

**STATE OF VERMONT  
GREEN MOUNTAIN CARE BOARD**

In re: Application of Green Mountain Realty LLC, )  
Green Mountain Nursing and Rehabilitation ) GMCB 017-14con  
Center LLC, White River Property LLC, and )  
Brookside Nursing and Rehabilitation Center )  
LLC )  
\_\_\_\_\_ )

**STATEMENT OF DECISION AND ORDER**

Introduction

Green Mountain Realty LLC, Green Mountain Nursing and Rehabilitation LLC, White River Property LLC and Brookside Nursing and Rehabilitation Center LLC (the applicants) have applied for a certificate of need (CON) to purchase the operations and real estate of two skilled nursing facilities in Vermont.

For the reasons outlined in this decision, we approve the transaction and issue a CON to the applicants.

Procedural Background

Four individuals—Yechiel Landau, Shmuel Love, Abraham Rubin and Eli Skaist—formed four separate corporate entities<sup>1</sup> to purchase the real estate and operations of two existing skilled nursing facilities. Green Mountain Realty LLC and Green Mountain Nursing and Rehabilitation LLC propose to purchase the real estate and operations of Green Mountain Nursing Home (Green Mountain), a 73-bed skilled nursing facility in Colchester. White River Property LLC and Brookside Nursing and Rehabilitation Center LLC propose to purchase the real estate and operations of Brookside Nursing Home (Brookside), a 67-bed skilled nursing facility in White River Junction.

The applicants placed notice of the CON application in the Burlington Free Press and Valley News on December 17, 2014. After receiving no requests for intervention, the Board granted expedited review of the application.

The Board requested additional information from the applicants on January 29, February 26, March 20, May 5, and June 26, 2015, to which the applicants responded on February 17, April 8, April 14, May 14, and July 2, 2015, respectively. The application was closed on July 8, 2015.

The Board considered the application at its public meeting on August 20, 2015. Applicants Shmuel Love and Eli Skaist attended the meeting accompanied by Andrew Bachand, CPA, of Kittell Branagan & Sargent, and Shireen Hart, Esq., of Primmer Piper Eggleston & Cramer, PC.

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<sup>1</sup> For simplicity, we refer to both the individuals and corporate entities as “the applicants.”

Thomas Rice, Brookside's current owner, attended the meeting with his attorney, Scott McGee, Esq.

Judy Henkin, the Board's Health Policy Director, and Donna Jerry, Senior Health Policy Analyst, provided the Board with a procedural and factual overview of the application. Attorney Hart spoke on behalf of the applicants and Hart, applicant Skaist, and Brookside owner Rice responded to questions from the Board.

After accepting public comment, the Board recessed for closed deliberations. The Board thereafter reopened the meeting and voted unanimously to approve the application, subject to conditions as outlined in the certificate of need, issued on this same date.

### Findings of Fact

1. Green Mountain and Brookside nursing homes are currently owned and managed by Thomas Rice, Stephen Rice and Susan McGrath. Thomas Rice is the primary owner and operator of both facilities. Application at 1.
2. Four individuals—Yechiel Landau, Shmuel Love, Abraham Rubin and Eli Skaist—have formed four corporate entities to purchase the real estate and operations of Green Mountain and Brookside. Landau has a 50% interest in the corporations, Love and Rubin each have a 20% interest, and Skaist has a 10% interest. Application at 12-13.
3. The total cost of purchasing Green Mountain, including associated costs,<sup>2</sup> is \$4,035,514. Application at 10. The applicants propose to finance the purchase with a \$2,912,000 loan from Rockhall Funding Corporation, an FHA Title II mortgagee with the authority to submit applications to the U.S. Department of Housing and Urban Development (HUD) to obtain Farmers Home Administration (FHA) mortgage insurance for nursing homes (HUD loan). Application at 10. Although the applicants have advised the Board that the HUD loan has been approved, they must provide verification that a certificate of need has been issued prior to dispersal of any HUD funds. The remainder of the cost of acquiring Green Mountain will be financed with \$1,123,514 in equity from Landau and Love.
4. The total cost of purchasing Brookside, including associated costs, is \$3,958,764. Application at 11. The applicants propose to finance the purchase with a \$2,976,000 HUD loan. Application at 11. Although the applicants have advised the Board that the HUD loan has been approved, they must provide verification that a certificate of need has been issued prior to dispersal of any HUD funds. The remainder of the total cost for Brookside is being financed with \$982,764 in equity from Landau and Love.
5. For Green Mountain, the applicants plan to spend \$10,000 for improvements to the therapy gym, and have set aside \$20,374 for HUD required repairs to be made upon assuming ownership. A \$240,900 HUD required reserve will be established, from which \$50,000 will

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<sup>2</sup> Associated costs include debt financing and administrative expenses such as legal and accounting fees and permits, reserves and escrow accounts. Application at 10

be used annually for replacement of major structural elements, mechanical equipment and capital improvements. Application at 8.

