

APPROVED

**TOWN OF LINCOLN, NH
PLANNING BOARD MEETING
Wednesday, May 12, 2021 – 6:00 PM
Lincoln Town Hall, 148 Main Street, Lincoln NH**

Due to the current COVID-19 situation, the Town Office is closed to the public. This meeting will be available only via the Zoom Meeting Platform to allow for town wide participation. The public is encouraged to participate remotely using ZOOM by going to:

Join Zoom Meeting

<https://us02web.zoom.us/j/87850618037?pwd=bmVTanQ5cjBCd1N4NnYvVGNLQk1kZz09>

Meeting ID: 878 5061 8037

Passcode: 323417 Or dial by your location 1-929-205-6099 US (New York)

(See also town website www.lincolnnh.org for the same link, meeting ID and passcode.)

Present: Chairman James Spanos, Vice Chairman Joe Chenard, Board of Selectmen's Representative O.J. Robinson, Member Steve Noseworthy, Member Paul Beaudin and Alternate Mark Ehrman.

Excused: None.

Staff Present: Town Planner Carole Bont, Fire Chief & Code Enforcement Officer/Health Officer/ZOOM Host & Moderator Ronald R. (Ron) Beard.

Consultants:

- **Town Engineer Raymond H. Korber P. E.**, KV Partners LLC, PO Box 7721, Gilford, NH 03249-7721 (via ZOOM)
- **Town Attorney Jason Dennis (standing in for Attorney Peter Malia)**, Hastings Malia Law Office, P.A., 376 Main Street, PO Box 290, Fryeburg, ME 04037-0290 (via ZOOM)

Guests Present:

- **Attorney Mark Beaudoin**, (nonresident), (ATTORNEY FOR APPLICANTS), Nixon Peabody, LLP, City Hall Plaza, 900 Elm St, Manchester, NH 03101 - Outside Local NH Counsel for APPLICANT Remedy Medical Properties, LLC, an affiliate of which is the potential fee owner/developer;
- **Cathy Furttek Conway, P.E.**, (nonresident) (APPLICANTS' ENGINEER) Horizons Engineering, Inc., 34 School St., Littleton, NH 03561;
- **Kurt Meyer**, (nonresident) (APPLICANT) Senior Preconstruction Manager at Remedy Medical Properties, Inc., 800 W Madison Street, Suite 400, Chicago, IL 60607

- **Robert (Bob) F. Nutter**, (nonresident) (APPLICANT) President/CEO of Littleton Regional Hospital (which is the proposed main tenant of the new building to be constructed), Littleton Regional Healthcare, 600 St. Johnsbury Road, Littleton, NH 03561;
- **Attorney Barbara Peloquin**, (nonresident) (APPLICANT) Associate In-House Counsel for APPLICANT Remedy Medical Properties, LLC, Remedy Medical Properties, Inc., 800 W Madison Street, Suite 400, Chicago, IL 60607;
- **Jeff Woodward**, (nonresident) (APPLICANT) 38 Raven Lane, Franconia, NH 03580-0536, Vice Chair of the Board of Littleton Regional Healthcare, Littleton Regional Healthcare, 600 St. Johnsbury Road, Littleton, NH 03561.

I. CALL TO ORDER by the Chairman of Planning Board (PB); announcement of excused absences, if any, and seating of alternates(s), if necessary.

II. CONSIDERATION OF THE MEETING MINUTES

April 14, 2021

(Chairman James Spanos, Vice Chairman Joe Chenard, Board of Selectmen's Representative O.J. Robinson, Member Steve Noseworthy, Member Paul Beaudin and Alternate Mark Ehrman)

"To approve the meeting minutes of April 14, 2021 as written."

Motion: Member Robinson Second: Member Beaudin
Motion carries.

III. CONTINUING AND OTHER BUSINESS (Staff and Planning Board Member/Alternates).

A.SPR 2021-01 M112 L018 Clark - Littleton Hospital

SUBDIVISION & SITE PLAN REVIEW

Applicants:

- Littleton Development Medical Properties, Inc.
800 W. Madison Street, Suite 400
Chicago, IL 60607
- Littleton Hospital Association d/b/a Littleton Regional Hospital
600 St. Johnsbury Road
Littleton NH 03561

Property Owners:

Brenda Clark, Benjamin Clark, Jennifer Franz
 PO Box 9
 Lincoln, NH 03251-0009

Agent/Surveyor/Engineer:

Cathy Furtak Conway, P.E.
Horizons Engineering, Inc.
34 School Street
Littleton, NH 03561

Property: Railroad Street #LO (Map 112, Lot 018).

The property is located in the General Use (GU) District.

SUBDIVISION:

Proposal: Application for Subdivision proposes to divide 1 lot into 2 lots at the end of Railroad Street (50ft Private ROW). Lot is currently 5.51 acres. Applicant proposes to subdivide it into two (2) parcels:

- A. Lot 1: 33,867 SF (or 0.77 Ac); &
- B. Lot 2: 206,369 SF (or 4.74 Ac)

One new lot will be created. Improvements to these lots, extension of municipal water & sewer lines & extension of utilities will be required. The plan includes shared access easements to Lots 1 and 2.

SITE PLAN REVIEW:

Proposal:

- A. Lot 1 (above) 33,867 SF (or 0.77 Ac): Development of 4,000 SF Medical Office Building with associated parking on Lot 1; &
- B. Lot 2 (above) 206,369 SF (or 4.74 Ac): Development of 48,000 SF Medical Office Building with associated parking on Lot 2.

The first public hearing was held on March 24, 2021. The application was found to be complete. The Applicant's presentation and public hearing were started. The hearing was continued to Wednesday, April 28, 2021 at 6:00 PM. Applicant's presentation and public hearing were continued, but not completed. The hearing was continued to May 12, 2021.

Presentation:

Applicant's Engineer Cathy Conway informed the Board that since the last meeting her team has done the following:

1. Submitted a revised Sheet C3 that includes the addition of the point of stormwater discharge underneath the NHDOT right-of-way and added a 24" culvert that crosses the highway.
2. On Sheet C5, she added the note regarding the I-93 sign on the northernmost driveway that ZBA approval would be required for this sign.
3. Added "Option C" Sign Graphics for the seventy-five-foot (75') sign.
4. On Option 5 Sign Graphics, she added a notation to the plans saying "no left-hand turn" signs for the two northernmost driveways that go onto Railroad Street.

5. She included another copy of the Subdivision Plan because she really had not updated or seen that since initial submittal.
6. Applicant's Engineer Conway reached out to Public Works Director Hadaway to discuss the Town owned portion of Railroad Street, but was not able to connect with him about his concerns regarding Railroad Street.
7. All plans for the Hydraulic Analysis were submitted to Weston & Sampson Engineering, Inc., for their review.
8. No changes were made to the Sewer Capacity Analysis or Stormwater Analysis. Town Engineer Ray Korber is currently reviewing them.
9. Completed an Opinion of Probable Construction Costs for the Site Stabilization related to the bond. A site stabilization analysis was conducted for Town bonding purposes with the estimate coming in at seventy-five thousand dollars (\$75,000).
10. A NH DOT Traffic Analysis will be completed by the end of the month. The traffic engineer was out at the site last week to gather traffic information. The traffic engineer is working on his report and the report will be completed by the end of the month.
11. Because this is access onto the State Highway off from a Town Road, the Town is actually the applicant for the NH DOT Driveway Permit. NH DOT Driveway Permit Application was submitted to Public Works Director (DPW) Hadaway for his review and submission by the Town to NHDOT.
12. The AoT Application has been submitted and accepted by NH DES as complete and NH DES has 90 days to review it.

