

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of University of Vermont)
Medical Center, Purchase of) GMCB-004-18con
Real Estate at 62 and 192 Tilley)
Drive in South Burlington)
)
)
_____)

STATEMENT OF DECISION AND ORDER

Introduction

In this Decision and Order, we review the application of the University of Vermont Medical Center (UVMMC, or the applicant) for a certificate of need (CON) to purchase medical office buildings it currently leases at 62 and 192 Tilley Drive in South Burlington for a total cost of \$22,122,010.

For the reasons set forth below, we approve the application and issue the applicant a certificate of need, subject to the conditions set forth therein.

Procedural Background

On February 9, 2018, UVMMC filed a CON application and request for expedited review seeking approval to purchase a two-story, 28,069 square foot (sq. ft.) medical office building at 62 Tilley Drive and a 53,600 sq. ft. medical office building at 192 Tilley Drive, both of which are currently leased and occupied by UVMMC.* The Board requested that the applicant provide additional clarifying information as to the project's cost, which it did on March 22, 2018.

On March 27, 2018, the Board granted the applicant's request for expedited review. In addition, the Board requested that the applicant submit revised financial statements, which were provided on May 16, 2018. The Board closed the application on May 18, 2018.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9375(b)(1) and 18 V.S.A. § 9434(b)(1).

Findings of Fact

1. UVMMC is Vermont's only academic medical center and tertiary care facility, serving approximately one million residents in Vermont and northern New York. In addition to its main

* The applicant, then known as Fletcher Allen Health Care, first filed a CON application to purchase these properties as part of a larger real estate acquisition in 2014. That application lapsed in 2015.

campus in Burlington, UVMMC operates over thirty off-campus patient care sites in northwestern Vermont.

2. UVMMC seeks approval to purchase two medical office buildings located at 62 and 192 Tilley Drive in South Burlington's Mountain View Business Park that are currently leased from Pizzagalli Properties, LLC (Pizzagalli). Both buildings were originally constructed for occupancy by UVMMC, which has leased the building at 62 Tilley Drive since September 2004, and the building at 192 Tilley Drive since December 2007. UVMMC intends to occupy both buildings for the foreseeable future. Application (App.) at 3-5.

3. The two-story, 28,069 sq. ft. building at 62 Tilley Drive houses UVMMC's Cardiology and Cardiac Rehabilitation Programs, Endocrinology Program, and Center for Pain Management. Its current annual costs include a base rent of \$588,152, a building management fee of \$18,339, and approximately \$205,860 in annual operating expenses. The building's lease runs through February 2021 and gives UVMMC an option to purchase the building during the term of the lease. App. at 3; Response to Questions (March 22, 2018) (Resp.) at 2.

4. The two-story, 53,600 sq. ft. building at 192 Tilley Drive hosts UVMMC's Orthopedic Specialty Center and related radiology services. Its current annual costs include base rent of \$1,292,245, a building management fee of \$32,160, and approximately \$341,400 in annual operating expenses. The building's lease runs through December 2022 and gives UVMMC the option to purchase the building during the term of the lease. App. at 3-4; Resp. at 2.

5. Both of the subject buildings are designed specifically for use as medical offices. There are currently no other buildings on the market in the greater Burlington area of similar size, quality, and design type. Resp. at 2.

6. The most recent sale of comparable commercial property in the greater Burlington area was a 53,000 sq. ft. general office building at 88 Technology Park Way in South Burlington. The building, priced at \$336.45 per sq. ft., was not designed or intended for medical occupancy. *Id.*

7. The applicant's business objective in purchasing 62 and 192 Tilley Drive is to reduce its long term operating expenses through ownership of its real estate assets. Leasing costs for the two buildings will continue increasing over time. App. at 5.

8. The applicant will pay \$6,941,787 (\$247.31 per sq. ft.) to purchase 62 Tilley Drive and \$14,603,181 (\$272.45 per sq. ft.) for 192 Tilley Drive property. The total purchase price of \$22,122,010 includes acquisition, lender financing fees, legal costs, transfer taxes, title search fees, title insurance premiums and a small contingency to cover additional closing costs. App. at 4; CON Table 1.

9. The purchase price for both buildings is fixed by contract and was reached through a fair market value appraisal process. App. at 4. The applicant will use \$3,808,787 in existing capital to pay acquisition costs and finance 85% of the purchase price (\$18,313,223) with conventional commercial financing over a 15-year borrowing term at 4% interest. App. at 5; Table 2, *Debt Financing Arrangement*.

