



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET NO: H-02	BOARD MEETING: June 4, 2019	PROJECT NO: 19-001	PROJECT COST:
FACILITY NAME: OAK Ambulatory Surgery Center		CITY: Bourbonnais	Original: \$13,225,750.
TYPE OF PROJECT: Substantive			HSA: IX

PROJECT DESCRIPTION: The Applicants (OAK ASC, LLC, Orthopedic Associates of Kankakee S.C., and OAK Real Estate Ventures, LLC) propose to establish a multi-specialty ASTC in Bourbonnais, Illinois at a cost of \$13,225,750. The expected completion date is April 1, 2022.

EXECUTIVE SUMMARY

PROJECT DESCRIPTION:

- The Applicants (OAK ASC, LLC, Orthopedic Associates of Kankakee S.C., and OAK Real Estate Ventures, LLC) propose to establish a multi-specialty ASTC in Bourbonnais, Illinois at a cost of \$13,225,750. The expected completion date is April 1, 2022.
- The proposed ASTC will be in a 2-story medical office building which will include space for physician offices, Imaging and MRI services, PT/OT and support and public spaces.
- This project was modified on March 13, 2019 by adding Orthopedic Associates of Kankakee S.C., as an Applicant. This was considered a Type A Modification and a Notice of an Opportunity for a Public Hearing was published.
- Additional information was received on May 14, 2019 including a projected income and balance sheet supporting the projected financial ratios and revised Safety Net Impact Statement and projected payor mix.

WHY THE PROJECT IS BEFORE THE STATE BOARD:

- The proposed project is before the State Board because it establishes a health care facility as defined at 20/ILCS 3960/3.

PURPOSE OF THE PROJECT:

- The Applicants stated *“The purpose of the project is twofold: “First, since the establishment of OAK Surgical Institute (“OSI”), demand for services has increased to a point where demand exceeds reasonable capacity at that facility, which has only two operating rooms. Second, due primarily to the expanded scope of orthopedic procedures now appropriate for the ASTC setting, and the space requirements of those procedures, larger operating rooms than those of OSI (constructed in 2004) are needed. The project, as being proposed in this Certificate of Need application, will address both of those problems in a positive fashion, by providing three operating rooms of an appropriate size.”*

PUBLIC HEARING/COMMENT:

- A public hearing was offered, no hearing was requested. No letters of opposition were received by the State Board. Letters of support were received from the following:
 - Representative Lindsey Parkhurst
 - Senator Tori Hutchinson
 - Terry Granger, President, Bishop McNamara Catholic School
 - Giuseppe Gagliardi, MD
 - Dr. Scott Wakely, Superintendent Bradley Bourbonnais Community High School District
 - David Duda, Azzarelli Medical Clinic (Former Director)
 - Mary Kohl, Executive Director Oak Surgical Institute
 - Paul Schore, Village President
 - Barbi Brewer-Watson, Kankakee County Chamber of Commerce

SUMMARY:

- The Applicants state the proposed project is needed to address the inadequacy of the size of Oak Surgical Institute (an existing ASTC in the 17-mile GSA). The Applicants propose to move all of 2018 Oak Surgical Institute workload to the proposed new ASTC. Currently Oak Surgical Institute is operating above target utilization. Oak Surgical Institute is not being discontinued in conjunction with this Application for Permit.
- The Applicants addressed a total of 22 criteria and did not meet the following:

Criterion	Reasons for Non-Compliance
<p>Criterion 1110.235 (c) (6) – Service Accessibility</p>	<p>The State Board asks the Applicants to provide documentation that service access will be improved with the approval of the proposed project by meeting one of the four criteria below:</p> <p><i>A) There are no other IDPH-licensed ASTCs within the identified GSA of the proposed project;</i></p> <p><i>B) The other IDPH-licensed ASTC and hospital surgical/treatment rooms used for those ASTC services proposed by the project within the identified GSA are utilized at or above the utilization level specified in 77 Ill. Adm. Code 1100;</i></p> <p><i>C)The ASTC services or specific types of procedures or operations that are components of an ASTC service are not currently available in the GSA or that existing underutilized services in the GSA have restrictive admission policies;</i></p> <p><i>D)The proposed project is a cooperative venture sponsored by 2 or more persons, at least one of which operates an existing hospital.</i></p> <p>There are existing ASTCs and Hospitals in the 17-mile GSA providing services proposed by this project. All of the ASTCs are at target utilization but the two hospitals are not. The proposed project is not a joint venture with a hospital.</p>
<p>Criterion 1110.235 (c) (7) – Unnecessary Duplication/Maldistribution</p>	<p>There are three ASTCs and two hospitals in the 17-mile GSA. All the ASTCs are at target utilization but the two hospitals are not. Oak Surgical Institute, an existing ASTC in the GSA, will be impacted should this project be approved.</p>
<p>Criterion 1120.120 – Availability of Funds Criterion 1120.140 (a) – Reasonableness of Financing Arrangements</p>	<p>The Applicants are funding a portion of this project with a loan from the <i>Peoples Bank of Kankakee County</i>. However, the bank letter contained conditions that the Board Staff did not accept.</p>

