

FILED

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
03 DHR 1838

COUNTY OF HARNETT

2004 JUL -9 P 1:40

OFFICE OF
ADMINISTRATIVE
HEARINGS

GOOD HOPE HEALTH SYSTEM, L.L.C.

Petitioner

and

THE TOWN OF LILLINGTON

Petitioner Intervenor

vs.

RECOMMENDED DECISION

N. C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, DIVISION OF
FACILITY SERVICES,
CERTIFICATE OF NEED SECTION

Respondent

and

BETSY JOHNSON REGIONAL HOSPITAL,
INC., AND AMISUB OF NORTH
CAROLINA, INC. D/B/A CENTRAL
CAROLINA HOSPITAL

Respondent Intervenors

This matter came to be heard upon petition for contested case hearing filed by Petitioner in the Office of Administrative Hearings before Fred G. Morrison Jr., Senior Administrative Law Judge, on May 10-12, and 14 at the North Carolina Medical Board in Raleigh, North Carolina; May 13 at the Harnett County Courthouse in Lillington, North Carolina; and May 17-21, 26-28, June 3, and June 7-10, 2004, at the Raleigh office of Nelson Mullins Riley & Scarborough, L.L.P. By consent of the parties, Ms. Dorothy Higdon Murphy, UNC-Chapel Hill School of Law student extern, observed the proceedings and assisted the judge, counsel, and court reporter concerning exhibits and administrative matters. Following the hearing, Ms. Murphy assisted Judge Morrison with drafting the recommended decision and preparing the official record for delivery to the Agency. Pursuant to the judge's request, the parties filed proposed Recommended Decisions on June 28, 2004.

recd 7-11-04/m

APPEARANCES

For Petitioner Good Hope Health System, L.L.C.:

Maureen D. Murray
Susan M. Fradenburg
William W. Stewart, Jr.
Smith Moore LLP
300 North Greene Street, Suite 1400
PO Box 21927
Greensboro, NC 27420

For Petitioner-Intervenor Town of Lillington:

C. Winston Gilchrist
Morgan Reeves & Gilchrist
PO Box 1057
Lillington, NC 27546

For Respondent N.C. Department of Health and Human Services, Division of Facility Services, Certificate of Need Section ("the CON Section" or "the Agency"):

Melissa L. Trippe
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

For Respondent-Intervenor Amisub of North Carolina, Inc.,
d/b/a Central Carolina Hospital:

S. Todd Hemphill
Christie M. Foppiano
Bode, Call & Stroupe, LLP
P.O. Box 6338
Raleigh, North Carolina 27628-6338

For Respondent-Intervenor Betsy Johnson Regional Hospital, Inc.:

Noah H. Huffstetler III
Denise M. Gunter
Nelson Mullins Riley & Scarborough, LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

APPLICABLE LAW

1. The procedural statutory law applicable to this contested case hearing is the North Carolina Administrative Procedure Act, N. C. Gen. Stat. §150B-1 et seq.
2. The substantive statutory law applicable to this contested case hearing is the North Carolina Certificate of Need Law, N. C. Gen. Stat. §131E-175 et seq.
3. The administrative regulations applicable to this contested case hearing are the North Carolina Certificate of Need Program Administrative Regulations, 10 N.C.A.C. 3R.0100 et seq., and the Office of Administrative Hearings Regulations, 26 N.C.A.C. 3.0001 et seq.

ISSUE

Whether the Agency's decision disapproving Good Hope Health System, L.L.C.'s 2003 certificate of need ("CON") application should be affirmed or reversed.

