

ATTACHMENT - REQUIRED STATE AGENCY FINDINGS

FINDINGS

C = Conforming

CA = Conditional

NC = Nonconforming

NA = Not Applicable

Decision Date: September 27, 2017

Findings Date: October 3, 2017

Chief: Martha J. Frisone

Project ID #: G-11335-17

Facility: The Crossings at Winston-Salem

FID #: 170193

County: Forsyth

Applicants: Winston-Salem AL Investors, LLC

Winston-Salem Operations, LLC

Project: Relocate 121 adult care home beds from Integrity Assisted Living (FID #920217) to develop a 121-bed replacement facility, including a 48-bed special care unit and rename the facility The Crossings at Winston-Salem

REVIEW CRITERIA FOR NEW INSTITUTIONAL HEALTH SERVICES

N.C. Gen. Stat. §131E-183(a) The Agency shall review all applications utilizing the criteria outlined in this subsection and shall determine that an application is either consistent with or not in conflict with these criteria before a certificate of need for the proposed project shall be issued.

- (1) The proposed project shall be consistent with applicable policies and need determinations in the State Medical Facilities Plan, the need determination of which constitutes a determinative limitation on the provision of any health service, health service facility, health service facility beds, dialysis stations, operating rooms, or home health offices that may be approved.

C

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, located at 2900 Reynolds Park Road in Winston-Salem, has not served any residents since 2015. The applicants, Winston-Salem AL Investors, LLC (lessor) and Winston-Salem Operations, LLC (lessee), propose to acquire the beds, relocate the facility and rename it The Crossings at Winston-Salem. The replacement facility would include a 48-bed special care unit (SCU). There is no SCU at Integrity Assisted Living.

Need Determination

The proposed project does not involve the addition of any new health service facility beds, services or equipment for which there is a need determination in the 2017 State Medical Facilities Plan (SMFP). Therefore, there are no need determinations applicable to this review.

Policies

There are two policies in the 2017 SMFP that are applicable to this review: Policy LTC-2: Relocation of Adult Care Home Beds and Policy GEN-4: Energy Efficiency and Sustainability for Health Service Facilities.

Policy LTC-2 states:

“Relocations of existing licensed adult care home beds are allowed only within the host county and to contiguous counties. Certificate of need applicants proposing to relocate licensed adult care home beds to contiguous counties shall:

- 1. Demonstrate that the facility losing beds or moving to a contiguous county is currently serving residents of that contiguous county; and*
- 2. Demonstrate that the proposal shall not result in a deficit, or increase an existing deficit in the number of licensed adult care home beds in the county that would be losing adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins; and*
- 3. Demonstrate that the proposal shall not result in a surplus, or increase an existing surplus of licensed adult care home beds in the county that would gain adult care home beds as a result of the proposed project, as reflected in the North Carolina State Medical Facilities Plan in effect at the time the certificate of need review begins.”*

The applicants propose to relocate the ACH beds within the same county. The number of licensed adult care home beds in Forsyth County would not change as a result of the proposed relocation. Therefore, the application is consistent with Policy LTC-2.

Policy GEN-4 states:

“Any person proposing a capital expenditure greater than \$2 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178 shall include in its certificate of need application a written statement describing the project’s plan to assure improved energy efficiency and water conservation.

In improving a certificate of need proposing an expenditure greater than \$5 million to develop, replace, renovate or add to a health service facility pursuant to G.S. 131E-178, Certificate of Need shall impose a condition requiring the applicant to develop and implement an Energy Efficiency and Sustainability Plan for the project that conforms to or exceeds energy efficiency and water conservation standards incorporated in the latest editions of the North Carolina State Building Codes. The plan must be consistent with the applicant's representation in the written statement as described in paragraph one of Policy GEN-4.

Any person awarded a certificate of need for a project or an exemption from review pursuant to G.S. 131E-184 is required to submit a plan for energy efficiency and water conservation that conforms to the rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. The plan must be consistent with the applicant's representation in the written statement as described in paragraph one of Policy GEN-4. The plan shall not adversely affect patient or resident health, safety or infection control."

The projected capital cost for the proposal exceeds \$5 million. In Section IX, page 53, and in a letter from an architect provided in Exhibit 21, the applicants state that the project will conform to all energy and water conservation rules, codes and standards implemented by the Construction Section of the Division of Health Service Regulation. Therefore, the application is consistent with Policy GEN-4.

Conclusion

In summary, the applicants adequately demonstrate that their proposal is consistent with Policy LTC-2 and Policy GEN-4. Therefore, the application is conforming to this criterion.

- (2) Repealed effective July 1, 1987.
- (3) The applicant shall identify the population to be served by the proposed project, and shall demonstrate the need that this population has for the services proposed, and the extent to which all residents of the area, and, in particular, low income persons, racial and ethnic minorities, women, handicapped persons, the elderly, and other underserved groups are likely to have access to the services proposed.

