



FOLEY & LARDNER LLP

September 27, 2013

VIA FEDERAL EXPRESS AND EMAIL

Mr. Michael Constantino
Project Review Supervisor
Illinois Health Facilities & Services Review Board
535 West Jefferson Street
Springfield, IL 62761-0001

Re: Second Permit Renewal Request for Project No. 10-031,
Pecatonica Pavilion (the "Project")

Dear Mr. Constantino:

We are counsel to Pecatonica Pavilion LLC (the "Permit Holder"). Pursuant to 77 Ill. Admin. Code § 1130.740, and on behalf of the Permit Holder, we are hereby submitting this permit renewal request for Project No. 10-031. This is the Permit Holder's second permit renewal request for Project No. 10-031 (the "Second Permit Renewal Request").

Background Facts

On May 19, 2010, the Permit Holder filed its original application (the "Original Application") for permit under the Illinois Health Facilities Planning Act seeking to establish and operate a forty six (46) bed skilled nursing unit, as part of a much larger 120 bed independent living, assisted living, and Alzheimer's continuing care retirement community ("CCRC"), in Pecatonica, Illinois. Pecatonica is a small rural community situated in western Winnebago County, and bordering Stephenson County, Illinois. Pecatonica does not currently have a skilled nursing facility in its town.

The Original Application was supported by a Market Feasibility Analysis conducted by Revere Healthcare, Inc. and contained 35 separate letters of support. The Original Application was backed by State elected officials representing the Pecatonica region, hospital administrators and executives, physicians serving the Winnebago County community, and 27 members of the public who sought a nursing care facility located in their rural community so that they would not be forced to later leave their home town.

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CLIENT/MATTER NUMBER
100284-0102

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SEP 30 2013

**HEALTH FACILITIES &
SERVICES REVIEW BOARD**

On October 18, 2010, the Permit Holder filed a Type B Modification to the Application (the "Modified Application"), reducing the number of skilled beds from forty six (46) to twenty four (24) (the "Modified Project"). The Modified Application was filed after the Illinois Health Facilities & Services Review Board (the "Board") approved a ninety (90) bed skilled nursing facility in Freeport, Illinois, on July 27, 2010. See Project No. 10-007 (Manor Court of Freeport). Meaning, in light of the changing demand for services, the Permit Holder voluntarily chose to reduce the size of the Project. So, as of the Modified Application, the Permit Holder was proposing to establish and operate a twenty four (24) bed skilled nursing unit, as part of a much larger 120 bed CCRC (the "CCRC Development"). In other words, the skilled nursing beds would only constitute twenty percent (20%) of the beds in the planned CCRC Development.

The Modified Application stated that the Modified Project would cost \$1,767,400 (the "Permit Amount") and that the Modified Project would be completed on March 31, 2012 (the "Original Project Completion Date").

On March 21, 2011, the Permit Holder appeared before the Board and the Board unanimously approved the Modified Project. On March 24, 2011, the Board issued a permit letter for the Modified Project. Shortly thereafter, the Permit Holder began work on the overall CCRC Development (and the Modified Project). On December 30, 2011, the Permit Holder obligated the Modified Project as set forth in the Modified Application.

On or about April 26, 2011, Medina Nursing Center, Inc., Alpine Fireside Health Center, Ltd., Neighbors Rehabilitation Center, LLC, and Fairview Nursing Plaza, Inc. (the "Plaintiffs") filed a complaint for administrative review of the Board's approval of the Modified Project in the Circuit Court for the Seventh Judicial Circuit of Illinois, Sangamon County, case No. 2011 MR 000176 (the "Administrative Review Complaint"). The Plaintiffs are four competing skilled nursing facilities located in Winnebago County. Over the next few years, the Administrative Review Complaint worked its way through the Illinois judicial system, ultimately resulting in a decision from the Illinois Appellate Court on July 12, 2013 (the "Remand Order"). It should be noted that the Permit Holder vigorously challenged the Administrative Review Complaint in the Circuit Court and the Appellate Court and has incurred tens of thousands of dollars in legal fees in doing so. On September 25, 2013, the Board issued its Response to the Remand Order and offered strong and compelling support for the Board's approval of the Permit Holder's Modified Application, attached hereto as Exhibit A.

