcus & Millichap. They are with the National Seniors Housing Group and are specialists in the consulting and brokerage in what is known as Senior Housing Aspects. They are nationally known and have worked all over the country and they have also really been specializing with counties in the State of New York on both evaluation and sale of nursing facilities.

As you well know county governments across the country, like Rockland County, are evaluating core functions and determining whether services would be better run outside of County government.

We have been joined tonight by Joshua Jandris, who is the Senior Director and specialized in brokerage and consulting of County owned nursing homes across the country. We also have with us Mark Myers, who is a Senior Housing Specialist and he also has represented selling commercial real estate across the United States. We also have with us Charles Hilding, Analyst.

Mr. Jandris will give a presentation and then take questions from the Legislators.

Mr. Jandris.

While we were working on the RFP and crafting a response and addendum was put out, not only for evaluation services, but also for brokerage services. I will present the slide presentation at this time (see attached).

Chairwoman Cornell

The Chair of the Board of Governors is here, Vincent Abbatocola. Also here from the County Executive's office is Sean Mathews and Sue Rutledge. We have here Darcy Casteleiro from Assemblywoman's Jaffee office. Also here are our journalists.

Mrs. Low-Hogan

The County many want to continue the LTACH beds and lease them back to the hospital. Can you explain that?

Mr. Jandris

Almost in all instances when you have a nursing home and LTACH that is adjacent or complimentary somebody usually owns all of the real estate. Then whoever owns the real estate would then lease out the LTACH component to a third party. In the case of Rockland County it looks to me like you are doing with that asset. I don't know how much better you could be doing, but I know right now just looking at the financials that it is making money. I think it would still make money. It is like a traditional commercial real estate transaction, a triple net lease. You would be locking in for a ten or fifteen year period at a fixed lease payment and then they would be you a multiple of that on the front end.

Mr. Murphy

For those of us in the business Managed Care is very frightening to us, because what they are telling is they are going to make sure that nobody is in a facility beyond their needs. They can march in and tell you to send people to assisted living, they speak with authority and they can't be challenged. In the case of the County, I believe the County also has to join a health home plan. We are going to be forced into a health home and they are going to decide for us that the people in certain beds have to move on. When you have as many beds as we do and they start moving patients out to an assisted living facility that is an extraordinary burden on us.

While they are telling us that, in another room, in another sub-committee they are telling us that the Federal government has indicated New York has a disproportionate share of its Medicaid dollars and they are looking at reducing the New York Medicaid dollars. I have health home in one hand saying that they are going to move patients to a cheaper facility and have the Medicaid people saying that you have an unfair share of the nations Medicaid dollars. All that puts us in harms way.

My understanding of what is going on is that if a non-county takes over they are going to have the flexibility to be able to build rungs on a ladder so when the health home says to move them to a cheaper place they will move them to the next rung on the ladder, because they own it. So we are at a disadvantage, because as a County we can't do that.

Outside of my Legislative life I have these issues. They are going to impact the sale price of this facility dramatically, because the buyer is going to know that the County is handcuffed in the face of the health home or Managed Care. The inability of the County to provide the next rungs on the ladder puts our backs to the wall.

Can I assume that before this last cut of Medicaid comes down the best time to sell it, if you are going to sell it, is to do it before then?

Mr. Jandris

You want to sell before the news is clearly definitively bad. We agree with you. The buyers have so many potentials, because they can add so many different services and address more health issues.

Mr. Murphy

I am under the impression that the ax is going to fall within the next eighteen months.

Mr. Jandris

Yes, correct. It is better for you to sell before the ax falls, but what we are saying to you is the buyers will know that is coming and they have the tools to counteract all those changes. Someone that owns many facilities can provide all kinds of care and they can address a lot of these risks. For you, if you wait to long, chances are pretty high that you will be caught in the Managed Care title wave.

Mr. Murphy

It seems to me incredibly dangerous to us that we may find ourselves in a health home.

Mr. Jandris

We are trying to also address this issue. We know what a new operator can do when they come in the door. We just went to market in Maryland for a county facility and the first day we took it to market we had thirty-seven confidentiality agreements signed. And that county has messed up things from the front door to the back and made it difficult for the buyers, but yet we still had all this interest in it. Why? Because the buying community knows the potential and what they can do with it and they do take a very long-term view.

Mr. Myers

A lot of buyers are not just nursing owners. They own ancillary businesses as well, such as therapy companies and other complimentary businesses. There may be some downside on the Medicaid reimbursement side there are upsides with those ancillary businesses.