NC

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, located at 2900 Reynolds Park Road in Winston-Salem, has not served any residents since 2015. The applicants propose to acquire the beds, relocate the facility and rename it The Crossings at Winston-Salem. The replacement facility would include a 48-bed SCU. There is no SCU at Integrity Assisted Living. On page 9, the applicants state they:

“plan to add an independent living community to the facility at a future date. With the addition of independent living, the residents will have better options for aging in place. When the entire community becomes operational, independent living residents who require more assistance as they age may choose to transition into an adult care setting within similar surroundings.”

Patient Origin

On page 219, the 2017 SMFP defines the service area for adult care home beds as *“the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrrell, are considered a combined service area.”* Thus, the service area for this facility consists of Forsyth County. Facilities may also serve residents of counties not included in their service area.

Since Integrity Assisted Living is not currently operational there is no historical patient origin for the facility. In Section III.7(b), page 30, the applicants provide the projected patient origin for the proposed facility, as shown in the table below.

County	Projected % of Total ACH Admissions
Forsyth	90%
Guilford	3%
Yadkin	2%
Davie	2%
Stokes	1%
Davidson	1%
Surry	1%
Total	100%

In Section III.7(c), page 30, the applicants provide the assumptions used to project patient origin. The applicants adequately identify the population to be served.

Analysis of Need

Section III.1(a) of the application form requests that the applicant:

“Discuss the need for the proposed renovation or replacement of the facility, including such factors as age, building design, room configuration, room types, energy efficiency, and patient environment, safety and security.”

In response, on page 19, the applicants state:

“The existing building where the current facility is located ceased to operate before the date of this application. The current facility was built in 1955, and, therefore, it was not built to standards that other newer facilities in the county were built [sic]. The proposed

building allows for a much higher quality of resident care, and given the modern construction materials and techniques, would be much more energy efficient to operate.

The current facility serves a portion of eastern Forsyth County. The proposed site will serve a different portion of Forsyth County, as shown in the maps in Exhibit 26. The second and third maps in Exhibit 26 show a 15-minute drive-time radius for both the current location and the proposed site. In the Applicants' experience, a 15-minute drive-time radius is a good indicator for determining the origin of a significant segment of a facility's potential residents. The first map shows that the proposed site is in a part of Forsyth County with a significantly higher median age, while the current location is near the center of the part of the county with the youngest demographics. ... The Applicants believe that building a replacement facility in an area with a higher median age will help attract residents because it will be within a closer geographic radius for the population that needs the facility's services."

Building a modern facility would result in a healthy census by creating a more home-like environment and allowing residents to age in place with a special care unit. The energy efficiency, resident safety, and the security of the new building will undoubtedly be greater than the current facility simply due to the nature of the current building being 62-years old."

Other than the three maps provided in Exhibit 26, the applicants provide no other documentation to support their response to Section III.1(a).

Section III.1(b) of the application form requests that the applicant respond to the following:

"If the existing adult care home is not operating at 85% of capacity, explain the reasons the facility is underutilized and the proposed impact of the project on future utilization."

In response, on page 20, the applicants state that

"The current facility is licensed but it has not been in operation for some time. The Applicants are unable to determine the census during the time it did operate. However, it would make sense that it suffered from a low census during the last years of operation. The facility was built in 1955, and, therefore, it was not built to standards that other newer facilities in the county were built [sic]. Additionally, many residents and residents' families would simply prefer a newer and more modern facility.

Moving the facility to its proposed location and creating a new community will go a long way toward [sic] drawing residents from across Forsyth County. Unlike the current facility, The Crossings at Winston-Salem will cater to a healthy mix of elderly persons who can afford the private pay rate, and elderly persons suffering from Alzheimer's and dementia who rely on Medicaid. This mix will allow the proposed facility to create [sic] standard of care far beyond that which the current facility could provide. The applicants' plan to include a special care unit for Alzheimer's and dementia, which will

attract those residents who would prefer to age in place. The applicants believe these factors will bring the proposed facility up to a census of almost 90% by the end of the first year of operation.

While the majority of residents at the proposed facility are projected to be private pay, residents relying on Medicaid in the special care unit will be served as well.”

The applicants do not provide any documentation to support the statements made in response to Section III.1(b).

Section III.2 of the application form requests that the applicant respond to the following:

- “(a) If any new special care services are proposed describe the unmet need that necessitated the inclusion of these services [i.e. special care units such as Alzheimer’s units].*
- (b) Provide statistical or other data that substantiates the need for each new service.”*

The applicants provide a response on pages 20-27 of the application and include supporting documentation in Exhibits 3-7.

Projected Utilization

Section IV.2 requests that the applicant provide projected utilization for the first two operating years. The applicants’ response is summarized in the table below.

	FFY 2020 (OY 1)	FFY 2021 (OY 2)
Regular ACH Beds		
Patient Days	13,775	23,448
Occupancy Rate	52%	88%
# of Beds	73	73
SCU Beds		
Patient Days	9,058	15,418
Occupancy Rate	52%	88%
# of Beds	48	48
Total Beds		
Patient Days	22,833	38,865
Occupancy Rate	52%	88%
# of Beds	121	121

Section IV.3 requests that the applicant:

“Describe the assumptions and methodologies used to project utilization in the above tables. If a mathematical formula was used to derive the utilization projections, provide the formula or calculation that was used.”

