

September 7, 2011

Virginia:

AT A SPECIAL CALLED MEETING of the Nelson County Board of Supervisors at 1:00 p.m. in the Board of Supervisors Room located on the second floor of the Nelson County Courthouse in Lovingston, Virginia.

Present:

Allen M. Hale, East District Supervisor
Constance Brennan, Central District Supervisor
Thomas H. Bruguere, Jr. West District Supervisor - Vice Chair
Joe Dan Johnson, South District Supervisor – Chair
Thomas D. Harvey, North District Supervisor
Stephen A. Carter, County Administrator
Candice W. McGarry, Administrative Assistant/Deputy Clerk
Phil Payne, IV, County Attorney

Absent: None

I. Call to Order

Mr. Johnson called the meeting to order at 1:04 pm with all Supervisors present to establish a quorum. He then asked for a moment of silence, followed by Mr. Bruguere leading the Pledge of Allegiance.

II. Consider (the) Certificate of Public Need Application to the Virginia Department of Health of Albemarle Health Care Center, LLC (Medical Facilities of Virginia, Limited Partnership and Medical Facilities of America, Inc., Member Entities) As Regards (the) Lovingston Health & Rehabilitation Center in Lovingston, Virginia

Mr. Johnson introduced the agenda item and deferred to Mr. Carter. Mr. Carter reported that he and Mr. Payne had followed up with the MFA CEO and VP of Marketing and Mr. Payne has researched the issue and has conferred with VDH on the matter. He stated that from the staff's perspective, the Board could move ahead with its petition to the state to be a participant in a fact finding hearing and be made a party to contest the COPN, but he thought that even if the County was initially successful, that ultimately they (MFA) would be able to move the existing beds to Albemarle and reapply for another COPN. He reiterated that he did not think the County could ultimately stop them and reiterated that VDH has recommended that the current application be approved by the Commissioner.

He then reported that MFA has said that they will be moving and have offered a compromise where they would convey the building to the County plus \$10,000. He then advised that the Board's considerations were to continue or withdraw its petition and to consider the two agreements submitted by MFA for the Boards consideration regarding conveying the property and the County's agreement to drop its petition.

Mr. Payne then addressed the Board and noted that he had proceeded based on the Board's previous direction which gave him authorization to negotiate MFA's assistance with the development of the facility. He noted that he had spoken with the CEO and any additional assistance was rejected by him outright; thus the additional \$10,000 offered was a surprise. He added that they did offer the services of

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their Marketing Developer for any assistance he could provide. He noted that now it was a matter of passing a resolution, executing the agreements and sending in the Board's withdrawal of its petition to VDH and then beginning the process of what to do with the building.

In response to questions, Mr. Payne noted that the timeframe for closure of the facility was three years; which was what was in their application and was told to him by the MFA CEO.

Mr. Johnson inquired as to any follow up done with the Fluvanna County Administrator and Mr. Payne indicated he had not spoken with him. He then related that Mr. Johnson had mentioned that they (Fluvanna) were interested in pursuing the sixty (60) beds. He stated that he had checked his notes on this and confirmed that the recommendation made was a joint recommendation and he also contacted VDH who confirmed that they amended both MFA's and Fluvanna's applications to be thirty (30) beds each. He then reported that he had contacted Envoy of Fluvanna and they stated that their approach was that in the event that Nelson County was made a party to the proceedings and stymied the efforts to move the sixty (60) beds, then their fallback position would be to go after all of the sixty (60) beds. He added that this was all explained by them to the Fluvanna County Administrator and the Board of Supervisors. He stated that the problem with this was that the applications called for thirty (30) beds each and as a technical matter it would be unlikely that VDH would amend this after they have gone through the process.

Mr. Johnson inquired as to what would happen if Albemarle were to refuse their land use application and Mr. Payne noted that it is the facility that would be approved and they would have some leeway with their location. Mr. Johnson suggested thought that this might create some difficulty for them. He then noted that he would have been happy to help them find land in their same market area.

Mr. Payne supposed that the need to be near the hospitals was very important and was the driver for the new facility's location. He added that in the scheme of things, a sixty (60) bed facility was marginal now at best. He added that the projections were that there will not be an increase in nursing home patients and the state's COPN analyst indicated that they have never denied a transfer of beds within a planning district region.

Mr. Johnson stated that the issue was that they were taking away Medicare/Medicaid beds that could have been sold to someone else.

In response to questions, Mr. Carter noted that the property's assessed value was approximately \$2.5 Million and contained 8.0 acres. Mr. Carter then noted that he had spoken to the Fluvanna County Administrator and he initially said that they supported whatever Envoy wanted to do. He noted that he then called back and confirmed the strategy as described by Envoy, that Mr. Payne had related previously.

Mr. Bruguiere suggested that the County put the building on the market for sale; noting that he did not want to keep the building for the County's use. He added he would like to see it be a similar facility and Mr. Hale agreed.

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Mr. Carter then distributed the draft agreements as proposed by MFA and Mr. Hale noted that there was nothing in the draft donation agreement that officially described the property and suggested that it should contain deed book references etc.

