Public Health Committee Minutes
October 24, 2012 – 3:00 p.m.

Present: Chairman Wright; Supervisors Raymond, Kinowski, Southworth, Grattidge, Yepsen, Rowland, Collyer, Barrett, Lawler, Lucia, Daly, A. Johnson, and Lewza; Spencer Hellwig, Administrator; George Martin, Darcy Plummer, Treasurer; Hugh Burke, Steve Dorsey, County Attorney; Brian O'Conor, Auditor; Ryan Moore, Mgmt. Analyst; Press.

Chairman Wright called the meeting to order and welcomed all in attendance.

On a motion made by Mrs. Southworth, seconded by Mr. Grattidge the minutes of the October 9, 2012 meeting were approved unanimously.

Mr. Miller from Harris Beach gave a brief update on the post assessment for Maplewood Manor as follows: He said the findings of the report stated that the current model as operated by the county is unsustainable on a financial basis. The beds are needed for the community, they are an important aspect for the community to maintain, and as a result of that the closing of the facility is not an option at this point, which creates challenges and the need to find solutions for the county for the future of the facility. Any solutions that are identified by the county need to attain certain things, and those things need to include realistic goals. As reviewed by the county, the goals include stopping an unsustainable deficit associated with the facility, preventing the county from having to impose a 20% tax increase and maintaining the highest level quality of care for Maplewood Manor residents. With those things in mind and a stated goal, several things have been considered including several models. Among them, and to the extent that the sale of the facility is considered by the county to help achieve those goals, they could establish an LDC, which is called a Local Development Corporation. That tool can be utilized to manage the disposition of the facility to a selected operator. An LDC generally is a private not for profit corporation that could be established by municipal governments in New York State. They have been established throughout New York in many communities as primary economic development tools, and to assist municipalities with either the management or disposition of assets that they no longer need. They can be charged with lessening the burdens of government and to undertake the sale of municipal assets, also providing other benefits and tools not available to municipalities in New York State in the normal course. They can provide financial relief to counties, in this instance during the transition process associated with a fiscally distressed facility or municipal asset. With that in mind and with that model proposed, there are several benefits that can and should be considered by any county or municipality that is looking to utilize this tool as a means to surplus or transfer ownership of a municipal asset. This tool, if it is selected for use by the county, can enhance the county's ability to select a preferred operator for the facility and to complete the sale in a timely manner and get the best value for that asset. In essence, the LDC can, should, and may serve as the county's working group, a small subset of a working group that can manage the transition of ownership of a facility, is one of the primary benefits. LDC's as a working group can manage all of the incremental steps that are required to be undertaken along the way for any kind of disposition or transition of ownership. Among those steps, include the selection of a broker to assist the county undertake an RFP in the selection of a preferred developer or owner of the facility in the context of a sale and helping with the issuance of an RFP to interested operators, negotiating the terms of sale and other steps that are required along the way. This has been viewed and utilized in other communities as a stable way to undertake a disposition. It is not the easiest decision to make in the world, and certainly it is a challenging one for any municipality to undertake. In essence, it provides a core working group that undertakes the challenge for the benefit of the community. In addition, an LDC can provide counties and municipalities with flexibility and options that are generally not available in the normal context.

Mr. Miller said in the event that the county decides to utilize this model, a public hearing is required to be held by the county in connection with the proposed transition of ownership to a Local Development Corporation. Upon authorization after the public hearing, the LDC itself would be charged with undertaking a sale to the responsible bidder. They would be required to keep the facility open, keep the beds available to the current residents and maintain the highest level of quality care for Maplewood Manor residents; first and foremost stabilization and continued operation of the facility would be maintained under this structure. The contemplated relationship to allow the Local Development Corporation to undertake this task on behalf of the county would involve, in the first instance, a lease agreement and a lease back agreement. The county would continue to operate the facility while the LDC is helping to manage the disposition. There would be no change in ownership or any kind of employment status while the LDC is undertaking this task. There would be no change in the relationship that the county has with the facility for quite some time. It is a relationship between the county and the LDC, so the LDC has an interest in the facility, but the county continues to own, operate and maintain it.