In response, on page 33, the applicant states

“For the projected utilization in the tables above, it was assumed that the facility would open with 9% occupancy. In the management company’s (Harmony Senior Services) experience, marketing and resident recruitment is initiated several months before the facility is opened, and 9% occupancy at opening is a conservative estimate. After the facility opens, occupancy is projected to increase at a consistent rate until it reaches 88% at the end of the first year of operation.”

While the applicants provide certain assumptions used to project utilization, they do not provide the methodology used to project utilization as requested. Moreover, the applicants do not provide any documentation to support the statements made on page 33 in response to Section IV.3. In particular, the applicants do not provide any documentation to support the assumption that *“9% occupancy at opening is a conservative estimate”* other than the statement that it is based on the experience of Harmony Senior Services. There is nothing in the application as submitted which describes this experience and explains why it is reasonable to assume that the experience in Forsyth County would be similar. Furthermore, according to Table 11B, page 247, in the 2017 SMFP, there will be a surplus of 882 ACH beds in Forsyth County in 2020. The applicants do not address this projected surplus in the application as submitted. Therefore, the applicants do not adequately demonstrate that projected utilization is based on reasonable and adequately supported assumptions, and consequently, they do not adequately demonstrate the need to acquire the beds and relocate the facility.

Access

In Section VI.3(a), page 35, the applicants state that all persons will have access to the facility only on the written order of a physician and all persons whose needs can be met by the facility will be admitted without regard to their race, color, creed, age, national origin, handicap, sex, or source of payment. On page 36, the applicants state:

“Private-pay patients in the special care unit who spend down and become eligible for Medicaid will not be discharged from the facility if there is a bed available in a room designed for dual occupancy in the special care unit.”

In Section III.1(b), page 20, the applicants state: *“The Crossings at Winston-Salem will cater to a healthy mix of elderly persons who can afford the private pay rate, and elderly persons suffering from Alzheimer’s and dementia who rely on Medicaid.”* In Section VI.2, page 35, the applicants project that 16.5% of all days of care will be provided to residents of the SCU who rely on State County Assistance/Basic Medicaid to pay for their care.

The applicants adequately demonstrate the extent to which all residents of the area, including the medically underserved, are likely to have access to the proposed services.

Conclusion

In summary, the applicants adequately identify the population to be served and adequately demonstrate the extent to which all residents of the area, including the medically underserved, are likely to have access to the proposed services. However, the applicants do not adequately demonstrate the need to acquire the beds and relocate the facility. Therefore, the application is not conforming to this criterion.

- (3a) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the applicant shall demonstrate that the needs of the population presently served will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly to obtain needed health care.

C

Integrity Assisted Living (FID #920217), is a 121-bed adult care home facility, located at 2900 Reynolds Park Road in Winston-Salem. The applicants propose to acquire the beds, relocate the facility and rename it The Crossings at Winston-Salem. Integrity Assisted Living is not currently serving residents and has not served any residents since 2015. Thus, no residents, including any medically underserved groups, will be impacted by the relocation of the 121 ACH beds. More than sixteen percent of the projected days of care are expected to be provided to recipients of State County Assistance/Basic Medicaid in the replacement facility. The applicants demonstrate that the proposal will not adversely affect the ability of underserved groups to obtain needed health care. Therefore, the application is conforming to this criterion.

- (4) Where alternative methods of meeting the needs for the proposed project exist, the applicant shall demonstrate that the least costly or most effective alternative has been proposed.

NC

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, is located at 2900 Reynolds Park Road in Winston-Salem. The facility has not served any residents since 2015. The applicants propose to acquire the beds, relocate the facility and rename it The Crossings at Winston-Salem. The replacement facility would include a 48-bed special care unit (SCU). There is no SCU at Integrity Assisted Living.

Section III.3 of the application form requests that the applicant:

“Discuss the various alternatives that were considered in development of the proposed project and the reason the alternative chosen is the most effective alternative of those considered.”

In response, on pages 27-28, the applicants state:

“In addition to the route chosen and proposed in this application, the applicants considered renovating the existing facility and constructing a new building on the current site. However, neither alternative would work because the current site is 4.7 acres, which is not enough to build the type of facility the Applicants wish to build, and the current facility is so old, it would not provide the square footage necessary to meet the current rules for all 121 beds if it were renovated. As such, the proposed location would provide an enhanced access to care for Forsyth County residents because a more comprehensive facility can be constructed there.”

Thus, the applicants state that they believe that the alternatives of renovating the existing building or constructing a new building on the existing site would be less effective alternatives than their proposal to acquire the beds and relocate the facility.

However, the applicants do not adequately demonstrate the need for the proposed project. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference. Furthermore, the application is not conforming to all other statutory review criteria, and thus, is not approvable. See Criteria (5), (6), (18a) and (20). A project that cannot be approved cannot be an effective alternative.