6. For Brookside, the applicants plan to spend \$10,000 for improvements to the therapy gym, and have set aside \$9,318 for HUD required repairs to be made upon assuming ownership. A \$373,525 HUD required reserve will be established, from which \$50,000 will be used annually for replacement of major structural elements, mechanical equipment and capital improvements. Application at 8.
7. The period for completing the HUD financing was scheduled to expire on August 20, 2015, but has been extended until September 20, 2015. The applicants must provide HUD with an approved certificate of need approximately three weeks prior to that date to ensure timely processing.
8. The applicants do not plan to change the staffing at either facility with one exception; they will add one full-time employee (FTE) to Green Mountain, while eliminating one FTE at Brookside. Application at 9.
9. Eli Skaist, the managing member for facility operations, will oversee the day-to-day nursing home administrators at both Green Mountain and Brookside. Skaist holds a current Nursing Home Administrators' license in New York, New Jersey and Vermont. At the time this application was submitted, Skaist was the Nursing Home Administrator of Mosholu Parkway Nursing and Rehabilitation (Mosholu) in the Bronx, New York, which had an overall three-star (average) rating on the Centers for Medicare and Medicaid Services' website, Nursing Home Compare (CMS website).<sup>3</sup>
10. On August 20, 2015, the date on which the Board considered this application at its public meeting, the CMS website showed that Mosholu's overall rating had fallen to two stars (below average). Skaist explained that he left his position at Mosholu during the past year but that while he was at the facility, its overall star rating had improved.
11. Skaist further explained that although he does not plan to move to Vermont, he has spent considerable time with staff and administrators at each of the facilities pending approval of this CON, and will visit Vermont weekly, at a minimum, to oversee operations at each facility.
12. In addition to Skaist, Rubin has nursing home operations experience as the CEO and operator of Silverbrook Rehabilitation and Nursing Care Center (Silverbrook) in Niles, Michigan. As of August 20, 2015, Silverbrook had an overall one-star (much below average) CMS rating.
13. As of August 20, 2015, Brookside was rated five stars (much above average) overall, and Green Mountain was rated three stars (average) overall on the CMS website.

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<sup>3</sup> The CMS website, Nursing Home Compare, allows consumers to access information about the quality of care at all Medicare and Medicaid-certified nursing homes. Nursing homes are separately star-rated on staffing, health inspections and quality measures, resulting in one overall star rating. The lowest star rating is one (much below average), and the highest is five (much above average).

14. Investors Love and Landau have not owned or operated nursing homes prior to their involvement with this project, but each has real estate development and management experience. Landau also owns a New York licensed home health care service company operating in four boroughs in New York City.

#### Standard of Review

Vermont's certificate of need process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000: *Certificate of Need*. The applicants bear the burden to demonstrate that each criterion set forth in 18 V.S.A. § 9437(1)-(7) is met. Rule 4.000, §4.302(3).

#### Conclusions of Law

Section 9437 of Title 18 contains criteria that must be satisfied before the Board may issue a certificate of need to an applicant. Here, we conclude that the applicants have met the applicable criteria for the purchase of Green Mountain and Brookside.

- I. The applicants have shown that their application is consistent with the health resource allocation plan (HRAP). 18 V.S.A. § 9437(1) (Criterion 1).

Based on our review, we find that the applicants have met the applicable HRAP standards relative to the purchase of Green Mountain and Brookside.