Applicant's Engineer Conway said that she has completed the studies and addressed all of the questions the Planning Board asked for last month and "we were told that we will get a provisional approval so we can complete moving forward with the project". The only other State Permit outstanding is the AoT permit.

Hydraulic Analysis for Water, Sewer and Fire Protection

Member Beaudin asked Town Engineer Korber if he had completed the Water Hydraulic Analysis for Water, Sewer and Fire Protection and if he had any comments. Town Engineer Korber, KVPartners, LLC has completed his review of the Water Capacity Analysis and the Sewer Capacity Analysis. He had a conversation with Weston & Sampson Engineering, Inc. today about completing the Hydraulic Analysis for fire suppression. The Town had to issue Weston & Sampson a task order to get Weston & Sampson under contract to do the work. Weston and Sampson Engineering, Inc. is in the process of putting that contract together. Weston & Sampson expects to have their review done by the end of the month.

Stormwater Management Plan

Member Beaudin asked Town Engineer Korber about the Stormwater Management Plan. Town Engineer Korber reviewed that outdoor drainage design but he has not yet reviewed the drainage analysis – the Hydric CAD model. He received the drainage analysis on April 28, 2021. He has not gotten to that piece of the Plan yet. He expects to get that review completed this week.

Alteration of Terrain (AoT) Permit

Member Beaudin asked Applicant's Engineer Conway if she knew when the NH DES was going to get a chance to look at the Application for an AoT. The application was submitted April 28, 2021. NH DES accepted the application as "complete". NH DES has ninety (90) days to review the application.

Contribution for Stabilization of Railroad Street:

Town Engineer Korber also updated the Board on the discussion he had with DPW Nate Hadaway on the condition of Railroad Street. He stated that there is a section of road between Main Street and the railroad tracks there is a section of Railroad Street that is delaminating; the wearing course is coming away from the base course. That is something the Town would like taken care of. The Town should be able to take care of this with a mill of 1-1 ½ inches of pavement and then paving it over. He does not believe that part of the road needs to be reconstructed or rehabilitated. It would just require a mill and an overlay in this section of road only. He is not sure exactly how many feet that would be. He would roughly estimate it to be about twenty feet (20') of roadway. He asked Applicant's Engineer Conway if she could scale it on the plans. They are referring to the public portion of Railroad Street (versus the private portion of Railroad Street). The area of concern is right at the intersection with Main Street where the railroad tracks cross in front of the railroad tracks.

Member Beaudin said he would like to know who should be responsible for that portion of roadway. Town Engineer Korber said the wearing course is delaminating and additional traffic will just make the situation worse.

Member Beaudin said the wear and tear on that section of Railroad Street is caused by the other users of the road on Railroad Street including:

1. Rodger's Ski and Sport Shop;
2. Holiday Inn Express Inn & Suites;
3. Hobo Railroad; and
4. Hobo Hill Adventure Miniature Golf,

Therefore, Member Beaudin said he did not think it would be fair to make the applicant responsible for any required road repairs.

Chair Spanos said fixing up that section of the roadway due to delamination could be a requirement for the Town getting a State NH DOT Driveway Permit.

Town Engineer Korber said when the Town does apply for a NH DOT Driveway Permit the NH DOT could require some changes to that intersection. Perhaps some line work and some line striping and that NH DOT may require a paved apron between the NH Route 112/Main Street and the railroad tracks. NH DOT may drive that requirement as well.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward said he thought it was a pretty small price for the Town to pay to fix the 20-30 feet of public portion of the Rail Road roadway that is owned by the Town in order for the Town to have a \$20,000,000 medical facility

in the Town for the townspeople. As you drive down Railroad Street, the public portion of Railroad Street is going to be shared by the Hobo Railroad, the Holiday Inn Express Hotel and Suites, Rodgers Ski and Sport Shop, and the Hobo Hill Adventure Golf. Repairing that section of roadway is a pretty small price for the Town to pay to get a major medical facility in their Town.

Member Beaudin asked Chair Spanos if this issue should be addressed as part of the review of the application for the subdivision and medical facility. Member Beaudin said he agreed with Jeff Woodward; that the Town should pay to fix the section of roadway between the railroad tracks and the intersection of Railroad Street and Main Street/NH Route 112. He anticipates the Town will get a fair amount of tax revenue out of this medical facility because the for-profit facilities are not eligible for property tax exemptions.

Selectmen's Representative Robinson agreed with Member Beaudin. (1) He said this portion of roadway is "very small and almost insignificant amount of roadway when looking at the whole Town infrastructure". (2) The roadway is already showing deterioration and is in need of repair with or without the building of these two (2) facilities. (3) When you look at the amount of traffic going in there, based on the total use of that road, he thinks that Rodgers Ski and Sport Shop, the Holiday Inn Express Hotel & Suites and the Hobo Railroad together would produce far more traffic than these two (2) new medical facilities. It would not be fair to get the new guy on the block to pay for improvements that are benefitting the other three (3) substantial existing users of Railroad Street.

Member Beaudin said he agreed with comments made by Selectmen's Representative Robinson and Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward. Member Beaudin said what if NH DOT requires something different at that intersection. Should not those additional expenses be borne by the applicant? The NH DOT traffic study will be related to the amount of traffic being generated by the application for these two (2) facilities and how that traffic would impact the egress and ingress onto NH Route 112 from those two (2) parcels. He thinks there is a distinction between just fixing a road surface that is there now and a series of new requirements by the NH DOT necessitated by the new proposed project. He thinks those additional expenses should be borne by the applicant.

Chair Spanos asked, what if resurfacing the roadway is part of the NH DOT requirement before the Town can get a driveway permit? Member Beaudin said he thought the Town should pay for the resurfacing no matter what. Chair Spanos asked if that was the consensus of the Planning Board.

Vice Chair Chenard said the public portion of Railroad Street is more than twenty feet (20') in length; the public portion of the Town road called Railroad Street goes up the intersection with Donovan Drive. The public portion of the roadway is more like one hundred feet (100'), not twenty feet (20'). The Town maintained portion of the Railroad Street goes from the intersection of Main Street/NH Route 112 past Rodgers Ski and Sport Shop, to include the intersection with Donovan Drive ROW.

[Per the tax maps the public or Town-owned portion of Railroad Street is approximately $89' + 17.52' + 25' = 131.52'$. It is approximately fifty feet (50') wide. See attached map.]

It does not include the private portion of Railroad Street ROW that continues past the DeGraces' homes, past the Holiday Inn Express Hotel & Suites to the Hobo Railroad and Trail Station. The State of New Hampshire gave the land to the Town for a public road back in 1972.

Member Beaudin wanted the Planning Board to clarify. Currently, the Town-owned portion of Railroad Street has some deterioration. If the NH DOT comes back and if NH DOT says they need a stop light or something else like a bar that goes down across the railroad tracks, he does not think those required changes should be the Town's financial responsibility.

Connector Road Will Not Be Used for Access or Egress and Signage:

Member Beaudin would like to see an indication on the plan that shows that the two (2) proposed medical facilities were not going to be using the access onto Connector Road. Although it would be difficult to police locals trying to get out by way of Connector Road, he felt that the intent should be clear that guests of the medical facilities would not be exiting or entering via Connector Road.