STATE BOARD STAFF REPORT

Project #19-001

OAK ASC, LLC

APPLICATION/ CHRONOLOGY/SUMMARY	
Applicants(s)	OAK ASC, LLC, Orthopedic Associates of Kankakee, S.C. and OAK Real Estate Ventures, LLC
Facility Name	OAK Ambulatory Surgery Center
Location	6700 LaGrange Road, Bourbonnais, Illinois
Permit Holder	OAK ASC, LLC, Orthopedic Associates of Kankakee S.C. and OAK Real Estate Ventures, LLC
Operating Entity/Licensee	OAK ASC, LLC,
Owner of Site	OAK Real Estate Ventures, LLC
Proposed Gross Square Feet	12,625 GSF
Application Received	January 15, 2019
Application Deemed Complete	January 16, 2019
Financial Commitment Date	June 4, 2021
Anticipated Completion Date	April 1, 2022
Review Period Ends	May 1, 2019
Review Period Extended by the State Board Staff?	No
Can the Applicants request a deferral?	Yes

I. Project Description

The Applicants (OAK ASC, LLC, Orthopedic Associates of Kankakee S.C., and OAK Real Estate Ventures, LLC) propose to establish a multi-specialty ASTC in Bourbonnais, Illinois at a cost of \$13,225,750. The expected completion date is April 1, 2022.

II. Summary of Findings

- A. State Board Staff finds the proposed project is **not** in conformance with all relevant provisions of Part 1110.
- B. State Board Staff finds the proposed project is **not** in conformance with all relevant provisions of Part 1120.

III. General Information

The Applicants are OAK ASC, LLC, Orthopedic Associates of Kankakee, and OAK Real Estate Ventures, LLC. The proposed facility will be located at 6700 LaGrange Road, Bourbonnais, Illinois in the HSA IX Health Planning Area. Financial Commitment will occur after project completion. This project is subject to a Part 1110 and Part 1120 review.

The Centers for Medicare and Medicaid defines an Ambulatory surgical center as any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization and in which the expected duration of services would not exceed 24 hours following an admission.

IV. Health Service Area

The proposed ASTC will be in the HSA IX Health Service Area. This service area consists of the Illinois Counties of Grundy, Kankakee, Kendall, and Will with a population of approximately 1,034,000.

V. Project Costs and Sources of Funds

The cost of the project is \$13,225,750. The Applicants are funding this project with cash in the amount of \$1,311,750, a mortgage in the amount of \$6,707,000 and leases with a fair market value of \$5,207,000. The estimated start-up costs and operating deficit are \$400,000.

**TABLE ONE
Project Uses and Sources of Funds**

Uses of Funds	Reviewable	Non-reviewable	Total	% of Total
Preplanning Costs	\$110,000	\$5,000	\$115,000	0.87%
Site Preparation	\$250,000	\$5,000	\$255,000	1.93%
New Construction Contracts	\$4,961,250	\$116,250	\$5,077,500	38.39%
Contingencies	\$245,000	\$7,500	\$252,500	1.91%
Architectural/Engineering Fees	\$400,000	\$9,500	\$409,500	3.10%
Consulting and Other Fees	\$208,550	\$6,450	\$215,000	1.63%
Movable and Other Equipment (not in construction contracts)	\$1,464,700	\$45,300	\$1,510,000	11.42%
Net Interest Expense During Construction Period	\$175,038	\$9,213	\$184,251	1.39%
Fair Market Value of Leased Space or Equipment	\$4,946,650	\$260,350	\$5,207,000	39.37%
Total Uses of Funds	\$12,761,188	\$464,563	\$13,225,751	100.00%
Sources of Funds:				
Cash and Securities	\$1,246,163	\$65,588	\$1,311,751	9.92%
Mortgages	\$6,568,375	\$138,625	\$6,707,000	50.71%
Leases (fair market value)	\$4,946,650	\$260,350	\$5,207,000	39.37%
Total Sources of Funds	\$12,761,188	\$464,563	\$13,225,751	100.00%

V. Background of the Applicants, Purpose of the Project, Safety Net Impact, Alternatives

A) Criterion 1110.110(a) - Background of the Applicant

To address this criterion the applicants must provide a list of all facilities currently owned in the State of Illinois and an attestation documenting that no adverse actions¹ have been taken against any applicant's facility by either Medicare or Medicaid, or any State or Federal regulatory authority during the 3 years prior to the filing of the Application with the Illinois Health Facilities and Services Review Board or a certified listing of adverse action taken against any applicant's facility; and authorization to the State Board and Agency access to information in order to verify any documentation or information submitted in response to the requirements of the application for permit.

1. The Applicants have furnished authorization allowing the State Board and IDPH access to all information to verify information in the application for permit. [Application for Permit page 39]
2. Evidence of ownership of the site has been provided as required at pages 28-29 through a letter of intent for lease from OAK Real Estate Ventures, LLC.
3. The proposed ASTC (OAK ASC, LLC) is a newly formed limited liability company owned by seven physicians. Each of the following seven physicians own 14.2857% of the OAK ASC, LLC:
 - Tornasz Antkowiak, MD
 - Wesley E. Choy, MD
 - Michael J. Corcoran, MD
 - Eddie Jones, Jr., MD
 - Alexander E. Michalow, MD
 - Kermit Muhammad, MD
 - Rajeev D. Puri, MD

Note: These seven physicians own 14.2857% of Valley Investments, LLC, which, in turn, holds a 55% ownership interest OAK Surgical Institute, LLC, an IDPH-licensed ASTC. Oakside Corporation, a subsidiary of Riverside Medical Center owns the remaining 45%. The building housing OAK Surgical Institute, LLC is owned by Riverside Medical Center.