Moreover, there is controversy over whether or not the applicants are entitled to acquire the beds and relocate the facility.

Background

- The owner of the real property at 2900 Reynolds Park Road, Winston-Salem is AA Holdings – Winston-Salem, LLC (AA Holdings).
- The sole owner of AA Holdings was Clifford Hemingway, who passed away on September 22, 2016.
- In 2015, the license for the facility was issued to Cornerstone Living Center of Winston-Salem, LLC (Cornerstone).
- On or about May 13, 2015, the Adult Care Licensure Section of the Division of Health Service Regulation (Adult Care) issued a Suspension of Admissions
- On or about May 26, 2015, Adult Care issued a Summary Suspension of Adult Care License.
- On or about June 2, 2015, Adult Care issued a Notice of Intent to Revoke Adult Care Home License.
- Cornerstone appealed.
- A settlement was reached and the Settlement Agreement was signed by the Director of the Division of Health Service Regulation on September 25, 2015. Other signatories included: Cornerstone; AA Holdings; Raintree Healthcare of Forsyth, LLC (Raintree), Adult Care; and the NC Attorney General’s Office.

- Pursuant to the September 25, 2015 Settlement Agreement, the Suspension of Admissions would continue until the building was brought into compliance with applicable construction standards.
- The new licensee (Raintree) and AA Holdings were given until February 29, 2016 to either apply for a certificate of need to relocate the beds or make improvements to the existing building to bring it into compliance with applicable construction standards.
- The Settlement Agreement allowed the licensee and AA Holdings to ask for an extension of time to apply for a certificate of need past February 29, 2016 to a date no later than August 31, 2016.
- No request was made before the deadline of February 29, 2016 but Mr. Hemingway's attorney began negotiating with Adult Care for an extension of time in order to finalize negotiations with Raintree and a prospective buyer, identified as Mainstay Financial Services, LLC (Mainstay).
- By letter dated January 11, 2017, Mainstay notified the Healthcare Planning and Certificate of Need Section (CON Section) of an intent to acquire the facility.
- By letter dated February 22, 2017, the CON Section notified Mainstay that its proposal to acquire the facility was exempt from certificate of need review pursuant to N.C. Gen. Stat. § 131E-184(a)(8).
- By letter dated February 24, 2017, Adult Care notified Raintree that the 2017 License Renewal was denied.
- On April 17, 2017, the applicants filed the CON application proposing to acquire and relocate the facility.
- On June 29, 2017, AA Holdings filed for Chapter 11 Bankruptcy.

Exhibit 25 of the certificate of need application includes a document titled "*LEASE AGREEMENT RAINTREE HEALTHCARE OF FORSYTH LLC A NORTH CAROLINA LIMITED LIABILITY COMPANY AND CLIFF HEMINGWAY SOLE OWNER OF AA HOLDINGS-WINSTON-SALEM LLC.*" The agreement was "*made and entered into this 30th day of September, 2015*" (September 30, 2015 Lease) and identifies Raintree as Lessee and Cliff Hemingway as Owner. Paragraph 3, headed LICENSE, states:

"Lessee shall have a license to use the Facilities during the term of this Agreement in accordance with the terms and conditions of this Agreement, and shall have rights to the License and Certificate of Need (CON) according to the settlement agreement signed agreed and approved by the Division of Health Service Regulation on September 25th, 2015 in and to the Facilities. Owner shall at all times during and after the term of this Agreement be the sole owner of the Facilities real estate. The License and CON shall be transferred and /or sold with proceeds divided by Raintree and Owner for an amount not less than 60% of the proceeds to Raintree and 40% to Owner."

Exhibit 2 of the certificate of need application contains an agreement dated November 15, 2016 (November 15, 2016 Agreement) between Raintree (identified as the Seller) and Winston-Salem AL Investors, LLC (identified as the Buyer). The following summarizes the

provisions of the November 15, 2016 Agreement relevant to the review of the certificate of need application.

- Paragraph A states AA Holdings owns the Real Estate and identifies AA Holdings as the Property Owner.
- Paragraph B identifies the 121 existing ACH beds as the Authorized Beds.
- Paragraph I states *“Buyer desires to apply to DHHS for a Certificate of Need to construct a replacement facility for the Authorized Beds at a different location from the Real Estate (the ‘Replacement Facility’).”*
- Paragraph 12 is headed Representations and Warranties of Seller. Subparagraph f., headed Holder of Rights, states *“The Seller is the sole holder of any and all Certificate of Public [sic] Need rights for the Authorized Beds, including without limitation the right to replace and/or relocate the Authorized Beds (the ‘COPN Rights’). ... No other persons, entities or parties claim to have any right, title, interest, lien or claim to the COPN Rights.”* (Emphasis added.)