Applicant's Engineer Conway replied that the Applicant felt it would be difficult to close off this access especially to locals who know how to use it. They proposed erecting "No Left-Hand Turn" signs to help deter people from accessing Connector Road. If we put a note on the plan "No Vehicles to Connector Road" we did not know how that could be enforceable versus a "No Left Turn" sign is something that people see and can make their decision about traveling based on that sign.

Chair Spanos suggested having a sign that says "Private Drive".

Member Beaudin said he agreed with that idea, however, as time goes on and the ownership of the medical facilities changes, if there is nothing in writing on the plan, that it is not the intent to use the end of Railroad Street ROW onto Connector Road a successor owner could say its guests can use the egress onto Connector Road. It is necessary to include that language on the plan for clarification.

Vice Chair Chenard said that currently Benjamin Clark who is the owner of the Hobo Railroad and the fee for the land under the private portion of Railroad Street has currently blocked off the ingress/egress from Railroad Street to Connector Road, except for limited use for his own business. The private portion of Railroad Street is not a public way going all of the way through to Connector Road.

Chair Spanos suggested putting on the plan that the private portion of Railroad Street is not a public way.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward said Benjamin Clark currently has that access/egress point from Railroad Street to Connector Road blocked off from November of 2020 until now (May 12, 2021). People are not going to be able to go through because Benjamin Clark has barricades up for most of the year.

Performance Bonding:

Further discussion ensued about how much to set aside for bonding and what costs needed to be covered. Town Engineer Korber has reviewed the applicant's bonding proposal and has comments on it. He will get those comments back to Horizons Engineering. Member Beaudin asked Town Engineer to review the comments tonight in case the Planning Board votes to give the Applicants provisional approval tonight it would be good to know what those comments are before making that decision.

Town Engineer Korber said he has not done any quantity take offs yet. For the purposes of this discussion, he is assuming that the quantities that are shown on the estimate are correct, however, the unit prices are low. For example, \$6 for excavation embankment work is low. Typically, it would be almost two (2) times that amount or \$12.

Town Engineer Korber said he is not sure what the treatment is for the infiltration basin itself. He assumes that the basin is going to be loamed and seeded.

Applicant's Engineer Conway said she included the loam, seed and fertilizer in the price. The total square yardage is the whole area of the lot to be disturbed that needs to be stabilized.

Town Engineer Korber said again, the price shown for loam, seed and fertilizer of \$1 per square yard is low. That number needs to be increased.

Town Engineer Korber said that Applicant Engineer's stated erosion control costs are also low at \$10,000 lump sum. He was not sure what the cost of the grading and ditching entailed. Is that just swales and the site work itself?

Applicant's Engineer stated what she thought was that in order to stabilize the site they did not need to install all of closed drainage system, including the catch basins. If for some reason construction stopped part way through, to stabilize the site they would only need to direct all of the stormwater runoff to the pond. First, the Applicants would need to construct the pond, then they would need to direct the runoff to the pond. In general, right now the slope of the site goes towards that pond so they would not really have to change that. What if they get the building path started or start some of the work for the building pad and the project stops? They would need to rectify that and still give surface water a way to run towards the pond. This proposed work would include doing some rough grading on the site to direct the water towards the pond. Then, in some areas, they would do some ditching to make sure they collect all of the water and send it to the pond. The proposed bond estimate is not for the installation of the proposed design; it is more about stabilizing a partially constructed site.

Town Engineer Korber said the other thing the Planning Board has to think about is the stage of construction. During the last meeting, they discussed if the applicants are partially through installing storm drainage, or water or sewer, is it the Town's intention to have the applicants just cap those utilities and leave them in place or does the Town want the Applicants to continue to make the connections so that whatever project comes in afterwards can just hook up and have those connections be available to it. If the Town wants those connections to be made then the Town has to make allowances for doing that and include those costs in a performance bond.

Member Beaudin asked the Planning Board how they could approve this project if they did not have a clear bond amount. Chair Spanos said the Planning Board could make an approval based on the amount to be determined by the Town. Then the Planning Board can discuss a possible percentage contingency. In the past the Planning Board has included a contingency of 10-15%.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward stated that Urgent Care and the accompanying businesses (Littleton Hospital, etc.) are very large companies. His “team” is made up of Remedy Medical Properties which is the largest privately-held and operated medical facilities in the country. Just last year alone Remedy Medical Properties did two hundred fifty million dollars (\$250,000,000) worth of projects just like this one. Dr. Marcus Hampers of New London, New Hampshire, is the owner of ClearChoiceMD, Urgent Care and runs fourteen (14) Urgent Cares in the northeast. Littleton Hospital and several other companies in New Hampshire (9 facilities so far) are working with ClearChoiceMD. You have one in Littleton already. Why are you building another one in Lincoln, NH? Littleton Hospital’s mission is to provide high quality health care to the north country. They are only coming to Lincoln because they feel there is a “need” for good health care in the Lincoln area. “That is what we are about.”

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward continued that the Applicant is ***not*** a small local Mom and Pop hotel operation that the Town has to worry about going defunct mid-way through the project. These are medical facilities that will be completed. Every penny that Littleton Hospital spends is money that be used for its facilities or medical equipment. The Littleton Regional Hospital is a nonprofit organization. Every penny they make goes back into redoing their medical facilities. He added that all contractors working on the project definitely will be bonded. If they walk out on the Littleton Hospital, the Littleton Hospital is going to collect from their insurance company to finish this project. Further, he stated that there is no way this project will not be completed. Any money the Littleton Hospital does not use just goes back into the health care facility.

Member Beaudin said he does not question the motives of the Applicants; however, the Town of Lincoln has had a number of developers who came into Town with grand ideas and the Town was left holding the bag after those developers came in, got approval, started a project and then did not finish the project. That is why the provisions requiring bonding was set up.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward said he understood, but the Littleton Hospital is different than other applicants because they are looking to construct a medical facility. They are not looking to make a profit. They just want to provide a service to the community.

Abutter Questions:

Vice Chair Chenard said several abutters like owners of the Holiday Inn Express Hotel & Suites have asked him questions that he will in turn ask the Applicants:

1. What time will the medical facilities be open and what are their open hours? The hotel can have about 400 guests and employees at the hotel at any one time.
2. What will their hours of construction for the facility be? The hotel owners expect that construction for the facility will adversely affect their clientele which means about 400 people if they are filled to capacity.
3. Will this be a walk-in facility where you can go in at any time and they cannot refuse you or is it like an emergency room or do you have to go in and produce a credit card or an insurance package?

President/CEO of Littleton Regional Hospital **Robert (Bob) F. Nutter**, said

1. They will do as much construction as they can being respectful of any of the neighbors around, typical of any of these construction projects.
2. Hours of operation of the Urgent Care will be somewhere around either 8 AM – 8 PM or 9 AM – 9 PM. Those hours will be set by the traffic patterns and the needs of the community.
3. The Littleton Regional Hospital is an “equity partner” – a 50%-50% partner with ClearChoiceMD. As a 50-50 equity partner and a nonprofit organization, “we” do take anybody who comes through the door. There are rules and regulations for a for-profit entity. There are different rules that apply to nonprofits than apply to for-profits. It is the intention of the Littleton Regional Hospital that it can serve as many people of the community, regardless of the patients’ ability to pay, but that is a fairly small percentage. The whole purpose/mission or goal is to try to drive down the cost of health care and to provide health care as close to home as possible. To that extent it is the intent of the Littleton Regional Hospital to work to make sure that it achieves that goal.
 - a. Littleton Regional Hospital has an “urgent care” operating out of the Littleton Hospital right now. They would expect to see “very similar processes in Lincoln.”