Ms. Brennan questioned the meaning of the legal term defenses of forum non conveniens and Mr. Payne indicated that it meant it was inconvenient to litigate this because of some factor and is usually limited to federal courts.

Mr. Hale then questioned Paragraph 8 concerning assignment of the agreement and Mr. Payne stated that if they were to assign the agreement to a non-public entity then the tax deduction would be lost or conversely, there could be a better tax benefit if they assign it to a subsidiary company. Mr. Hale then asked if Paragraph 9 contradicted what was just said, in not allowing assignment to third party beneficiaries and Mr. Payne noted that a subsidiary would still be considered the same party because it is within the parent entity and would not constitute a third party.

Mr. Harvey agreed that the agreement should have the deed/plat descriptions included and he questioned what parts of the inside were to be conveyed. Mr. Carter stated that anything not attached would not be included and otherwise the building would come over intact. Mr. Johnson suggested that the agreement include a statement that the building will be maintained and members indicated there was no need to quibble over that and it would likely be maintained for the next three years. Mr. Bruguere inquired as to what would happen if a buyer presented themselves before the end of the three years and it was noted that they would have to have to go through the County otherwise MFA might lose their tax write off. Mr. Payne noted that he thought that the Board would think it was great if someone wanted to purchase the building and they could add language relative to its conveyance upon the closing of the facility as a nursing home. He added that MFA had put the documents together quickly and they could be fine tuned.

Mr. Hale clarified that the language should convey that the County would get title to the building when it was closed. He then moved that the Board of Supervisors authorizes the County Attorney to complete the two documents between the County and Albemarle LLC, including the Donation Agreement to Nelson County, Virginia from the MFA XXXII (32) Limited Partnership, Lovingson to Nelson County with the addition of an adequate description of the property to be conveyed including when it ceases to operate as a nursing home and Mr. Harvey seconded the motion.

During the discussion that followed, Mr. Hale stated that while it had been a difficult decision to reach and he had regret at seeing the facility close, he thought it was the wisest course to follow. Ms. Brennan added that she was sad to see the center leave and hoped the employees would be offered jobs at the new one and that MFA would help to plan the future use of the building. Mr. Bruguere noted that he was still against the State having anything to do with this and being in the middle of regulating business. He added that he was sorry to lose the facility, the jobs, and the tax base and was willing to fight it although he thought it was a lost cause. Mr. Harvey had no comments and Mr. Johnson noted that this was a perfect example that the State does not care about localities and he thought it to be an insult that MFA would give the County \$10,000 when it would cost them much more for one day in court.

There being no further discussion, Supervisors voted (4-0-1) by roll call vote to approve the motion with Mr. Johnson abstaining from the vote. Mr. Johnson then explained that he would not vote against the full Board, but that he also could not support the motion and therefore abstained.

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Mr. Payne then advised the Board that they needed a resolution to withdraw their petition of opposition and that he had developed a template. Mr. Payne then noted that the title referenced the proceeding and the body tracked the original petition. He then read aloud the following document for the Board's consideration:

BEFORE THE STATE HEALTH COMMISSIONER

In re: COPN Request No. VA - _7816
Albemarle Health Care Center, LLC (Applicant)

WITHDRAWAL
OF PETITION SEEKING TO SHOW GOOD CAUSE
WHY THE COUNTY OF NELSON (Nelson County
Board of Supervisors; Stephen A. Carter, County Administrator)
SHOULD BE MADE A PARTY IN THE MATTER OF THE
ABOVE-REFERENCED APPLICATION FOR A
CERTIFICATE OF PUBLIC NEED (COPN)

1. By petition dated July 11, 2011, the County of Nelson (the "County"), by the County Administrator Stephen Carter, filed the above-referenced petition pursuant to Virginia Code Sections 102.6 E 3 and 102.6 G, seeking to show good cause to be made a party to the proceeding.
2. A good cause informal fact-finding conference (IFFC) and an IFFC-in-chief are scheduled for September 14, 2011 at 9:30 o'clock a.m.
3. The County has reached an agreement with Albemarle Health Care Center, LLC disposing of the allegations made by the County in her petition and resolving all matters.

Accordingly, the County withdraws the petition seeking to be made a party and withdraws her opposition to the recommendation of the Division of Certificate of Public Need regarding COPN Request No. VA-_7816.

Mr. Harvey then moved to approve this modified version of the withdrawal and Mr. Hale seconded the motion. Mr. Johnson reiterated his objections to this and noted that he would rather have fought to delay things for two (2) years; but that it was a lost cause at this point.

There being no further discussion, Supervisors voted (4-0-1) by roll call vote to approve the motion and resolve to withdraw their petition for good cause as presented; with Mr. Johnson abstaining from the vote.

III. Other Business (As May be Presented only if all Members are Present)

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Mr. Johnson confirmed that staff will include full figures for the options on the Health Dept. Building to be discussed at the next meeting with Mr. Carter noting that the budget allocations in this year's budget would also be reiterated.

Mr. Harvey then asked that staff provide a copy of the Employee Handbook and a printout of employees and their salaries.

IV. Adjournment

AT 1:40 PM, Mr. Harvey moved to adjourn and Mr. Hale seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.