4. A Certificate of Good Standing has been provided for each Applicant as required. An Illinois Certificate of Good Standing is evidence that an Illinois business franchise (i.e. Illinois Corporation, LLC or LP) is in existence, is authorized to transact business in the state of Illinois and complies with all

¹ "Adverse action is defined as a disciplinary action taken by IDPH, CMMS, or any other State or federal agency against a person or entity that owns or operates or owns and operates a licensed or Medicare or Medicaid certified healthcare facility in the State of Illinois. These actions include, but are not limited to, all Type "A" and Type "AA" violations." (77 IAC 1130.140)

state of Illinois business requirements and therefore is in "Good Standing" in the State of Illinois.

5. The Applicants provided evidence that they were in compliance with Executive Order #2006-05 that requires *all State Agencies responsible for regulating or permitting development within Special Flood Hazard Areas shall take all steps within their authority to ensure that such development meets the requirements of this Order. State Agencies engaged in planning programs or programs for the promotion of development shall inform participants in their programs of the existence and location of Special Flood Hazard Areas and of any State or local floodplain requirements in effect in such areas. Such State Agencies shall ensure that proposed development within Special Flood Hazard Areas would meet the requirements of this Order.* [Application for Permit pages 33-34]
6. The proposed location of the facility is in compliance with the Illinois State Agency Historic Resources Preservation Act which requires *all State Agencies in consultation with the Director of Historic Preservation, institute procedures to ensure that State projects consider the preservation and enhancement of both State owned and non-State-owned historic resources (20 ILCS 3420/1).* [Additional Information provided April 8, 2019]

B) Criterion 1110.110(b) – Purpose of the Project

To demonstrate compliance with this criterion the Applicants must document that the project will provide health services that improve the health care or well-being of the market area population to be served. The Applicants shall define the planning area or market area, or other area, per the applicant's definition. The Applicants shall address the purpose of the project, i.e., identify the issues or problems that the project is proposing to address or solve. Information to be provided shall include, but is not limited to, identification of existing problems or issues that need to be addressed, as applicable and appropriate for the project.

According to the Applicants “*It is intended that the proposed project will replace OSI with a larger ambulatory surgical treatment center ("ASTC"), sufficiently sized to address the demand documented in (Attachment 24c3 of Application for Permit). The market area, consistent with (Section 1110.510.d), consists of those portions of Kankakee, Will and Iroquois Counties located within seventeen miles of the proposed ASTC's Bourbonnais site. As documented in (Attachment 24c2 of the Application for Permit), the vast majority of patients to be brought to the proposed replacement ASTC reside within that area. This project, as being proposed, addresses two problems. First, since the establishment of OAK Surgical Institute ("OSI"), demand for services has increased to a point where demand exceeds reasonable capacity at that facility, which has only two operating rooms. Second, due primarily to the expanded scope of orthopedic procedures now appropriate for the ASTC setting, (Attachment 12 of the Application for Permit) and the space requirements of those procedures, larger operating rooms than those of OSI (constructed in 2004) are needed. The project, as being proposed in this Certificate of Need application, will address both of those problems in a positive fashion, by providing three operating rooms of an appropriate size”*

C) Criterion 1110.110 (c) Safety Net Impact

All health care facilities, with the exception of skilled and intermediate long term care facilities licensed under the Nursing Home Care Act, shall provide a safety net impact statement, which shall be filed with an application for a substantive project (see Section 1110.40). Safety net services are the services provided by health care providers or organizations that deliver health care services to persons with barriers to mainstream health care due to lack of insurance, inability to pay, special needs, ethnic or cultural characteristics, or geographic isolation. [20 ILCS 3960/5.4]

This is a substantive project. A safety net impact statement is required and has been provided in additional information.

According to the Applicants: “Due to the nature of an ASTC, such facilities are not providers of safety net services, with all procedures scheduled on an elective basis. The applicants, however, are directly affiliated with OAK Orthopedics ("OAK"), and physicians investing in this project hold positions of leadership responsibility with the practice. OAK has a 50+ year history of serving the residents of Kankakee County, and a long history of community involvement, including philanthropic support of a wide variety of programs. Examples of OAK's community involvement is the practice's voluntary staffing of hundreds of area school athletic events, the provision of approximately 450 annual high school sports-related physicals (with the proceeds donated to area schools), and participation in and sponsorship of community-based programs, including health fairs. In addition, in recent years, OAK has provided, on an annual basis, approximately \$500,000 in uncompensated/charity care and write-offs to patients unable to afford necessary services.”

The payor mix of the proposed ASTC is anticipated to be very similar to that of OAK Orthopedics, with the anticipated payor mix of the ASTC being:

- Medicare 34%
- Private Insurance 60%
- Medicaid 5%
- Other 1%

D) Criterion 1110.110 (d) - Alternatives to the Proposed Project

To demonstrate compliance with this criterion the Applicants must document that the proposed project is the most effective or least costly alternative for meeting the health care needs of the population to be served by the project.

The Applicants considered two alternatives to the proposed project.

The first alternative was to maintain the status quo and do nothing. This alternative was rejected because the existing surgical center’s operating rooms are undersized to meet the projected procedures to be performed.