RECORD OF THE CASE

At the hearing, testimony was received from the following:

Witnesses for the Petitioner

Donald Annis--CEO of Good Hope Hospital in Erwin, North Carolina
David Johnson--Managing Principal in the firm of Johnson, Johnson, Crabtree Architects
Dr. Thomas Wilson--Clinical Director of Services at Lee-Harnett Mental Health Center
Claretta Johnson--Director of the Lee-Harnett Mental Health Center
Charles Barefoot--Director of Harnett County Emergency Medical Services
Johnny Shull--Mayor of the Town of Coates, North Carolina
Eric Benson--United States Navy retiree who lives in Harnett County
Dr. Marcos Rosado--Medical Director of Anesthesia Services at Good Hope Hospital
Rodney Tart--Director of Harnett County Public Utilities
Andrea Phillips--Project Analyst in CON Section of Respondent Agency
Dan Moen--Executive Vice President for Development & Management Services with Triad, Inc.
Lee Hoffman--Chief of the CON Section of Respondent Agency
Earl Jones--retired Harnett County attorney who chairs Good Hope Hospital Board of Trustees
David French--President of Strategic Healthcare Consultants who prepared 2003 application

Witnesses for the Agency

James Keene--Planner in Medical Facilities Planning Section of Respondent Agency
Lee Hoffman--Chief of the Agency's CON Section

Witnesses for Respondent Intervenor Betsy Johnson

Dawn Carter--President of Health Planning Source, Inc. who prepared 2001 application
Thomas Matherlee--President of Matherlee Associates which provides consulting services
Al Taylor--CEO of Betsy Johnson Regional Hospital in Dunn, North Carolina

The following exhibits were entered into evidence:

Petitioner's Exhibits

1-58, 60-66, 74-78, 80

Respondent's Exhibits

1, 2, 3, 6, 7

Respondent Intervenor Betsy Johnson Regional Hospital's Exhibits

1-21, 22- offer of proof, 23-28, 29- offer of proof, 31- offer of proof

Respondent Central Carolina Hospital's Exhibits

9, 10, 11

Having heard all the evidence in the case, considered the exhibits, arguments, proposed recommended decisions of counsel, and reviewed the relevant law, the undersigned finds, by the greater weight of the evidence, the following facts:

FINDINGS OF FACT

History

Good Hope Hospital, Inc. ("GHH") is located in Erwin, Harnett County, North Carolina. The original Good Hope Hospital was constructed in 1913. The oldest portion of the facility that remains in use today was constructed in 1921. Major additions were made in 1930, 1964, 1970, 1973, 1978, 1981, 1982, 1984, 1985, 1986, and 1991. It is believed to be the oldest continuously operating hospital in North Carolina. There are also five additional buildings located on the Good Hope Hospital campus which house the hospital's medical records, plant operations, physical therapy gymnasium, and patient accounts. Good Hope Hospital is currently licensed for a total of 72 beds: 29 psychiatric beds and 43 general acute care beds, including 36 medical/surgical beds and seven ICU/CCU beds, along with two operating rooms and one endoscopy procedure room (which has not been used or reported for several years). For the past 90 years, Good Hope Hospital has provided acute care services to the residents of Harnett and surrounding counties. Good Hope Hospital now needs to be totally replaced because its facility has become outdated and fundamentally obsolete.

2001 Application

On April 9, 2001, GHH submitted an application to the Certificate of Need Section ("CON Section" or "Agency") proposing a partial replacement facility on a 51-acre site on Highway 421 near Erwin. The application, identified as Project I.D. No. M-6394-01, has been described as a "partial, piece-meal, bare-boned, budget-driven, scaled-down plan" due to financial constraints on the current hospital. Most notably, under this 2001 proposal, a number of the hospital's existing ancillary and support services would remain on the old campus.

On July 27, 2001, the Agency, finding that the hospital needed to be replaced, notified GHH that its application was conditionally approved. In its Findings, the Agency found GHH conforming with Criteria 3a, 5, 6, 7, 8, 12, 13a, 13b, 13c, 13d, 14, 20, and conditionally approved on Criteria 1, 3, 4, and 18a. The conditions were as follows, GHH shall: not acquire nuclear medical equipment that has coincidence imaging capabilities, not develop an endoscopy procedure room, materially comply with all representations made in the application, construct no more than 34 acute care beds and 12 inpatient psychiatric beds, not increase patient charges, not acquire equipment not proposed, and as conditioned, the application will have a positive effect on cost effectiveness.

