IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

COMMUNITY NURSING AND REHABILITATION CENTER, LLC, *et al.*,	)	
Plaintiffs,	)	
v.	)	**No. 2016 MR 805**
ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD, *et al.*,	)	
Defendants.	)	

OPINION AND ORDER

Overview of Parties and Controversy

Plaintiffs are Community Nursing and Rehabilitation Center; Naperville Senior Care, LLC d/b/a The Springs at Monarch Landing; and Bria Health Services, LLC; LLC. Defendants are the Illinois Health Facilities and Services Review Board and its members (the "Board"); Illinois Department of Health (the "Department"); Transitional Care of Lisle ("Transitional"); IH Lisle Owner, LLC; IH Lisle Opco, LLC; Innovative Health, LLC; and OnPointe Health Development, LLC. Plaintiffs brought this action for judicial review of the Board's decision to approve project No. 15-056 (the "Project"), a proposal to construct a 68-bed skilled nursing facility in Lisle, Illinois.

Plaintiffs are in the business of operating a skilled care nursing facilities, and they object to the arrival of a new competitor, Transitional. Plaintiffs' objections focus on the lack of need for the Project based upon the existence of other facilities in the community which provide the same services, and the available capacity of these other facilities to provide the care Transitional seeks to provide.

To prevent the construction of redundant health care facilities, the Illinois Health Facilities Planning Act (the "Act") (20 ILCS 3960/1 *et seq.* (West 2016)) contains licensing procedures which provide that "No person shall construct, modify or establish a health care facility or acquire

major medical equipment without first obtaining a permit or exemption from the State Board." 20 ILCS 3960/5 (West 2016). This permit is referred to as a Certificate of Need.

Public Hearing and State Board Report

On December 3, 2015, Transitional applied to the Board for a permit to build a 68-bed nursing facility in Lisle, Illinois. A public hearing was conducted on March 14, 2016. Plaintiffs attended the public hearing and presented testimony and written comments in opposition to the Project. Their objections centered on the need for a new facility and the excess capacity of existing facilities. Additionally, Plaintiffs argued that the Project would leave them with lower-reimbursement and indigent residents. Twenty-two individuals participated through written or oral testimony at this meeting.

Afterward, a state board staff report (the "Staff Report") was prepared by the Board staff members. The staff report found that the Project met a majority of the criteria (15 of 20) in the Board's regulations. (R. 920). However, the staff report found that the Project failed to meet five criteria: (1) service accessibility; (2) unnecessary duplication of service; (3) availability of funds; (4) financial viability; and (5) reasonableness of project costs. A summary of the findings stated that the proposed Project was not in conformance with the provisions of Part 1125 or Part 1125.800 of the Board's regulations (77 Ill. Adm.Code 1125, 1125.800 (West 2016)).

The Board's Meeting

On May 10, 2016, the Board held a meeting, in which it considered Transitional's application for the project. The Board heard testimony again from individuals in support and in opposition to the Project. The Board discussed some matters with Transitional including the Project's strategy, expected Medicare and Medicaid certification and admissions, real estate acquisition, financing sources and methods, and work with managed care. After this discussion, the Board voted on the Project. Six Board members voted "yes" and stated their reasons including the projected growth, the transitional care concept, their concern over managed care and its effect on the healthcare industry, and the determined bed need in the area. Three Board members voted in the negative, due to the Project not conforming with review criteria such as financing, unnecessary duplication of services and service accessibility.

The Permit Approval Letter

On May 11, 2016, the Board followed up with a letter to Transitional Care confirming its approval of the Project. The letter states the "approval was based upon the substantial conformance with the applicable standards and criteria in the Illinois Health Facilities Planning Act (20 ILCS 3960) and 77 Illinois Administrative Codes 1110 and 1120." (R. at 943). The letter further states, "*[i]n arriving at a decision, the* ***State*** *Board adopted the* ***State Board staff's report and findings****, and when applicable, considered the application materials, public hearing testimony, public comments and documents, testimony presented before the Board and any additional materials requested by the State Board staff*" (emphasis in the original). *Id.*