Vice Chair Chenard said that the urgent care in Littleton [referring to ConvenientMD Urgent Care, 511 Meadow Street, Littleton, NH 03561], how does that affect the hospital in Littleton? Is it a detriment for funding coming in for patients? Does the Littleton Hospital work hand in hand with the urgent care [ConvenientMD Urgent Care] in Littleton? Do they work hand in hand with each other or do they compete against each other?

President/CEO of Littleton Regional Hospital **Robert (Bob) F. Nutter**, said

They are all part of the same family. Our “urgent care” is another department of Littleton Hospital where patients can just walk in. They do not need an appointment. Patients do not need insurance. They can just walk right in. The intent is to address the much lower level, less acute cases, do “rule-outs” and deal with bruises, scrapes, strains, sprains, that sort of thing. That is what we really see in an “urgent care”. They assess patients when they come through. If the patient is in need of a higher level of care, whether it is an emergency department or something else, the urgent care will be able to transfer that patient to the emergency department of the patient’s choice.

[Note: Mr. Nutter either purposely or unintentionally misunderstood which “urgent care” facility Vice Chair Chenard was referring to. Chenard was talking about the commercial for-profit urgent care facility called “ConvenientMD Urgent Care” that had been referenced in numerous local newspaper articles back in 2019 and 2020. ConvenientMD was erected in Littleton right off I-93. Mr. Nutter answered by talking about the “Urgent Care” Department of the Littleton Regional Hospital. Chief Medical Officer of “CovenientMD Urgent Care” is Dr. Mark Pundt, Portsmouth, NH alongside Co-Founder and Executive Chairman Gareth Dickens. Several local news articles appeared about lawsuits filed by the Littleton Regional Hospital versus ConvenientMD Urgent Care facility in 2019. (See attached.)]

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward stated it is much cheaper to be seen in an “urgent care” facility than in an emergency room. There is an entirely different rate structure.

Detention Pond

Member Beaudin asked Applicant’s Engineer Conway if the full detention pond would be constructed at the very beginning of the construction process or would the whole detention ponds be installed using a phased approach. He is asking because the “Urgent Care” facility is the first facility that the applicant is intending to construct. Later they will construct the bigger building.

Applicant’s Engineer Conway said the whole forebay and the infiltration basin will be constructed. We designed the detention pond for the flow of the entire site so it does not make sense to construct the detention pond in phases, cost-wise or construction-wise. Until the next phase is built, the detention pond will be oversized which is perfectly okay.

Will the Applicants Be Looking for a Tax Exemption?

Member Beaudin questioned whether the buildings being built would be taxable. Are both facilities going to be taxable entities? President/CEO of Littleton Regional Hospital Nutter said:

“It is our intent that it would be a taxable entity in that we are looking to have partners with other health care providers as we are with the Urgent Care. We like to find ways that we can partner with other folks. Actually, as we partner with other ‘for profit’ or private equity people like a physician who would like to participate in this practice. If that is the case, then that turns it into a for-profit entity and that is our intent.”

Alignment of Railroad Street on Survey Versus its Location on the Ground & Parking Spaces and Traffic Island Encroachments into Railroad Street Right of Way:

Chair Spanos asked about the alignment of Railroad Street towards the end where the Right of Way portion of Railroad Street is. Many of the parking spaces for the Hobo Railroad and Train Station appear to be located directly within the fifty-foot (50’) Right of Way for Railroad Street.

Applicant’s Engineer Conway said there is a fifty-foot (50’) Right of Way for Railroad Street. The existing parking lot encroaches into that fifty-foot (50’) Right of Way as shown on the plan. At its narrowest there is about twenty feet (20’) from the existing parking to the Right of Way. The Applicants are currently talking with the property owners (the Clarks, Benjamin, Brenda and Jennifer) about that encroachment.

Fee Ownership of Land Under Private Portion of Railroad Street and Easements

Chair Spanos asked if the Clarks (d/b/a Hobo Scenic Railroad & Junction Station) are going to maintain fee ownership of the land within the Railroad Street Right of Way. Applicant’s Engineer Conway said yes. The Applicants will have an easement just like the easement for the Holiday Inn Express Hotel & Suites. The Applicants will try to obtain an easement for access as well as for the water and sewer utilities and the electric. The applicants will have a similar easement to the Hotel.

Traffic Issues Within the Easement for Railroad Street Right of Way

Chair Spanos asked Town Engineer Ray Korber whether he had any thoughts or concerns about the easement.

Town Engineer Korber said on the plan Railroad Street comes into and ends in a parking lot (which is fine). However, then the alignment of Railroad Street is in direct alignment with a number of parking spaces as well as two (2) traffic islands that encroach into the Railroad Street Right of Way. Applicant has a number of different traffic movements happening in a very small confined area. Applicant will have drivers coming out of the medical facility parking lot onto Railroad Street at the same time as Applicant has one or both drives with people backing out of parking spaces at the same time that people are coming from Railroad Street into the Hobo Railroad parking lot and into the two medical facilities.

Town Engineer Ray Korber recommended that Applicant's Engineer Conway re-examine that area to make sure that there is good traffic flow going in and out of the medical facility parking lot so the traffic flow within the parking lot has limits from the Hobo Railroad. He also asked her to look at the traffic from the two (2) medical facilities coming in and off from Railroad Street to make sure there are no potential conflicts in traffic flow.

Loss of Parking Spaces for Hobo Railroad and Hobo Golf:

Vice Chair Chenard said he thought if the Applicant had to removing the parking encroachment from the Railroad Street Right of Way that would affect between 15 and 20 parking spaces for the Hobo Railroad. Town Engineer Korber agreed.

(Note: Parking for the Hobo Railroad is also shared with the Hobo Adventure Hills Mini Golf Course.)

Town Engineer Korber said he did not know how that problem would be resolved. At this point there is a lot going on in a very small footprint. From a traffic safety standpoint, this problematic traffic flow warrants additional consideration by the engineer.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward said the Applicant has been speaking with Benjamin Clark, one of the property owners, about the encroachments into the Railroad Street Right of Way. If the Planning Board does have to have Clark move his parking spaces and traffic islands, Applicant will then give Clarks a parking easement to use Applicant's parking spaces in Applicant's parking lot. The big medical facility will be closed on weekends. Hobo Railroad has most of their tourist business on the weekends. We will have spaces at the large medical facility that will not be used on the weekends. So, the Clarks will have the ability to use spaces at the Applicants' large medical facility if Clarks have to remove parking spaces in his parking lot.

Phasing of Improvements

Member Beaudin asked Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward if he was going to construct all of the parking lot during the first phase or just the ones associated with the Urgent Care facility. Woodward said he would assume they would only create the parking spaces for the Urgent Care facility to start. Member Beaudin said, "That is not very many parking spaces that I see." There are only a few parking spaces associated with the Urgent Care facility.

Applicant's Engineer Conway said that if the Applicants only constructed the Urgent Care facility and its related parking, the traffic to and from that facility will not conflict with the Hobo Railroad parking lot. The entrance into the Urgent Care starts south of the parking lot for the

Hobo Railroad. The traffic flow conflict is really going to happen when the Applicants construct the parking lot for the larger medical office facility.