The second alternative considered was a joint venture with AMITA Health St. Mary’s Hospital in Kankakee. According to the Applicants AMITA Health elected not to participate interest in a joint venture.

In additional information (dated March 13, 2019) the Applicants stated that the addition of a third operating room to OAK Surgical Institute was not considered as a reasonable alternative for a variety of reasons, including the age of the building, the size of existing ORs, and the building's system/utilities limitations.

VI. Project Scope and Size, Utilization and Unfinished/Shell Space

A) Criterion 1110.120 (a) - Size of Project

To demonstrate compliance with this criterion the Applicants must document that that the physical space proposed for the project is necessary and appropriate. The proposed square footage cannot deviate from the square footage range indicated in Appendix B, or exceed the square footage standard in Appendix B if the standard is a single number, unless square footage can be justified by documenting, as described in subsection (a)(2).

The Applicant is proposing three operating rooms and twelve recovery stations in a total of 12,625 GSF of reviewable space for the surgery center.

The State Board Standard for operating rooms is 2,750 GSF per room. The State Board does not have a gross square footage standard for recovery rooms in an ASTC. The Applicants are proposing three operating rooms and twelve recovery rooms for a total of 12,250 GSF of clinical space. As seen by the Table below the Applicants are within the gross square footage standards established by the State Board. The Applicants have successfully addressed this criterion.

TABLE TWO				
Cost/Space Requirements				
Department	Cost	Proposed GSF	State Standard GSF	Difference
Reviewable				
ASTC/Surgery	\$ 11,485,069	8,200	8,250	-50
ASTC/Recovery	\$1,276,119	4,050	No Standard	
Total Reviewable	\$12,761,188	12,250		
Non-reviewable	\$464,563	365		
Total	\$13,225,750	12,625		

B) Criterion 1110.120(b) - Project Services Utilization

To demonstrate compliance with this criterion the Applicants must document that, by the end of the second year of operation, the annual utilization of the clinical service areas or equipment shall meet or exceed the utilization standards specified in Appendix B. The number of years projected shall not exceed the number of historical years documented. All Diagnostic and Treatment utilization numbers are the minimums per unit for establishing more than one unit, except where noted in 77 Ill. Adm. Code 1100. [Part 1110 Appendix B]

As documented at 77 ILAC 1110.235 (c) (3) and Table Three and Table Four below the Applicants are projecting 5,445 hours of surgery (4,450 referrals) by the second year after project completion. Should those physician referrals and the subsequent number of hours

materialize the Applicants will be at the target occupancy of 1,500 hours per room by April 2024 the second year after project completion.

C) Criterion 1110.120 (e) - Assurances

To document compliance with this criterion the Applicants representative who signs the CON application shall submit a signed and dated statement attesting to the applicant's understanding that, by the end of the second year of operation after project completion, the Applicants will meet or exceed the utilization standards specified in Appendix B.

The Applicant provided the necessary assurance as required at page 45 of the Application for Permit.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH CRITERION SIZE OF THE PROJECT, PROJECTED UTILIZATION, ASSURANCES (77 ILAC 1110.120 (a) (b) (e))

VII. Non-Hospital Based Ambulatory Surgical Treatment Center Services

A) Criterion 1110.235 (c)(2) - Geographic Service Area Need

The applicant shall document that the ASTC services and the number of surgical/treatment rooms to be established, added or expanded are necessary to serve the planning area's population, based on the following:

A) 77 Ill. Adm. Code 1100 (Formula Calculation)

As stated in 77 Ill. Adm. Code 1100, no formula need determination for the number of ASTCs and the number of surgical/treatment rooms in a geographic service area has been established. Need shall be established pursuant to the applicable review criteria of this Part.

Not Applicable

B) Service to Geographic Service Area Residents

The applicant shall document that the primary purpose of the project will be to provide necessary health care to the residents of the geographic service area (GSA) in which the proposed project will be physically located.

i) *The applicant shall provide a list of zip code areas (in total or in part) that comprise the GSA. The GSA is the area consisting of all zip code areas that are located within the established radii outlined in 77 Ill. Adm. Code 1100.510(d) of the project's site.*

ii) *The applicant shall provide patient origin information by zip code for all admissions for the last 12-month period, verifying that at least 50% of admissions were residents of the GSA. Patient origin information shall be based upon the patient's legal residence (other than a health care facility) for the last 6 months immediately prior to admission.*

The Applicants identified 20 zip codes within the 17-mile GSA with a population of 155,967 residents. Approximately 67% (4,490 patients) of the patients came from within this 17-mile GSA during year ending September 2018. [Application for Permit pages 46-49 and additional information dated March 13, 2019].

