

December 19, 2016

**DELIVERED BY ELECTRONIC MAIL**

Noel Hudson, Esq.  
Hearing Officer  
Director of Health Policy  
Green Mountain Care Board  
89 Main Street  
Montpelier, VT 05620

**Re: Docket No. GMCB020-15con  
Proposed purchase of Rowan Court Nursing and Rehabilitation Center**

Dear Mr. Hudson:

I have reviewed the letter from the Long Term Care Ombudsman Project (LTCOP), dated December 13, 2016. On behalf of the Applicants, we respond as follows:

The LTCOP's submission should not become a part of the record, or should be stricken from the record if already included therein, for the following reasons.

First, once the LTCOP filed a notice of intervention it became an "interested party." 18 V.S.A. § 9440(c)(9); Green Mountain Care Board (GMCB) Rule 4.406. An interested party:

- (a) shall be copied on all materials in the record;
- (b) may, prior to the application closed date, submit to the Board proposed questions for the applicant, to which the Board may in its discretion ask the applicant to respond;
- (c) may file pre-hearing information and participate in the review process; and
- (d) may appeal the Board's decision or other ruling eligible for appeal to the Vermont Supreme Court within thirty (30) days of the date of the Board's decision or ruling.

GMCB Rule 4.406 ¶ 5.

An interested party "may submit at the public hearing presentation materials that were not submitted to the Board prior to the application closed date, so long as those materials contain no new information or contain new information that was expressly requested by the Board." Rule 4.407 ¶ 2. The submission by the LTCOP contains new information not included in the application or even raised at the hearing. One example of such new information is a discussion in the LTCOP submission of Fitchburg Gardens. This facility is not part of the record.

Second, the LTCOP's submission is untimely. Members of the public may submit written comment to the Board regarding an application after the Board has asserted jurisdiction over the project until ten days after a public hearing. GREEN MOUNTAIN CARE BOARD (GMCB) RULE 4.000: CERTIFICATE OF NEED (Rule 4.) 4.407 ¶ 5. According to Rule 4.104 ¶ 5, "'Days' means consecutive calendar days, except as follows: (a) If a deadline falls on a weekend or holiday, the deadline shall be extended to the next business day." The deadline therefore for the submission of written comments was ten days after the public hearing which was held on December 1, 2016; making the submission deadline Monday, December 12, 2016. Although the LTCOP's submission is dated December 13, 2016, which in itself is late, it appears as though it was not served until December 15, 2016, when the undersigned was copied on the email from the LTCOP to the GMCB filing the submission. Assuming the submission was allowed as a written comment from the public, it was nonetheless late, whether filed on December 13<sup>th</sup> or 15<sup>th</sup>.

Third, even if the LTCOP's submission were not late, it could not be considered for the truth of the matter asserted because it was not submitted under oath. "Public comments, whether made at a public hearing or submitted in writing, shall not be considered for the truth of the matter asserted unless they are submitted under oath." 4.407 ¶ 6.

Finally, the LTCOP's submission contains generalizations and conjecture, with no references to support the assertions. For example, the submission states that Mr. Gamzeh is still working for Holliswood Nursing Home because Holliswood still lists him as the "managing employee". Mr. Gamzeh, however, testified under oath at the public hearing that he no longer works there (Transcript at 31). The Applicants should not be made to submit further documentation to prove this fact based on this unsupported assertion by the LTCOP. Having said that, Mr. Gamzeh can certainly submit documentation from Holliswood to confirm that he has no involvement there. In addition, the LTCOP states: "High rates of above average antipsychotic medication use (not only for the homes with behavioral programs, high incidences of pressure ulcers above average and above average re-hospitalizations rates are only a few of the many concerns gleaned from these tables." The LTCOP makes this assertion without referencing the specific Tables, let alone the homes, the dates, etc. A final example: the LTCOP references Messrs. Gamzeh, Glatzer and Lerner proposing to spend 8 hours per week at Rowan. However, in the hearing transcript, these gentlemen explained that they will commit whatever is needed and that putting a concrete number on the hours they will devote is not fair. (Transcript at 47).

Based on the foregoing, the Applicants respectfully submit that the submission by the LTCOP dated December 13, 2016 and filed on or about December 15, 2016 should be denied. In the alternative, the Applicants request that the LTCOP be made to resubmit the submission, under oath and with citations to the record in support of its submission and/or the submission of the documentation on which it relies. The Applicants would then respectfully request ten business days (in light of the impending holidays) to submit a response to the amended submission.

Thank you.

Very truly yours,

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line and a small upward flick.

Shireen T. Hart, Esq.

cc: Alice S. Harter, Local Long Term Care Ombudsman  
Eric Avildsen, Acting Director of the Long Term Care Ombudsman Project  
Donna Jerry, GMCB