Member Beaudin said if the Planning Board is approving this project and the Board is looking for a condition to address the traffic concerns, then the potential conflict needs to be looked at and approved as part of this application for approval.

Loss of Parking Spaces for Hobo Railroad and Hobo Golf:

The Board also discussed the parking lots as the Hobo Railroad will lose fifteen to twenty (15-20) parking spaces for its business if the parking spaces are removed from the Railroad Street Right of Way. Vice Chair Chenard asked if Hobo Railroad have to come before the Planning Board for Site Plan Approval to address its lack of parking. Could this be considered a "Change in Use" that triggers Site Plan Review for the Hobo Railroad? The number of parking spaces required for the tourist attraction called The Hobo Scenic Railroad was part of their Site Plan Review approval. Would a loss of those parking spaces negatively affect the Hobo? The impact may be negligible.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward replied that the property owner Benjamin Clark told Woodward that he is comfortable with the loss of those parking spaces because his parking lot for the Hobo Railroad is filled up only about four (4) times per year. During those peak times (on weekends), the new large medical facility building would be closed and Clark would be allowed to use the medical facility's parking lot.

PUBLIC COMMENT:

"To open the hearing to public comment."

Motion: Member Beaudin

Second: Vice Chair Chenard

All in favor.

There were no public comments.

"To close the hearing to public comment."

Motion: Member Beaudin

Second: Vice Chair Chenard

All in favor.

Third Party Town Engineer Review:

Selectmen's Representative Robinson asked whether Town Engineer Korber had reviewed the Stormwater Management Plan yet. Town Engineer Korber said:

1. He has reviewed the Drainage Design (basically, the layout of the facilities on the site).
2. He has received the Alteration of Terrain Permit Application;
 - a. As part of the AoT Permit Application he has received the Drainage Analysis. He has not reviewed the Drainage Analysis yet.
 - b. Selectmen's Representative Robinson asked whether Town Engineer Korber saw anything in that drainage analysis that would require a drastic change that it would not fit on this site or would need to redo the parking lot or the grading. Is that a "show stopper" or is that something that the Planning Board could approve with a condition of working this out with Korber. Korber does not think there is a "show stopper" based on a review of the Drainage Design alone. Although

Korber did not review the drainage analysis yet, looking at the Drainage Design and the footprint of the facilities, he does not see any reason why it cannot work. However, the “devil is in the details.”

Selectmen’s Representative Robinson asked whether Town Engineer Korber had fully reviewed the Water Capacity Analysis and Sewer Capacity Analysis.

1. Town Engineer Korber said he reviewed the Water Capacity Analysis and Sewer Capacity Analysis and will provide comments but nothing that will affect the loading or the demands significantly. It will change the numbers. He added that it is important to get these numbers right so that there is documentation in the record to show what the expected loading is supposed to be. He does not see a “showstopper” there either.

Selectmen’s Representative Robinson asked whether Town Engineer Korber had any thoughts about the Fire Flow Analysis which he has not received yet.

1. Town Engineer Korber said as far as fire protection, analysis, he expects to see results comparable to the nearby Riverwalk at Loon Mountain Resort site recently submitted. Applicant’s Engineer Conway was looking at one thousand gallons per minute (1,000 GPM) for two (2) hours. He added that there are no project show stoppers at this point. Weston & Sampson's report should show adequate water supply and sewer capacity.

Member Beaudin asked whether Town Engineer Korber had taken into account the developments already approved, but not yet built in assessing those capacities. Korber said “yes” as was discussed last week.

1. Waste Water Capacity: Korber did a “desk top study” on the waste water system including the Waste Water Treatment Plant and the segments of interceptor that enter into the Waste Water Treatment Plant. Based on that analysis and comparing the loadings from what are called the “vested developments” (i.e., unbuilt, but approved), there should be sufficient capacity in the system to handle those vested developments and these proposed medical facilities.
2. Water Capacity: Same.
3. Water Capacity for Fire Flow: We are assuming one (1) fire downtown and not multiple fires.

Town Engineer Korber said, as Town Manager Burbank said at the last meeting, at some point you are going to tip that scale. You have not tipped it yet.

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward said he knows the Planning Board is concerned about stressing the infrastructure in Town. He suggested the Planning Board consider the possible tax revenue created by the pending three hotels and these two medical facilities that could bring in so much money the property taxes from these properties alone could pay to upgrade the infrastructure by borrowing money. Member Beaudin said the reason the Town of Lincoln has such a low tax rate is because the Town does not borrow money. Later, Alternate Ehrman strongly disagreed with Member Beaudin as this kind of thinking goes contrary to the principles of finance and sound development.

Discussion re: Requiring a Performance Bond and How Much:

Chair Spanos asked members of the Planning Board about their thoughts re: requiring a performance bond.

- Member Beaudin said he thought the amount of the bond should be the amount that Town Engineer Korber and Applicant's Engineer Conway should come to terms about the amount of the bond.
- Chair Spanos said he wanted to discuss including a contingency because the cost of construction has been going up; consider adding a 15% contingency.
- Vice Chair Chenard agreed with Member Beaudin. Back in the 1990s when the *** hit the fan all of the contractors had bonds. A major developer went "flooeey". Many people lost over \$250,000. Part of the problem was the developer never finished the drainage for the Forest Ridge property.
- Alternate Ehrman stated that the character of the proposed business has not been adequately discussed. This is a medical facility versus a straight commercial enterprise. This facility will bring a great tax revenue to the Town which could be used to update the Town's infrastructure. The Town's need for this development should be carefully considered. The risk of default is minimal. Focusing on the bond requirements and not the benefit to the Town is not something he wants to be part of. He feels it is insulting to nitpick the applicant when the Town should be welcoming them.
- Member Robinson agreed with Alternate Ehrman. The projects that have failed before have been large-scale commercial second home projects. When the economy dipped the developers were pulled under because of the economic downturn. This project is totally unrelated to the second home market. The other projects were built on steeply sloped land that required significant site work for roads and utilities. The proposed project is on a relatively flat lot with utilities in front of the place. This project does not present a risk to the Town, thus the need for bonding should not be a major point of discussion. What does the Town need to protect here?
- Member Beaudin stated that he disagrees and that bonding protects all involved parties.

Are All of the Trees on the Entire Lot Going to be Cut in Phase I?

Member Beaudin asked if the entire lot was going to be cut as part of the initial project or will they cut just tress on the part where they will be locating the ConvenientMD Urgent Care facility in Phase I of the project?

Applicant's Engineer Conway directed the Planning Board to look at the plans. The tree line goes onto both parcels. From a construction standpoint, just like we are talking about constructing the entire infiltration basin, when the Applicants get a logger in there it makes more sense to log everything they are going to log at once. She is not aware of any plans to handle this project any differently. They would log the entire parcel and do the stumping all at one time and not segregate the task into two phases. From a cost perspective it makes more sense to prep the site all at once. The second phase would be more about putting in finishing materials like the gravel, the building, and the paving. She is not the developer, but that is how she would go about it.

Member Beaudin asked if the Applicant intends to cut the entire lot and stump it, how is the Applicant going to direct the drainage to where it needs to go if the Applicant does not have the final grades in or does the Applicant intend to have all of the final grades in as well.

Applicant's Engineer Conway said that is part of the cost estimate she submitted. She estimated five (5) days with a full crew (i.e., an excavator and bulldozer set up) to do the grading and ditching so they could direct the water towards the detention pond. Currently, the site slopes from the north down toward the southwest corner which is the same way she proposes sending the water towards the proposed location of the detention pond. Even if they cut the trees and do "some stumping" the general flow of the water on that property is not being changed. They will just do some rough grading to make sure the water does get to that detention pond should the project stop for some reason.

