BELL BOYD
BELL, BOYD & LLOYD LLP

70 West Madison Street, Suite 3100
Chicago, Illinois 60602-4207
312.372.1121 • Fax 312.827.8000

THOMAS C. SHIELDS
312.807.4232
tshields@bellboyd.com
Direct Fax: 312.827.8166

VIA EMAIL AND OVERNIGHT DELIVERY

February 9, 2009

Michael Constantino
Project Reviewer
Illinois Health Facilities Planning Board
525 West Jefferson Street
2nd Floor
Springfield, IL 62761

Re: Response to State Agency Report for Additional Information
Project 08-086, Springfield Nursing and Rehabilitation Center, Springfield

Dear Mr. Constantino:

We represent the applicants in Project No. 08-086, Springfield Nursing and Rehabilitation Center. Project 08-086 is for the establishment of a 75-bed nursing care facility in Springfield to be called Springfield Nursing and Rehabilitation Center. The total project cost is $12,199,520. This letter is in response to your request for information on matters raised in a letter to Mr. Jeffrey Mark dated January 23, 2009, from Ms. Anne Cooper of the Polsinelli law firm ("Polsinelli letter") writing on behalf of Heritage Enterprises, Inc. ("Heritage").

We note at the outset that neither Heritage nor any one else requested a public hearing on this Project in response to the Notice of Opportunity for Hearing that was posted by the Planning Board's Staff in October 2008. Nor does Heritage claim that it will be in any way adversely affected by the proposed project. It appears therefore that the Polsinelli letter is simply asserting objections for the sake of objecting and that Heritage has no other interest in the Project beyond that.

A. Need For The Project

1. The calculated bed need exceeds the number of proposed beds

There is a calculated need in the Planning Area (Sangamon County) for the proposed beds. Sangamon County has a calculated bed need of 246 beds. Outside of Chicago and collar counties, it is the second most *under-bedded* Planning Area in the State.

At the Planning Board's meeting on January 29, 2009, the Board voted to remove 170 Long Term Care beds from the Inventory for Sangamon County based on the discontinuation of

the long-term care service at Sangamon Care Center. This action resulted in an increase of the need for beds in the Planning Area from 76 beds to 246. Project No. 08-086 is for the establishment of 75 Long Term Care beds. The project therefore meets the Need Criterion.

2. Polsinelli proposes a bed need methodology contrary to the Board's rules

The Polsinelli letter acknowledges that there is a calculated bed need for the beds proposed by this project. However, it faults the Planning Board's bed need methodology because "it does not address the shortage by payor." (Polsinelli letter at 11.) Polsinelli would have the Board reconfigure its bed need methodology to separately calculate the bed need for Medicare beds, Medicaid beds, and private pay beds. (*Id.*) Since the Planning Board's bed need methodology for Long Term Care beds is established by the Board's rules, any change to the methodology must be through a rule change. The Board should disregard Polsinelli's proposed methodology for determining the need for Long Term Care beds.

3. The Project will be Medicaid and Medicare certified

Polsinelli erroneously claims that the proposed project "will include no Medicare or Medicaid beds" and references page 9 of the CON application. (Polsinelli letter at 11.) Polsinelli has misread and misunderstands the Planning Board's application form.

Page 9 of the applicants' CON application is from page 12 of the Planning Board's application form. Paragraphs 2 and 3 of the form request identification of the *current* number of Medicare swing beds and *current* number of Medicare and Medicaid beds for applicants that are *existing* health care facilities. The form does not request the number of beds that *will be* certified at a proposed facility. This is reflected in the use of the present tense, as opposed to future tense, in the application form: "2. *Is* the facility certified…."; "3. ...indicate that number of beds that *are* Medicare certified and the number of beds that *are* Medicaid certified." (Emphasis added; CON application at 9.) Since none of the applicants are *existing* health care facilities, paragraphs 2 and 3 are not applicable to them.

The applicants' proposed facility will be Medicare and Medicaid certified. As demonstrated at pages 183 through 186 of the CON application, a justification for this project is that a number of facilities in the area have restrictive admissions policies in that they do not admit Medicare and Medicaid patients. The proposed facility will provide that access. To remove any uncertainty on this issue, Mr. Brian Levinson on behalf of the applicant OJCC, LLC has confirmed to us and requested that we represent to the Planning Board in this letter that the proposed facility will be Medicare and Medicaid certified.