STANDARD OF REVIEW

In reviewing a decision by an administrative agency, the court applies differing standards of review depending on the type of issue for which review is sought. When the court reviews factual findings, those findings are deemed prima facie correct and will be reversed only if they are against the manifest weight of the evidence. *Abbott Indus., Inc. v. Dep't of Employment Sec.*, 2011 IL App (2d) 100610, ¶ 15, 954 N.E.2d 292, 296. Where, on the other hand, the issue is the correctness of the agency's conclusions of law, the court's review is *de novo*. *Id.* Finally, where the determination is a mixed question of fact and law, the court applies the "clearly erroneous" standard and will reverse only if its review of the record and the agency's determination leaves the court with the "definite and firm conviction" that the decision was a mistake. *Id.* Under any standards of review, the plaintiff seeking administrative review bears the burden of proof. *Marconi v. Chicago Heights Police Pension Bd.*, 225 Ill. 2d 497, 532–33, 870 N.E.2d 273, 293 (2006), as modified on denial of reh'g (May 29, 2007).

Reviewing the Board's ultimate decision to grant or deny a permit requires the court to examine the legal effects of the facts, which presents a mixed issue of law and fact. *Mercy Crystal Lake Hosp. & Med. Ctr. v. Illinois Health Facilities & Serv. Review Bd.*, 2016 IL App (3d) 130947, ¶ 17, 59 N.E.3d 27, 34. The clearly erroneous standard of review is significantly deferential, and, so long as the record contains evidence supporting the agency's decision, it should be affirmed. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill.2d 76, 88, 180 Ill.Dec. 34, 606 N.E.2d 1111 (1992); *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill.App.3d 34, 38–39, 319 Ill.Dec. 930, 886 N.E.2d 1054 (2008).

ANALYSIS

The purpose of the Act is to

> "establish a procedure (1) which requires a person establishing, constructing or modifying a health care facility, as herein defined, to have the qualifications, background, character and financial resources to adequately provide a proper service for the community; (2) that promotes, through the process of comprehensive health planning, the orderly and economic development of health care facilities in the State of Illinois that avoids unnecessary duplication of such facilities; (3) that promotes planning for and development of health care facilities needed for comprehensive health care especially in areas where the health planning process has identified unmet needs; and (4) that carries out these purposes in coordination with the Center for Comprehensive Health Planning and the Comprehensive Health Plan developed by that Center." 20 ILCS 3960/2 (West 2016).

Under the Act, no person may construct, modify, or establish a health care facility without first obtaining a permit or exemption from the Board. 20 ILCS 3960/5 (West 2016).

The Board can "prescribe rules, regulations, standards, criteria, procedures or reviews" to carry out the Act's purpose and can "develop criteria and standards for health care facilities planning." 20 ILCS 3960/12(1), (4) (West 2016). The Department must "Review applications for permits and exemptions in accordance with the standards, criteria, and plans of need established by the State Board under this Act and certify its finding to the State Board." 20 ILCS 3960/12.2(1) (West 2016).

The Board should approve an application if it finds: "(1) that the applicant is fit, willing, and able to provide a proper standard of health care service for the community with particular regard to the qualification, background and character of the applicant, (2) that economic feasibility is demonstrated in terms of effect on the existing and projected operating budget of the applicant and of the health care facility; in terms of the applicant's ability to establish and operate such facility in accordance with licensure regulations promulgated under pertinent state laws; and in terms of the projected impact on the total health care expenditures in the facility and community, (3) that safeguards are provided which assure that the establishment, construction or modification of the health care facility or acquisition of major medical equipment is consistent with the public interest, and (4) that the proposed project is consistent with the orderly and economic development of such facilities and equipment and is in accord with standards, criteria, or plans of need adopted and approved pursuant to the provisions of Section 12 of this Act." 20 ILCS 3960/6(d) (West 2016).

Sufficiency of Reasoning for Review

Plaintiffs argue first that the Board failed to provide sufficient reasoning for judicial review, complete with findings of fact and conclusions of law, similar to *Medina Nursing Center, Inc. v. Health Facilities and Services Review Bd.*, 2013 IL App (4th) 120554, 992 N.E.2d 616, 372 Ill.Dec. 774. Defendants, on the other hand, argue that the Board provided sufficient findings and decisions for judicial review, relying on a more recent case, *Mercy Crystal Lake Hosp. & Med. Ctr. v. Illinois Health Facilities & Serv. Review Bd.*, 2016 IL App (3d) 130947, ¶ 20, 59 N.E.3d 27, 405 Ill.Dec. 734.