It is the last sentence of Paragraph 12f that is of particular interest. In written comments submitted during the 30-day written comment period established by N.C. Gen. Stat. § 131E-185(a1), attorneys representing the Estate of Clifford Hemingway (Estate) and AA Holdings, asserted that the September 30, 2015 Lease is *“fraudulent.”* In addition, regarding the November 15, 2016 Agreement, the attorneys state that neither *“the Estate nor AA Holdings have given Raintree permission to enter into any such agreement with the Applicants, and therefore, the applicants are not legally entitled to develop the proposed services.”* It appears that there is a controversy over who owns the rights to the 121 ACH beds. The Agency is not authorized to determine whether or not the September 30, 2015 Lease is *“fraudulent”* or who owns the rights to the beds. The ownership issue will have to be resolved in a different forum.¹ However, the Agency cannot approve the applicants for a certificate of need to acquire the beds and relocate the facility given the controversy over their right to acquire the beds.

In summary, the applicants do not adequately demonstrate that their proposal is the least costly or most effective alternative to meet the need. Therefore, the application is nonconforming to this criterion and is denied.

- (5) Financial and operational projections for the project shall demonstrate the availability of funds for capital and operating needs as well as the immediate and long-term financial feasibility of the proposal, based upon reasonable projections of the costs of and charges for providing health services by the person proposing the service.

NC

¹ At a hearing held on September 19, 2017 in Charlotte, NC, the Honorable Laura T. Beyer, United States Chief Bankruptcy Judge ruled that the September 30, 2015 Lease is invalid and fraudulent.

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Capital and Working Capital Costs

In Section VIII.1, page 43, the applicants project the total capital cost for the proposed project as shown in the following table:

Site Costs	\$1,565,000
Construction Costs	\$10,906,000
Equipment/Furniture Costs	\$657,000
Architect & Engineering Fees	\$258,000
Certificate of Need Preparation Costs	\$7,000
Legal Fees	\$93,000
Market Analysis Costs	\$7,000
Other Costs (not specified)	\$822,000
Commercial Loan Costs	\$56,000
Interest During Construction Costs	\$188,000
Total	\$14,559,000

In Section VIII.2, page 44, the applicants state that the capital costs of the project will be financed with a commercial loan (\$10,919,250) and owner's equity of James R. Smith (\$3,639,750). In Exhibit 24, the applicants project that the start-up costs will be \$210,602.38 and the initial operating expenses will be \$966,872.62 for a total working capital of \$1,177,475.

Availability of Funds

Exhibit 12 contains a copy of a letter dated April 12, 2017 from the Managing Director of Synovus Financial Corporation, which states:

“Synovus Financial Corporation hereby expresses its interest in providing construction and permanent financing for your proposed adult care facility in Forsyth County, NC. ...

Borrower: Winston-Salem AL Investors, LLC
Purpose: Finance the construction of a 121-bed adult care facility in Forsyth County, NC
Amount: \$10,919,250.00 or 75% of the appraised value of the facility, whichever is less.
...
Guarantors: James R. Smith and Hunter D. Smith”

Exhibit 14 contains a letter dated April 12, 2017 from a certified public accountant with Meeks & Young, PLC, which states:

“I am Mr. James R. Smith’s and Mr. Hunter D. Smith’s personal accountant, and have worked on the Smiths’ behalf for over twenty years. In my capacity, I am fully aware of all of the Smiths’ current business interests, and of all presently planned future projects.

It is my understanding that Winston-Salem AL Investors, LLC, of which Mr. James R. Smith is the majority member, has filed a Certificate of Need (‘CON’) Application relating to a 121 bed adult care home in Forsyth County I further understand that the project may involve a total capital cost for the adult care facility of \$14,559,000 of which the Smiths’ equity contribution will be approximately \$3,639,750.

...

Based on my familiarity with Mr. Smith’s personal financial statements, it is clear that Mr. James R. Smith has liquid financial assets in more than sufficient amounts to fund all of the equity requirements necessary to develop the Forsyth County adult care home.”

The applicants adequately demonstrate the availability of sufficient funds for the capital needs of the project, however, the applicants do not provide any documentation in the application as submitted to demonstrate that \$1,177,475 would be available for the working capital needs of the project. Therefore, the applicants do not adequately demonstrate the availability of sufficient funds for the working capital needs of the project.

Financial Feasibility

In Section IX.6, Form B, (see Section XII of the application), the applicants provide projected revenues and operating expenses for the first two years of operation following completion of the project, as shown in the table below.

	Operating Year 1	Operating Year 2
Total Patient Days	22,833	38,865
Total Revenue	\$3,542,267	\$6,029,390
Average Revenue per Patient Day	\$155.14	\$155.14
Total Operating Expenses (Costs)	\$4,357,394	\$5,080,306
Average Operating Expense per Day	\$190.84	\$130.72
Net Income	(\$815,127)	\$949,084

As shown in the table above, the applicants project that revenues will exceed total operating costs in Operating Year 2. However, the applicants do not adequately demonstrate that the assumptions used in preparation of the pro forma financial statements are based on reasonable and adequately supported assumptions. In particular, they do not adequately demonstrate that projected utilization is based on reasonable and adequately supported assumptions. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference. Therefore, the applicants do not adequately demonstrate

sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of costs and charges.