Mr. Miller said discussions have taken place to consider this model in the near term. He said in December of 2012 and January 2013 the required public hearing and authorizations of the County Board of Supervisors could be considered to put this tool into place and make it available. With that accomplished, the months of January and February of 2013 would be targeted for the Local Development Corporation. Once it is incorporated, to get itself organized, adopt various policies and internal controls to start undertaking the business that the county has charged it with, along with those initial actions that board would take, is to consider whether the county and LDC, undertaking some of the burdens of the county, needs to engage a broker to help find a responsible buyer of the facility. In that context, municipalities are generally well served to have a broker on board helping the municipality find a successor to operate the facility. Brokers can find a nationwide audience and interested people who are looking to acquire these assets and continue to operate them. Once a broker is engaged by the LDC for the purposes of finding a prospective owner and operator, the LDC can issue the RFP, again broadcasting that to a nationwide audience of firms and operators that are looking to acquire these types of assets. A fairly short time period would be established which would be long enough to get the message out and get a well broadcasted RFP, but short enough to stay on a timeline to have responses to that RFP by April or May of 2013. The next step would be the LDC board which has been charged with the duty to help the county would review the responses received and undertake some due diligence. That due diligence involves undertaking a background check on all the firms that are interested in operating a home, including visiting their other assets and facilities, doing searches of DOH records to make sure that their facilities are operated in a safe and efficient manner. This would lead up to a mid-summer selection of a preferred bidder. The LDC board, undertaking their due diligence would select a short list of individuals based not only on price, but also the intangibles, quality of care and the past practice and operating history of anyone who is interested to undertake negotiations to enter into a purchase and sale agreement with that selected operator.

Mr. Miller said any operator who has been selected to take over the operations of the facility and buy it from the county would have to secure their own license or seal a certificate of need with the Department of Health. This application process can take anywhere from twelve to eighteen months. Based on this timeline, once the operator is selected and acquires licensure from the Department of Health that is when the facility would change hands. When they have the ability to operate it that is when they would have the ability to acquire it. Mr. Miller said based on this timeline and all reasonable events, it would be targeted for December of 2014. Based on current timeframes and on a methodical and well undertaken disposition process it would still be around two years before an ultimate sale were to take place. At that time, that would be the first event that there would be any change in relationship between the county and the facility. The county would own and operate the facility through that timeframe. In essence, nothing changes until then, the LDC would simply be acting as a way for the surplus to take place, he said.

Mrs. Southworth asked if the certificate of need would be held by the county even when and if it was being operated by the LDC. Mr. Miller said the LDC is in no way operating the facility, it doesn't have any management control or relationship to the operation of the facility, it is simply looking for a buyer. The county holds the certificate of need now and is licensed to operate the facility as a public nursing home, and will continue to hold that until the sale takes place. It would be turned in if and when a buyer is selected and secures their own license.

Mrs. Southworth asked if the public hearing that is required at the time of purchase, after the purchase agreement was agreed upon, would another public hearing be required or only the initial public hearing to form the LDC. Mr. Miller said the only required public hearing is the one that the County Board of Supervisors would need to hold in connection with the initial rule. The LDC will operate subject to the open meetings law and subject to FOIL. It will be in essence, following all the typical government open meeting rules and requirements so the public will have an opportunity to interface with that board as it is going through the selection process. It doesn't need to hold a public hearing when it selects its bidder or when it enters into the purchase or sale agreement, but it would be doing it in a very public fashion. Once the RFP process is opened up after they have entered into a contract, all of the bids in the RFP process would then be subject to public review. Mr. Miller said what has been experienced in other communities is once there is a solid valuation set on the facility the RFP contains specific language where no bids are accepted under a certain amount. You can set the tone based on the valuation guidance and guidelines that you have received from brokers and other appraisers that are involved. Another flexibility that the LCD can afford is that they can negotiate with any bidder. In this context, the money is not the most important thing, it is the bidder and their quality of care and ability to maintain the facility after they own it.

Mr. Wright asked Mr. Miller to discuss the makeup of the Board of Directors for the LDC. Mr. Miller said the County in this first instance would establish the LDC and would have control of who sits on the Board of Directors. The composition of the Board would be between three and seven members with a blend of both private and public sector representatives with members of the Board of Supervisors, and to the extent that the Board of Supervisors would like to bring on board certain people with skill sets, such as the medical community and business community, they would be welcome and be useful voices on the board.

Mrs. Southworth said with regard to the LDC, is there a requirement for an outside and inside audit of the LDC and LDC functions. Mr. Miller said technically the LDC would be considered a component unit of the county for county purposes. What has been seen in most cases is that these development corporations, which are controlled by a municipality, will use the same auditing firm to put together financial statements of the entity on an annual basis. It will also be subject to the open meetings law and FOIL, and is considered a local authority under the Public Authorities Law. Industrial Development Agencies and Local Development Corporations in New York State, in recent years have been required to comply with the Public Authority Accountability Act and the Public Authorities Reform Act. Under those laws these types of entities that are municipally established have to put together a detailed annual report, budget report and make detailed filings with New York State on an annual basis. This is another level of transparency and accountability that the entity will have as it undertakes its business. If and when this disposition is undertaken by the Board and the sale goes through it wouldn't have any job left to do. The most likely event that would occur is within a few months it would dissolve and wind up its affairs and any assets leftover would be vested to the county.

