Constantino, Mike

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Sent:	Wednesday, July 04, 2012 2:00 PM
To:	Constantino, Mike; Roate, George
Subject:	Opposition to Good Samaritan -- Pontiac, Project No. 12-027
Attachments:	Good Sam Pontiac Opposition Letter Project No 12-027.pdf
Importance:	High

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<<Good Sam Pontiac Opposition Letter Project No 12-027.pdf>>

Mike and George:

We are counsel to Asta Care Center in Pontiac, Illinois; Evenglow Lodge in Pontiac; Flanagan Rehab & Health Care Center in Flanagan, Illinois; Heritage Health - Dwight f/k/a Heritage Manor in Dwight, Illinois; and Meadows Mennonite Home in Chenoa, Illinois (collectively, the "Coalition"). On behalf of the Coalition, we have prepared the attached opposition letter to the Certificate of Need Application filed by The Good Samaritan Group to construct a 122 replacement skilled nursing facility in Pontiac, Illinois, and known as Project No. 12-027.

Please call me with any questions.

Best regards,

Ed

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039822-0101

July 4, 2012

VIA FEDERAL EXPRESS AND EMAIL

Mr. Dale Galassie
Chairman
Illinois Health Facilities & Services Review Board
535 West Jefferson Street
Springfield, Illinois 62701-0001

Re: Opposition to Good Samaritan-Pontiac Certification of Need Application
Project No. 12-027

Dear Mr. Galassie:

We are counsel to Asta Care Center in Pontiac, Illinois; Evenglow Lodge in Pontiac; Flanagan Rehab & Health Care Center in Flanagan, Illinois; Heritage Health - Dwight f/k/a Heritage Manor in Dwight, Illinois; and Meadows Mennonite Home in Chenoa, Illinois (collectively, the "Coalition"). On behalf of the Coalition, we have prepared the below opposition letter to the Certificate of Need Application (the "Application") filed by The Good Samaritan Group ("Good Sam") to construct a 122 replacement skilled nursing facility in Pontiac, Illinois (the "Replacement Facility"), and known as Project No. 12-027 (the "Project").

In short, we are deeply troubled by the fact that this Project has already taken four years to reach to the Illinois Health Facilities & Services Review Board (the "Board") and that, despite the passage of so much time, Good Sam has still not secured a "hard financing commitment" for the Project. We are also very, very concerned by the fact that Good Sam filed a Type A modification less than five weeks after it filed the Application (the "Type A Modification") and increased the size of the Project by more than 13.5% (from 48,797 gsf to 55,413 gsf) and increased the cost of the Project by nearly 41% (from $10,362,817 to $14,590,261). Yet, despite these material size and cost increases, Good Sam did not file any new financial projections (and specifically, any new debt service projections) to support these size and cost increases. Indeed, even in the original Application, Good Sam failed to provide any information relative to the working capital needs of the Replacement Facility and completely ignored that Good Sam's normalized earnings would demonstrate that Good Sam is currently insolvent from a working capital point of view.

And as set forth below, we are beyond skeptical of Good Sam's census level increases as forth in the Application (more than 216% between 2011 and 2016) given the historical underutilization of the current facility (currently operating at a 31% utilization level and never operating above a 67% utilization level since 2007). Quite candidly, we have been unable to uncover any certificate of need application for a replacement facility (of any variety) in the past decade that has relied on such a large increase in census levels over historical census levels.

Given these glaring deficiencies, we would submit that the Application should be declared null and void and that Good Sam should be forced to resubmit a new application when (and if) Good Sam can actually establish that the Replacement Facility is capable of being financed, and that Good Sam can actually repay any such debt. To the extent, the Board elects to allow the Application (and the Type A Modification) to move forward, we would respectfully submit the following, non-exhaustive, list of defects.

1. Financial Viability. As the Board is well aware, the ability to finance projects (and service the financing) has become the number one challenge facing providers since 2008. Any number of applicants have appeared before the Board, professed their ability to finance a project, and then failed in their efforts to actually secure financing or their ability to repay the financing. See, e.g., Addison Rehabilitation & Living Center (Elgin Property), CON Project No. 09-030 ("Due to a crisis in the credit market, Addison has been hampered in its ability to secure financing for this [skilled nursing facility] project. . . [and] respectfully request[s that] the State Board grant Addison a three year renewal of the Project Permit."); Clare Oaks (Bartlett), CON Project No. 05-002 (less than 3 days prior to the Board granting a third permit renewal request to the applicant, the applicant filed for Chapter 11 bankruptcy protection professing its inability to repay and restructure its secured debt obligations); Pickneyville Community Hospital District (Pickneyville), CON Project No. 09-068 ("The permit holders state the recent economic downturn has made the process more challenging that originally anticipated. Both the economy and capital markets have delayed the applicants ability to immediately implement the construction phase of the project. At this time, the permit holders cannot attest to having confirmatory evidence that financing is available to complete the project.").