4. This Project may not be batched with other pending projects

Polsinelli notes that there are two other pending applications to establish Long Term Care beds in Sangamon County. One is to establish 62 beds, and the other 76 beds. (Polsinelli letter at 1 and 12.) Polsinelli claims there is a need for only one of these facilities. There are two fundamental errors in this assertion. First, with the adjustment to inventory made by the Planning Board at its January 29, 2009 meeting there is now a need for 246 skilled nursing beds in Sangamon County. Consequently, even if the Board approved all three projects (totaling 214 beds) there would still be a need for 33 additional beds. Second, the Planning Board's rules prohibit batching of projects and, therefore, the applicants' Project should be reviewed on its own merits and on an individual basis. (*See* 77 Ill. Adm. Code 1130.620(e)(2)).

B. Bed to Population Ratio

The bed to population ratio within 30 minutes of the proposed site indicates that the project will not create a maldistribution of beds by exceeding 1.5 times the State average. As demonstrated at pages 31 and 32 of the CON application, the bed to population ratio within 30 minutes is 1:158 compared to the State average of 1:123 even without the 1.5 adjustment. This shows there are far fewer beds per population in Sangamon County than throughout the State on average.

The Polsinelli letter acknowledges that "the bed to population ratio in the target area is less than the one and a half times the State average..." (Polsinelli letter at 3.) But once again, Polsinelli creates its own "rules" that it wants the Planning Board to apply to this Project. While acknowledging that maldistribution is not indicated by the bed to population ratio, Polsinelli states that the Board should consider that the proposed facility will be located within five miles of five existing facilities. Of course, that is already accounted for in the bed to population Review Criterion which applies to all facilities within 30-minutes travel time. Polsinelli does not claim that any of these five facilities were excluded in determining the bed to population ratio.

Polsinelli further argues that "while there may not be a maldistribution of general long term care beds in the target area, a disproportionate number of general long term care beds currently exists on the west side of Springfield." (Polsinelli letter at 4.) This is not a consideration under the Planning Board's rules. Once a need for beds in a Planning Area is established, as it is here, the Planning Board's Criteria do not mandate *where* additional beds must be placed within the Planning Area.

Polsinelli claims that the west side currently accounts for 51.7% of the licensed beds in the target area. Since ten of the twelve existing skilled nursing facilities in Sangamon County are located in Springfield, it is to be expected that a majority of beds would be in Springfield. In any event, Polsinelli has made no claim that residents of the "east side" of Springfield lack access to skilled nursing beds.

C. Applicant Identification

In preparing this CON application, the applicants followed the long-standing practice of the Planning Board to not include as co-applicants the individual members and owners of the applicant Limited Liability Companies (LLCs) or corporations. We note that Heritage itself does not include the individual members and owners of its LLCs when it files applications for CONs. See for example, Project No. 07-032, Heritage Manor – Litchfield where the applicants included Heritage Manor – Litchfield, LLC, Heritage Manor Real Estate, LLC and Heritage Enterprises, Inc., but none of the individual members or owners of the applicants were added. Similarly, in Project No. 07-021, Barton W. Stone-Jacksonville, the named applicants were Barton W. Stone-Jacksonville, LLC, Heritage Manor Real Estate, LLC and Heritage Enterprises, Inc., but the individual members and owners of the applicant LLCs and corporations were not included as applicants.

As with Heritage's own applications, numerous other recent applications for skilled nursing facilities have included LLC and corporate applicants and were not required to include individual members and owners including: Project 07-044, Phoenix Rehabilitation and Nursing Care; Project No. 07-107, Alden Estates Shorewood; Project No. 07-139, Miller Healthcare Center; and Project No. 08-062 Manor Court of Maryville.

The proposed project includes all applicants that have historically been required under the Planning Board's past practice and application of its rules. We further note that this project was deemed complete on October 22, 2008, and the Staff determined that the application was complete as submitted and did not require the inclusion of additional applicants.