10. UVMMC budgeted \$25 million for this project in its 2017 and 2018 hospital budget submissions to the Green Mountain Care Board. App. at 6-7; Resp. at 3. The project was also included in UVMMC's multi-year capital framework and will reduce its reliance on commercial real estate leases. App. at 8.

12. The Applicant expects costs of \$5,622,050 in Year 1 that includes a \$3,231,745 down payment, closing costs of \$417,062, and one-time financing costs of \$160,000. Following the purchase, the mortgage payments and operating expenses for the two buildings will total \$1,647,111 per year, substantially less than the current lease and operating payments. As a result, the applicant projects a positive post-purchase cash flow of \$440,368 in Year 2 and \$482,118 in Year 3. App at 6, Exhibit 2.

13. By Year 8, the applicant projects that it will recoup its initial down payment and closing costs. The mortgage will be fully paid in Year 15; by Year 30, the applicant expects a positive cumulative cashflow of approximately \$54.3 million. App. at 6; Resp. at 2.

14. Because the project is solely a financial transaction and will result in financial savings for the applicant, it is not predicated on specific annual revenue growth assumptions. Resp. at 3.

15. The project does not involve the construction or development of new buildings or improvements, the acquisition of any equipment, the creation of any new health care facilities, or the initiation of any new health services. App. at 3, 7-8.

16. Apart from the overall net positive financial benefit to UVMMC, the project will not impact other hospitals or clinical settings financially, nor will it have any impact on services, expenditures, or charges. App. at 7-8. In addition, the savings associated with the purchase may allow the applicant to reinvest in patient care and quality improvement initiatives. App. at 8.

17. In 2010, UVMMC partnered with Chittenden County Transportation Authority (CCTA), Pizzagalli, and Maitri Health and Community Health Centers of Burlington to establish a Tilley Drive shuttle. The shuttle provides free public transportation Monday through Friday between the University Mall in South Burlington and medical offices on Tilley Drive. Resp. at 3-4. Individuals who wish to use the free shuttle must call ahead to reserve a seat during one of the available pick-up times. App. at 9; Resp. at 3-4. In addition, Green Mountain Transit has since December 2016 provided individuals with disabilities who are unable to use the fixed route bus service system transportation to the Tilley Drive facilities. Resp. at 4.

Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). An applicant bears the burden to demonstrate that each of the criteria set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3).

Conclusions of Law

I.

Under the first statutory criterion, the applicant must show that the application is consistent with the health resource allocation plan (HRAP), which identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. 18 V.S.A. § 9437(1). Because the proposed project is simply a financial transaction, only HRAP standard 3.4, requiring that the applicant include the costs of the proposed project within its hospital budget submission is applicable.

In this case, the applicant included the project's capital costs in its 2017 and 2018 hospital budget submissions to the Board. *See* Finding of Fact (Findings) ¶ 10. The applicant also factored the project's capital expenses into its recent CON applications. *Id.* We therefore conclude that this criterion has been satisfied.

II.

Under the second criterion, an applicant must demonstrate that the project cost is reasonable because first, the applicant can sustain any financial burden likely to result from the project's completion; second, the project will not cause an "undue" increase in the costs of care, and third, "less expensive alternatives do not exist, would be unsatisfactory, or are not feasible or appropriate." 18 V.S.A. § 9437(2). In determining whether the project will unduly increase the costs of care, the Board must consider factors that include the financial impact on the facility's services, expenditures and charges, and whether such impact is outweighed by the project's benefits to the public. 18 V.S.A. § 9437(2)(B).

After reviewing the record, we believe that the project's total cost of \$22.1 million is reasonable in relation to its expected long-term financial benefit. Even with Year 1 costs in excess of \$5.6 million—largely due to the down payment for the loan—the applicant will achieve positive annual cash flows by Year 2 and its cumulative cash flows will break even by Year 8. Findings ¶ 12, 13. Once the mortgage is discharged in Year 15, cumulative savings will accelerate to over \$1.6 million per year, and by Year 30, the applicant estimates a positive cumulative cash flow of approximately \$54.3 million. Findings ¶ 13. In view of this cost savings, it is unlikely that this project will create a financial burden to the applicant.