In the Project at hand, Good Sam has attached a revised "commitment" letter from Busey Bank. See pp. 145-149 of the Type A Modification. Upon closer review, one immediately notes that the Busey Bank "commitment" letter is not a "hard" commitment letter. See Type A Modification at p. 146 ("Pricing for the construction loan and permanent loans will be determined at the time a formal commitment letter is issued.") Rather, it would appear that Good Sam needs to obtain a guaranteed construction loan under the Community Facility Loan Program administered by the United States Department of Agriculture, prior to Busey Bank making any sort of a formal commitment to the Project. While the Community Facility Loan Program is certainly a worthwhile and very useful program, it is highly unlikely that Good Sam will actually secure a construction loan (or a loan guaranty) anywhere close to the $12,570,261 set forth in the "commitment letter." Based upon a cursory review of the webpage for the Community Facility Loan Program and the webpage for United States Senator Dick Durbin, one can see that no entity in Illinois in recent history has ever obtained a loan (or loan guarantee) anywhere close to the size of the construction loan of $12,570,261 set forth in the "commitment letter." See, e.g., City of McLeansboro ($30,000 grant to replace a leaking roof); Indian Grove Drainage District ($2,570,000 loan to construct an additional excess flow pump station); Southern Seven Health Department ($500,000 loan to purchase and modernize a building to house a health clinic); Henderson Water District ($1,000,000 grant and $2,405,000 loan to construct 73 miles of water mains).

The fact that Good Sam has been working on this Project since 2008 speaks volumes about the ability (or inability) of Good Sam to line up any real construction financing for this Project. Indeed, Good Sam goes to great lengths in its Application to say that approval by this Board is the gating issue for this Project to move forward. But, when a party spends the better part of four years working on financing, one can safely assume that "financing" will be the gating issue. Moreover, when one considers that Good Sam increased the costs of this Project by 41% no less than five weeks after it filed the Application, one can safely draw the conclusion that Good Sam is at "square one" in its efforts to finance this Project and that Good Sam has not submitted any paperwork to the United States Department of Agriculture at this point. See Application at p. 141 ("Applicant is also in the application process to obtain certain funding and guarantees from the United States Department of Agriculture.)

It also bears noting that Good Sam's $2,500,000 "equity commitment" from Livingston County – which is also a condition of the Busey Bank "commitment letter" -- expires on December 1, 2012 – a full 9 months before the Project completion date of August 13, 2013. See p. 153 of the Application ("The Livingston County Board . . . also granted a one year extension to the [Economic Development Grant Agreement] until December 1, 2012.)

Moreover, the Busey Bank "commitment letter" makes no mention of any sort of a working capital loan for the Project. Indeed, the Application (and the Type A Modification A) completely ignores the working capital needs of Good Sam and the Project on a go-forward basis. As the Board is undoubtedly aware, since 2008, the real estate market has crashed. As a consequence, real estate lenders no longer lend simply on the perceived value of real estate. Rather, real estate lenders now look to the operational viability of a project and require borrowers to commit both equity and sustaining working capital to a project. In this Project, Good Sam has not allocated a single penny for working capital. This is even more troubling in light of the fact that Good Sam increased the debt on the Project by $4,227,444 between March and April of this year. Nowhere in the Application or in the Type A Modification does Good Sam indicate how it will fund the construction debt and the day to day operations of the Replacement Facility.

Of course, one can see why Good Sam would want to stay clear of its working capital needs. According to Good Sam's consolidated financial statements, Good Sam had $1,709,576 of current assets as of December 31. 2010 and $2,038,776 of current liabilities as of December 31, 2010 – for a negative working capital of $329,200. See Application at p. 189. If one "normalizes" Good Sam's current assets in 2010 – by removing the $833,333 operating grant from Livingston County (which ceased after 2010), Good Sam actually had negative working capital of $1,162,533. See Application at p. 190.

