



North Carolina Department of Health and Human Services
Division of Health Service Regulation

Pat McCrory
Governor

Richard O. Brajer
Secretary DHHS

Mark Payne
Assistant Secretary for Audit and
Health Service Regulation

June 27, 2016

Denise M. Gunter
Nelson Mullins
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103

No Review

Record #: 1974
Business Name: New Hanover Regional Medical Center
Business #: 1308
Project Description: Offer diagnostic imaging services in Medical Office Building
County: Onslow

Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your letter of June 21, 2016 regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in your correspondence is not governed by, and therefore, does not currently require a certificate of need. However, please note that if the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

However, you need to contact the Agency's Acute and Home Care Licensure and Certification Section to determine if they have any requirements for development of the proposed project.

It should be noted that this determination is binding only for the facts represented in your correspondence. Consequently, if changes are made in the project or in the facts provided in your correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office. Changes in a project include, but are not limited to: (1) increases in the capital cost; (2) acquisition of medical equipment not included in the original cost estimate; (3) modifications in the design of the project; (4) change in location; and (5) any increase in the number of square feet to be constructed.



Healthcare Planning and Certificate of Need Section

www.ncdhhs.gov

Telephone: 919-855-3873 • Fax: 919-715-4413

Location: Edgerton Building • 809 Ruggles Drive • Raleigh, NC 27603


Mailing Address: 2704 Mail Service Center • Raleigh, NC 27699-2704


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Please contact this office if you have any questions. Also, in all future correspondence you should reference the Facility ID # (FID) if the facility is licensed.

Sincerely,


Jane Rhoe-Jones
Project Analyst

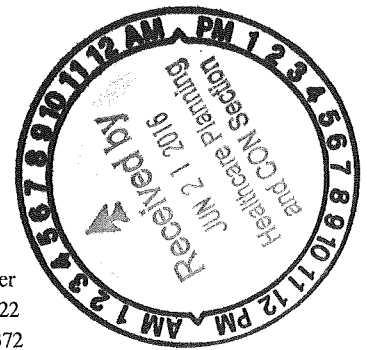

Martha J. Frisone,
Assistant Chief, Certificate of Need

cc: Acute and Home Care Licensure and Certification Section, DHR
Paige Bennett, Assistant Chief, Healthcare Planning, DHR

Nelson Mullins

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June 21, 2016

Hand Delivered

Martha J. Frisone, Assistant Chief
North Carolina Department of Health and Human Services
Division of Health Service Regulation
Certificate of Need Section
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: New Hanover Regional Medical Center
Letter of No Review for Diagnostic Imaging Equipment in Medical Office
Building
Onslow County
Health Service Area VI

Dear Ms. Frisone:

On behalf of New Hanover Regional Medical Center ("NHRMC"), I am writing to confirm that the following proposal with a capital cost of \$202,897 does not constitute a diagnostic center under N.C. Gen. Stat. § 131E-176(7a) and does not otherwise require a CON pursuant to N.C. Gen. Stat. § 131E-176(16).

Facts

NHRMC, either directly or through an affiliate¹ (collectively referred to as NHRMC in this letter), proposes to lease space in a medical office building ("MOB") located at 2000 Brabham Avenue in Jacksonville, North Carolina. The MOB will be owned by a third party developer, Summit Healthcare Group, LLC ("Summit"), which submitted a separate exemption letter for the MOB. The CON Section issued an exemption letter to Summit on June 1, 2016. Summit does not provide any healthcare services. NHRMC is only a tenant in the MOB and

¹ NHRMC and the radiology group, Delaney Radiologists ("Delaney"), which provides services at NHRMC facilities, intend to form a joint venture (the "Joint Venture") to operate an imaging suite in the MOB. The joint venture is currently in the process of being formed.

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will not own any part of the MOB. The lease between NHRMC and Summit will be an operating lease, not a capital lease.

The Joint Venture will offer certain diagnostic imaging services in the MOB (the "Project"). The imaging space will total approximately 5,995 square feet. The imaging services to be offered are x-ray, CT, ultrasound, mammography, and bone density testing. NHRMC already owns the x-ray machine, the CT scanner, the Medrad injector used to administer contrast for CT scans, the ultrasound machine, the mammography unit and the bone density machine. NHRMC is contributing the x-ray machine, the CT scanner, the Medrad injector, the ultrasound machine, the mammography unit and the bone density machine to the Joint Venture as NHRMC's initial capital contribution and assessing these pieces of equipment at their current fair market value ("FMV"). These pieces of equipment are currently located at NHRMC in Wilmington and will be transported by truck to Jacksonville. In accordance with the Court of Appeals' decision in *Mission Hospitals, Inc. v. NCDHHS*, 205 N.C. App. 35, 54, 696 S.E.2d 163, 176-77 (2010), NHRMC has used the FMV of the x-ray machine, the CT scanner, the Medrad injector, the ultrasound machine, the mammography unit and the bone density machine, rather than their original acquisition cost, to determine whether the \$500,000 diagnostic center threshold is reached. See also *Susi v. Aubin*, 173 N.C. App. 608, 612, 620 S.E.2d 682, 684 (2005) (fair market value ". . . is generally defined as '[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction.'") (quoting *Black's Law Dictionary* 1587 (8th ed. 2004)).

