



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

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DOCKET ITEM NUMBER: E-01	BOARD MEETING: April 26, 2022	PROJECT NUMBER: 19-014
BUSINESS ITEM: Declaratory Ruling Request		
SUBJECT: MIRA Behavioral Health Center for Children and Adolescents, Tinley Park		

STATE BOARD STAFF REPORT
DECLARATORY RULING REQUEST

I. Request for Declaratory Ruling

The Permit Holder (MIRA Neuro Behavioral Health Care, LLC) is requesting a declaratory ruling from the State Board for Permit #19-014.

II. Background

On March 20, 2019, MIRA Behavioral Health Center for Children and Adolescents (the Permit Holder) filed an Application for Permit to establish a 30-bed AMI hospital in Tinley Park. The Hospital was to be in a portion of a 2-story vacant building previously used to house intellectually disabled individuals since 2001. In the application, the Hospital was to be in approximately 36,000 GSF of space. The remainder of the building was to be leased to two different organizations one providing day care for children and adolescents and one to house Palos Behavioral Health Professionals.

On September 17, 2019, the State Board approved the Permit Holder to establish the 30-bed AMI hospital at a cost of \$5,646,921.

The Permit Holder is seeking permission from the State Board to alter Permit #19-014 even though the altered cost of the permit would exceed the allowable alteration amount of 7% of the approved permit amount. State Board rules stipulate that a total altered permit amount greater than 7% is prohibited (77 IAC 1130.750 (c) – Alteration of Post-Permit Projects). The Permit Holder is asking the State Board to approve an alteration to the permit to increase the overall cost of the permit to \$8,767,222 or 55.26% above the approved permit amount. There is no increase in the gross square footage, or the number of beds being proposed.

In July of 2021 the Permit Holder entered into a sale leaseback agreement with Store Capital a Real Estate Investment Trust (REIT). The lease agreement has been provided to you in your packet of material. The change in the value of the leased space is the result of the sale lease back agreement. There is no longer an amount for a mortgage, an amount

for interest expense during construction and other sources and uses of funds as result of this change.

TABLE ONE				
Approved Costs, Proposed Cost and Difference				
	Approved Total Project Costs	Proposed Total Project Costs	Difference	% Difference
New Construction Contracts	\$3,419,605	\$6,358,678	\$2,939,073	85.95%
Contingencies	\$262,251	\$100,000	-\$162,251	-61.87%
Architectural/Engineering Fees	\$130,000	\$200,000	\$70,000	53.85%
Consulting and Other Fees	\$200,000	\$200,000	\$0	0.00%
Net Interest Expense During Construction	\$91,565	\$0	-\$91,565	-100.00%
Fair Market Value of Leased Space or Equipment	\$418,500	\$783,544	\$365,044	87.23%
Acquisition of Building or Other Property	\$1,125,000	\$1,125,000	\$0	0.00%
TOTAL USES OF FUNDS	\$5,646,921	\$8,767,222	\$3,120,301	55.26%
Cash and Securities	\$1,028,835	\$1,338,345	\$309,510	30.08%
Mortgages	\$3,788,541	\$0	-\$3,788,541	-100.00%
Lease (fair market value)	\$336,800	\$7,428,877	\$7,092,077	2105.72%
Other Funds and Sources	\$492,745	\$0	-\$492,745	-100.00%
TOTAL. SOURCES OF FUNDS	\$5,646,921	\$8,767,222	\$3,120,301	55.26%

III. Reasons for the Increase in the Permit Amount

The Permit Holder has stated the following: *“The reason for the cost increase is several folds and relates primarily to challenges caused by the pandemic and the resultant supply chain challenges. Construction costs have sky-rocketed since we submitted our original CON application. The cost of structural steel, copper wiring, plumbing, concrete and other building materials have increased dramatically as have the freight costs for the delivery of the materials. Labor shortages have also increased construction costs. Finally, because of the demand for new hospital beds during COVID the cost of leasing hospital beds increased significantly. We also experienced two other unanticipated expenses. First the hardware and security necessary for behavioral health setting was much higher than anticipated. Second, IDPH required additional fire proofing for the roof which added \$264,000. There has been no change in the scope of the Project.”*

IV. Possible State Board Action

The State Board may consider the following options:

1. Accept the Permit Holder's alteration as submitted.
2. Determine the permit null and void. Require the Permit Holder to submit a new application to complete the project.
3. Allow the Permit Holder to complete the project as stated in the Alteration request and refer the project to the Board's General Counsel for possible fine and penalty.