Mr. Jandris

One of the operators in New York that we have sold facilities too is so large that he is considering forming his own HMO/Managed Care Company. The County does not have the opportunity to do many things.

Mr. Murphy

I just feel that every new rate that come down is designed subliminally to drive the counties out of the nursing home business.

Mr. Jandris

I don't think they are designed specifically for that. Every State is having budgetary constraints and so what the reimbursement system is attempting to do is to tie reimbursement with a broad range of services for the lowest cost possible and to have as much as possible a one-stop shop. They want a place that could provide varies levels of health care. Those who are not able to provide that are punished, if you will.

Mr. Murphy

We are not in the position to provide ancillary services. We have seen this storm cloud coming and it think it is about to rain on us.

Mr. Jandris

We don't want the buyers to take advantage of you. There is just too many of them out there that would be very interested.

Mr. Murphy

I am very impressed by your presentation.

Mr. Soskin

Can I get the sale price for the LTACH beds and the other beds?

Mr. Myers

The way that we presented our evaluation is we don't assign a sale price to the LTACH. What we are trying to do is show you how you can maximize the value and also get the cleanest transaction. What we have seen almost in all cases is somebody buying the whole thing and then leasing the LTACH. We would think that is where you would realize the most money, if they were paying for a lease structure.

As far as the nursing home value is concerned, we provided an evaluation range of $71,651 to $96,573 per bed. LTACH value, $1,218,375 to $1,501,000 based on a lease payment.

Mr. Jandris

Pulling out the LTACH and then selling it separately is another option, but it can be extremely convoluted and challenging just given the fact that it is one floor on a multi-floor structure. If we were engaged to market both assets then we would be looking for LTACH owner-operators and skilled nursing home owner-operators.

Mr. Myers

The complexity of real estate transactions doesn't get more complex than in New York. Another option is a buyer purchases nursing home and LTACH, but signs a 99-year Ground Lease then you control the facility. We have seen different types of transactions. You can lease or sell the LTACH.

Chairwoman Cornell

I think it would be useful for us to go over the sale-restrictions.

Mr. Jandris

I know that Summit Park occupies a large piece of land that is County owned and contains a lot of the County operations. That has been the case in many transactions. What counties have done are subdivisions. They carve out just the property that is immediately surrounding the actual asset and then you would retain all of your land. In the case of the gas, heat and electricity you would either move towards having the property separately metered or they could by those utilities directly from the County.

Mr. Soskin

Is it better to do a 99-year lease to an operator? You also mentioned this is a good time to sell. Could the medical providers elect out of working in Managed Care? What if a doctor wants to stay private?

Mr. Myers

I think in the State of New York I think that would be very much acceptable by the buyers. If you are going to participate in the State's system I believe they decide whether it is Managed Care.

Mr. Soskin

You are going to have $11,000,000 immigrants who may become eligible for Medicaid.

Mr. Myers

That is where the additional services come into play. The people who are going to thrive through the health care system in the United States for the next twenty years are those who are providing care at more levels of acuity and different services at the lowest cost. The easiest way to provide it at the lowest cost is to have a greater volume, because you can spread your fixed costs.

Mr. Carey

Are any changes going to happen with the LTACH's?

Mr. Jandris

Not that we are aware of. As far as I know there is still a moratorium on the LTACH's. The whole system is being built on what is needed verses what is wasteful. An LTACH seems to be an excellent way to address a true need in health care. We have not heard anything about eliminating that system.

Mr. Carey

There are a lot of variables here and a lot of expertise that you bring. Regarding the process of deciding all these different options, what is in the best interest for the County, in your experience are those decisions done by the LDC if we so choose or are they done by the Legislature.

Mr. Jandris

In Ulster County we worked with their LDC. In that case what we did was very similar to this. We added very similar discussion with the LDC Board before we were engaged and we provided a restriction analysis and we gave everything to them. We said that these are things that you should consider when bringing this into market to make sure that you protect the sale and legacy associated with the facility. They came back to us, with the help of their attorney, and we had an RFP. These are really good terms and conditions that you create your RFP with. I don't know how the County Executive in Rockland County is going to work with the Legislature to work through this. We can't speak to that. In the case of Essex County we worked with Legislature and the County Administrator.

Mr. Carey

The other consultants said that businesses are looking for certainty and their recommendation was that moving the asset into the LDC and taking out of the seventeen folks up here hand makes for more certainty and make it better in the mind of potential buyers.