D. Sangamon Care Center

Certain individuals who are members of the applicant LLCs were also members of Sangamon Care Center, LLC, which operated Ashford Court f/k/a Sangamon Care Center. In an unseemly attempt to smear the applicants, Polsinelli recounts the closure of Ashford Court and asserts that certain notice requirements were not fulfilled in the process. Polsinelli then claims that, for this reason, "the Applicants have not established that they are fit, willing and able to operate the [proposed] Facility." (Polsinelli letter at 7.)

Sangamon Care Center was assessed monetary fines in connection with the closure and has paid those fines. Those matters have been resolved with the respective State agencies and there are no pending proceedings in connection with that matter. We respectfully note that Heritage has received IDPH Notices with far heavier sanctions and yet continues to operate skilled nursing facilities in the State. (*See* attached listings from IDPH website of Nursing Home Violators.)

E. Alternatives

The applicants have referenced the calculated bed need and high occupancy rates of existing facilities in support of their position that the proposed project is the best alternative available. The Polsinelli letter claims that the applicants "overstated" the average occupancy rate for area facilities. The applicants have calculated the average occupancy rate in the area to be 93.5% and Polsinelli claims this overstates the occupancy rate by "at least 1.5%" (Polsinelli letter at 8.) Even if the applicant's number was reduced by 1.5% to 92%, that is still above the Planning Board's target occupancy rate of 90%.

Polsinelli also rehashes its claim that there is a shortage of Medicaid beds that will not be addressed by the project. However, as confirmed above, the proposed Project will be both Medicare and Medicaid certified.

Polsinelli next contends that a number of residents of Sangamon Care Center were relocated outside the Planning Area when that facility closed. Assuming that is true, it *supports* the need for additional skilled nursing beds in the area if, in fact, area residents are forced to go outside the area for service.

F. Size of the Project

Consistent with most new bed projects recently presented to the Planning Board the proposed Project will include mostly private rooms rather than semi-private. This has resulted in the Project having 765 gsf/bed, what is above the State standard. The applicants have justified this overage in their application and even Polsinelli acknowledges that the applicants "have accounted for most of the excess space…." (Polsinelli letter at 13-14.)

G. Improved Access

The Polsinelli letter confirms that the applicants "have documented access restrictions" at other area facilities with regard to Medicare and Medicaid patients. (Polsinelli letter at 15.) Polsinelli then asserts the proposed Project will not improve access. Again, this position is based on the mistaken notion that the proposed project will not be Medicare and Medicaid certified. As explained above, the project will be certified for both Medicare and Medicaid beds.

We trust the information supplied is responsive to your request. Please contact the applicants' CON Consultants, Mr. Charles Foley or Mr. John Kniery of Charles H. Foley & Associates (217-544-1551), or myself if additional information is desired.

Very truly yours,

BELL, BOYD & LLOYD LLP

Thomas C. Shields

TCS:dp
Enclosures
cc: Mr. Jeffrey S. Mark
Mr. Charles Foley

DOCKET #: NH 06-o0123
NAME OF OWNER OR LICENSEE: Heritage Enterprises, Inc.
ADDRESS: 115 West Jefferson St., Ste. 401
Bloomington, Illinois 61701

On May 5, 2006, sent Notice of License Revocation relating to the area of nursing and Notice of Fine Assessment of $60,000. A hearing has been requested.

FACILITY NAME: Heritage Manor South-Beardstown
FACILITY ADDRESS: 8306 St Lukes Drive
Beardstown, Illinois 62618

DOCKET #: NH 06-C0108
NAME OF OWNER OR LICENSEE: Heritage Enterprises, Inc.
ADDRESS: 115 West Jefferson, #401
Bloomington, Illinois 61701

On April 21, 2006, sent Notice of Type "A" ***Violation*** *relating to the area of policy and procedure and Notice of Fine Assessment of $20,000. A hearing has been requested.*

FACILITY NAME: Heritage Manor-Gibson City
FACILITY ADDRESS: 620 East First Street
Gibson CIty, Illinois 60936

DOCKET #: NH 05-C0220
NAME OF OWNER OR LICENSEE: Heritage Enterprises, Inc.
ADDRESS: 115 West Jefferson St., Ste. 401
Bloomington, Illinois 61701

On November 9, 2005, sent Notice of Type "A" ***Violation*** *relating to the area of nursing and Notice of Fine Assessment of $50,000. A hearing has been requested.*