In *Medina*, Pecatonica Pavilion, LLC, applied to the Board to construct a nursing care facility. *Id.* at ¶ 8. The Department prepared a state agency report in which it found that the project met some, but not all, of the criteria in the Board's regulations. *Id.* at ¶ 12. Overall, the Department concluded that the project was not in substantial conformance with parts 1110 and 1120 of the Board's regulations. *Id.* However, after holding a hearing, the Board approved construction of the new facility. *Id.* at ¶15. The first paragraph of the Board's approval letter stated:

> ""On March 21, 2011, the Illinois Health Facilities and Services Review Board approved the application for permit for the referenced project based upon the project's substantial conformance with the applicable standards and criteria of Part[s] 1110 and 1120. In arriving at a decision, the State Board considered the findings contained in the State Agency Report, the application material, and any testimony made before the State Board." *Id.* at ¶18.

The letter did not state which criteria in parts 1110 and 1120 were applicable and did not specify which criteria in these parts the project met or failed to meet. The plaintiffs, competitor operators of long-term care facilities (the "Operators"), sought review of the decision. The trial court entered judgment against the Operators, and the Operators appealed. *Id.* at 20. On appeal, the Operators argued, in part, that the Board failed to provide reasoning for their decision. *Id.* The appellate court agreed. *Id.* at ¶ 27.

In its analysis, the court found that the decision lacked findings, and, without findings made by the agency (citing 735 ILCS 5/3-108(b)), it could not comply with 735 ILCS 5/3-110, "Scope of Review." *Id.* at ¶ 22-23. That section requires that ""[t]he findings and conclusions of the

administrative agency on questions of fact shall be held to be prima facie true and correct.'" *Id.* at ¶ 23; 735 ILCS 5/3-110. The court reasoned that

> "to hold the Board's findings of fact to be prima facie true and correct, we must be informed by the Board what, precisely, those findings of fact are. We do not know which standards and criteria in parts 1110 and 1120 the Board found the project to meet and which ones the Board found the project not to meet. The Board did not adopt the state agency report. Obviously, the Board disagreed with the Department's conclusion that the project did not substantially conform to parts 1110 and 1120. We have the Department's findings and conclusions, but we do not have the Board's findings and conclusions." *Id.*

The court found that boilerplate language, such as "substantial conformance with the applicable standards and criteria of Part 1110 and 1120," is "worthless for purposes of judicial review." *Id.* at ¶ 25. The court remanded the case to the Board "with directions that the Board provide, in writing, a reasoned explanation for its decision in [the] case, complete with '*findings and conclusion.*'" 2013 IL App (4th) 120554 at ¶ 27 (emphasis added).

In *Mercy Crystal Lake Hosp. & Med. Ctr. v. Illinois Health Facilities & Serv. Review Bd.*, Centegra applied to the Board for a permit to build a hospital. *Id.* at ¶ 4. The Board staff prepared a state agency report that indicated that the project was in compliance with 17 of the 20 review criteria. *Id.* at ¶ 6. The Board ultimately voted to approve the project. *Id.* at 12.

Competitor hospitals (intervenors during the administrative process before the Board) then filed complaints for administrative review. *Id.* at ¶ 13. The trial court found that the Board's decision did not contain findings of fact or conclusions of law and remanded the matter. *Id.* The Board held another meeting and again approved the permit. *Id.* at ¶ 14. The trial court affirmed the Board's decision this time around finding that it had articulated its findings and conclusions. *Id.* The competitor hospitals appealed. *Id.*

On appeal, the competitor hospitals first argued that the Board's written decision following remand was legally deficient because it was devoid of specific reasons for approving the application. *Id.* at ¶ 18. The appeals court disagreed. *Id.* at ¶ 19.

In finding that the Board's written decision was sufficient, the appeals court reasoned that "[w]here the testimony and documentary evidence is preserved in the record, a reviewing court has a sufficient factual basis upon which to determine whether an agency's decision is manifestly erroneous without the need for the agency to specify any factual basis for its decision." *Id.* at ¶ 20. Further, the court found that "[t]o the extent that the court in *Medina Nursing Center* required

the Board to articulate specific reasons for its decision on an application, we decline to follow the holding in that case." *Id.*