On August 24, 2001, GHH filed a petition for a contested case hearing. Betsy Johnson Regional Hospital, Inc. ("BJRH") and Central Carolina Hospital ("CCH") did not file similar petitions challenging the CON or the need for a replacement hospital, nor did they move to intervene as affected persons in the GHH contested case.

2001 Settlement Agreement

GHH through its attorneys negotiated with the Agency and provided supplemental information which led to a settlement agreement allowing a third operating room for the replacement hospital. On December 14, 2001, the Agency issued a CON to GHH which authorized the development of a replacement hospital with three operating rooms. Several functions would remain on the current campus. BJRH and CCH did not contest the CON issued pursuant to the settlement agreement, nor did they challenge the award of a third operating room.

Financing of 2001 CON Issued Pursuant to the Settlement Agreement

GHH proposed in its 2001 application to finance the project through Department of Housing and Urban Development ("HUD") financing. Its trustees visited and received favorable action from HUD officials in Washington, DC. On March 8, 2002, GHH presented its project to the Medical Care Commission ("MCC") at its quarterly meeting. The MCC took no action on it.

Matherlee Reports

In January of 2002, Thomas Matherlee of Matherlee Associates was retained by BJRH and GHH to explore merger options between the two hospitals. A February 2002 report prepared by Matherlee Associates for BJRH and GHH analyzed collaboration options. The report recommended a full consolidation/merger between BJRH and GHH.

In a March 2002 report, Matherlee Associates outlined five alternatives for collaboration. The options discussed in the report were: (1) Build a new state-of-the-art, full-service 120-bed hospital on one campus—possibly the 52-acre parcel outside Erwin; (2) Build a new (scaled down) overnight 120-bed hospital on GHH's new site. Utilize BJRH for a day hospital and diagnostic center, as well as for administration/back-office functions; (3) Consolidate in-patient beds on the BJRH campus. Build a state-of-the-art day hospital and diagnostic center on the GHH site; (4) Build/renovate two smaller hospitals; and (5) Consolidate all in- and out-patient

services in Dunn. Build a new bed-tower on the BJRH campus, and utilize existing bed tower for expanded programs/services.

Thomas Matherlee believes that option 4 is not a good option for the two hospitals because it is essentially maintaining the status quo. His report noted that GHH's 2001 proposal may be undersized and that it had expansion limitations.

Merger Discussions Between GHH and BJRH

In September or October of 2001, Earl Jones, Chairman of the GHH Board of Trustees, contacted T.C. Godwin, Chairman of BJRH's Board of Trustees, about collaboration opportunities between GHH and BJRH. Godwin was receptive, and in January of 2002, GHH and BJRH hired Thomas Matherlee as a consultant. On April 25, 2002, Thomas Matherlee sent a letter to Jones and Godwin expressing his pleasure that the two Boards had taken action to pursue a merger together. Godwin and Jones continued to correspond via phone and mail. While each continuously expressed that time was of the essence, they were unable to reach an agreement as to the terms of a potential merger that were agreeable to both Boards. Ultimately, GHH's merger discussions with BJRH failed to result in a merger agreement. Differences included that GHH trustees did not think it was best for the county residents to put all inpatient beds in Dunn and the trustees of BJRH would not agree to GHH's proposal for the composition and selection of a new twelve member governing board upon consolidation. No deal was struck!

BJRH's 2002 CON

On March 14, 2002, the Respondent Agency notified BJRH that it had conditionally approved BJRH's CON application, Project I.D. No. M-6523-01, authorizing it to construct a three tower addition at a cost of almost \$16 million. Agency findings made no mention that a merger with GHH would be a less costly or more effective alternative.