Conclusion

In summary, the applicants adequately demonstrate that sufficient funds will be available for the capital cost of the project. However, the applicants do not adequately demonstrate the availability of sufficient funds for the working capital needs of the project. Furthermore, the applicants do not adequately demonstrate sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of costs and charges. Therefore, the application is not conforming to this criterion.

- (6) The applicant shall demonstrate that the proposed project will not result in unnecessary duplication of existing or approved health service capabilities or facilities.

NC

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On page 219, the 2017 SMFP defines the service area for adult care home beds as *“the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrrell, are considered a combined service area.”* Thus, the service area for this facility consists of Forsyth County. Facilities may also serve residents of counties not included in their service area.

Chapter 11 in the 2017 SMFP includes an inventory of the existing ACH beds located in Forsyth County and a methodology for projecting the need for additional ACH beds. The summary data in the table below was compiled from Tables 11A (Inventory) and 11B (Need Projections) in the 2017 SMFP.

Adult Care Home Beds Located in Forsyth County	
# Facilities	34
# Beds in ACH Facilities	2,005
# ACH Beds in Nursing Facilities	224
Total # Licensed ACH Beds	2,229
# CON Approved Beds (License Pending)	24
Total # ACH Beds Available	2,253
Sum of Exclusions	21
Total # ACH Beds in Planning Inventory	2,232
Projected Bed Utilization in 2020	1,350
Projected Bed Surplus (Deficit)	882

As shown in the table above, according to the 2017 SMFP, there will be a surplus of 882 ACH beds in Forsyth County in 2020. The applicants do not address in the application as submitted why the 121 unutilized ACH beds at Integrity Assisted Living need to be replaced given the projected surplus of 882 ACH beds in Forsyth County in 2020. Moreover, they do not adequately demonstrate that projected utilization of the replacement facility is based on reasonable and adequately supported assumptions. The discussion regarding projected utilization in Criterion (3) is incorporated herein by reference. Because the applicants do not address the projected surplus and do not demonstrate the need to replace the 121 ACH beds, the applicants do not adequately demonstrate that the proposed project would not result in the unnecessary duplication of existing or approved ACH beds in Forsyth County. Consequently, the application is not conforming to this criterion.

- (7) The applicant shall show evidence of the availability of resources, including health manpower and management personnel, for the provision of the services proposed to be provided.

C

The applicants propose to provide personal care staff twenty-four hours per day, seven days per week. In Section VII.2, page 40, the applicants project to employ a total of 60.2 full-time equivalent (FTE) positions in Operating Year 2. Of those positions, 31.9 FTE positions will support the regular ACH beds and 28.3 FTE positions will support the SCU. Adequate costs for the health manpower and management positions proposed by the applicants are budgeted in the pro forma financial statements. The applicants adequately demonstrate the availability of sufficient health manpower and management personnel to provide the proposed services. Therefore, the application is conforming to this criterion.

- (8) The applicant shall demonstrate that the provider of the proposed services will make available, or otherwise make arrangements for, the provision of the necessary ancillary and support services. The applicant shall also demonstrate that the proposed service will be coordinated with the existing health care system.

C

In Section II.1, pages 9-13, the applicants list the services to be provided by the proposed replacement facility. Exhibit 9 contains an April 3, 2017 letter addressed to Wake Forest Baptist Medical Center expressing an interest in executing a transfer agreement with the hospital. Exhibit 10 contains letters addressed to local physicians expressing an interest in working with the physician. The applicants adequately demonstrate that they will provide the necessary ancillary and support services and that the proposed services will be coordinated with the existing health care system. Therefore, the application is conforming to this criterion.

- (9) An applicant proposing to provide a substantial portion of the project's services to individuals not residing in the health service area in which the project is located, or in adjacent health service areas, shall document the special needs and circumstances that warrant service to these individuals.

NA

- (10) When applicable, the applicant shall show that the special needs of health maintenance organizations will be fulfilled by the project. Specifically, the applicant shall show that the project accommodates: (a) The needs of enrolled members and reasonably anticipated new members of the HMO for the health service to be provided by the organization; and (b) The availability of new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the applicant shall consider only whether the services from these providers:
- (i) would be available under a contract of at least 5 years duration;
 - (ii) would be available and conveniently accessible through physicians and other health professionals associated with the HMO;
 - (iii) would cost no more than if the services were provided by the HMO; and
 - (iv) would be available in a manner which is administratively feasible to the HMO.

NA

- (11) Repealed effective July 1, 1987.
- (12) Applications involving construction shall demonstrate that the cost, design, and means of construction proposed represent the most reasonable alternative, and that the construction project will not unduly increase the costs of providing health services by the person proposing the construction project or the costs and charges to the public of providing health services by other persons, and that applicable energy saving features have been incorporated into the construction plans.