On or about February 15, 2012, the Permit Holder filed its first permit renewal request for Project No. 10-031 (the "First Permit Renewal Request"), seeking to extend the Original Project Completion Date to September 30, 2013 (the "Extended Project Completion Date"). On February 28, 2012, the Board approved the Permit Holder's First Permit Renewal Request.

Elements Required by 77 Ill. Admin. Code § 1130.740

As you know, 77 Ill. Admin. Code § 1130.740(d) requires a party seeking a permit renewal to provide the following information to the Board: (1) the requested completion date; (2) a status report on the project detailing what percent has been completed and a summary of the project components yet to be finished and the amount of funds expended on the project to date; (3) a statement as to the reasons why the project has not been completed; (4) evidence of financial commitment to fund the project; and (5) the anticipated final cost of the project. Based upon this information, the Board must ultimately conclude that the party seeking the permit renewal “proceeded with due diligence,” as that phrase is defined at 77 Ill. Admin. Code § 1130.140. For the reasons set forth in this letter, the Permit Holder believes that it has established the necessary predicates for a permit renewal for the Modified Project.

Requested Completion Date

The Permit Holder hereby seeks a twelve (12) month extension of the Extended Project Completion Date of September 30, 2013. More specifically, the Permit Holder requests a new project completion date of September 30, 2014.

Status of the Project; Components Yet to be Finished; Reasons for Delay

As stated above, the Permit Holder obligated the Modified Project on December 30, 2011.

The Permit Holder has leveled and excavated the Modified Project site (and the entire site for the CCRC Development). Notably, the Modified Project site contained large sheets of rock, which required the Permit Holder to dynamite large portions of the Modified Project site in order to fully excavate the Modified Project site. Utilities have been brought to the Modified Project site and all of the engineering for the Modified Project site has been completed. The final architectural drawings are complete for the Modified Project.

At this point, the Permit Holder has spent nearly \$2,000,000 in funds attributable to the entire CCRC Development. And the Permit Holder has obligated 100% of the \$1,767,400 in funds committed in the Modified Application for the Modified Project.

That all said, the need for this Second Permit Renewal Request is mainly attributable to the delays and uncertainty caused by the Administrative Review Complaint. The Permit Holder has had to spend an inordinate amount of time trying to convince its lenders (and the lenders’ appraisers) that the Modified Project was still viable in light of the Administrative Review Complaint and the various court rulings and appeals. Quite candidly, had the Board not issued its Response to the Remand Order on September 25, 2013, it is likely that the entire CCRC Development (including the Modified Project) would have stalled and the Permit Holder

Mr. Michael Constantino
Second Permit Renewal Request for Project No. 10-031
September 27, 2013
Page 4

would have had to consider withdrawing the Modified Project from the CCRC Development. Instead, the Permit Holder has spent the past few days working with its lenders and equity supporters and has obtained the necessary commitments to continue to fund the CCRC Development (and the Modified Project) through its conclusion.

Evidence of Financial Commitment to Fund the Project

The Permit Holder has attached, as Exhibit B, the Affidavit of George Anderson (the "Anderson Affidavit"), Chief Executive Officer for the Permit Holder, as support for this element. In short, and as set forth in the Anderson Affidavit, the Modified Project will continue to be funded as originally approved by the Board.

Anticipated Final Cost of the Project

The Permit Holder believes that the final cost of the Modified Project will be within the Permit Amount of \$1,767,400.

Conclusion

Accordingly, the Permit Holder believes that it is entitled to a permit renewal for the Modified Project on the terms set forth in this letter. If you need any other information, please call. I have also sent, under separate cover, a check in the sum of \$1,000 to cover the processing fee. See Exhibit C.

Sincerely,



Edward J. Green

cc: George Anderson, Pecatonica Pavilion LLC
Grant Shumway, Revere Healthcare Ltd.