MCC Actions On Funding Requests

Even though GHH had secured HUD financing, at its June 14, 2002, meeting, following a slide presentation by GHH, the MCC denied its request for financing. Minutes of the meeting report that one of the members of the commission made a motion to deny the project and the motion was seconded and approved with no dissenting votes. The MCC minutes do not give a reason for this decision, nor was any written notice sent to GHH giving reasons for the action and notice of any appeal rights it had under the APA as an aggrieved person. As a result of the MCC's disapproval, GHH was unable to obtain HUD financing for the Erwin project and was forced to explore other alternatives to finance the much needed and CON approved replacement of the hospital. It has no funding available for the 2001 project. At a subsequent meeting, the MCC approved financing for the BJRH project which led to the start of its construction in 2003 with completion expected in August of 2005.

Request for Declaratory Ruling

On November 12, 2002, GHH filed a request for a declaratory ruling regarding its previously approved application. Good Hope Hospital sought permission via the declaratory ruling to change the holder of the CON to Good Hope Health System, L.L.C. ("GHHS"), move the location of the site to Lillington, and to add approximately 6,000 square feet at a cost of \$2 million more than the previous proposal.

On January 13, 2003, the Division of Facility Services denied the requested permission and told GHH that it needed to file a new application for a CON. The following appears on the first page of the ruling: **"The ruling applies only to this request."**

On February 12, 2003, GHH filed a petition in Wake County Superior Court asking for judicial review of the denial of the declaratory ruling request.

On April 28, 2003, the Superior Court Judge presiding, by consent of the parties, issued an order staying judicial review in the matter "up through and including the issuance of the North Carolina Department of Health and Human Services, Division of Facility Services' decision concerning Good Hope Hospital's and Good Hope Health System's April 15, 2003, application for changes in a replacement hospital project and resolution of all appeals concerning that application, or the request of one of the parties to lift the stay, whichever occurs sooner."

History of Triad

Triad Hospitals, Inc. ("Triad") provides health care services to the 50 hospitals that it owns and operates (as of 4/15/03). Triad provides its hospitals with capital resources and general management. It knows the business and would not construct more space than is needed to adequately and reasonably serve citizens of a community. Its stated mission is "to continuously improve the quality of healthcare services provided to the communities [they] serve by creating an environment that fosters physician participation, recognizes the value and contributions of [their] employees, and strives to meet the unique healthcare needs of [their] local communities."

In May of 1999, Triad established itself as a separate entity from HCA Corporation. Two years later in April 2001, Triad acquired Quorum Health Group, Inc., which included Quorum Health Resources ("Quorum"). Since this time, Triad has been the parent corporation of Quorum, the current management company for Good Hope Hospital and eleven other hospitals across North Carolina. Thus, GHH's CEO & trustees were well aware of Triad in 2003.

Triad considers it important to involve the local community in the operations of each hospital; therefore, Triad seeks to maintain a balance between the financial objectives of the company and the needs of the community. In 2002, Triad reinvested over \$350 million into local community hospitals. The Chairman and President of Triad, Denny Shelton, says, "We're healthcare people first and business people second. If we do a good job taking care of people, then the business will be there."

Partnership with Triad

GHH partnered with Triad to create a new company, Good Hope Health System, L.L.C. ("GHHS"). GHHS, a limited liability company, was formed for the purpose of developing and operating a replacement Good Hope Hospital in Harnett County. Under the agreement, Good Hope Hospital and Triad would be equity partners in a joint venture, GHHS. Triad would lease the existing building from Good Hope Hospital while the new hospital was under construction. At closing, Triad would have a 90% share of the hospital while GHH would retain a 10% share. GHH trustees visited several cities where Triad has built hospitals. They received favorable reports from civic, community, business and religious leaders about how Triad has been a good corporate citizen interested in the health care needs of all people.

2003 Pre-Application Conference

The Agency encourages applicants to contact the CON Section to schedule a pre-application conference with the assigned analyst and others. GHHS's application consultant, David French, scheduled the conference for April 1, 2003, which was 14 days before the application was due. French had been retained late in this process due to GHH's 2001 consultant having a conflict of interest in 2003. During the pre-application conference, agency officials informed French and others that it would be an "uphill battle" and that they would have "high hurdles to overcome" in order to get the application approved. Lee Hoffman informed them that they had to file an application as a new project and justify all phases of a replacement hospital.