*STANDARD 1.6: Applicants seeking to develop a new health care project shall explain how the applicant will collect and monitor data relating to health care quality and outcomes related to the proposed new health care project. To the extent practicable, such data collection and monitoring shall be aligned with related data collection and monitoring efforts, whether within the applicant's organizations or the government.*

The applicants have shown that they will continue to use the Quality Assurance and Performance Improvement (QAPI) program to collect and monitor data relating to health care quality and outcomes. The applicants will also review the program annually and make improvements as necessary. The primary purpose of the QAPI program is to establish data driven facility-wide processes to improve the quality of care, quality of life and clinical outcomes of residents. The QAPI program has five strategic elements and twenty action steps. The applicants will convene a QAPI Committee at each facility to identify benchmarks for performance and compare the data with national and state performance benchmarks.

We conclude that the applicants have satisfied this standard.

*STANDARD 1.7: Applicants seeking to develop a new health care project shall explain how such project is consistent with evidence-based practice. Such explanation may include a description of how practitioners will be made aware of such guidelines, and how guidelines will be incorporated into ongoing decision making.*

Because evidence-based practice is constantly evolving, the applicants intend to continue the use of evidence-based practice guidelines already in place and monitor for changes in the guidelines that require implementation of different practices. Routine and on-going training will be used to educate staff on the implementation of new and existing guidelines. Particular focus will be placed on areas where the facilities' CMS quality ratings are not on par with state averages.<sup>4</sup>

Brookside scores lower than the state average in only four of the 18 CMS quality measures. The applicants intend to immediately implement procedures to improve the quality in two of its lowest-rated measures—controlling moderate to severe pain for both short and long term stay patients, and the loss of control of bowels/bladder. Responses (4/8/15) at 6-7.

Green Mountain scores lower than the state average in 11 of the 18 CMS measures including seasonal flu and pneumococcal vaccines for short term patients, urinary tract infections, pressure ulcers, loss of control of bowels/bladder, catheter inserted/left in bladder, increased help with daily living, loss of too much weight, depressive symptoms, pneumococcal vaccines and the use of anti-psychotic medications for long term patients. The applicants intend to initially target the areas in which Green Mountain scored the poorest and implement procedures to reduce the incidence of pressure ulcers, reduce the use of anti-psychotic medications, and reduce/eliminate loss of control of bladder/bowels. Responses (4/8/15) at 4-6.

We conclude that the applicants have satisfied this standard.

*STANDARD 3.12: Any applicant seeking to expand services for potentially terminally ill patients shall explain what efforts that applicant has taken or will undertake which will support high quality, patient centered palliative and end of life care. Such efforts should include training and collaboration with other health care and hospice providers to facilitate high quality, patient centered end of life care.*

The applicants intend to continue using the palliative care approaches currently in place at both facilities for residents with advanced incurable illnesses or limited life expectancies. The approaches are focused on a course of treatment directed at alleviating pain and relieving symptoms while enhancing comfort rather than continued interventions. An interdisciplinary team which includes the resident's providers, nurses, social worker, bereavement providers and pastoral care staff work with residents and their families. Treatment may include intravenous fluids, tube feedings, and parenteral or topical administration of medication to control pain. Staff is trained in this holistic approach to terminal illness which includes creating and supporting quality time for families and residents at the end of life. Staff works in conjunction with local hospice providers to provide a dignified and serene course of care. The applicants will provide 24-hour call support, expanded psycho-social and spiritual support and family meetings to discuss care goals, advance directives, patient wishes and the concept of comfort and pain-free care. Private rooms will be made available for overnight stays and private bereavement time.

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<sup>4</sup> CMS quality ratings vary over time; thus, unless we specifically state otherwise, we will refer to the facilities' CMS ratings as of the time we received the CON application. It should be noted, however, that despite our use of the present tense, the ratings at any of the facilities discussed in this decision may currently be higher or lower.

We conclude that the applicants have satisfied this standard.

*STANDARD 4.7: Applicants seeking to establish, expand or otherwise modify services available to elderly Vermonters shall establish how those services will support the mental health and well-being of this population, including addressing how the applicant supports or otherwise integrates with mental health services currently available.*

Green Mountain will continue to utilize the University of Vermont Medical Center to conduct mental health assessments and provide consultation services to residents. Deer Oaks Mental Health will continue to provide mental health assessments and consultation to residents at Brookside. The applicants plan to evaluate the effectiveness of these services and contractual relationships to ensure support of the individualized need of residents at Green Mountain and Brookside.

Accordingly, the applicants have satisfied this standard.