HEALTH FACILITIES and SERVICES REVIEW BOARD
STATE OF ILLINOIS

In the Matter of:

Pecatonica Pavilion, LLC

Project # 10-031

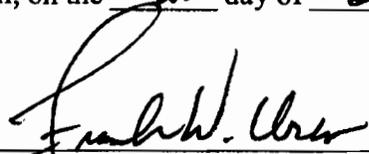
**Illinois Health Facilities and Services Review Board's Response
to the Court's Remand Order**

Enclosed is a copy of the Board's response to the Fourth District Appellate Court's remand order regarding the Pecatonica Pavilion, LLC, project # 10-031. Copies of the response were sent by email and certified mail in a sealed envelope, postage prepaid to:

Nicholas J. Lynn
Mark J. Silberman
Duane Morris LLC
190 South LaSalle Street, Suite 3700
Chicago, Illinois 60603

Edward J. Green
Jonathan W. Garlough
Foley & Lardner LLP
321 North Clark Street, Suite 2800
Chicago, Illinois 60654

The said documents were deposited in the United States mail in Chicago, Illinois and sent via email, on the 25 day of September 2013.



Frank W. Urso
General Counsel

Illinois Health Facilities and Services Review Board

cc: Laura Wunder, Assistant Attorney General
Kathryn J. Olson, Chair
Courtney Avery, Administrator

Exhibit A

Board Findings

The Board adopted the Board staff report (Report) and found that Pecatonica provided the required information that complied with the following standards in 77 Ill Adm. Code 1110.230, 1110.234, 1110.1730, 1120.120 and 1120.310:

1. Section 1110.230 - Project Purpose, Background and Alternatives

A) Section 1110.230 (a) - Background of Applicant

Pecatonica complied with this requirement. Pecatonica provided a list of all health care facilities currently owned and/or operated by the applicant, including licensing, certification and accreditation identification numbers, a certified listing from the applicant of any adverse action taken against any facility owned and/or operated by the applicants during the three years prior to the filing of the application, and authorization permitting the Agency and Illinois Department of Public Health (IDPH) access to any documents necessary to verify the information submitted.

B) Section 1110.230 (b) - Purpose of the Project

Pecatonica complied with this requirement. Pecatonica proposed to address a need for skilled nursing services/rehabilitative care in western Winnebago and eastern Stephenson Counties. The applicants maintain these rural communities are underserved, with an elderly population that has a strong preference to receive care closer to home, as opposed to the larger metropolitan areas of these counties where many of the skilled care facilities are located. The Report noted that there were eleven facilities within the 30-minute drive time (adjusted) and ten of the facilities had not achieved the State Board's target utilization of 90%.

C) Section 1110.230 (c) - Alternatives to the Proposed Project

Pecatonica complied with this requirement by providing 4 alternatives to their proposed project.

2. Section 1110.234 - Project Scope and Size, Utilization and Unfinished/Shell Space

The Pecatonica project conformed to the following State standards:

- A) Criterion 1110.234(a) - Size of Project
Board found the Pecatonica proposed project was in conformance with the size of project Board criterion.

- B) Criterion 1110.234 (b) - Project Services Utilization
Pecatonica successfully addressed the project services utilization criteria.

3. Section 1110.1730 – General Long Term Care – Review Criteria

a. Section 1110.1730 (g) - Staffing Availability

Pecatonica complied with this requirement. Pecatonica provided a staffing plan and recruitment strategy for the proposed facility. They also provided a manpower study demonstrating the area contains a feasible source of labor for a skilled care facility.

b. Section 1110.1730 (h) - Performance Requirements

Pecatonica complied with this requirement. Pecatonica demonstrated compliance by proposing to establish a category of service and a skilled care facility with 24 beds, which is below the maximum size of 250 beds.

c. Section 1110.1730 (i) - Community Related Functions

Pecatonica complied with this requirement. Pecatonica provided 35 letters of support from community organizations, legislators, clinicians and citizens.

d. Section 1110.1730 (j) - Zoning

Pecatonica complied with this requirement. The applicants provided a letter dated December 22, 2009 from Shawn Connors, President of the City of Pecatonica, stating the City Council's inclination to rule that the property is approved for use as a convalescent home and provided a copy of the proposed annexation agreement.

e. Section 1110.1730 (h) – Assurances

Pecatonica complied with this requirement. Pecatonica provided the required certification.

f. Section 1120.120 - Availability of Funds

Pecatonica complied with this requirement. The total estimated project cost was \$16,315,713. Pecatonica would fund the project through a 30-year, nonrecourse, HUD insured loan. The applicants also provided a letter from the Vice President of Capmark Finance, Inc., agreeing to be the exclusive lender through the application phase of the HUD 232 program.