**TABLE THREE
17-mile Zip Code**

Number (1)	Zip Code	City	County	Population	Patients
1	60910	Aroma Park	Kankakee	510	0
2	60401	Beecher	Will	8,097	99
3	60913	Bonfield	Kankakee	1,587	79
4	60914	Bourbonnais	Kankakee	29,268	1,097
5	60915	Bradley	Kankakee	10,156	367
6	60922	Chebanese	Kankakee/Iroquois	2,119	99
7	60935	Essex	Kankakee	1,310	0
8	60940	Grant Park	Kankakee	3,353	122
9	60941	Hershers	Kankakee	2,051	69
10	60944	Hopkins Park	Kankakee	1	0
11	60901	Kankakee	Kankakee	35,784	1,077
12	60442	Manhattan	Will	10,806	0
13	60950	Manteno	Kankakee	11,981	484
14	60954	Momence	Kankakee	6,424	201
15	60449	Monee	Will	9,248	75
16	60956	Papineau	Iroquois	173	0
17	60468	Peotone	Will	6,319	143
18	60964	Saint Anne	Kankakee	4,870	367
19	60969	Union Hill	Kankakee	46	0
20	60481	Wilmington	Will	11,864	211
			Total	155,967	4490

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION GEOGRAPHIC SERVICE AREA NEED (77 ILAC 1110.235 (c) (2))

B) Criterion 1110.235 (c) (3) - Service Demand – Establishment of an ASTC Facility or Additional ASTC Service

The applicant shall document that the proposed project is necessary to accommodate the service demand experienced annually by the applicant, over the latest 2-year period, as evidenced by historical and projected referrals.

The Applicants are projecting a total of 4,450 referrals to the proposed facility within 2-years after project completion. The Applicants documented historical referrals of 6,082 in 2017 and 6,682 in 2018. Patient origin of the 2018 referrals is summarized in Table Three above. Approximately 67% of the 2018 historical referrals came from within the 17-mile GSA in 2018. Based upon the information provided there is enough demand for the proposed project.

**TABLE FOUR
Historical Referrals**

Physician	Specialty	Proposed Referrals	2017 Historical Referrals				2018 Historical Referrals			
			Total	OSI ⁽¹⁾	St. Mary	Riverside	Total	OSI	St Mary	Riverside
Choy	Orthopedics	42	77	40	5	32	69	39	12	18
Corcoran	Orthopedics	360	466	304	51	111	544	403	83	58
Jones	Orthopedics	50	105	40	11	54	95	48	20	27
Muhammad	Orthopedics	437	592	357	28	207	694	427	73	194
Michalow	Orthopedics	105	119	58	23	38	167	66	37	64
Puri	Orthopedics	84	124	23	41	60	157	20	65	72
Sullivan	Orthopedics	12	2	1	0	1	19	1	9	9
Antkowiak	Orthopedics	210	297	241	3	53	320	242	29	49
Subtotal		1,300	1,782	1,064	162	556	2,065	1,246	328	491
Friedrich	Podiatric	150	138	69	25	44	197	110	37	50
Subtotal		150	138	69	25	44	197	110	37	50
Hasan	Pain	885	1,249	6	46	1,197	1,304	1	11	1,292
Santiago	Pain	2,115	2,893	2,239	326	328	3,115	2,444	375	296
Subtotal		3,000	4,142	2,245	372	1,525	4,419	2,445	386	1,588
Grand Total		4,450	6,062	3,378	559	2,125	6,681	3,801	751	2,129

1. OSI – Oak Surgical Institute

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION SERVICE DEMAND (77 ILAC 1110.235 (c) (3))

C) Criterion 1110.235 (c) (5) - Treatment Room Need Assessment

A) The applicant shall document that the proposed number of surgical/treatment rooms for each ASTC service is necessary to service the projected patient volume. The number of rooms shall be justified based upon an annual minimum utilization of 1,500 hours of use per room, as established in 77 Ill. Adm. Code 1100.

B) For each ASTC service, the applicant shall provide the number of patient treatments/sessions, the average time (including setup and cleanup time) per patient treatment/session, and the methodology used to establish the average time per patient treatment/session (e.g., experienced historical caseload data, industry norms or special studies).

The Applicants are proposing three operating rooms at the proposed surgery center. The Applicants are estimating 5,445 hours by the second year after project completion. If those hours materialize the Applicants can justify the number of rooms (three) being proposed at the target occupancy [5,445 hours ÷ 1,500 hours = 3.63 rooms]

**TABLE FIVE
Projected Utilization**

Specialty	Procedures	Hours	Total Hours
Obstetric	1,300	2.5	3,250
Podiatric	150	2.3	345
Pain	3,000	.61	1,850
Total	4,450		5,445

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION TREATMENT ROOM NEED ASSESSMENT (77 ILAC 1110.235 (c) (5))

D) Criterion 1110.235 (c) (6) - Service Accessibility

The proposed ASTC services being established or added are necessary to improve access for residents of the GSA. The applicant shall document that at least one of the following conditions exists in the GSA:

A) There are no other IDPH-licensed ASTCs within the identified GSA of the proposed project;

B) The other IDPH-licensed ASTC and hospital surgical/treatment rooms used for those ASTC services proposed by the project within the identified GSA are utilized at or above the utilization level specified in 77 Ill. Adm. Code 1100;

C) The ASTC services or specific types of procedures or operations that are components of an ASTC service are not currently available in the GSA or that existing underutilized services in the GSA have restrictive admission policies;

0) D) The proposed project is a cooperative venture sponsored by 2 or more persons, at least one of which operates an existing hospital. Documentation shall provide evidence that the existing hospital is currently providing outpatient services to the population of the subject GSA;

ii) The existing hospital has sufficient historical workload to justify the number of surgical/treatment rooms at the existing hospital and at the proposed ASTC, based upon the treatment room utilization standard specified in 77 Ill. Adm. Code 1100;

- iii) The existing hospital agrees not to increase its surgical/treatment room capacity until the proposed project's surgical/treatment rooms are operating at or above the utilization rate specified in 77 Ill. Adm. Code 1100 for a period of at least 12 consecutive months; and*
- iv) The proposed charges for comparable procedures at the ASTC will be lower than those of the existing hospital.*

- A) There are three ASTCs and two hospitals in the 17-mile GSA.
- B) One (Oak Surgical Institute) of the three ASTCs in the 17-mile GSA provides all the procedures being proposed for this project as well as the two hospitals. Riverside Ambulatory Surgery Center does not provide orthopedic services currently.
- C) The services being proposed by this project are available in the 17-mile GSA.
- D) The proposed project is not a cooperative venture with a hospital.