In summary, the *Medina* court found that the Board was required to provide findings of fact and conclusions for review purposes. *Medina*, 2013 IL App (4th) 120554 at ¶ 27. However, the Board's decision in *Medina* included no findings whatsoever – it did not adopt the findings of the state agency report and it only stated a broad conclusion that the project was not in "substantial conformance with the applicable standards and criteria of Part 1110 and 1120." *Id.* at ¶ 23-25. The *Mercy* court did not disagree that findings of fact and conclusions should be present upon review, it simply stated that the Board did not have to articulate "specific reasons" in its written decision. *Mercy*, 2016 IL App (3d) 130947 at ¶ 20. A reviewing court's role in an administrative review is to determine whether the evidence in the record supports the agency's decision, as opposed to inquiring into the level of detail of the agency's decision. *Id.*

Section 11 of Illinois Health Facilities Planning Act (the "Act") also requires the Board to include findings of facts and conclusions of law, providing in pertinent part, "In order to comply with subsection (b) of Section 3-108 of the Administrative Review Law of the Code of Civil Procedure, the State Board shall transcribe each State Board meeting using a certified court reporter. The transcript shall contain the record of the *findings and decisions* of the State Board." 20 ILCS 3960/11 (West 2016) (emphasis added). Section 3-108(b) of the Administrative Review Law (the "ARL") states that "the administrative agency shall file an answer which shall consist of the original or a certified copy of the entire record of proceedings under review, including such evidence as may have been heard by it and the *findings and decisions* made by it." 735 ILCS 5/3-108(b) (West 2016) (emphasis added).

In this case, the Board's approval letter initially states that the "approval was based upon the substantial conformance with the applicable standards and criteria in the Illinois Health Facilities Planning Act (20 ILCS 3960) and 77 Illinois Administrative Codes 1110 and 1120." R. at 943. This language is similar to the boilerplate language in *Medina*, yet the Board's decision here continues: ~~and states,~~ "*[i]n arriving at a decision, the **State** Board adopted the **State Board staff's report and findings**, and when applicable, considered the application materials, public hearing testimony, public comments and documents, testimony presented before the Board and any additional materials requested by the State Board staff*" (emphasis in the original). *Id.* Unlike *Medina*, the Board adopted the very detailed staff report and its findings. *Id.* Additionally, the

transcript of the Board's hearing includes findings by those Board members in support of the decision of approval. (R. at 914-17). Such findings in the transcript include: "a five-year growth projection [ ] for those that are in the aging population," a need for transitional care, the fact that another facility owner will only be 16 minutes away, and that there is a bed need as opposed to a bed surplus. *Id.* Moreover, during the hearing, it was noted that the Project did not meet the following criteria: service accessibility, unnecessary duplication of service, availability of funds, financial viability and reasonableness of project costs. (R. at 867-68). The transcript also contains an in-depth discussion that addresses the financials of the Project, which was a significant part of the Project's nonconformance with Board criteria. (R. at 869-75, 892-899, 901-902, 907-909). The transcript further includes a lengthy discussion on the growth projection, the bed need, Medicare and Medicaid, the overall Project and its goals. (R. at 875-913). Additionally, the transcript includes testimony from those in support of the Project and those in opposition. (R. at 814-846). As a result, the Board has provided a record with sufficient findings and conclusions of law for judicial review. The Court now turns to the issue of whether there is a sufficient factual basis in the record upon which to determine whether the Board's approval of Transitional's application was erroneous.

Review of the Board's Decision

Plaintiffs, in their written briefs, never articulate what standard of review they are urging on this Court, however at oral argument, they pressed the clearly erroneous standard. Plaintiffs argue that the Board's decision was clearly erroneous based on various reasons. A clearly erroneous standard is significantly deferential to an agency's decision, and an agency's decision is only reversed if the court believes that a mistake has occurred based on the entire record. *AFM Messenger Service, Inc.*, 198 Ill.2d at 395. The testimony and documentary evidence preserved in the record should be sufficient for a reviewing court to determine whether an agency's decision is manifestly erroneous. *Mercy*, 2016 IL App (3d) 130947 at ¶ 20.

Plaintiffs contend that the application failed to meet several of the Board's criteria. The adopted staff report found that the Project failed to meet 5 of the 20 criteria. (R. at 920). These criteria included service accessibility, unnecessary duplication of service, availability of funds, financial viability and reasonableness of project costs. *Id.* Plaintiffs also argue that the Board failed to consider the distinction between an existing bed need for skilled nursing beds and the

approval of a project dedicated to short-term rehabilitation beds that would be unavailable to meet the long-term skilled nursing needs of a greater community.