C

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, is located at 2900 Reynolds Park Road in Winston-Salem. The applicants propose to acquire the beds, relocate the facility and rename it The Crossings at Winston-Salem. The replacement facility would include a 48-bed SCU. There is no SCU at Integrity Assisted Living.

Exhibit 20 contains preliminary drawings for the proposed 98,500 square foot replacement facility. Exhibit 21 includes a letter from an architect in which he estimates that construction costs for the proposed facility will be approximately \$105 per square foot. The letter also describes the proposed project's plan to assure improved energy efficiency and water conservation. The discussion regarding costs and charges found in Criterion (5) is incorporated herein by reference. The applicants adequately demonstrate that the cost, design, and means of construction represent the most reasonable alternative for the type of facility proposed, and that the construction project will not unduly increase costs and charges for health services. Consequently, the application is conforming to this criterion.

- (13) The applicant shall demonstrate the contribution of the proposed service in meeting the health-related needs of the elderly and of members of medically underserved groups, such as medically indigent or low income persons, Medicaid and Medicare recipients, racial and ethnic minorities, women, and handicapped persons, which have traditionally experienced difficulties in obtaining equal access to the proposed services, particularly those needs identified in the State Health Plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the applicant shall show:
- (a) The extent to which medically underserved populations currently use the applicant's existing services in comparison to the percentage of the population in the applicant's service area which is medically underserved;

NA

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, located at 2900 Reynolds Park Road in Winston-Salem, has not served any residents since 2015. In Section II.3, page 18, the applicants state that neither Winston-Salem AL Investors, LLC nor Winston-Salem Operations, LLC currently own or operate any adult care home facilities in North Carolina but the management company, Harmony Senior Services, operates The Crossings at Reynolds Mountain in Asheville (Buncombe County).

- (b) Its past performance in meeting its obligation, if any, under any applicable regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal assistance, including the existence of any civil rights access complaints against the applicant;

NA

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, located at 2900 Reynolds Park Road in Winston-Salem, has not served any residents since 2015. In Section II.3, page 18, the applicants state that neither Winston-Salem AL Investors, LLC nor Winston-Salem Operations, LLC currently own or operate any adult care home facilities in North Carolina but the management company, Harmony Senior Services, operates The Crossings at Reynolds Mountain in Asheville (Buncombe County).

- (c) That the elderly and the medically underserved groups identified in this subdivision will be served by the applicant's proposed services and the extent to which each of these groups is expected to utilize the proposed services; and

C

In Section VI.2, page 35, the applicants project the following payor mix during Operating Year 2.

Payor Category	Days of Care			
	Regular ACH Beds	SCU Beds	Total Beds	% of Total
Private Pay	23,448	8,994	32,442	83.47%
State/County Special Assistance	0	6,424	6,424	16.52%
Total	23,448	15,418	38,866	100.00%

As shown in the table above, the applicants project that 16.52% of all days of care will be paid for by State/County Special Assistance/Medicaid. The applicants adequately demonstrate the extent to which medically underserved populations will have access to the proposed ACH services. Therefore, the application is conforming to this criterion.

- (d) That the applicant offers a range of means by which a person will have access to its services. Examples of a range of means are outpatient services, admission by house staff, and admission by personal physicians.

C

In Section VI.3, page 35, the applicants state that access to the ACH services offered at The Crossings at Winston-Salem will only occur by the written order of a physician. The applicants also state on page 35, *“Otherwise, as long as beds are available in appropriate rooms: all persons will be admitted”* The applicants adequately demonstrate they will offer a range of means by which residents will have access to the facility. Therefore, the application is conforming to this criterion

- (14) The applicant shall demonstrate that the proposed health services accommodate the clinical needs of health professional training programs in the area, as applicable.

C

Exhibit 8 contains a copy of a letter from the applicants addressed to Forsyth Technical Community College offering the replacement facility as a clinical training site. The application is conforming to this criterion.

- (15) Repealed effective July 1, 1987.
- (16) Repealed effective July 1, 1987.
- (17) Repealed effective July 1, 1987.
- (18) Repealed effective July 1, 1987.
- (18a) The applicant shall demonstrate the expected effects of the proposed services on competition in the proposed service area, including how any enhanced competition will have a positive impact upon the cost effectiveness, quality, and access to the services proposed; and in the case of applications for services where competition between providers will not have a favorable impact on cost-effectiveness, quality, and access to the services proposed, the applicant shall demonstrate that its application is for a service on which competition will not have a favorable impact.

NC

Integrity Assisted Living (FID #920217), a 121-bed adult care home facility, is located at 2900 Reynolds Park Road in Winston-Salem. The applicants propose to acquire the beds, relocate the facility and rename it The Crossings at Winston-Salem. The replacement facility would include a 48-bed SCU. There is no SCU at Integrity Assisted Living.

On page 219, the 2017 SMFP defines the service area for adult care home beds as *“the adult care home bed planning area in which the bed is located. Ninety-eight counties in the state are separate adult care home planning areas. Two counties, Hyde and Tyrrell, are considered a combined service area.”* Thus, the service area for this facility consists of Forsyth County. Facilities may also serve residents of counties not included in their service area.