And as set forth below in greater detail, Good Sam's operational assumptions (i.e., an increase in census from 39 to 120 in less than 5 years) are also borderline ridiculous. No lender is going ignore the poor, historical operational performance of a borrower and assume that a healthcare facility is going to increase its census by 216%. Simply put, in today's economic environment, no lender in the United States of America (even when the lender is the United States of America) is going to lend to an entity with such a large negative working capital number and such unrealistic operational assumptions.

2. Service Demand. Pursuant to Section 1125.540(d), an applicant attempting to establish a new long term care facility must submit letters from referral sources that attest to the historical referrals to existing long term care facilities by zip code during the 12 months immediately prior to the submission of an application and the anticipated number of referrals to the new facility within the 24 month period immediately following the completion of the project. In this Project, Good Sam has not submitted a single referral letter in conformance with the rules and regulations. See Application at pp. 246-251. Good Sam's "best" referral source, OSF Saint James-John Albrecht Medical Center, projects that it will refer approximately 60 patients – but only if an undisclosed number of patients from other planning areas would be "amenable to relocating to health service area 4." See Application at p. 248. Good Sam's two other referral sources refuse to make any referral commitments. See Application at pp. 250-252. Thus, Good Sam has not justified a single post-Project completion admission to the Replacement Facility.

Incredibly, and despite the lack of a single conforming referral commitment and despite the lack of any service area demand analysis, Good Sam is projecting that the Replacement Facility will obtain 100% utilization by the year 2016. More specifically, Good Sam is projecting that its census will increase by 216% from its current level of 39 to 120. Good Sam also notes in its Application that "within 90 days of Good Samaritan assuming management [in 2008], the census started to increase." While that may be true, Good Sam's census has still not returned to the levels it enjoyed in 2007 – i.e., the year before Good Sam assumed operations of the facility. See Application at p. 121.

Quite frankly, if Good Sam is allowed to prevail in efforts to establish "need" through the use of unsupported conjecture, there is no need for the Illinois Health Facilities Planning Act. Applicants will be able to simply "fill in the right census number" and the planning process will become a complete farce.

3. Maldistribution. Pursuant to Section 1125.580, an applicant seeking to establish a new long term care facility must establish that the new facility will not result in a maldistribution of services. In its Application, Good Sam simply provides the following conclusory statement on the topic of maldistribution: "The proposed project will not affect maldistribution of general long term beds in the Livingston County Planning Area." Keeping in mind that there is no such thing as the "Livingston County Planning Area" under the rules and that Good Sam provides historical, competitor utilization data in its Application from 2007, Good Sam has failed to provide any evidence, data or support for its statement that maldistribution will not occur in the future – in direct violation of Section 1125.580(c). Indeed, given that Good Sam did not attach a single compliant referral letter, it is clear that Good Sam will be attempting to pull prospective residents from the existing skilled nursing facilities in health planning area 4.

But at this point in time, 7 of the 10 current long term care providers in healthcare planning area 4 are already below the state utilization standards. If Good Sam is successful in its efforts to increase its historical census from 39 to 120, it is safe to assume that every long term care provider in the area (save for the Replacement Facility) will be operating below the state utilization standards.

4. Completion Date. In its Application, Good Sam has listed August 13, 2013 as the completion date for the Project. That is less than 13 months away. Given the fact that Good Sam has yet to even finance the Project, there is no way Good Sam will be able to complete the Project prior to August 13, 2013. Instead, if the Application is approved by the Board, Good Sam will have to then file a permit renewal request – which will undoubtedly ask for a two or three year extension of the completion date. That, of course, will then "tie up" the planning area for years. See, e.g., Addison Rehabilitation & Living Center (Elgin Property), CON Project No. 09-030 ("Due to a crisis in the credit market, Addison has been hampered in its ability to secure financing for this [skilled nursing facility] project. . . [and] respectfully request[s that] the State Board grant Addison a three year renewal of the Project Permit.").

And as noted above, Good Sam's $2,500,000 "equity commitment" from Livingston County expires on December 1, 2012 – a full 9 months before the Project completion date of August 13, 2013. See p. 153 of the Application ("The Livingston County Board . . . also granted a one year extension to the [Economic Development Grant Agreement] until December

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1, 2012.) Thus, at this point, it would appear that Good Sam cannot possibly finance or complete its Project prior to the completion date of August 13, 2013 listed in the Application.

5. Concluding Statement. Given these glaring deficiencies (and many, many others that will be hopefully set forth in the State Agency Report for this Project) we would respectfully submit that the Board, should, at a minimum, issue an intent to deny the Application.

Sincerely,

Edward Green

Edward J. Green