For the same reasons, we find that the project will not unduly increase the costs of care. To the contrary, the savings associated with the project represent a financial benefit to the public by freeing up funds that would have gone to lease payments and reinvesting the savings in patient care and quality improvement initiatives. Findings ¶ 16. The project will not have any impact on other hospitals or any impact on services, expenditures or charges. *Id.*

We are also persuaded that there are no viable, cost-effective alternatives to the project. Continuing to lease 62 and 192 Tilley Drive would be much costlier over time than purchasing the two buildings. *See* Findings ¶¶ 7, 12, 13. There are no other commercial office buildings on the market in the greater Burlington area of similar size, quality, and design type; these buildings were specifically designed for use by the applicant as medical offices. Findings ¶ 5. Further, the

single commercial office building recently on the market that can be considered comparable to the subject properties was not intended for medical occupancy and sold for \$336.45 per square foot, significantly more than the \$247.31 per square foot for 62 Tilley Drive and \$272.45 per square foot for 192 Tilley Drive. Findings ¶¶ 6, 8.

We thus conclude that the applicant has satisfied the second criterion.

III.

Under the third criterion, the applicant 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).

The two buildings the applicant proposes to purchase house critical outpatient services. Findings ¶¶ 3, 4. Both buildings were constructed specifically for, and are fully occupied by UVMMC, and it intends to use them for outpatient services for the foreseeable future. Findings ¶ 2. With no options for affordable and adequately sized and configured alternative space for these services, see Section II, above, we conclude that there is there is an identifiable and existing need for the project. The applicant has therefore met the third criterion.

IV.

The fourth criterion requires that the applicant demonstrate that the proposed project will improve the quality of health care in Vermont, provide greater access to health care for Vermonters, or both. 18 V.S.A. § 9437(4).

As we discussed above with respect to cost of care, the applicant has demonstrated that the savings generated by the project can be used for reinvestment in patient care and quality improvement initiatives. Findings ¶ 16. Through the project implementation period and annual budget submissions, we expect the applicant to identify how cost savings generated from this project are being reinvested into patient care and quality improvement initiatives.

The applicant has met this criterion.

V.

The fifth criterion requires that the applicant demonstrate that the project will not have an undue adverse impact on other services it offers. 8 V.S.A. § 9737(5). The project is a purely beneficial financial transaction that does not involve the construction or development of new buildings or improvements, the acquisition of any equipment, the creation of any new health care facilities, or the initiation of any new health services. Findings ¶ 15. In addition, the project will not have any financial impact on other hospitals or other clinical settings, or any impact on services expenditures or charges. Findings ¶ 16. Thus, to the extent this criterion is applicable, we conclude it has been satisfied.

VI.

For all of the reasons discussed throughout this decision, we also conclude that the project will “serve the public good.” 18 V.S.A. § 9437(6). Specifically, it will allow the applicant to both build equity in the Tilley Drive medical office buildings and reduce its annual expenses. Findings ¶¶ 7, 13. Further, the cost savings generated from the project will give the applicant more money to reinvest in patient care and quality improvement initiatives. Findings ¶ 16. The applicant has therefore satisfied the sixth criterion.

VII.

The seventh criterion requires that the applicant adequately consider the availability of affordable, accessible patient transportation services to the facility. 8 V.S.A. § 9437(7). UVMHC currently subsidizes public transportation to 62 and 192 Tilley Drive, including paratransit services for individuals with disabilities who are unable to use the fixed route bus service system. Findings ¶ 17. As the project does not add or relocate any patient services, *see* Findings ¶ 15, we find that this criterion has been satisfied.

VIII.

Finally, the applicant must demonstrate that the purchase of new health information technology conforms to the State’s health information technology plan. 18 V.S.A. § 9437(8). Because the project is purely a financial transaction, this criterion is not applicable.

Conclusion

Based on the above, we conclude that the applicant has demonstrated that it has met each of the required statutory criterion under 18 V.S.A. § 9437. We therefore approve the application and issue a certificate of need, subject to the conditions outlined therein.

SO ORDERED.

Dated: May 22, 2018 at Montpelier, Vermont.

s/ Kevin Mullin, Chair)
)
s/ Jessica Holmes)
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s/ Robin Lunge)
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s/ Tom Pelham)
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s/ Maureen Usifer)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

Filed: May 22, 2018

Attest: s/ Erin Collier, Administrative Services Coordinator