*STANDARD 5.1: Applicants seeking a certificate of need relating to long-term care services shall demonstrate how they support the Vermont State Health Plan goal of insuring that Vermonters who need long-term care services will receive the services that reflect their personal values and preferences in the least restrictive environment possible.*

The philosophy and mission of the facilities has and will continue to recognize that residents have the right to live in an environment that promotes dignity, safety, self-determination and independence, and to assure that such rights are promoted and protected. The applicants are aware and supportive of emerging culture changes surrounding living and working in nursing homes and person-centered, individualized care models being piloted as a result of culture change efforts. Because staff is instrumental to implementing culture change efforts, the applicants plan to assess its staffs' current duties and protocols, willingness and ability to implement change, and will provide staff training targeted at individualized resident care and choices. Planned changes include accommodating individual preference in bedtimes and wake up times, broader menu choices, wider flexibility in timing of daily activities such as bathing, meal times and therapy times, and greater involvement by family in care plan meetings.

The applicants have satisfied this standard.

*STANDARD 5.2: Nursing homes or similar entities seeking to replace or increase beds shall show the beds are needed. Such showing of need shall be confirmed by the Department of Disabilities, Aging and Independent Living.*

The proposed purchase does not include any change in the number of licensed beds at Green Mountain or Brookside. In addition, the Department of Disabilities, Aging and Independent Living (DAIL) has submitted a letter confirming that the current number of beds at Green Mountain and Brookside are needed to provide long-term care to residents in their service areas.

This standard has been satisfied.

*STANDARD 5.3: Nursing homes or similar entities seeking a certificate of need shall provide a written recommendation from the Department of Disabilities, Aging and Independent Living supporting the new health care project proposal.*

DAIL provided a written recommendation supporting the proposed purchase of Green Mountain and Brookside by the applicants, and supporting Eli Skaist as the new operator of the two facilities.

*STANDARD 5.4: Nursing homes or similar entities seeking a certificate of need shall demonstrate the applicant is sufficiently capitalized and insured to protect residents against substandard care and to provide for sufficient protection in the event of legal liability of the facility or the facility's operators.*

The confidential personal financial statements provided by the four individual applicants show that they have sufficient liquid assets or easily liquidated assets to cover the \$2,106,278 equity contribution, to retain sufficient insurance to cover the facilities in the event of legal liability, and to run the facilities' day-to-day operations. In addition, the applicants expect to receive \$5,888,000 in HUD loans to finance the rest of the purchase; HUD imposes extensive insurance requirements that provide for sufficient protection in the event legal liability is brought against the facilities or its operators.

The applicants have satisfied Standard 5.4.

*STANDARD 5.12: Applicants seeking to restructure nursing home ownership that triggers the need for a new license from DAIL shall demonstrate the ability to meet all reasonably anticipated financial and quality obligations imposed by the operation of the nursing home.*

The applicants' financial information shows sufficient liquid assets or easily liquidated assets to cover anticipated financial obligations for the purchase and operation of Green Mountain and Brookside. In addition, the Vermont Division of Rate Setting has provided a letter confirming that the projected Medicaid rates reflected in the CON application are acceptable estimates of future Medicaid rates, and that occupancy estimates of 91% for the facilities are reasonable; data shows that for the last three months of 2014, Green Mountain's average occupancy rate was 89.16% and Brookside's was 91.44%. The applicants expect to increase occupancy rates through marketing and by offering enhanced rehabilitation and care for higher acuity residents. The HUD loans will enable the applicants to purchase the facilities and make necessary repairs, and to establish reserves to make annual structural, mechanical and capital improvements.

As to quality, Green Mountain has an overall three-star (average) CMS quality rating and Brookside has a five-star (much above average) rating. The applicants have stated that they will maintain and improve the quality at both Green Mountain and Brookside, and will not make staffing changes as a result of the change in ownership. Applicant Skaist has assured the Board that he will invest his time and energy in each facility to ensure that the CMS ratings do not fall.

As we stated in our analysis of Standard 1.7, *see* p. 5, herein, the applicants intend to focus most closely on improving those quality measure which have lower than state average CMS ratings.

Notwithstanding the applicants' stated intention to maintain or improve the quality of care at the Vermont facilities, we express our concern, in light of low CMS quality ratings at Mosholu and Silverbrook—facilities with which one or more of the applicants have been affiliated—that quality ratings for patient care at Brookside and Green Mountain will decline. Based on the applicants' explanation and assurances at public meeting, however, we expect that they will prioritize quality of care, will appropriately invest in capital improvements to the aging facilities, and will maintain trained, adequate, and appropriate staffing at each facility.

