

From: [Kniery, John P.](#)
To: [Constantino, Mike](#)
Subject: FW: Verification regarding DeKalb County CON
Date: Wednesday, October 4, 2023 11:15:38 AM
Attachments: [image001.png](#)
[image003.png](#)

Here is mark's email...

Kind Regards,

John P. Kniery



Health Facilities & Services Review Board

John P. Kniery
Administrator

john.kniery@illinois.gov

Web: HFSRB.illinois.gov

Illinois Department of Public Health

525 W. Jefferson Street • 2nd Floor
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From: Silberman, Mark J. <MSilberman@beneschlaw.com>
Sent: Friday, September 29, 2023 3:48 PM
To: Kniery, John P. <John.Kniery@Illinois.gov>
Cc: Constantino, Mike <Mike.Constantino@Illinois.gov>; Roate, George <George.Roate@Illinois.gov>; Alikhan, Rukhaya <Rukhaya.Alikhan2@Illinois.gov>
Subject: [External] RE: Verification regarding DeKalb County CON

Mr. Kniery,

Thank you for your inquiry. I had already begun to prepare an email to you, but will respond to your inquiry with the most up to date information that I have. As things currently stand, there appears to be a disconnect between the proposed buyer and the proposed seller.

- On Wednesday, September 27, 2023, the County Board considered and rejected proposed modifications to the "transaction" that would have, among other things, removed Messrs. Blonder and Singer from any involvement in the project. I have no involvement in that nor do I have any firsthand knowledge of what occurred or why.
- On Friday September 29, 2023, counsel for the buyers issued a notice of termination related to the APA and OTA (the transaction referred to in the CON application).
- Counsel for the County has advised that they want to proceed forward to have the CON application considered on October 3, 2023.
- Counsel for the Buyers have advised that, based upon its issuance of the notice of termination, they would recommend to have the consideration the CON application deferred to a future date, should that prove necessary.

We do not represent either party with regards to this transaction, but were retained on to assist with the proposed CON. The County is represented by Mr. Michael Roth at Ice Miller and the Buyers are represented by Steven Gitelis at Gitelis LLP. Should there be any information the Board needs regarding the transaction, these would be the appropriate counsel with whom to coordinate.

I am uncertain as to what role I will be able to play moving forward as we were retained by the buyers to help them navigate the CON process which previously aligned with the interests of the County. However, as the County has repeatedly made clear, it has its own counsel. In fact, during our recent call, you advised that the County informed you it will be working with Mr. Jason Lundy, also of Ice Miller, who we both know to be very competent counsel regarding the CON process.

I am passing this information along in response to your request. Should there be further information that is necessary, I will make every effort to obtain the relevant information from the relevant parties and provide it to you and your staff.

Best regards,

Mark J. Silberman



Mark J. Silberman
(he/him/his)
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From: Kniery, John P. <John.Kniery@Illinois.gov>

Sent: Friday, September 29, 2023 11:05 AM

To: Silberman, Mark J. <MSilberman@beneschlaw.com>

Cc: Constantino, Mike <Mike.Constantino@Illinois.gov>; Roate, George <George.Roate@Illinois.gov>; Alikhan, Rukhaya <Rukhaya.Alikhan2@Illinois.gov>

Subject: RE: Verification regarding DeKalb County CON

Mark, this appears different from what you and I discussed via email this week. What is going on and how is the applicant moving forward? We moved this project off of the agenda due to the emailed conversation that we had but this appears different. Please let me know how you expect to proceed.

Kind Regards,

John P. Kniery



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From: Kniery, John P.

Sent: Wednesday, September 27, 2023 10:11 AM

To: Silberman, Mark J. <MSilberman@beneschlaw.com>

Cc: Constantino, Mike <Mike.Constantino@Illinois.gov>

Subject: RE: Verification regarding DeKalb County CON

Mark, you are correct on the issues below. It is a type A modification of the application. It will provide for the opportunity for a public hearing. You have indicated that the Applicant had identified a potential 3rd party manager. I strongly suggest that party be identified and in lieu of an executed contract with said provider, the Board has accepted a letter-of-intent just to show good faith.

As for a public hearing. I would love to get one scheduled for the 11th or 12th of October. Then we could absolutely have the project heard in December.

Kind Regards,

John P. Kniery



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From: Silberman, Mark J. <MSilberman@beneschlaw.com>

Sent: Wednesday, September 27, 2023 8:23 AM

To: Kniery, John P. <John.Kniery@Illinois.gov>

Subject: [External] Verification regarding DeKalb County CON

Importance: High

John,

Based upon the feedback that was received at the last Board meeting, the applicant is planning to pursue what we believe would constitute a Type A modification, but wanted to verify with you and your staff. Pursuant to 77 Ill. Admin. Code Section 1130.650(a)(6), it would constitute a Type A modification to “change in the person who is the applicant, including the addition of one or more co-applicants to the application.”

We were listening. The applicants read the entire transcript of proceedings before the Board and spent a significant amount of time evaluating the concerns that were raised by the Board. Several different plans were evaluated and the plan is as follows:

- The applicants will remain unchanged. Dekalb Healthcare Holdings LLC will remain a co-applicant, as will Dekalb SNF Land Holdings LLC.
- However the individual ownership interests in those interests will change. Neither Aharon Singer or Moshe Blonder will have any interest in the facility.
- Avi Zuckerman will take on and maintain a majority interest in both the OpCo and the ProCo (likely approximately 65% - 70% - but will be finalized before the Modification is filed).
- So that the Board will have a comfort level of ‘with whom they are dealing’ Mr. Zuckerman will retain ownership and operational control but will look to identify an experienced management company to assist (not as a co-applicant but as a strategic partner)
- Given the removal of two owners there will be an interest to identify additional investors.
 - No investor will have an interest that rises to (or exceeds) a 5% interest;
 - No investor will have any operational control;
 - In the unexpected circumstance where a 5% interest were exceeded the individual would be identified;
 - In the unexpected circumstances where any individual were obtaining operational control they would be included as a co-applicant.
- To keep the process moving forward, upon filing of the modification, the applicant will request a public hearing (so HFSRB staff can begin to look at scheduling)
- Mr. Zuckerman has appeared before the DeKalb County Board at a public hearing to ensure open and transparent process; and
- Mr. Zuckerman will appear before the HFSRB on behalf of the applicants OpCo/PropCo to address any questions the Board may have.

Out intention is to file the modified applicant this coming week and we hope to be considered at the December meeting of the Board. However, to facilitate that, we wanted to verify that this plan would appropriately constitute a Type A modification and that there is nothing about the proposed plan of action that would require the addition of further co-applicants.

Thank you for taking the time to assess this with me.

Mark



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