The table on the next page shows the capital costs associated with the project. In accordance with N.C. Gen. Stat. § 131E-176(7a), only the items with an FMV of \$10,000 or greater are included to determine whether the \$500,000 diagnostic center threshold is met. The x-ray machine (FMV = \$6,000) and ultrasound machine (FMV = \$7,000) each has a fair market value of less than \$10,000, so they are excluded from the cost calculations below.

Table 1: Costs

Imaging Specific Cost for the Construction of the CT and CT Control Rooms	\$41,397
CT FMV	\$60,000
Mammography Machine FMV	\$26,000
Bone Density FMV	\$18,500
Medrad Injector for CT	\$10,000
Cost of Moving/Installing Equipment	\$35,000
Physicist Visits	\$12,000
Total	\$202,897

See Capital Cost Sheet, attached as Exhibit A.²

Analysis

N.C. Gen. Stat. § 131E-176(16)a. defines "new institutional health service" to mean, *inter alia*, "[t]he construction, development, or other establishment of a new health service facility." "Health service facility" is defined to include "diagnostic center." See N.C. Gen. Stat. § 131E-176(9b).

"Diagnostic Center" means:

. . . a freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars (\$500,000), the costs the

² The construction costs to make the x-ray area suitable for x-rays are \$18,400; however, since the x-ray machine has an FMV of less than \$10,000, x-ray area construction costs are not included. However, even if these costs were included, the total cost of the Project would still be well below the \$500,000 threshold.

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equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.

N.C. Gen. Stat. § 131E-176(7a).

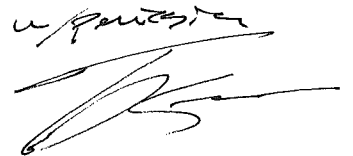
As the foregoing demonstrates, the total cost of the Project, \$202,897, is well below the \$500,000 threshold. None of the equipment NHRMC proposes to use in the MOB independently requires a CON.

Accordingly, NHRMC respectfully requests that the CON Section confirm in writing that the Project does not require a CON.

Thank you for your time and attention.

Sincerely,


Denise M. Gunter



Enclosure

PROPOSED CAPITAL COSTS

Project Name: Imaging Equipment in MOB
 Proponent: New Hanover Regional Medical Center

A. <u>Site Costs</u>		
(1)	Full purchase price of land.....	\$ _____
(2)	Acres _____ Price per Acre \$ _____	
(3)	Closing costs.....	\$ _____
(4)	Site Inspection and Survey.....	\$ _____
(5)	Legal fees and subsoil investigation.....	\$ _____
	Site Preparation Costs	\$ _____
	Soil Borings.....	\$ _____
	Clearing-Earthwork.....	\$ _____
	Fine Grade For Slab.....	\$ _____
	Roads-Paving.....	\$ _____
	Concrete Sidewalks.....	\$ _____
	Water and Sewer.....	\$ _____
	Footing Excavation.....	\$ _____
	Footing Backfill.....	\$ _____
	Termite Treatment.....	\$ _____
	Other (Specify).....	\$ _____
	Sub-Total Site Preparation Costs.....	\$ _____
(6)	Other (Specify).....	\$ _____
(7)	Sub-Total Site Costs.....	\$ _____
B. <u>Construction Contract</u>		
(8)	Cost of Materials	
	General Requirements	
	Concrete/Masonry	
	Woods/Doors & Windows/Finishes	
	Thermal & Moisture Protection	
	Equipment/Specialty Items	
	Mechanical/Electrical	
	Other (Specify)	
	Sub-Total Cost of Materials.....	\$ _____
(9)	Cost of Labor.....	\$ _____
C.	Other (Specify).....	\$ _____
D.	Sub-Total Construction Contract.....	\$ _____
E.	<u>Miscellaneous Project Costs</u>	\$41,397
(10)	Building Purchase.....	\$ _____
(11)	Fixed Equipment Purchase/Lease.....	\$ _____
(12)	Movable Equipment Purchase/Lease.....	\$114,500
(13)	Furniture.....	\$ _____
(14)	Landscaping.....	\$ _____
(15)	Consultant Fees	
	Architect and Engineering Fees.....	\$ _____
	Legal Fees.....	\$ _____
	Market Analysis.....	\$ _____
	Other (Specify).....	\$ _____
	Sub-Total Consultant Fees.....	\$ _____
(16)	Financing Costs (e.g. Bond, Loan, etc.).....	\$ _____
(17)	Interest During Construction.....	\$ _____
(18)	Other (Specify) moving and installing equipment (\$35,000) and physicist (\$12,000)	\$ 47,000
(19)	Sub-Total Miscellaneous.....	\$ _____
(20)	Total Capital Cost of Project (Sum A-C above).....	\$ 202,897

I certify that, to the best of my knowledge, the above construction related costs of the proposed project named above are complete and correct.

 (Signature of Licensed Architect or Engineer)

I assure that, to the best of my knowledge, the above capital costs for the proposed project are complete and correct and that it is my intent to carry out the proposed project as described.

John A. Giszka

 (Proponent - signature of officer)

Chief Operating Officer

 (Title of officer)