

MINUTES
STATE HEALTH FACILITIES COUNCIL
JANUARY 10, 2013
LUCAS STATE OFFICE BUILDING
321 EAST 12TH STREET, FIFTH FLOOR, ROOM 524
DES MOINES, IOWA
ELECTRONIC MEETING

This electronic meeting of the State Health Facilities Council was held in accord with section 21.8 of the Code of Iowa entitled "Electronic Meetings." The Code states that a governmental body may conduct a meeting by electronic means only if circumstances are such that a meeting in person is impossible or impractical, and if the governmental body complies with the provisions of section 21.8. It was impractical for the Council to hold an in-person meeting to discuss an extension request and a cost over-run request because of the expense in assembling the Council in person, time commitments of the Council members, and the anticipated short nature of the meeting. This electronic meeting was held in Conference Room #524, 5th Floor, Lucas Building. Notices and agendas were posted in the building and on the CON web page.

I. 9:00 AM ROLL CALL

MEMBERS PRESENT VIA PHONE: Bill Thatcher, Chairperson, Vergene Donovan, and Roberta Chambers were present via phone. Marc Elcock was present in the conference room.

MEMBER ABSENT: Bob Lundin

STAFF PRESENT: Barb Nervig and Heather Adams, Counsel for the State (present in the conference room).

OTHERS PRESENT: Doug Gross and Katie Cownie of Brown Winick representing both Arbor Court and Newton Village were present via phone.

II. EXTENSION OF PREVIOUSLY APPROVED PROJECT

Arbor Court Fairfield, Fairfield, Jefferson County: Establish 65-bed nursing facility -- \$3,100,000. *Sixth extension request* (originally approved 1/29/09).

Staff report by Barb Nervig. Doug Gross, representing the applicant, asked for an additional 90 days to finalize the purchase of the building; stating that if the purchase was not finalized by the Council's April 25, 2013 meeting, an additional extension would not be requested. A motion by Chambers, seconded by Donovan to grant a 90-day extension carried 4-0.

III. PROJECT REVIEW

Newton Village, Inc., Newton, Jasper County: Re-review of project approved 1/29/09 to establish 24-bed nursing facility at a cost of \$5,221,964. Cost Over-run of \$1,899,309 (57.2% of approved \$3,322,655).

Staff report by Barb Nervig. Doug Gross, representing the applicant, answered questions regarding the increase in costs and indicated that at the time of the upcoming April extension request; the bids will be known. A motion by Donovan, seconded by Chambers to approve the cost over-run carried 4-0.

The meeting was adjourned at 9:35 AM.

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF THE)
CERTIFICATE OF NEED EXTENSION FOR)
)
ARBOR COURT FAIRFIELD)
)
FAIRFIELD, IOWA)

DECISION

This matter came before the State Health Facilities Council for review on Thursday, January 10, 2013.

The project, the establishment of a 65-bed nursing facility through the purchase and renovation of a closed nursing facility, was originally approved on January 29, 2009 at an estimated cost of \$2,300,000.

Written findings were issued April 27, 2009 and on May 15, 2009, Parkview Care Center, an affected party who participated in the formal review procedure, filed an application for rehearing. The Council denied the request for rehearing in written findings dated June 4, 2009. A petition for judicial review was filed by Parkview Care Center with the District Court in Polk County on July 1, 2009.

In November 2009 the department received an extension request from the applicant that indicated the initiation of the project had been delayed in part by the pending appeal. Also, the applicant stated that it took longer than anticipated to resolve tax liens on the real property they are in process of purchasing. The tax liens have been resolved. As of November 2009, a total of \$110,000 had been spent on the project. A six month extension was granted by the Council on December 2, 2009 and an update on the project was requested at the Council's next meeting in April 2010. In a letter dated March 24, 2010, the department and Council received an update stating the appeal was heard in District Court on February 12, 2010 and no ruling had yet been received. Arbor Court delayed the project until greater legal certainty occurs.

On June 15, 2010, the Council voted to grant a second six month extension based upon the finding that the project continued to be delayed due to litigation. On June 28, 2010, the District Court issued its decision denying the appeal of Parkview Care Center and affirming the Council's decision to grant a Certificate of Need.

In October 2010, the department received an extension request from Arbor Court stating they were close to finalizing the purchase agreement and intended to start construction by spring 2011. The applicant further stated that the building sustained extensive water damage because the current owner did not drain the water pipes prior to turning off the heat the previous winter. As of October 2010, a total of \$170,000 had been spent on the project. A completion date for the project was estimated to be the third quarter of 2011.

On November 3, 2010 the Council voted to grant a one year extension based on the finding that adequate progress was being made.

On March 23, 2011 the department received a request to approve a project cost increase from Arbor Court Fairfield. In this request the applicant stated that the increase in the total project cost to construct/renovate and equip the 65-bed Arbor Court Fairfield facility was due to delays resulting from litigation filed by an affected party and failure by the current owner of the facility to protect the facility from freezing temperatures during the period of delay. The applicant stated that the failure of the current owner to drain the plumbing, heating, and sprinkler systems before turning off the heat resulted in these systems freezing causing serious damage. These systems need to be repaired or replaced at a cost of approximately \$580,000. The applicant further stated that leaking water from broken pipes also caused several ceilings in the facility to collapse, resulting in the need for substantial repair. Estimated construction costs have increased by approximately \$428,500. Although Arbor Court Fairfield is hoping to negotiate a reduction in the purchase price of the facility as a result of these damages, Arbor Court Fairfield has incurred additional costs to extend its option to purchase the facility. On April 12, 2011, the Council approved a modification to the original Certificate of Need increasing the cost by \$1,000,000 for a new total project cost of \$3,300,000; a 43.5% increase in the original total project costs.