An application is not required to meet all review criteria. *Provena*, 382 Ill.App.3d 34 at 40 (approval of application with seven negative criteria was not clearly erroneous). No one criterion is more an important than any other. *Id.*

The issue here is: what does the statute require regarding the Board decision. The Plaintiffs appear to argue that *Medina* requires this. The focus of the argument of both sides here centers on *Medina*. When the legislature amended the statute, they knew of the *Medina* decision. (See transcript of Legislative hearing appended to Plaintiff's Reply Brief). They did not adopt a requirement that the Board provide a written basis of their reasoning, nor did they require that the Board provide a "reasoned basis" for their findings. The only requirements the legislature provided for in the amendment was that the Board must produce a transcript which contains their findings and their decision, and, as discussed above, the Board has fulfilled this requirement. No requirement exists in the amended statute for a 'reasoned basis.' While this might be beneficial and might aid a reviewing court in its administrative review process, the Court cannot impose on the Board a requirement that the legislature chose not to include when they enacted an amendment to the statute, particularly when that amendment was enacted after the *Medina* ruling, and in specific contemplation of that case holding.

Plaintiffs also argue that the decision is clearly erroneous because approval of innovative projects that do not comport with existing regulatory structures are more appropriately pursued via a regulatory change or utilizing the Alternative Healthcare Delivery Act (210 ILCS 3/1, *et seq.*). Plaintiffs reason that there is no statutorily recognized type of facility licensed for "transitional care."

Transitional is a skilled nursing facility and skilled nursing facilities fall under part 1125, long-term care, of the Health Facilities and Services Review Board. 77 Ill. Adm. Code 1125.140 ("[long-term care] includes the nursing category of service, which provides inpatient treatment for convalescent or chronic disease patients/residents and includes the skilled nursing level of care and/or the intermediate nursing level of care, defined in 77 Ill. Adm. Code 300"). Therefore, the Certificate of Need was issued in conformance with the statutorily required procedures, and Plaintiffs have not shown that the Board's consideration of this aspect of the Transitional's services was improper under a clearly erroneous standard. The Board simply exercised its discretion and

found that the Project met the statutory requirements to issue the Certificate, and this Court will not re-weigh that finding.

Arbitrary and Capricious/Clearly Erroneous

Lastly, in Plaintiffs' complaint, they include sparse language that the Board's decision was arbitrary and capricious. Throughout the complaint, Plaintiffs conflate this argument with the clearly erroneous standard of review.

An agency's actions are arbitrary and capricious if the agency: "(1) relied upon factors that the legislature did not intend to be considered; (2) entirely failed to consider an important aspect of the application; or (3) offered an explanation for its decision that either runs counter to the evidence before it or is wholly implausible." *Mercy*, 2016 IL App (3d) 130947 at ¶ 26 citing *Greer v. Illinois Housing Development Authority*, 122 Ill.2d 462, 505–06, 120 Ill.Dec. 531, 524 N.E.2d 561 (1988). In review, the Court is not to substitute its own reasoning for that of the agency. *Greer*, 122 Ill.2d 462 at 506.

(1) Relied upon factors that the legislature did not intend to be considered

Plaintiffs argue that the Board's decision is arbitrary and capricious because it considered factors which the legislature did not intend for it to consider. Specifically, Plaintiffs contend that Transitional made multiple representations regarding the Project which had no evidentiary support in its application and should not have been considered by the Board. Plaintiffs allege that Transitional requested expedited review of its application because it would lose the ability to purchase land for the Project after April 21, 2016, and then, during the May 10, 2016 Board hearing, Transitional Care claimed that it received an extension of its offer to purchase yet provided no additional documentation regarding the land for the Project.

The record demonstrates that Plaintiffs were allowed to introduce much of the proffered evidence they now claim was not properly considered by the Board. In other instances, Plaintiffs attempt to introduce extraneous evidence not part of the record. For example, Plaintiffs claim that star quality ratings of other facilities should have been considered by the Board on other non-related projects. However, other projects do not involve the same circumstances at issue in this project. This Court should not be put in the position of re-weighing the evidence or substituting its own judgment for that of the Board. Plaintiffs seek to bootstrap the evidence of a

co-applicant's performance on other projects into consideration for this project. (See page 8 of Plaintiffs brief). Even assuming this was a relevant consideration, this Court cannot re-weigh the factual determinations by the Board regarding this issue.