Mr. Grattidge asked Mr. Miller to address what he has seen in the past for the patients that are in the existing facility and what happened through a transition like the one we are talking about today. He also asked for the legacy costs to the county with regard to employees and the responsibilities to the county and the existing workforce as we go through this transition. Mr. Miller said in New York there have been only a couple of completed sales that have taken place. Essex County is in contract and Fulton County has completed their sale and in other areas of the State they are in various degrees and stages of the process. He said the LDC doesn't have any relationship with the workforce during this process; it is simply acting as a working committee to help out with the disposition. The county has responsibility through the date of the sale to manage its employees and pay its employees. Legacy costs are the responsibility of the county after the county is no longer in the business. In some areas there have been a variety of ways that governments have handled how they interact with their buyer and what a buyer may or may not be doing directly with a workforce. He said overall Saratoga County has a workforce and any buyer is going to want to work with them because they understand the facility and there is value in operating the facility. One of the more common ways this is undertaken and/or dealt with is when a private sector buyer buys a facility and then wants to run it on day one it is within the purchase/sale agreement or the contracts between the municipality and the buyer that the buyer is fully willing to say that they are going to interview and consider for employment anyone there. They are not going to want to lose a captive workforce. It becomes a negotiation when you get that far down the road as to whether or not the buyer depends on their business model, labor costs, and workforce assumptions in terms of how much capital they want to put into the facility. The price that they are willing to pay is often times reflective of some labor costs after the sales, so it depends on the negotiations in terms of whether or not they are going to obligate themselves to hire everyone in the facility, which they might or they might want to take a more practicable approach and right size it and hire as many of the people as they can. What has been seen in other instances is the buyers are fully willing to obligate themselves to keep the current patients and residents of the facility in place. They have no desire to have a higher vacancy rate, and they certainly want to keep the residents in place. To the extent that there are vacancy challenges, now they can address them in their own way as a private sector operator. What is being seen is that the operators want to come in and enhance the kinds and amount of care that is provided in current municipal facilities. In other places it is seen that other private sector operators want to create new programs such as Parkinson's, Dementia, Alzheimer's, direct services, enhanced oral and dental care, and surgery on site. They want to bring in a suite of services as opposed to just general care, which helps with their profitability, but also ends up being an enhancement of the services being delivered to the facility. You don't see a step backwards in the quality of care, what you will see is the ability to actually make it more robust.

Ms. Yepsen said it was mentioned that an LDC would be operating until a surplus takes place. She asked Mr. Miller to expand on that and talk about how the county is supposed to balance their budget for the first two years as the LDC is operating and making the sale happen. Ms. Yepsen said she didn't see how this was going to save the county money; in fact, if anything it will cost the county more.

Mr. Miller said that after the LDC has done its job it may dissolve and any surplus that it holds at that time will revert to the county. During its undertaking of the proposed and contemplated disposition process the LDC does have some abilities and powers that the county does not have on its own. First and foremost it has the ability to undertake financing for the benefit of the county to help it balance its budget and provide revenue sources that the county is struggling to identify right now. One of the more common approaches and one of the major tools other than having a well-organized working committee that the LDC can provide is for the LDC to undertake a bond financing while it has an interest in the facility. The LDC has the ability to access equity in the facility while it has title to it. Simply stated, the LDC would be able to access equity in the facility during the period of time that it is trying to undertake this disposition of perhaps two years. If the LDC is looking to access that equity during that time period, the county would get those revenues from the LDC to help it balance its revenues and budget depending on whatever budget plans are put together for the county. In essence, the county can realize equity in the facility before the sale takes place to help them with some of the budgetary constraints and challenges.

Ms. Yepsen said, essentially it is a loan. Mr. Miller said, yes, the LDC can access and borrow money based on the equity in the facility during that time period. The county cannot do that under the local finance law.

Ms. Yepsen asked how the loan is paid off. Mr. Miller said the structure that the LDC has utilized is a lease and then a lease back. Under the lease back structure where the county continues to operate the facility and continues to maintain all the employees, they would be paying the LDC rent. Absent of bond financing, the rent would be for nominal costs. The accounting costs of the LDC and other carrying costs would be the nominal expense to the extent that the LDC does undertake this form of borrowing, the rent would be principal and interest on those bonds, so during that 24 month period, if that is what it turns out to be, there would be principal and interest payments on those bonds that the county would pay in the form of rent to the LDC. Mr. Miller said keep in mind that the LDC under that structure is bringing a significant amount of equity back to the county for budgetary purposes during the pendency of a sale. If the LDC has a mortgage on the facility, it would be paid off when the ultimate sale takes place.