2003 Application

On April 15, 2003, GHHS submitted its 2003 CON application, Project I.D. No. M-6801-03. The application noted that "GHHS considers this application to be an application to change the existing approved replacement hospital project, Project I.D. No. M-6394-01, to address a new capital partner for financing, increased square footage and capital expenditure to better address the community's needs and a change in location to enhance access as warranted by population growth and trends evident from 2000 census data that was not available at the time of the original application." The new replacement hospital would be centrally located in Harnett County, would continue to provide the same services to the same population in the same service area, and hopefully, significantly reduce the 50% outmigration of patients to other counties.

In its 2003 application, GHHS proposed a total replacement of Good Hope Hospital with a new two-story, 112,945 square foot building on a 35 acre site on U.S. Highway 421 in Central Harnett County near the town of Lillington. The replacement facility would house a total of 46 beds: 29 medical/surgical acute care beds, 12 in-patient psychiatric beds, and 5 ICU medical/surgical acute care beds. All acute care and inpatient psychiatric services would be relocated to the new site. The application also included the development of 3 operating rooms and 10 observation beds. The new proposed location is approximately 10 miles from the current location in Erwin, and 15 miles from BJRH in Dunn (thus adjusting geographical maldistribution as GHH is now within 2-3 miles of BJRH).

On April 24, 2003, project analyst Andrea Phillips sent a letter to GHH's CEO, Donald Annis, stating that GHHS's application was deemed complete as of April 17, 2003, and the review period was scheduled to begin on May 1, 2003. Phillips also noted in her letter that all comments regarding the project must be received by the Agency no later than June 2, 2003, in order to be considered. BJRH and CCH filed extensive comments challenging/opposing the granting of a CON to build a replacement hospital in Lillington.

Public Hearing

A public hearing was held on June 12, 2003, in Lillington, allowing comments regarding GHHS's 2003 application. The hearing, which lasted over 5 hours, was one of the largest and longest that the CON analyst, Andrea Phillips, had ever witnessed. There was overwhelming support expressed from the citizens of Harnett County for the 2003 proposal. In her testimony, Phillips noted that information gathered from the public hearing can be used as further support of what is stated in the application, but it cannot be used to provide documentation that is not in the application. At the close of the hearing, approximately 1,319 letters and petitions were given to the analyst by individuals who did not get the chance to speak or on behalf of those who were unable to attend. The Agency, in making its decision, did not consider these written comments from citizens of Harnett County who were petitioning for the replacement hospital.

Notice of Exemption

By letter dated August 21, 2003, Good Hope gave written notice to the agency that the proposed replacement facility is exempt under N. C. Gen. Stat. § 131E-184(a). This letter set forth examples of the many deficiencies at the hospital. A building evaluation report outlining the deficiencies was submitted with the letter. The documents detailed why it was not possible to renovate the existing facility which is reaching the end of its useful life and fails to comply with numerous licensure requirements, building codes, and life safety standards.

CON Section Denies 2003 Application

Andrea Phillips was the project analyst who reviewed GHHS's 2003 application. Ms. Phillips was also the project analyst for GHH's 2001 CON application. On September 26, 2003, the Agency denied GHHS's 2003 application as not being conforming to required statutory and regulatory criteria. The Agency found that the application was non-conforming with Statutory Review Criteria under 131E-183 (a) (1), (3), (4), (5), (6), (12), (18a), and under N.C.G.S. § 131E-183(b). The reference to conformity with regard to criterion 3 on page 1158 of the findings is a typographical error. The Agency also found that the 2003 application was nonconforming with regulatory criteria 10A NCAC 14C .2102 (a)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8); 10A NCAC 14C .2103 (a) and (b); 10A NCAC 14C .2104 (b)(4); and 10A NCAC 14C .2105 (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (b).