4. Section 1120.310 - Economic Feasibility

a. Section 1120.310(a) - Reasonableness of Financing Arrangements

Pecatonica complied with this requirement. The total estimated project cost was \$16,315,713 and the applicants would fund the project with a 30 year, nonrecourse, HUD insured loan amounting to \$16,315,713. The applicants have attested that all cash and securities were being used prior to borrowing.

b. Section 1120.310(b) – Terms of Debt Financing

Pecatonica complied with this requirement. The total estimated project cost was \$16,315,713. The applicants supplied a notarized statement stating that they would fund the project with a 30-year nonrecourse HUD insured loan.

c. Section 1120.310(d) – Projected Operating Costs

Pecatonica complied with this requirement by supplying the necessary information.

d. Section 1120.310(e) – Total Effect of the Project on Capital Costs

Pecatonica complied with this requirement by supplying the necessary information.

The Board also found that Pecatonica did not comply with several State standards. The unmet standards were the following:

1. Section 1110.1730 – Planning Area Need, which included the following subsections:
 - a. Need Formula Calculation - 77 Ill. Adm. Code
 - b. Service to Planning Area Residents
 - c. Service Demand – Establishment of General Long Term Care
 - d. Service Accessibility

Pecatonica did not comply with the above standards because according to the December 2010 Update to the long term care bed inventory there was an excess of 1 skilled bed in Stephenson County and 6 skilled beds in Winnebago County. Regardless of the bed need in and around Pecatonica, other long term facilities existed within the 30 minute drive radius that had bed availability and those facilities were not operating at the Board mandated occupancy target of 90%. Although the Report also stated that there was sufficient demand for the number of

of beds requested by Pecatonica, there were existing beds in the service area that that could accommodate that demand.

2. Section 1110.1730 (e) – Unnecessary Duplication/Maldistribution

Pecatonica did not comply with the above State standard because there were eleven long term care facilities within the 30 minute drive radius that had bed availability. Those facilities were not operating at the Board mandated occupancy target of 90%. The potential for an unnecessary duplication of services existed because of the excess beds in Stephenson and Winnebago Counties and the underutilization of beds in other facilities.

3. Section 1120.130 - Financial Viability

Pecatonica did not comply with this requirement. Pecatonica provided data for cushion ratio and projected debt service coverage that were not in compliance with the State Standards. It also appeared that the other applicant, Revere Healthcare, did not meet the Days Cash on Hand or Cushion Ratios. Pecatonica provided no documentation to demonstrate that the applicants had an "A" bond rating or that another organization would assume the legal responsibility to meet the debt obligations should the applicants default. As a result of the deficiencies, the applicants did not meet the requirements for a variance.

4. Section 1120.310(c) – Reasonableness of Project cost

Pecatonica did not comply with all the State standards contained in this requirement. Pecatonica's preplanning costs of 3.4% appeared high when compared to the State standard of 1.8%.

The Board staff also conducted a public hearing regarding the Pecatonica project on July 30, 2010. Twenty-six people attended the public hearing. Eleven individuals provided testimony in opposition and five people provided testimony in support of the Pecatonica project. The Board considered the verbatim transcript of that public hearing, as well as, letters of support and opposition for the project that were sent to the Board.

Board Conclusions

The Board reviewed and considered the entire Pecatonica project file, which included, the Board staff report, the Pecatonica application and attachments, the applicants' testimony at the Board meeting, the public hearing testimony and documents, and the opposition and supportive comments submitted to the Board.

In adopting the Board staff report, the Board determined that the applicants'

background, purpose, and alternatives to this project were acceptable. The Board also found that the following criteria were met: Project Services Utilization, Size of Project, Staffing Availability, Performance Requirements, Community Related Functions, Zoning, Assurances, Availability of Funds, Reasonableness of Financing Arrangements, Terms of Debt Financing, Projected Operating Costs, and Total Effect of the Project on Capital Costs.

In its' review, the Board determined that the establishment of Pecatonica's 24-bed, skilled nursing care project, along with its' geriatric assisted living, memory support assisted living, and independent living units, would improve access to skilled nursing care services and create a more comprehensive and orderly health care delivery system in that rural region of Illinois.