Ms. Yepsen said she has done a lot of research on LDC's and from the Governor on down there is a lot of concern about LDC's and there are a lot more questions that need to be answered. There are so many people saying that LDC's were initially started for economic development purposes, but what it really boils down to is a much less transparent process than what we have now, she said. We don't even have a transparent process now, in terms of answering all these questions that the people have. Ms. Yepsen said she didn't know how the committee could jump from this report to voting on anything today. She said clearly the Governor is working against LDC's and he is trying to cut the level of government out of this and the Attorney General's office is finding all sorts of concerns and problems with these. The Comptroller's office has indicated that it does not save money and it provides less transparency because they can't go in and audit these budgets. Ms. Yepsen said she would like to see the numbers if this is going to be an advantage to the county taxpayers. She said she didn't know how the Board was going to respond to the residents needs and ensure the people jobs through this very secretive process of a very small board controlling everything.

Ms. Raymond said any meeting of the LDC board is under the same constraints for public meetings as anything that is done here governmentally. Mr. Miller said there are some local government corporations in the past that have taken the opinion that they are not subject to the open meetings law or FOIL. He said in this instance being a directly controlled governmental entity, it will be.

Ms. Raymond asked if everyone would see a draft of the documents prior to the public hearing and the vote, so they can see how it is going to be structured with the number of people, who will be supervisors, and that it will be subject to open meetings. Mr. Miller said, yes. Ms. Raymond asked if the subject that any prospective buyers would be willing to interview all current employees and that all residents of the facility shall stay at the time of sale and no one will be asked to leave will be included. Mr. Miller said, yes.

Mr. Kinowski said when this whole matter came up he asked to be on the subcommittee because he wanted to take his own input and view of it. He said he personally spoke with Ulster County and asked why they went down this road speaking with Supervisors and committee members. He said he invited the committee and subcommittee to bring some of those members to voice in our subcommittee meetings. He said he then went on to discuss or look at other potential options of whom else went down this road. Mr. Kinowski received some information from Montgomery County who sold their nursing home, looking into how their employees were dealing with it and how their county is working with them, and what happened to some of their employees. There is positive and negative, but you have to look into it and analyze it, he said. Mr. Kinowski said he has also done it from a budgetary prospective, and we are in a dilemma and so you have to look for the best way out of it. He said he can appreciate every employee who works for Maplewood Manor and understands their concerns and every one of them is valid. He said he feels that this committee has been very open and very transparent as far as giving information out. He said every meeting is open to the public and the committee looks for input and they try to give input back. Mr. Kinowski said the most important feedback is options and opportunities. With LDC's that you have heard of as bad, there are just as many that are good, he said. If we use this for the good it can benefit employees, taxpayers and be a process for a budgetary recovery.

Mr. Hellwig said as a result of the questions that have been raised over the course of the past several months, a fact sheet has been prepared and will be placed on the county website tomorrow morning by 9:00 a.m. and will be readily available to anybody who is interested in reading through it.

Mrs. Southworth said she does have concerns about the LDC and the quality of care especially. She said she doesn't know why any employee we have wouldn't retire prior to sale. That means we will have inexperienced employees at the facility administering care to the residents. She said that is not a good thing. Mrs. Southworth said in the long run the county is still responsible for all the debt and all the post retirement care. She said the county might think that the burden is off of them now, but in the long run it will not be a savings.

Mr. Wright said no one on the Board of Supervisors questions the care at Maplewood Manor residents or the love that the employees have for their jobs and residents. The reality is that the State is forcing the county in that we will be losing $10 million this year. In order for the county to make that up taxes would have to be raised by 20% or lay 110 employees off at Maplewood, and the Board is not in a position to do that. Both those options are not attainable, he said.

Mr. Wright said the county is near broke and the Maplewood Manor facility has forced the county to cut back on capital projects, as well as no longer filling jobs in the Sheriff's Department. As Governor Cuomo stated, it is time for local governments to make hard decisions, time to balance the budgets and make these hard decisions without raising taxes.

Mr. Wright said when he came on as committee chair he made a promise to the Board Chairman that there would be a direction made for Maplewood Manor this year.

Mr. Wright said he would like to see a recommendation from the Public Health committee to move this to the Law and Finance Committee and suggest forming an LDC for the disposition of Maplewood Manor.