Member Beaudin said in a high flow rain situation Applicants are going to have some serious erosion control on the parts of the lot where they cut trees if the project is not finished.

Applicant's Engineer Conway said this soil type is not the type of soils she is used to seeing up on the sides of the hills with sloped properties. This soil has such a rapid infiltration rate that she had to add amenities in the infiltration system to slow the infiltration down. Because the site has such a nice gravelly clean soil water tends to enter the ground rather than run off. There is no evidence of any erosion at that site. There are no steep slopes. There is no poor soil. Consequently, that lot is a really nice lot to develop.

Vice Chair Chenard confirmed the sandy nature of the soil at the site.

Poll re: Requiring a Performance Bond and How Much:

Chairman Spanos polled the Board to determine the consensus of the Board on whether to require a bond.

<i>Selectmen's Representative Robinson</i>	- no
<i>Vice Chair Chenard</i>	- a small bond
<i>Member Noseworthy</i>	- yes
<i>Member Beaudin</i>	- yes
<i>Chairman Spanos</i>	- yes

Chairman Spanos said the amount is a matter to discuss with the Town Engineer.

Signage for Connector Road

Planner Bont and staff recommended to the Board that the access to Connector Road have additional signage such as "Private Way" sign in addition to the "Left Hand Turn" signs. Town Engineer Conway thought this was a helpful and doable suggestion.

Who is "The Town" in the context of establishing a Performance Bond?

Selectmen's Representative Robinson asked "Who is "the Town" in establishing the amount of a performance bond?" Chair Spanos said "the Town" was the "technical review staff". Vice Chair Chenard said at an earlier Planning Board meeting, the Planning Board determined that "the Town" should be the Planning Board, rather than staff; the Planning Board should be the entity that determines whether or not a performance bond should be discharged and whether the terms of the performance bond have been met successfully to avoid repeating an earlier mistaken discharge of a performance bond. It is highly unlikely that all of the members of the Planning Board would disappear before the matter of discharge of the bond comes up.

Legal Advice re: Bonding

In the course of the discussion about the proposed approval below, Town Attorney Jason Dennis (standing in for Attorney Peter Malia), from Hastings Malia Law Office gave the following legal advice. It is appropriate that the Planning Board, if it chooses to do so, make that requirement as it is worded (i.e., as Chair Spanos said, the technical review staff which has the input of Town Engineer Ray Korber). That would not necessitate the input and approval from the Board of Selectmen.

Terms of the Bond:

Vice Chair of the Board of Littleton Regional Healthcare Jeff Woodward suggested that Littleton Hospital put \$75,000 in an escrow account that could be used to refurbish the property if the Applicant walked away from the project unfinished. If the project is finished, then the \$75,000 would come back to the Littleton Hospital. Members of the Planning Board agreed. Member Beaudin suggested that the money be placed in an interest-bearing account and returned with interest. The Planning Board agreed to add the words, “with interest”.

Signage for Connector Road

Chair Spanos suggested that the signage to discourage through traffic from Railroad Street to Connector Road to include a “no trespassing” sign. Selectmen’s Representative Robinson did not want to use a “no trespassing” sign as he did not want the wording on the signs to be contrary to what Benjamin Clark (owner of the Hobo Railroad and owner of the fee for the land under the private portion of the Railroad Street Right of Way) would want.

Seventy-Five Foot Sign:

When reviewing the possible conditions of approval, Member Beaudin suggested adding the following condition:

- Applicants shall go before the ZBA for a Special Exception for the proposed 75-foot-high sign.

Selectmen’s Representative said that requirement was already included in the first requirement:

- Applicants shall obtain all necessary state and town permits and approvals. All State Permits issued to the Applicant for the project shall be submitted to the Town and will be reviewed by the town engineer including the Alteration of Terrain Permit. Planning Board members agreed.

Motion to Approve with Conditions:

"To approve the application based on the following conditions:"

- 1. Applicants shall obtain all necessary state and town permits and approvals. All State Permits issued to the Applicant for the project shall be submitted to the Town and will be reviewed by the town engineer including the Alteration of Terrain Permit.**
- 2. Applicants shall resolve with the town engineer all technical matters to ensure compliance with applicable town ordinances and impacts to the town infrastructure including but not limited to:**
 - a. Water Capacity Analysis;**
 - b. Sewer Capacity Analysis;**
 - c. Hydraulic Analysis for Fire Protection; and**
 - d. Stormwater Management Plan.**
- 3. Applicants shall provide written documentation confirming access is granted to the applicant across any privately held property.**
- 4. Applicants shall pay all engineering and construction costs related to obtaining and complying with the NHDOT requirements with the exception of any resurfacing of the town portion of Railroad Street that is considered ordinary maintenance.**
- 5. Applicants shall place the sum of \$75,000 into an interest-bearing escrow account to ensure site stabilization and to be returned to the applicant upon project completion.**
- 6. Applicants shall resolve potential traffic flow and conflicts to and from the subject properties at the intersection of the facility parking lot, the Hobo Railroad parking lot, and Railroad Street to the satisfaction of the Town Engineer**
- 7. Applicants shall install signage to discourage through traffic from Railroad Street over to Connector Road.**

Motion: Member Beaudin

Second: Vice Chair Chenard

All in favor.

The Board looks forward to welcoming Convenient Care Urgent Care and the medical facility to the Town of Lincoln.

IV. NEW BUSINESS

None.

- V. PUBLIC PARTICIPATION AND OTHER BUSINESS:** Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

Discussion whether the Planning Board should go back to in person meetings or a hybrid of in person and ZOOM meetings for now. Planning Board agreed to try the hybrid model until guidance and COVID-19 situation is better understood.

VI. ADJOURNMENT

“To adjourn the meeting at 7:21pm.”

Motion: Member Robinson

Second: Vice Chair Chenard

All in favor.

Respectfully submitted,

Brook Rose

Recording Secretary

Date Approved: June 23, 2021


James Spanos, Chairman

https://www.caledonianrecord.com/news/local/lrh-requests-injunction-to-prevent-convenientmd-from-obtaining-license/image_c389b33f-375e-559a-a2dc-5d7f6f7f40d7.html

LRH Requests Injunction To Prevent ConvenientMD From Obtaining License

Caledonia Record

October 31, 2019

A work crew packs up for the day Wednesday at ConvenientMD, the urgent care clinic about to open in Littleton and that has now entered into a partnership with North Country Healthcare. The clinic on Meadow Street is projected to open Dec. 11. (Photo by Robert Blechl)

Two days before North Country Healthcare and ConvenientMD announced a partnership, Littleton Regional Healthcare requested an injunction against the New Hampshire Department of Health and Human Services to prevent DHHS from issuing a license to the competitor urgent care clinic.

Littleton Regional Says It Would Lose \$3.2 Million A Year If ConvenientMD Opens

By John Koziol Union Leader Correspondent

Dec 2, 2019 Updated Dec 4, 2019

[Littleton Regional says it would lose \\$3.2 million a year if ConvenientMD opens](#)



ConvenientMD operates 24 urgent care centers in Northern New England, including this one in Littleton. The Portsmouth-based company proposes to build a new center in Manchester, which would replace a former gas station on Hooksett Road.