As stated above the Applicants have not met one of the four criteria as required.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION SERVICE ACCESSIBILITY (77 ILAC 1110.235 (c) (6))

E) Criterion 1110.235 (c) (–) - Unnecessary Duplication/Maldistribution

A) The applicant shall document that the project will not result in an unnecessary duplication. The applicant shall provide the following information for the proposed GSA zip code areas identified in subsection (c)(2)(B) the total population of the GSA (based upon the most recent population numbers available for the State of Illinois); and

ii) the names and locations of all existing or approved health care facilities located within the GSA that provide the ASTC services that are proposed by the project.

B) The applicant shall document that the project will not result in maldistribution of services. Maldistribution exists when the GSA has an excess supply of facilities and ASTC services characterized by such factors as, but not limited to:

i) a ratio of surgical/treatment rooms to population that exceeds one and one-half times the State average;

ii) historical utilization (for the latest 12-month period prior to submission of the application) for existing surgical/treatment rooms for the ASTC services proposed by the project that are below the utilization standard specified in 77 Ill. Adm. Code 1100; or

0) iii) insufficient population to provide the volume or caseload necessary to utilize the surgical/treatment rooms proposed by the project at or above utilization standards specified in 77 Ill. Adm. Code The applicant shall document that, within 24 months after project completion, the proposed project will not lower the utilization of other area providers below the utilization standards specified in 77 Ill. Adm. Code 1100; and

ii) will not lower, to a further extent, the utilization of other GSA facilities that are currently (during the latest 12-month period) operating below the utilization standards.

The population within the 17-mile GSA is 155,967. The number of operating/procedure rooms is 31 rooms. The ratio of operating/procedure rooms per thousand population in this 17-mile GSA is .1987 per thousand. The ratio of operating/procedure rooms per 1,000 population in the State of Illinois is .214 [2,778 operating/procedure rooms ÷ (12,978,800/1,000 or 12,978.8)]. To have a surplus of operating/procedure rooms within the 17-mile GSA the ratio of rooms to population within the GSA must be 1.5 times the State of Illinois ratio or .3224 operating/procedure rooms per thousand population. There is not a surplus of operating/procedure rooms within this GSA based upon this ratio.

There are three ASTCs and two hospitals within the 17-mile GSA. All the ASTCs are at target occupancy. The two hospitals are not. [See Table below]

TABLE SIX Existing ASTCs and Hospitals in the 17-mile GSA							
Name	City	Miles	Operating Rooms	Procedure Rooms	Total Hours	Number of Rooms Justified	Met Standard
<u>ASTC</u>							
Oak Surgical Institute	Bradley	2.9	2		4,785	4	Yes
The Center for Digestive Health	Bourbonnais	1		2	4,713	4	Yes
Riverside Ambulatory Surgery Center	Bourbonnais	1.3	2		1,978	2	Yes
<u>Hospitals</u>							
Riverside Medical Center	Kankakee	4.8	13	3	20,424	14	No
Presence Sain' Mary's Hospital	Kankakee	5.5	9		6,424	5	No

The proposed ASTC will impact Oak Surgical Institute as the Applicants are proposing to move 1,246 orthopedic procedures, 110 podiatric procedures and 2,445 pain management procedures from Oak Surgical Institute.

TABLE SEVEN
Oak Surgical Institute

Cases	Time	Total Hours
1,246	2.5	3,115
110	2.35	258.5
2,445	0.61	1,507.75
		4,881.25

As stated the proposed project will impact another facility in the area (Oak Surgical Institute). The proposed project will result in an unnecessary duplication of service.

Staff Note: It is the intent of the Applicants to discontinue Oak Surgical Institute shortly before the proposed project was licensed, if it is approved.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION UNNECESSARY DUPLICATION/MALDISTRIBUTION (77 ILAC 1110.235(c) (7))

F) Criterion 1110.235 (c) (8) - Staffing

A) Staffing Availability

The applicant shall document that relevant clinical and professional staffing needs for the proposed project were considered and that the staffing requirements of licensure and The Joint Commission or other nationally recognized accrediting bodies can be met. In addition, the applicant shall document that necessary staffing

is available by providing letters of interest from prospective staff members, completed applications for employment, or a narrative explanation of how the proposed staffing will be achieved.

B) Medical Director

It is recommended that the procedures to be performed for each ASTC service are under the direction of a physician who is board certified or board eligible by the appropriate professional standards organization or entity that credentials or certifies the health care worker for competency in that category of service.

The Medical Director of the proposed ASTC will be Kermit S. Muhammad, MD.

