

HEALTH FACILITIES and SERVICES REVIEW BOARD
STATE OF ILLINOIS

In the Matter of:

Pecatonica Pavilion, LLC

Project # 10-031

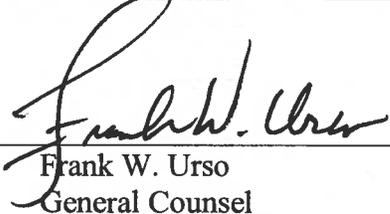
**Illinois Health Facilities and Services Review Board's Response
to the Court's Remand Order**

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

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