NORTH HAVERHILL — Littleton Regional Healthcare is asking a judge to block the state from granting a license to ConvenientMD Urgent Care, saying the walk-in center would cause the hospital to lose \$3.2 million a year.

ConvenientMD plans to open at 551 Meadow St. just off Interstate 93 Exit 42 and about a half-mile southwest of downtown Littleton. On July 23, Health and Human Services Commissioner Jeffrey Meyers determined the facility “will not result in a

[I cannot access the rest of the article without paying for it.]

Littleton Regional Healthcare Asks Judge For Injunction Against ConvenientMD

By John Koziol Union Leader Correspondent

Dec 4, 2019 Updated Dec 4, 2019

https://www.unionleader.com/news/health/littleton-regional-healthcare-asks-judge-for-injunction-against-convenientmd/article_71d5193f-9af2-59f8-b5cf-c16fdf3782af.html

John Koziol/Union Leader file

NORTH HAVERHILL — Lawyers for Littleton Regional Healthcare were in court Wednesday trying to stop ConvenientMD Urgent Care walk-in clinic from opening, but it has already received an operating license from the state Department of Health and Human Services.

Founded in 1907, Littleton Regional Healthcare is a nonprofit that operates a federally designated critical access hospital, and a walk-in clinic that is in a building on its campus.

In a lawsuit that it filed in October, and on Wednesday before Judge Lawrence MacLeod in Grafton County Superior Court, LRH said the opening of the ConvenientMD Urgent Care would cause it to lose an estimated \$3.2 million annually in revenues while further exacerbating the losses of the obstetrics and behavioral health services programs.

LRH asked MacLeod to grant an injunction preventing the state from issuing a license to ConvenientMD Urgent Care, while its lawsuit wants MacLeod to find that DHHS Commissioner Jeffrey Meyers erred in making a determination that the clinic’s opening would not result “in a material adverse impact” to LRH.

At the beginning of the hearing, however, both parties informed MacLeod that on Tuesday night, they were provided letters from DHHS in which Meyers made a second determination that confirmed the first.

A short while later, Atty. Daniel Deschenes, who represents ConvenientMD Urgent Care, told the court that earlier in the day the DHHS issued the license to his client, adding, “Patients are welcome right now.”

Deschenes and Lawrence Edelman, who represented the DHHS, argued that LRH, by state law, was required to follow the administrative appeal process, which should have begun with a motion to Health and Human Services for a re-hearing. If the hospital received a denial, they said, the next step would be to appeal to the NH Supreme Court, which, the attorneys noted, can also grant stays.

Atty. Jason Gregoire said Littleton Regional Healthcare wasn’t trying “to prevent a competitor from coming to town” but was trying to protect health care services for the broader community.

He said there was “not sufficient patient volume” for two walk-in clinics in Littleton and that the opening of ConvenientMD Urgent Care could result in the closing of the birthing center at Littleton Regional Healthcare.

The next closest birthing center is at Speare Memorial Hospital in Plymouth, 51 miles away, he said.

Littleton Hospital Disputes State Ruling That New Urgent Care Center Won't Have Adverse Effects

By DANIELA ALLEE

DEC 6, 2019

<https://www.nhpr.org/post/littleton-hospital-disputes-state-ruling-new-urgent-care-center-wont-have-adverse-effects#stream/0>

A Grafton Superior Court judge says he'll rule later on an injunction filed by Littleton Regional Healthcare related to the opening of an urgent care facility in the town.

Littleton Regional filed the injunction in October against the Department of Health and Human Services, after the commissioner determined that there would be no adverse effect on the hospital if a ConvenientMD clinic opened less than 3 miles away.

As a federally designated critical access hospital, Littleton Regional says it would lose about \$3.2 million dollars a year in revenue with the opening of ConvenientMD, and that would affect its obstetrics and behavioral health departments.

"We have to start looking at the services we provide, and if any of those services do in fact lose a lot of money we can't continue to subsidize those at the rates we are. So we've really got a pickle to figure out there," said Littleton's CEO and President Bob Nutter.

LRH opened its own urgent care center earlier this summer.

"They're not trying to prevent a competitor in coming to town. They're focused on conserving access to the full panoply of health services offered by Littleton Regional Healthcare," said Jason Gregoire, representing LRH.

On Tuesday, the night before the hearing, DHHS Commissioner Jeff Meyers issued a second determination, which reached the same conclusion that there wouldn't be an adverse effect of ConvenientMD opening.

In the six-page order, Meyers said that the information provided by LRH and Ammonoosuc Community Health Services in their objections to the Commissioner's determination is "conjecture and attenuated at best."

Meyers also argues that DHHS has licensed other urgent care centers within a 15-mile radius of critical access hospitals, "and there is not data establishing that any of these centers have adversely affected the essential health services of the service area."

The state argued that Littleton Regional should have used a different process to seek relief, as laid out in state statute, and that LRH did not meet the state's requirement for an injunction.

"They would need to show it wouldn't simply hurt their business, but destroy their business, close their business," said Dan Deschenes, who represents ConvenientMD.

ConvenientMD opened Wednesday in Littleton.

Judge dismisses Littleton hospital's suit over walk-in clinic

By John Koziol Union Leader Correspondent

Dec 12, 2019 Updated Dec 13, 2019

John Koziol/Union Leader fileNORTH HAVERHILL — Citing lack of jurisdiction, a judge has dismissed a lawsuit brought by Littleton Regional Healthcare that sought to undo the approval by the New Hampshire Department of Health and Human Services of a license for ConvenientMD Urgent Care, which operates a competing walk-in clinic.

In his order, dated Dec. 10, Judge Lawrence MacLeod also denied Littleton Regional Healthcare's request for an injunction to prevent DHHS from giving ConvenientMD Urgent Care a license for its facility at 551 Meadow St. in Littleton, which is about three miles from the hospital.

The proximity of the two was the primary issue raised by Littleton Regional Healthcare in a lawsuit it filed in October in Grafton County Superior Court. LRH also filed a motion for an injunction then.



The urgent care facility at Littleton Regional Healthcare.

John Koziol/Union Leader Correspondent

Robert Nutter, president and CEO of Littleton Regional Healthcare, in a prepared statement said the organization was “very disappointed,” but did not say what its next steps might be.

Both the lawsuit and motion were the subject of a Dec. 4 hearing before MacLeod.

In its lawsuit, Littleton Regional Healthcare argued that as a federally designated critical access hospital, New Hampshire state law prevented the opening of a rival within 15 miles that could have a “material adverse impact” upon it.

The law, [RSA 151:4](#), requires the DHHS commissioner to make a determination of impact and Littleton Regional Healthcare, in its lawsuit, said Meyers erred when he failed to take into consideration that the opening of ConvenientMD Urgent Care would have significant consequences upon it.

In court documents and in testimony before MacLeod, Littleton Regional Healthcare said it would face the possibility of losing up to \$3.2 million annually in revenues, adding that the loss would further exacerbate the already poor financial positions of its obstetrics and behavioral health services programs and could lead to their closures.

Lawyers for DHHS and ConvenientMD Urgent Care argued that the mechanism for appealing an administrative decision by the DHHS was to ask for a re-hearing and if denied there, to then take the matter to the N.H. Supreme Court.

On Dec. 3, the DHHS said Commissioner Jeffrey Meyers had conducted a second review of the ConvenientMD Urgent Care application and again found there would be adverse impact upon Littleton Regional Healthcare. The following day, just hours before the pending-motions hearing before MacLeod, the DHHS issued a license to operate ConvenientMD Urgent Care, with the company immediately opening to patients.