The Applicants stated regarding staffing availability:

“First, the applicants, through an affiliated entity, currently operate OAK Surgical Institute, a similarly-sized ASTC. Upon the opening of the proposed ASTC, the patient load of OAK Surgical Institute will transition to the proposed ASTC over a short “ramp-up” period, and it is anticipated that the vast majority of OAK Surgical Institute’s staff will transition to the proposed ASTC, also. Second, OAK Surgical Institute has never experienced unusual difficulties in attracting qualified staff, and the applicants are confident that the same will occur with the proposed ASTC. Should, however, additional or replacement staff need to be recruited, word of mouth and advertisements in local newspapers will be the primary tools used.”

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION STAFFING (77 ILAC 1110.235 (c) (8))

G) Criterion 1110.235 (c) (9) - Charge Commitment

In order to meet the objectives of the Act, which are to improve the financial ability of the public to obtain necessary health services; and to establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public; and cost containment and support for safety net services must continue to be central tenets of the Certificate of Need process [20 ILCS 3960/2], the applicant shall submit the following:

A) a statement of all charges, except for any professional fee (physician charge); and

B) a commitment that these charges will not increase, at a minimum, for the first 2 years of operation unless a permit is first obtained pursuant to 77 Ill. Adm. Code 1130.310(a).

The Applicants provided the required attestation that the charges will not increase at a minimum for the first 2 years of operation unless a permit is first obtained.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION CHARGE COMMITMENT (77 ILAC 1110.235 (c) (9))

H) Criterion 1110.235 (c) (10) - Assurances

A) The applicant shall attest that a peer review program exists or will be implemented that evaluates whether patient outcomes are consistent with quality standards established by professional organizations for the ASTC services, and if outcomes do not meet or exceed those standards, that a quality improvement plan will be initiated.

B) The applicant shall document that, in the second year of operation after the project completion date, the annual utilization of the surgical/treatment rooms will meet or exceed the utilization standard specified in 77 Ill. Adm. Code 1100. Documentation shall include, but not be limited to, historical utilization trends, population growth, expansion of professional staff or programs (demonstrated by

signed contracts with additional physicians) and the provision of new procedures that would increase utilization.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IN CONFORMANCE WITH CRITERION ASSURANCES (77 ILAC 1110.235 (c) (10))

VIII. Financial Viability and Economic Feasibility

A) Criterion 1120.120 – Availability of Funds

The Board asks the Applicants to provide evidence that financial resources are available to fund the proposed project. The proposed project is being funded with cash in the amount of \$1,311,751, leases with an FMV of \$6,707,00 and debt financing of \$5,207,000. OAK ASC, LLC is a new entity. A letter of intent to lease the property from OAK Real Estate Ventures, LLC was provided as required at page 29 of the Application for Permit. Evidence of that debt financing (mortgage) will be forthcoming should this project be approved was provided, but with conditions not acceptable to the Board Staff. (Additional Information provided by the Applicants)

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION AVAILABILITY OF FUNDS (77 ILAC 1120.120)

B) Criterion 1120.130 – Financial Viability

The Applicant does not qualify for the financial waiver.

Financial Viability Waiver

The applicant is NOT required to submit financial viability ratios if:

- 1) *all project capital expenditures, including capital expended through a lease, are completely funded through internal resources (cash, securities or received pledges); or*
HFSRB NOTE: Documentation of internal resources availability shall be available as of the date the application is deemed complete.
- 2) *the applicant's current debt financing or projected debt financing is insured or anticipated to be insured by Municipal Bond Insurance Association Inc. (MBIA) or its equivalent; or*
HFSRB NOTE: MBIA Inc is a holding company whose subsidiaries provide financial guarantee insurance for municipal bonds and structured financial projects. MBIA coverage is used to promote credit enhancement as MBIA would pay the debt (both principal and interest) in case of the bond issuer's default.
- 3) *the applicant provides a third-party surety bond or performance bond letter of credit from an A rated guarantor (insurance company, bank or investing firm) guaranteeing project completion within the approved financial and project criteria.*

OAK ASC, LLC is a new entity. No historical information is available. The Applicants provided a projected income statement and balance sheet for the second year after project. The Applicants have met the financial standards of the State Board.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION FINANCIAL VIABILITY (77 ILAC 1120.130)

A) Criterion 1130.140 (a) – Reasonableness of Financing Arrangements

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

- 1) *That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or*
- 2) *That the total estimated project costs and related costs will be funded in total or in part by borrowing because:*

- A) A portion or all the cash and equivalents must be retained in the balance sheet asset accounts to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
- B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

The Applicants stated “It is my belief that the terms and conditions of the proposed debt financing associated with the establishment of OAK Ambulatory Surgery Center are reasonable, and at the present time, represent the lowest net cost available to the applicant. The applicant is a newly-formed entity, without liquid assets that could be used to fund the project. Further, it is my belief that the leasing of space for the ASTC is less costly than the construction of a freestanding building. Last, it is not currently anticipated that equipment will be leased in conjunction with the proposed project.”