Mr. Jandris

Yes. In the case of Orange County, which we represented, they passed a resolution to engage us, but they needed a super majority in order to approve the goods that we received. They were losing a substantial amount of money, over $20,000,000 based on the analysis. We brought them three offers that not only were satisfied approximately $60,000 per bed to purchase the asset, but three of the bidders said that they would cover their loses the day they signed a purchase agreement until the purchase was finalized and that could be for as along as eighteen months, which comes to about $30,000,000, but because of the opposition within the Legislature they said nope and they decided to continue to run it.

Obviously, because a lot of the bidders knew that it was a very contentious process and that there wasn't really a consensus with the Legislators that did hinder the process. What the LDC offers to the market is once the LDC votes to market the asset, and the terms and price the LDC comes up with is done then it is a lot more palpable to market any buyer.

Chairwoman Cornell

Commissioner wants to speak about the LTACH's.

Commissioner Maloney

The moratorium came off of LTACH's came off of LTACH's on December 28th of last year. There are no moratoriums on moving beds or in creation of beds. A lot of these firms that have all the rungs in the ladder are for-profit publicly traded corporations. They are not permitted to provide health care in the State so this restriction blocks a lot of them.

Mr. Myers

Larger private companies in New York have ancillary companies.

Mr. Wieder

Have you seen the Alvarez and Marsal report?

Mr. Myers

We just learned about it tonight right before the meeting.

Mr. Wieder

Are you aware of the Toski report?

Mr. Jandris

Yes, we went through the Toski report while preparing the presentation.

Mr. Wieder

Have you met with the Department of Hospitals?

Mr. Jandris

We met at the facility with some folks.

Commissioner Maloney

I met them when they came out.

Mr. Wieder

I would like, through the Chair, them to review the Alvarez and Marsal report.

Mr. Jandris

I can tell you probably the most important thing in the report in on page 7 – High Level Impressions. Essentially the idea behind privatizing a County's long-term and sub acute facility is to reverse the difficulties that are listed here. The report is saying that they are very dedicated to the organizations. Some of them have been there many years, but they are handcuffed by a current system that is problematic. The more that efficiency is required in this industry the more it lends itself to making good and wise decisions quickly. The summary is saying to us that the facility needs to be redesigned, repositioned, implement more high-tech systems, money needs to be put into it, there needs be a better flow of information and better approval process, get rid of some of the County allocations, improve referrals by doctors and give more confidence to the pubic.

Chairwoman Cornell

Please go over Potential Conditions to Sale-Restriction Analysis from your report.

Mr. Jandris

We provided a number of ways to go about marketing, selling and offering the two assets.

On a scale of 1 to 10, with 10 being most restrictive and 1 being the least.

- ✓ Buyer purchases nursing home and LTACH, including land and physical plant. (3)
- ✓ Buyer purchases nursing home, building, land and County leases back the LTACH (3)
- ✓ Buyer purchases nursing home and LTACH and physical plant, but signs a 99-year Ground Lease (5)
- ✓ Buyer/Lessee leases the nursing home and LTACH, and pays County or LDC triple net lease for predetermined period of time and has no purchase option (9)
- ✓ Buyer/Lessee leases the nursing home and LTACH, and pays County or LDC triple net lease for predetermined period of time and with purchase option at predetermined Strike Price. (7)

More often than not a nursing home operating is not and LTACH operator. One of our recommendations is to maybe consider holding on to the LTACH and paying a lease payment. Ground Leases are common in New York. Typically it is not ideal when it comes to getting something financed, but I am sure there are ways of going about that. More often than not when somebody gets into this business they want to own it. They may be inclined to come in and have a lease as long as there is something on the horizon where they can actually own the asset. If you were to do a lease scenario you could satisfy your debt payments with that as well as taking something off the top to put towards other County operations. We do think not offering a purchase option would be detrimental. People would rather buy the asset.

Chairwoman Cornell

I am sure you are aware that the building that houses the LTACH and nursing home is also connected to the Rockland County Department of Health, which is a separate department. It is physically connected to the hospital.

Commissioner Maloney

The second floor clinic is the Department of Health. They operate the their clinics on the second floor. I would like to have these guys comment on what the value of our Certificate of Need is. We have a Certificate of Need to rebuild both institutions for about $130,000,000. It can't be transferred in terms of a sale. It would be cancelled by the State Health Department. Since we would get .90 cents on the dollar for the nursing home in terms of construction was any consideration about the sale of that asset if we built it or if we did build it would we be in a better position than we are today? We would be able to maintain the ownership of what is Building "A" right now.