Chapter 11 in the 2017 SMFP includes an inventory of the existing ACH beds located in Forsyth County and a methodology for projecting the need for additional ACH beds. The summary data in the table below was compiled from Tables 11A (Inventory) and 11B (Need Projections) in the 2017 SMFP.

Adult Care Home Beds Located in Forsyth County	
# Facilities	34
# Beds in ACH Facilities	2,005
# ACH Beds in Nursing Facilities	224
Total # Licensed ACH Beds	2,229
# CON Approved Beds (License Pending)	24
Total # ACH Beds Available	2,253
Sum of Exclusions	21
Total # ACH Beds in Planning Inventory	2,232
Projected Bed Utilization in 2020	1,350
Projected Bed Surplus (Deficit)	882

As shown in the table above, according to the 2017 SMFP, there will be a surplus of 882 ACH beds in Forsyth County in 2020.

Section VI.5, page 37, states:

“The applicants propose a new facility that will allow for the highest quality of care available. Underserved groups, such as those relying on Medicaid, who qualify for special care unit services, will be served by the new facility in special care unit rooms designed to accommodate dual occupancy without regard to payor source. ... This new facility would bring more choice to the residents of Forsyth County. ... Additionally, the proposed facility will prove more cost effective because it will provide a higher quality of care in exchange for the same Medicaid rates the other facilities are providing.”

However, the applicants do not adequately demonstrate how any enhanced competition would have a positive impact on the cost-effectiveness of the proposed adult care home services based on the information in the application and the following analysis.

- Projected utilization is not based on reasonable and adequately supported assumptions and the applicants do not adequately demonstrate the need to acquire the beds and relocate the facility. The discussion regarding projected utilization found in Criterion (3) is incorporated herein by reference.
- The applicants do not adequately demonstrate sufficient funds for the operating needs of the proposal and that the financial feasibility of the proposal is based upon reasonable projections of costs and charges. The discussion regarding operating needs and financial feasibility found in Criterion (5) is incorporated herein by reference.
- The applicants do not address the projected surplus of 882 adult care home beds in Forsyth County in 2020 and do not adequately demonstrate that the proposed project would not result in the unnecessary duplication of existing or approved ACH beds in Forsyth County. The discussion regarding unnecessary duplication found in Criterion (6) is incorporated herein by reference.

It is not cost effective to build a replacement facility that is not needed. Consequently, the application is not conforming to this criterion.

- (19) Repealed effective July 1, 1987.
- (20) An applicant already involved in the provision of health services shall provide evidence that quality care has been provided in the past.

NC

In Section II.3, page 18, the applicants state that neither Winston-Salem AL Investors, LLC nor Winston-Salem Operations, LLC currently own or operate any adult care home facilities in North Carolina. The proposed management company, Harmony Senior Services, operates The Crossings at Reynolds Mountain in Asheville (Buncombe County). However, in Section I.11, page 8, the applicants state that

“Exhibits may show Smith/Packett Med-Com, LLC as a stand-in for Winston-Salem AL Investors, LLC for the purposes of expediting the process of working to acquire the beds, the new site, and construction estimates. Smith/Packett Med-Com, LLC is also wholly owned by James R. Smith (75% owner) and Hunter Smith (25% owner).”

Exhibit 14 contains a letter dated April 12, 2017 from a certified public accountant with Meeks & Young, PLC, which states:

“I am Mr. James R. Smith’s and Mr. Hunter D. Smith’s personal accountant, and have worked on the Smiths’ behalf for over twenty years. In my capacity, I am fully aware of all of the Smiths’ current business interests, and of a presently planned future projects.

...

Over the past fifteen years, Mr. Smith, through Smith/Packett Med-Com, LLC, has initiated and completed or acquired at least 25 adult care homes in North Carolina.”

The Smiths’ accountant states that Smith/Packett Med-Com, LLC may own or operate as many as 25 adult care home facilities in North Carolina. Thus, the application contains conflicting information about the adult care home facilities owned by a related entity. The applicants have not identified those facilities or provided evidence that quality care has been provided at those facilities in the past. Therefore, the application is not conforming to this criterion.

- (21) Repealed effective July 1, 1987.
- (b) The Department is authorized to adopt rules for the review of particular types of applications that will be used in addition to those criteria outlined in subsection (a) of this section and may

vary according to the purpose for which a particular review is being conducted or the type of health service reviewed. No such rule adopted by the Department shall require an academic medical center teaching hospital, as defined by the State Medical Facilities Plan, to demonstrate that any facility or service at another hospital is being appropriately utilized in order for that academic medical center teaching hospital to be approved for the issuance of a certificate of need to develop any similar facility or service.

NA

The Criteria and Standards for Nursing Facility or Adult Care Home Services promulgated in 10A NCAC 14C .1100 are not applicable because the applicants do not propose to add adult care home beds to an existing facility or to establish new adult care home facility.