Mr. Hellwig said the landfill is being sold, which is another asset that the county had to sell to balance the budget in 2013. As far as the consequences of not making a decision today about how to deal with a projected shortfall at Maplewood Manor, we have had two quarterly meetings this year by the budget committee. Based on those meetings and the trending of the expenses and revenues, we are trending toward a year end fund balance of $9 million. This is what is projected to be in the bank, unappropriated, at the end of 2012. Currently, based on the request that we received from Maplewood Manor, in terms of the expenses and the revenues tied to those expenses, there is a $10.4 million deficit. In order to bring a budget to the Board that is balanced, he would have to take every penny of fund balance, which is $9 million and then borrow money in a tax anticipation note to cover the remaining $1.4 million. We cannot do that, he said. There are capital costs, a hiring freeze that has been in effect for two years and everything else is being downsized or put on hold while attempts are made to get the operation under order. It would be much easier to have revenues that covered the operations, but the reality is that the Medicaid reimbursement is 50% of the operating costs and all the changes with the affordable care act, which was reaffirmed by the Supreme Court this summer, projects a tremendous amount of uncertainty for the future. The $10 million is not a fixed amount. This time next year it will be $12 million because there are already health insurance costs that are projected to increase by 10% this year and another $4 million in retirement costs. All those costs go up which means any decision that prolongs a decision at this point only becomes more difficult to make and the opportunity to take advantage of equity in the facility keeps the county from having to bankrupt to cover the transition period which will take approximately two years. If we don't have an alternative source of revenue, the county will have to come up with $10 million this year to cover the deficit and $10 million plus next year, which is another $20 million. Now instead of being at zero or minus $1.5 million we are now at minus $20 million and we are bond rating. There are a tremendous amount of banks that are going to follow this and it is unsustainable, he said.

Mr. Wright said that the only thing that would be coming out of today's meeting is to move it out of the Public Health committee and pass it on to the Law and Finance Committee, which will then move it on to the full Board of Supervisors.

Mr. Grattidge made a motion that the Public Health Committee move the decision on to the Law and Finance Committee to create an LDC. Mr. Kinowski seconded.

Ms. Yepsen suggested that, based on the interest of this issue and the ramifications to our families and workers, a lot more public hearings be scheduled.

Mr. Hellwig read the following statement from committee member Matt Veitch who was unable to attend the meeting today.

I apologize for not being here today at the Public Health Committee to talk about Maplewood Manor and the transfer of the facility to a Local Development Corporation. I had to take my son to an Eye Doctor appointment in Boston to see his specialist. This appointment has been scheduled for some time and I could not foresee the Public Health Special meeting being scheduled for this day.

I have listened to the County Administration, our hired consultant, local residents, workers at the facility and residents of the facility. I sympathize with the concerns over what we plan to do with Maplewood, county run since the 1980's. It is one of the most difficult decisions I will make as County Supervisor. As I have weighted the Harris Beach report and looked into the various scenarios presented, I cannot see the current model of running Maplewood as sustainable.

Short of closing the facility or enacting draconian tax increases or mass layoffs of employees, there is no option other than to privatize the Manor. I do not look at moving the operation of the Manor to the LDC as a loss of control or an abandonment of our seniors, but as an opportunity to keep the facility open, to continue to serve those in need, without massive subsidy from the County. I will respect the decision of this committee going forward when I vote on this issue at Law and Finance and the full Board of Supervisors. This, to me, is the first step in keeping the facility open, preserving jobs for those employed there, and providing relief to the taxpayers whom we are all accountable for as elected officials.

I thank you for your consideration of my absence today.

Ms. Raymond said she wanted committee members and members of the audience to know that no one has arrived at a decision, whatever the decision, without a great deal of thought, study, concern and wishing we didn't have to make this decision at all. She said she respects her colleagues no matter which way they vote and she hopes that they will respect her when she votes. She said she would invite everyone who has concrete ideas on how to take a different path out of this dilemma, to write them down and send them. A lot of emails have been sent and they all say exactly the same thing and none of them have concrete ideas on how to solve this problem. Ms. Raymond said she would appreciate any input on concrete ideas. This is just the beginning of a long path and that path can change, twist or turn, but we need to have better ideas. She strongly urged everyone to contact the people in Albany and Washington because they are the ones who have created the mess that we are all in and they are the ones who have the ability to solve it by reimbursing properly for the care of the people we take care of.

A roll call vote was requested.

A roll call vote was taken as follows: Kinowski, yes, Grattidge, yes, Southworth, No, Wright, yes, Yepsen, No, Raymond, Yes. Motion passed.

On a motion made by Ms. Raymond, seconded by Mr. Grattidge the meeting was adjourned.

Respectfully submitted,
Chris Sansom