Based on the above, we find that the applicants have met this standard, and have therefore satisfied the first statutory criteria.

II. The applicants have met their burden to show that the cost of the project is reasonable pursuant to 18 V.S.A. § 9437(2) (Criterion 2).

Criterion 2 requires that the applicants demonstrate that the cost of the project is reasonable by meeting three statutory requirements: First, that they “will sustain any financial burden likely to result from the completion of the project”; second, that “the project will not result in an undue increase in the cost of medical care”; and third, that “less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate.” 18 V.S.A. § 9437(2). We address each requirement in turn.

A. The applicants can sustain the financial burden likely to result from completion of the Project.

As long as the applicants are successful in securing the HUD funds, which they have advised the Board is imminent, they have sufficient funds to purchase the facilities, improve the therapy gym, and make capital improvements and upgrades in structural elements and mechanical equipment. The applicants have submitted financial information showing they have sufficient cash flow to cover the debt obligation and maintain operations.

B. The Project will not result in an undue increase in the costs of medical care.

To determine whether there is an undue increase in the costs of care, the Board must consider and weigh relevant factors that include the impact on services, expenditures, and charges, and whether such impact is outweighed by the benefit to the public. 18 V.S.A. § 9437(2)(B)(i), (ii).

The proposed transaction does not increase the cost of health care. A memo from the Vermont Division of Rate Setting, submitted with the application, confirms that the projected Medicaid rates for Green Mountain and Brookside are acceptable estimates of future Medicaid rates. Application at Attachment VV. In addition, DAIL provided a letter documenting the continued need for the 73 licensed beds at Green Mountain and 67 beds at Brookside.

C. Less expensive alternatives are not feasible or appropriate.

The applicants seek to purchase two skilled nursing facilities, each of which are currently in operation with nursing beds that are needed in Vermont. No less expensive alternative exists.

Based on the information presented, we conclude that the applicants have satisfied this criterion and have shown that the cost is reasonable.

III. The applicants have shown that there is an identifiable need for the proposed project which is appropriate for the applicants to provide.

To satisfy Criterion 3, the applicants must show that there is “an identifiable, existing, or reasonably anticipated need for the proposed project which is appropriate for the applicant to provide.” 18 V.S.A. § 9437 (3).

Both Green Mountain and Brookside are needed facilities; without them, there would be an insufficient number of nursing home beds for their respective service areas. Given the applicants’ ability to finance the project, their experience in real estate development and management and in the day-to-day operations of nursing homes, it is appropriate for the applicants to provide these services.

IV. The applicants have shown that the project will provide greater access to health care for Vermonters.

Criterion 4 requires that the applicants show that the project “will improve the quality of health care in the state or provide greater access to health care for Vermont’s residents, or both.” 18 V.S.A. § 9437 (4).

The purchase of Green Mountain and Brookside is expected to maintain or improve health care quality and ensures that sufficient and needed nursing home beds will be available to Vermonters.

V. The project will not have an undue adverse impact on any other existing services provided by the applicants.

The project allows for the continued operation of Green Mountain and Brookside, and does not present any undue adverse impact on existing services provided by the applicants.

VI. The project will serve the public good.

For the reasons set forth in our discussion of each of the other criterion, we conclude that this criterion has been met.

Conclusion

Based on the foregoing, we conclude that the purchase and continued operation of the Green Mountain and Brookside meet the applicable statutory criteria. We therefore approve the application and issue a certificate of need in this matter.

**ORDER**

Pursuant to 18 V.S.A. § 9440(d), the Green Mountain Care Board approves the application for the purchase and continued operation of Green Mountain and Brookside, subject to the conditions outlined in the certificate of need, issued on this same date.

**SO ORDERED.**

Dated: August 27, 2015 at Montpelier, Vermont

s/ Alfred Gobeille )  
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s/ Cornelius Hogan )  
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s/ Jessica Holmes )  
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s/ Betty Rambur )  
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s/ Allan Ramsay )

GREEN MOUNTAIN  
CARE BOARD  
OF VERMONT

Filed: August 27, 2015

Attest: s/ Janet Richard  
Green Mountain Care Board,  
Administrative Services Coordinator