Plaintiffs also allege that each applicant claimed to neither own nor operate any other facilities, when, in fact, one of the co-applicants allegedly did own and operate multiple other facilities. Plaintiffs claim that the Centers for Medicare and Medicaid Services has rated these other facilities low, assessing each one or two stars out of a possible five. Plaintiffs maintain that, without this additional information, the Board could not fulfill its requirement to "consider whether adverse action has been taken against the applicant, or against any LTC facility owned or operated by the applicant, directly or indirectly, within three years preceding the filing of the application." 77 Ill. Adm. Code 1125.520(a) (West 2016).

Defendants argue that these facts are not found in the administrative record. Defendants cite to the Administrative Review Law which provides, in pertinent part, that "[t]he hearing and determination shall extend to all questions of law and fact presented by the entire record before the court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court." 735 ILCS 5/3-110 (West 2016). In reply, Plaintiffs argue that the Court should take judicial notice of the public records located on Medicare's website (Medicare.gov), which show alleged "adverse actions" by Transitional's co-applicant's facilities in Texas and New Mexico.

The Board defines "adverse action" as "a disciplinary action taken by Department of Public Health, Centers for Medicare and Medicaid Services (CMMS), or any other State or federal agency against a person or entity that owns and/or operates a licensed or Medicare or Medicaid certified LTC facility in the State of Illinois." 77 Ill. Adm. 1125.140 (West 2016)

A reviewing court may affirm an administrative agency's decision on any basis supported by the record. *Cook County Republican Party v. Illinois State Bd. of Elections*, 232 Ill.2d 231, 902 N.E.2d 652, 327 Ill.Dec. 531 (2009). Judicial review of administrative decisions is restricted to the record compiled by the agency, and no new or additional evidence shall be heard by the circuit court. The Plaintiffs fail in their burden of showing the Board's decision to have been arbitrary and capricious or clearly erroneous on this issue.

Plaintiffs argue that Transitional provided inaccurate information to the Board that the Arlington Heights facility had 25% Medicaid beds, when in actuality it has less than 2%. This

conclusion is disputed by Transitional. The colloquy in the record shows that Transitional's representatives thought it might be about 25%, but stated that they "actually don't know." (R. at 905). Again, Plaintiffs seek to introduce evidence outside the record. This Court cannot accept or consider such evidence and cannot re-weigh the Board's determination on factual matters.

(2) Entirely failed to consider an important aspects of the application

Finally, Plaintiffs argue that the Board's decision is arbitrary and capricious because it failed to consider essential aspects of the Project. Specifically, Plaintiffs maintain that the Board never addressed the Project's failure to conform to certain Board criteria: service accessibility, unnecessary duplication of service, maldistribution, and impact on other facilities.

This is simply Plaintiff arguing, again, that a requirement that a "reasonable basis" for the decision be read into the statute. Plaintiff suggests that all negative findings as to criteria must be thoroughly discussed and the reasons for overcoming those criteria must be articulated by the Board in any decision and findings. The statute is clear that findings and a decision are the only requirements. Through their letter granting the Certificate of Need, the Board specifically adopted the findings of the Staff Report and together with the transcript and record, these provide sufficient support for the decision of the Board. A reviewing court may affirm an administrative agency's decision on any basis supported by the record. *Cook County Republican Party*, 232 Ill.2d 231. Judicial review of administrative decisions is restricted to the record compiled by the agency, and no new or additional evidence shall be heard by the circuit court.

Further, the discussions of members who dissented touched on some of these criteria in their votes, showing that consideration was duly given. The record exceeds 900 pages of evidence, reports and testimony on the project in question. The Board's decision that the project substantially complied with the criteria and met the requirements for a Certificate of Need was not arbitrary and capricious or clearly erroneous in this respect. A reviewing court will not reverse an agency's finding of fact merely because an opposite conclusion might be reasonable or the reviewing court might have ruled differently; if the record contains evidence to support the agency's decision, it must be affirmed. While the record may reveal reasons why the Board could have reached the opposite conclusion, there is sufficient evidence in the entirety of the record to find that the Board's decision was not clearly erroneous in this case.

CONCLUSION

For the reasons set forth herein, the Court finds the Plaintiffs have not met their burden of proof. The Court therefore orders that the decision of the Board is affirmed and that remand to the Board is not warranted.

The status date of January 5, 2017 is hereby stricken.

Brian J. Diamond
Circuit Court Judge

1.3.17
Date