IV. Applicable Statute and Rules

Limits on Allowable Alterations Requiring HFSRB Approval

The cumulative effect of alterations to a project shall not exceed the following:

- 1) a change in the approved number of beds or stations, provided that the change would not independently require a permit or exemption from HFSRB.
 - 2) abandonment of an approved category of service established under the permit.
 - 3) any increase in the square footage of the project up to 5% of the approved gross square footage.
 - 4) any decrease in square footage greater than 5% of the project.
 - 5) any increase in the cost of the project not to exceed 7% of the total project cost. This alteration may exceed the capital expenditure minimum in place when the permit was issued if it does not exceed 7% of the total project cost.
 - 6) any increase in the amount of funds to be borrowed for those permit holders that have not documented a bond rating of "A-" or better from Fitch's or Standard and Poor's rating agencies, or A3 or better from Moody's (the rating shall be affirmed within the latest 18-month period prior to the submittal of the application).
- c) **Prohibited Alterations**
Notwithstanding the provisions of subsection (b), the following alterations are not allowed and, if incurred, invalidate the permit:
- 1) an increase in the total project cost that exceeds 7% of the permit amount.
 - 2) an increase in the project's gross square footage that exceeds 5% of the project's approved gross square footage, unless that increase is required or mandated by local, State, or federal building or life safety requirements that were not in effect at the time of permit issuance.
 - 3) any other change in the project's scope or funding that would independently require a CON permit or exemption.
- d) **Alteration Procedures**

- 1) Written Notification
 - A) The permit holder shall notify HFSRB in writing of any alteration to a project. The notice shall include a description of the alteration and related costs (if any) and shall address all applicable review criteria related to the alteration if the alteration requires HFSRB approval. HFSRB staff shall review the alteration request for compliance with the review criteria and submit its findings to HFSRB. If additional information is needed by HFSRB staff to perform a review of the request, the permit holder shall be notified.
 - B) All alteration requests shall be submitted to the State Board in writing on 8½" by 11" paper.
 - C) All alteration requests shall be submitted within the allowable time frames established in subsection (a)(1) and shall be sent only by any recognized overnight courier or personal delivery service.
 - D) Alteration requests submitted by email or fax will not be accepted.
- 2) Compliance with 77 Ill. Adm. Code 1110 and 1120

A request for alteration reviewed by HFSRB is subject to the provisions of 77 Ill. Adm. Code 1110 and 1120 that are applicable to the individual project. The components and any other proposed alterations to a project that would, when taken as a separate component, require a permit under the Act shall not be subject to review under this Section but shall require a new application for a permit.
- 3) HFSRB Staff Review

HFSRB staff shall review the alteration request for compliance with the review criteria and prepare a report of its findings for HFSRB review. HFSRB will notify the permit holder if additional information is needed to review the request.
- 4) Board Review and Action
 - A) The alteration request, HFSRB staff findings, and all related documentation shall be sent to the Chairman if:
 - i) staff review determines that the alteration request is in conformance with all HFSRB criteria; and
 - ii) this is the first alteration request for the project.

B) The Chairman, acting on behalf of HFSRB, shall approve or deny the request or refer the request to the full Board for consideration and action. Other conditions under which the alteration request shall be referred to the full Board for consideration and action are as follows:

- i) the request is not in conformance with all HFSRB criteria;
or
- ii) the request is not the first one for an alteration concerning the project in question.

C) The number of affirmative votes required for approval of an alteration request is specified in the Act. The approval or denial of a request for alteration constitutes HFSRB's final administrative decision.

5) Inventory and Permit Amount Adjustments

Upon approving a request for alteration, HFSRB will revise the permit to reflect the alteration and shall adjust all inventories accordingly. If a permit holder reduces the scope or size of the project, the permit amount shall be reduced accordingly.

6) Notification of Decision to Applicant

HFSRB staff shall submit to the permit holder that submitted a request for an alteration a written notice of HFSRB's decision.

7) Applicable Penalties

Any alteration undertaken without prior HFSRB notice or notice and approval (when required) shall be considered a violation of the Act and/or subsection (a)(1) of this Section and shall subject the permit or exemption holder to fines, permit revocation, and the penalties and sanctions mandated in the Act (see 20 ILCS 3960/14.1) and in Section 1130.790.

VI. 77 IAC 1130.810 Declaratory Rulings

HFSRB shall render determinations on various matters relating to permits and the applicability of the statute and regulations. Requests for determination shall be made in writing. Pursuant to Section 5-150 of the Illinois Administrative Procedure Act, such determinations are declaratory rulings and are not subject to appeal. The following matters shall be subject to declaratory rulings by HFSRB includes, but are not limited, to:

- a) whether a proposed project requires a permit or exemption.

- b) corrections to the facility inventories utilized by HFSRB.
- c) recognition that a service was in existence prior to permit requirements.
- d) amount of fees required.
- e) project classification as substantive or non-substantive; and
- f) applicability of rules.

BOARD NOTE: Declaratory ruling requests pertaining to an application for permit or exemption during the review period may be submitted only by the applicant and by IDPH.