Even considering that there were 7 excess beds in this planning area and eleven long term care facilities within 30 minutes from the proposed facility not operating at the prescribed occupancy target of 90%, the Board determined that the 24-bed Pecatonica project outweighed these negative factors because access to health care would be improved by approving the Pecatonica project. A key reason why the Board approved this project was the fact that there were no other long term care facilities in the rural community of Pecatonica.

The Board considered the applicants noncompliance with four out of 12 financial viability ratios. In spite of this fact, the Board determined that this noncompliance did not outweigh the fact that the project would be financed through a 30-year, nonrecourse, HUD insured loan for Pecatonica's \$16,315,713 project.

Another noncompliant standard that the Board considered dealt with Pecatonica's high preplanning costs of \$29,897 or 3.4%. The State standard was 1.8%. The Board determined that this was a minor, preplanning cost aberration, especially when it was compared to the total project cost of \$16,312,713.

In summary, the Board found that, according to the Board staff report, Pecatonica complied with 16 out of the 20 applicable criteria. The Board determined that the four noncompliant criteria, which are discussed above, did not outweigh the positive aspects of this project. Therefore, the Board approved the Pecatonica project and issued a permit because it determined that the Pecatonica project was in substantial conformance with the Board's applicable standards and criteria based upon the above findings and conclusions.

Board Decision

After the Illinois Health Facilities and Services Review Board carefully and thoroughly reviewed the Court's order, the Board adopted this document as the Board's response to the Court. Therefore, the Board respectfully submits this document in response to the Court's order remanding this case back to the Board.

On behalf of the Illinois Health Facilities and Services Review Board


Board Chairperson

9/24/13
Date

Pecatonica Pavilion LLC

September 25, 2013

Mr. Michael Constantino
Project Review Supervisor
Illinois Health Facilities & Services Review Board
535 West Jefferson Street
Springfield, IL 62761-0001

Re: Second Permit Renewal Request for Project #10-031
Pecatonica Pavilion (the "Project")

Dear Mr. Constantino:

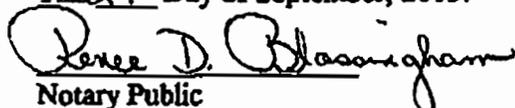
I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1130.740(d)(4), that Pecatonica Pavilion LLC has sufficient and readily accessible funds to complete the above-referenced Project.

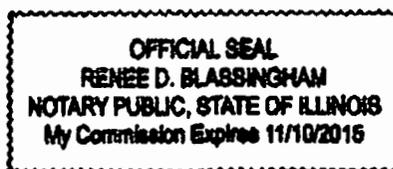
Sincerely,



George Anderson
Chief Executive Officer

Subscribed and Sworn Before Me
This 27th Day of September, 2013.


Notary Public



cc: Edward J. Green, Foley & Lardner, LLP
Grant Shumway, Revere Healthcare Ltd.

September 27, 2013

Via FedEx

Michael Constantino
Supervisor, Project Review Section
Illinois Health Facilities & Services
Review Board
525 West Jefferson Street, 2nd Floor
Springfield, IL 62702-5051

Re: Second Permit Renewal Request for Project #10-031
Pecatonica Pavilion (the "Project")

Dear Michael,

Attached please find a check in the amount of \$1,000 to cover the processing fee for the above Project.

If you require any additional information, please feel free to call me.

Sincerely,



Edward J. Green

EJGR:sc
Encl.

Exhibit C

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321 N. CLARK ST., STE. 2800
CHICAGO, IL 60654
312-832-4500

MB FINANCIAL BANK, NA
Chicago, IL 60601
02-173/710

2271

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PAY TO THE ORDER OF Illinois Department of Public Health

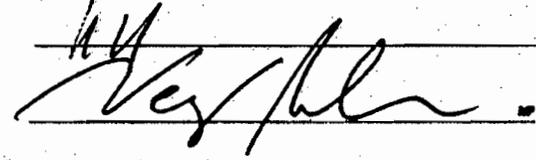
\$ **1,000.00

One Thousand and 00/100

DOLLARS

Illinois Department of Public Health

TWO SIGNATURES REQUIRED IF OVER \$500.00



MEMO

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FOLEY & LARDNER LLP

Illinois Department of Public Health

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