The Applicants also provided a letter from the Bank stated the following:

“This letter confirms the commitment of Peoples Bank of Kankakee County that should the Illinois Health Facilities and Services Board approve Project #19-001 (12,525 GSF ambulatory surgical center at a cost of \$13,225,750) it will loan OAK ASC, LLC \$6,707,000 in accordance with the terms and conditions documented in the Application for Permit. Said commitment is subject to customary lender due diligence on the proposed property and is conditioned on there being no material change to the financial condition of the Borrower or Guarantors.” [See Additional information provided by March 14, 2019]

Board Staff did not accept the letter from Peoples Bank of Kankakee County because of the condition underlined above. Board Staff believes a letter from a bank should contain a unqualified statement that the loan will be made should the project be approved by the State Board.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT NOT IN CONFORMANCE WITH CRITERION REASONABLENESS OF FINANCING ARRANGEMENTS (77 ILAC 1120.140 (a))

B) Criterion 1120.140 (b) - Terms of Debt Financing

Applicants with projects involving debt financing shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

- 1) *That the selected form of debt financing for the project will be at the lowest net cost available;*
- 2) *That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;*
- 3) *That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.*

1. Lease

The State Board considers operating leases debt financing. The Applicant provided a letter of intent to lease the property with the proposed terms. The initial term is for 10 years

with a five-year renewal option. The base rent is \$43,991 per month and will increase 2% annually. [Application for Permit page 29]

2. Loan

The Applicants provided the terms of the loan as documented below with the caveat that the letter was not a commitment to loan.

**TABLE EIGHT
Terms of Loan Proposal⁽¹⁾**

Borrower:	Orthopedic Associates of Kankakee, S.C. or related entity
Guarantor:	All 20% or greater owners of the property
Maximum Loan:	\$7,000,000
Collateral:	First lien mortgage on real estate and pledge of all equipment
Interest Rate:	4.75%
Term:	20 years
Loan Fee:	\$1,000 to Bank plus all 3rd party expenses

1. Peoples Bank of Kankakee

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION TERMS OF DEBT FINANCING (77 ILAC 1120.140 (b))

C) Criterion 1120.140 (c) – Reasonableness of Project Costs

The applicant shall document that the estimated project costs are reasonable.

Preplanning Costs are \$110,000 and are 1.65% of new construction and contingencies and movable and other equipment. This appears reasonable when compared to the State Board Standard of 1.8% or \$120,077.

Site Preparation costs are \$250,000 and are 4.8% of the new construction and contingency. This appears reasonable when compared to the State Board Standard of 5.0% or \$260,313.

New Construction and Contingency Costs are \$5,206,250 or \$425 per GSF. This appears reasonable when compared to the State Board Standard of \$427.34 GSF or \$5,234,915.

**TABLE NINE
New Construction and Contingency Costs**

2015	2016	2017	2018	2019	2020	2021
\$357.89	\$368.63	\$379.69	\$391.08	\$402.81	\$414.89	\$427.34

1. Base year is 2015 and inflated by 3% annually

Contingency costs are \$245,00 or 4.94% of new construction costs. This is reasonable when compared to the State Board Standard of 10% or \$496,315.

Architectural and Engineering Fees are \$400,000 or 7.68% or new construction and contingency costs. This appears reasonable when compared to the Board Standard of 8.37% or \$435,763.

Consulting and Other Fees are \$208,550. The State Board does not have a standard for these costs.

Movable or Other Equipment costs not in construction contracts are \$1,464,700 or \$488,233 per operating room. This appears reasonable when compared to the State Board Standard of \$519,570. Equipment itemization was provided at pages 36-44 of the Application for Permit.

**TABLE TEN
Movable or Other Equipment Costs**

2008	2009	2010	2011	2012	2013	2014
\$353,802.00	\$364,416.06	\$375,348.54	\$386,609.00	\$398,207.27	\$410,153.49	\$422,458.09
2015	2016	2017	2018	2019	2020	2021
\$435,131.83	\$448,185.79	\$461,631.36	\$475,480.30	\$489,744.71	\$504,437.05	\$519,570.16

1. Base year CY 2008 and inflated by 3% per year. [Part 1120 Appendix A]

Net Interest Expense During Construction is \$175,038. The State Board does not have a standard for these costs.

Fair Market Value of Leased Space is \$4,946,650. The State Board does not have a standard for these costs.

Itemization of these costs have been provided at pages 36-37 of the Application for Permit.

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION REASONABLENESS OF PROJECT COSTS (77 ILAC 1120.140 (c))

D) Criterion 1120.140 (d) – Direct Operating Costs

The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct costs mean the fully allocated costs of salaries, benefits and supplies for the service.

The Applicant is projecting the following for 4,450 procedures by the second year after project completion. The Applicant has met this criterion.

Salary and Benefits	\$1,659,700
Medical Supplies	\$2,110,635
Total	\$3,770,335
<u>Annual Operating Cost Per Procedure</u>	\$847.27

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION DIRECT OPERATING COSTS (77 ILAC 1120.140 (d))

E) Criterion 1120.140 (e) – Total Effect of the Project on Capital Costs

The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

The annual capital cost per procedure is \$451.41. The Applicant has met this criterion.

Interest Costs	\$67,830
Depreciation Costs	\$454,849
Capital Costs	\$522,679
<u>Capital Cost per Procedure</u>	\$117.46

STATE BOARD STAFF FINDS THE PROPOSED PROJECT IS IN CONFORMANCE WITH CRITERION TOTAL EFFECT OF THE PROJECT ON CAPITAL COSTS (77 ILAC 1120.140 (e))

19-001 OAK Ambulatory Surgery Center - Bourbonnais