Petition Filed Seeking Contested Case Hearing

On October 23, 2003, GHHS filed a petition for a contested case hearing challenging the September 26, 2003, decision by the Agency disapproving its 2003 CON application. Fearing

competition from a new, centrally located hospital in Harnett County, BJRH and CCH filed Motions to Intervene so that they could support the agency findings against GHHS and seek to overturn two agency findings in favor of GHHS. Their motions were granted. The Town of Lillington, upon motion, was granted intervenor rights as Petitioner so it could support agency findings in favor of the application and seek to have those against it reversed.

ALJ Findings Related to Statutory & Regulatory Criteria

Criterion 1: The applicant proved that the proposed project is not in conflict with applicable policies and need determinations in the 2003 SMFP. It demonstrated that it would reach 65% target occupancy in 34 needed acute care beds by 2008. It further showed that it does not seek to develop any additional operating rooms than the three which the hospital currently has (in fact or via CON Section approval). BJRH and CCH did not contest the 2001 award of a third operating room for the Harnett County hospital. In fact, the record reflects that GHH's attorney and local physicians convinced agency officials in 2001 that there was a need for three shared operating rooms at the proposed replacement hospital. Also, GHH does have an endoscopy procedure room which was used and reported in the past, which meets the definition of an operating room.

Criterion 3: The applicant identified the population to be served by the proposed project, the need that this population has for the services proposed, and the extent to which all of the residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed. The applicant showed a pressing need for a new replacement hospital and that one centrally located in the county would be more accessible for all citizens in the county and solve geographic maldistribution of services. GHH also agreed to reduce its beds as needed.

Criterion 3a: The applicant demonstrated that although the relocation will result in fewer acute care and psychiatric beds, this will not impact the needs of the population it serves for the result will be a replacement hospital in the same service area serving the same population. The effect of the reduction will not adversely affect the ability of underserved to obtain needed health care.

Criterion 4: The applicant proved that its proposed project to build a modern, state-of-the-art replacement hospital at a centrally located site in the fastest growing area of Harnett County is the least costly or most effective alternative it has available for the needed total replacement of Good Hope Hospital so it can remain viable and better serve citizens during the 21st Century with sufficient space for expansion obviating need for 11 additions as was done in the 20th Century.

Criterion 5: Financial and operational projections for the project demonstrated the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the applicant. Triad officials promised in the application and in remarks at the public hearing that they would fund the project. The record is replete with information that they have the wherewithal to carry out their pledge. It is more likely than not that the projections of costs and revenues are reasonable for a new, state-of-the-art, centrally located hospital in the county backed by the resources and expertise of Triad and its subsidiaries.

Criterion 6: The applicant demonstrated that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities. First, the applicant proved that it is very necessary to replace Good Hope Hospital. Second, the applicant will reduce the current numbers of acute care and psychiatric beds. Third, the applicant proposed no new services requiring CON approval. Ergo, the project does not duplicate any existing or approved health services.

Criterion 7: The applicant provided sufficient evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided at the new replacement hospital.

Criterion 8: The applicant adequately demonstrated that the necessary ancillary and support services will be available for the replacement hospital and that the services will be coordinated with the existing health care system.

Criterion 9: Not applicable to this application.

Criterion 10: Not applicable to this application.

Criterion 12: The applicant adequately demonstrated that the cost, design, and means of construction proposed represent the most reasonable alternative it has available, and that the proposal will not unduly increase the costs and charges of providing health services by the new hospital or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

Criterion 13: The applicant demonstrated that Good Hope Hospital currently provides adequate access to medically underserved populations and that they will continue to have such access in the future at the new replacement hospital by way of outpatient services, admission by house staff, and admission by personal physicians. Good Hope Hospital has had no obligation to provide uncompensated care in the past three years and there are no existing or pending civil rights access complaints against it. The new hospital will provide access to care for all patients as documented in its patient rights policy. It will practice an open admission policy and will not discriminate based on race, age, national or ethnic origin, disability, sex, income, or ability to pay. Patients will be admitted and services provided in compliance with all legal requirements.

Criterion 18a: The applicant adequately demonstrated that the proposal will have a positive effect on the cost effectiveness, quality, and access to the services proposed. BJRH and CCH realized that they will have a serious competitor, filed comments with the agency opposing the project, and hired attorneys to fight CON approval. BJRH even hired independent consultant Matherlee to testify against the project. Competition will benefit citizens needing health care.