In October 2011, the department received an extension request from Arbor Court stating once again that they were close to finalizing the purchase agreement. The applicant stated they recently received final construction quotes and were working with lenders to arrange financing for the project. As of October 2011, a total of \$190,000 had been spent on the project. A completion date for the project was expected to be August 2012. On October 19, 2011 the Council voted to grant a one year extension based on the finding that adequate progress was being made.

In March 2012, the department received an extension request from Arbor Court stating they recently secured a financing commitment from Great Western Bank for a credit facility up to \$4M. The applicant stated it was anticipated that Arbor Court Fairfield would execute definitive documents related to the purchase of the facility and associated financing on or before May 15, 2012. As of March 2012, a total of \$190,000 had been spent on the project. A completion date for the project was expected to be December 2012. On April 4, 2012 the Council voted to grant a nine-month extension based on the finding that adequate progress is being made.

In December 2012, the department received an extension request from Arbor Court stating that discovery of several tax liens on the facility prevented the current owners from conveying marketable title to the facility, which has delayed closing on the purchase. The applicant has negotiated a purchase agreement to purchase the facility for \$125,000, but closing is contingent upon the sellers resolving approximately \$500,000 of tax liens. As of December 2012, a total of \$190,000 had been spent on the project. A completion date for the project is now expected to be spring 2014.

Doug Gross of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, PLC, was present representing the applicant. Mr. Gross asked for an additional 90 days to finalize the purchase; stating that if the purchase of the building was not finalized by the Council's April 25, 2013 meeting, an additional extension would not be requested.

The Council, after reading the extension request and hearing comments by staff and the applicant, voted 4-0 to Grant an Extension of Certificate of Need per Iowa Administrative Code 641—202.13.

The extension is valid for 90 days (until the April 25, 2013 meeting of the Council).

Dated this 2nd day of April 2013

Handwritten signature of William Thatcher in cursive script.

William Thatcher, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: Health Facilities Council
Department of Inspections & Appeals, Health Facilities Division

**IOWA DEPARTMENT OF PUBLIC HEALTH
STATE HEALTH FACILITIES COUNCIL**

IN THE MATTER OF A REQUEST BY)
)
NEWTON VILLAGE, INC.) DECISION
NEWTON, IOWA)
)
TO MODIFY A CERTIFICATE OF NEED)

This matter came before the State Health Facilities Council for hearing on January 10, 2013.

The request proposes the modification of an approved project. The request is to increase the cost of the proposal. On October 19, 2011, the Council granted a certificate of need to construct a 24-bed nursing facility at a cost of \$3,322,655. This request proposes an increase in cost of \$1,899,309 for a total project cost of \$5,221,964.

The record includes the request prepared by the project sponsor and all the testimony and exhibits presented at the hearing. Doug Gross of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, PLC represented the applicant. Barb Nervig of the Iowa Department of Public Health summarized the chronology of events since the original approval of the project. The applicant made a presentation and answered questions.

No affected parties appeared at the hearing.

The Council, after hearing the above-mentioned testimony and after reading the record, voted 4-0 to grant a modification to the original Certificate of Need.

FINDINGS OF FACT

1. Newton Village, Inc. was granted a Certificate of Need on October 19, 2011 to construct a 24-bed nursing facility on their existing retirement community campus at a cost of \$3,322,655.
2. In September 2012 the department received an extension request from the applicant that indicated the initiation of a new completion date of March 2014. The primary delay in the project resulted from delays in the land acquisition process with the city of Newton. The applicant stated that a modest change in the project cost is anticipated due to increases in the price of building materials since the date of approval. Newton Village anticipated the cost increase would be well below the threshold to trigger a review for a cost overrun. As of September 2012, a total of \$63,381.36 had been spent on the project. A six month extension was granted by the Council and an update on the project was requested at the Council's next meeting in April 2013.

3. On December 21, 2012 the department received a request to approve a project cost increase from Newton Village. In this request the applicant states that the increase in the total project cost to construct the 24-bed facility is due to acquiring a different parcel of land than originally contemplated to avoid a hazardous waste site. Due to the modified shape of the parcel, the facility needed to be modified which also allowed for an increase in the size of the facility by approximately 2, 940 square feet which includes larger resident rooms, the addition of a chapel area, an enlarged physical therapy space, an enlarged activity space, and an enlarged dining room.
4. The applicant states that the reconfiguration and addition of the space, the need to balance the soil on the site (hauling in 7,000 yards of fill) and an increase in the cost of construction materials, construction labor and increased financing costs all contributed to the increase in total costs for the project.
5. The estimated total cost of the project is now \$5,221,964, a 57.3% increase in the original total project costs.

CONCLUSION

The Council concludes that the proposed change to the originally approved project represents an increase of approximately 57.2% in the cost of the project but does not substantially alter the nature and scope of the originally approved project.

Pursuant to 641 IAC 202.14, the Council therefore approves the request to modify the certificate of need originally granted October 19, 2011 to \$5,221,964 as the approved cost of the project.

The decision of the Council may be appealed pursuant to Iowa Code section 135.70(2013).

No changes that vary from or alter the terms of the approved application including a change in the approved dollar cost shall be made unless requested in writing to the department and approved. Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73 (Iowa Administrative Code [641]202.14).

Dated this 2nd day of April 2013



William Thatcher, Chairperson
State Health Facilities Council
Iowa Department of Public Health

William Thatcher, Chairperson
State Health Facilities Council
Iowa Department of Public Health

cc: State Health Facilities Council
Iowa Department of Inspections and Appeals:
Health Facilities Division