Mr. Myers

That is a very good point. You would have a state of the art facility. I haven't run the financial analysis regarding that, but there are buyers who do look at the capital component and the amount of debt services. So that is an excellent point, but the only question is, which none of us have the answer to, what happens when the reimbursement system changes and goes to Managed Care? The trouble could be what happens if the capital rate is no longer part of the reimbursement. I am not saying it is going to happen, but it is a possibility. Does the County really want to spend $130,000,000? So the $130,000,000 may end up being $160,000,000. Medicare is supposed to be a zero profit reimbursement. You are not really supposed to make money off of Medicare, but the Fed's know the nursing homes are making money off of Medicare and they say that is okay, because we know you are not making off on Medicaid so we will give it to you on Medicare. The reason why new facilities are built is to attract Medicare. The County would have to ask itself if it they want to take the more indigent residents/Medicaid or are they looking to build a high-tech Medicare facility. I don't know what your objective is.

Commissioner Maloney

The Certificate of Need is for 321 beds in the new facility. There is absolutely no doubt we would get our reimbursement. If we applied for a Certificate today we would only get about .74 cents on the dollar. We got it in at a time before they changed the reimbursement rate. I don't see how they can change that going forward in terms of our capital reimbursement. There were two Certificate of Need that were approved; one was for a 321 bed nursing home and one for 57 bed LTACH. It is about $130,000,000 budget.

Mr. Jandris

What I suggest the County do is contact all the counties across the United States that have built brand new facilities. We could give you a list of them. I think it is a good exercise, because there is a few that have been very successfully, but by and large 99 out of 100 are a financial disaster, because they build a palace of a facility with an indigent kind of based mission and they just lose more money.

Mr. Myers

Steuben County built a brand new facility for $19,000,000. Two years later they are realizing $3,000,000 in operating losses on top of their $1,500,000 per year in debt service and their post employment benefits. That is with the capital that supports the $19,000,000. I think there average rate is $223.00 per day. A new $26,000,000 facility was built in Cooperstown a couple of years ago. It is my understanding that they are selling their facility for the same reason. Frederick County built a brand new facility that was just completed in June for $40,000,000 and they are losing $4,000,000 on top of $2,800,000 in debt service and other ancillary losses.

Commissioner Maloney

In order to get a Certificate of Need in New York approved you have to show that you have the support and you show the cash flow to operate it. There is a calculation right in the Certificate of Need application. They wouldn't approve it if we didn't show we had the ability to do this.

Mr. Murphy

My interpretation of Obama Care is that there is going to be a significant reduction in the capital cost reimbursement of the Medicaid payment. When we applied for those Certificates of Need we put in for very then high capital cost reimbursement percent of the Medicaid payment. I know, as we speak, that in mental health in New York that is essentially being taken out of the daily Medicaid rate, because as part of Managed Care/Obama Care it is reduction since they are going to day services and other directions. It is very risky for us to go into a new Certificate of Need construction plan unless we would be reassured that what we said that the then very high capital cost percentage of the reimbursement need would remain at that.

Mr. Jandris

We are assuming that all of the other components cover the cost of operations and that is not the case. Google tonight when you get home the cost of care verses reimbursement the losses are pretty substantial. Your total rate has to support $130,000,000. If building new facilities made money you would have every private owner in New York State building new facilities, need I say more?

ACTIONS:

Presenters Joshua Jandris, Senior Associate, and Mark Myers, Senior Director to provide:

Chart of Cash Flow: Potential Conditions to Sale – Restriction Analysis based on a scale of 1 – 10, 10 being the most restrictive and 1 being the least restrictive.

Transaction details of Marcus & Millichap's history of Appraisal/Evaluations vs. Actual Sales of hospitals and nursing care centers.

Contact list of counties that have built new facilities.

Chairwoman Harriet D. Cornell called to adjourn the Committee of the Whole and report back to the full Legislature at 8:00 p.m., which was moved by Legislator Alden H. Wolfe and seconded by Legislator Michael M. Grant and passed.

RESOLUTION NO. 45 OF 2013
ADJOURNMENT

Mr. Wolfe offered the following resolution, which was seconded by Mr. Jobson and adopted (8:00 p.m.)

RESOLVED, that the meeting of the Legislature is hereby adjourned to Tuesday, February 5, 2013 at 7:00 p.m.

Respectfully Submitted,

DARCY SHAPIN - GREENBERG
Proceedings Clerk