Criterion 20: The applicant demonstrated that the hospital has provided quality care in the past and will continue to do so in a centrally located state-of-the-art replacement hospital.

Special CON Regulatory Criteria pursuant to G. S. 131-183(b) relating to operating rooms are not applicable to the 2003 CON application since no additional operating rooms are planned for the replacement hospital in Harnett County. The applicant is not seeking to replace any operating room which does not already exist or has not already been approved by the CON Section for Harnett County.

Based on the foregoing Findings of Fact, the undersigned makes the following Conclusions of Law:

CONCLUSIONS OF LAW

The parties are properly before the Office of Administrative Hearings which has jurisdiction to hear this contested case and issue a recommended decision to the Agency which shall then render a final agency decision that is subject to review by the NC Court of Appeals.

“The subject matter of a contested case hearing by the ALJ is an agency decision.” *Britthaven, Inc. v. North Carolina Dept. Of Human Res.*, 118 N.C App. 379, 382, 455 S.E.2d 455, 459, *disc. review denied*, 341 N.C. 418, 461 S.E.2d 754 (1995). “Under N.C. Gen. Stat. §150B-23(a), the ALJ is required to determine whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner’s rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule.” *Id.* “The judge determines these issues based on a hearing limited to the evidence that is presented or available to the agency during the review period.” *Id.*

In deciding whether to approve an application, the Agency must determine whether it is “either consistent with or not in conflict with [the] criteria” in N. C. Gen. Stat. 131E-183. Pursuant to N. C. Gen Stat. 131E-186(a), “Within the prescribed time limits---the Department shall issue a decision to “approve”, “approve with conditions,” or “deny” an application.”

Petitioner has persuaded me by the greater weight of the evidence presented that the agency substantially prejudiced its rights when it denied the 2003 application for a CON to build a much needed, centrally located, replacement hospital in Lillington, North Carolina.

Petitioner has persuaded me by the greater weight of the evidence presented that its application is consistent with or not in conflict with required statutory and regulatory criteria for the issuance of a CON, and that the agency acted erroneously when it denied the 2003 application for failure to conform with all criteria and regulations.

RECOMMENDED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby recommended that the decision of the Certificate of Need Section disapproving Good Hope Health System, L.L.C.’s 2003 application be reversed and that a CON be issued for the construction of a replacement hospital in Lillington, NC, as proposed in the application.

ORDER

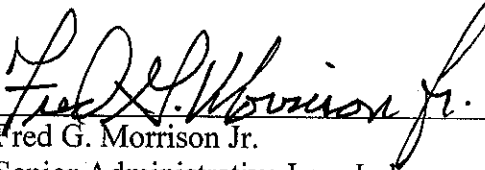
It is hereby ordered that the Agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. 150 B-36(b).

NOTICE

Before the Agency makes the Final Decision, it is required by G.S. 150B-36(a) to give each party an opportunity to file exceptions to this Recommended Decision, and to present written arguments to those in the Agency who will make the Final Decision.

The Agency is required by G.S. 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorneys of record.

This the 9~~th~~ day of July, 2004.



Fred G. Morrison Jr.
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

C. Winston Gilchrist
Morgan Reeves & Gilchrist
PO Box 1057
Lillington, NC 27546

Maureen D. Murray
Susan M. Fradenburg
William W. Stewart, Jr.
Smith Moore LLP
300 North Greene Street, Suite 1400
PO Box 21927
Greensboro, NC 27420

S. Todd Hemphill
Christie M. Foppiano
Bode Call & Stroupe LLP
PO Box 6338
Raleigh, NC 27628-6338

Noah H. Huffstetler III
Denise M. Gunter
Nelson Mullins Riley & Scarborough, LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

Melissa L. Trippe
Special Deputy Attorney General
NC Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

This the 9th day of July, 2004.


Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2698
Fax: (919) 733-3407