MacLeod, in his order, said the Legislature, in writing RSA 151:4, could have granted the superior court jurisdiction in appeals, but it did not, instead giving “exclusive jurisdiction” to the N.H. Supreme Court.

For those reasons, wrote MacLeod, “the court rules that it does not have the subject matter jurisdiction over the claims asserted in this case. The defendant’s motion to dismiss for lack of subject matter jurisdiction is granted. Because the court concludes that it does not have jurisdiction, the plaintiff’s motion for preliminary injunction is denied.”

Nutter said DHHS, instead of applying the law as drafted, “interpreted statutory terms to allow another urgent care center — which offers duplicative services — to open three miles away despite all evidence produced by LRH and others demonstrating that the new facility will cause an adverse impact on delivery of essential health services in the region such as obstetrics and behavioral health.”

He added that, “The presence of an additional urgent care center in the region will deplete essential health services” but was confident that “people in the greater Littleton area will realize the significant benefits of going to an urgent care center that is directly linked to an independent, comprehensive hospital like LRH that provides high-quality health services to the region, regardless of the ability to pay.”

<https://www.vnews.com/Urgent-Care-Expansion-May-Put-Pressure-on-Small-Hospitals-While-Driving-Down-Costs-for-Patients-31388973>

As urgent care centers expand, small hospitals feel the pinch



Michele Winham, of Plainfield, N.H., takes a few deep breathes for Kaitlyn Jennings, a certified physician assistant at ClearChoiceMD urgent care center in Lebanon, N.H., on Wednesday, Dec. 18, 2019. Winham was at the center because of a persistent cough. (Valley News - Jennifer Hauck) Copyright Valley News. May not be reprinted or used online without permission. Send requests to permission@vnews.com.

By NORA DOYLE-BURR

Valley News Staff Writer

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Modified: 12/28/2019 10:49:33 PM

LEBANON — Michele Winham decided it was time to see a doctor after she noticed the mucus resulting from a persistent cough had changed its hue.

The 49-year-old Winham, who moved to Plainfield from Maui this fall when her husband took a job at Kimball Union Academy, has not yet found a primary care doctor in the area, but called Dartmouth-Hitchcock Medical Center on Wednesday hoping they might have her records on file from her daughter's birth there two decades ago.

Unfortunately, they did not — and she learned her options for being seen quickly for her respiratory problem were to wait to be seen in the emergency department, go to walk-in evening hours in D-H's primary care or make a trip to the ClearChoiceMD urgent care center on Route 4 in Lebanon.

"I didn't want to put it off," she said, nor did she think her condition was serious enough for a trip to the emergency room.

So Winham walked in the door of ClearChoiceMD, which is in a shopping plaza along the Miracle Mile, mid-morning on Wednesday. She got in within minutes of her arrival, and after a paramedic took her vitals, she saw Kaitlyn Jennings, a certified physician's assistant. After examining Winham and listening to her lungs, Jennings recommended a breathing treatment with a medication called albuterol, which a paramedic then brought into the exam room for Winham to inhale through a tube attached to a nebulizer, which converts liquid medicine to vapor.

Overall, Winham said she felt the visit, which also included a chest X-ray, was "handled well."

Visits like these have increased in the past decade as the number of walk-in clinics in New Hampshire has more than quadrupled, from 15 in 2009 to 62 today. They aim to fill a niche between primary care and emergency departments, at a lower price to patients and insurers, with shorter wait times and evening and weekend hours.

But at least two critical access hospitals in rural parts of New Hampshire say that for-profit urgent care centers threaten their revenue streams, making it more difficult for them to continue to provide lower-revenue services such as obstetrics, mental health care and addiction treatment.

While all involved seem to agree that there's a need for urgent care in some form, they have not yet pinned down how best to provide that care, while sustaining the range of health care services people and communities need.

"All share the desire for lower-cost health care, but lower-cost health care cannot come at the expense of a health care delivery network that only a hospital can represent," said state Sen. Jeb Bradley, R-Wolfeboro, according to the record of a March hearing of the Senate Executive Departments and Administration Committee. Lawmakers and stakeholders gathered to discuss a bill he proposed that would have changed the way the state reviews license applications by standalone health care facilities near critical access hospitals.

As health care costs have continued to rise in recent years, patients, employers and insurance companies have become increasingly cost-conscious, said Dr. Marcus Hampers, ClearChoiceMD's CEO and founder.

Hampers, a Plainfield resident who is trained in internal medicine and critical care, came to DHMC in the 1990s and worked there in the emergency department and in intensive care until about five years ago. He left because he saw that many of the needs of people coming to DHMC's emergency room could be met in a less costly setting, he said.

"One ... trip to the emergency department could bankrupt a family," he said.

Since opening the first ClearChoiceMD center in 2014, Hampers' New London-based company has grown to include 13 clinics across New Hampshire, Vermont and Maine, many of them near interstate exits.

"We feel like urgent care is only going to continue to flourish," Hampers said.

Urgent care centers, though varied in their capabilities, generally treat acute minor illnesses or injuries, such as ear infections, colds, flus, sprains, minor broken bones, cuts, asthma or dehydration, Hampers said. They are open 8 a.m. to 8 p.m. daily and also provide services for employers such as drug screenings.

They are not set up to treat chronic conditions such as diabetes or depression, which Hampers said are better managed through a long-term relationship with a primary care clinician. Similarly, they are not equipped to treat the most serious emergencies such as heart attacks, strokes, uncontrolled bleeding, a drug overdose or a newborn with a fever.

Also, unlike nonprofit hospitals, for-profit urgent care centers can turn away patients who are unable to pay either out of pocket or through their insurance.

For those who can pay, an average visit to urgent care costs roughly 10% of the cost of an emergency department visit. In 2018, the average walk-in visit for non-emergency care at an emergency facility cost \$1,600, while an average visit at a walk-in clinic is \$196, said Lisa Guertin, the president of Anthem Blue Cross and Blue Shield, during the March Senate committee hearing. Meanwhile, the average deductible is \$3,000, she said.

“This is not just a problem (for) employers, but also for the consumers,” Guertin said at the hearing. “This has been changing in the southern tier with alternatives appearing, but it is not changing up north.”

Another alternative may be on the horizon for the Upper Valley. The Portsmouth-based ConvenientMD is looking for a location along Interstate 89 in West Lebanon. Though the company [withdrew a recent Zoning Board application](#) seeking a waiver for additional signage for an Interchange Drive property it was planning to lease, the company’s CEO Max Puyanik said they are “working hard to find an alternate site” due to the Upper Valley’s higher than average emergency room utilization.

Puyanik said ConvenientMD provides a broader range of services than other urgent care providers, such as intravenous therapies for dehydration, chronic obstructive pulmonary disease exacerbation, asthma, migraine headaches and cellulitis (a bacterial skin infection), as well as complex wound repair.

He said the goal is not to undermine other providers, such as critical access hospitals, but to collaborate with them by sending them referrals for specialty care.

“Ultimately, I believe that the health care system is stronger by us entering those communities,” he said.

Several supporters spoke in favor of ConvenientMD’s coming to the Upper Valley at a November Zoning Board hearing.

Wendy Parker, executive director of the Concord-based HealthTrust, which provides benefits to public sector employees around the state, including employees of Lebanon and of Grafton County, said she would like to see more lower cost options available in the state’s rural areas, especially in the North Country.

HealthTrust is “always looking for opportunities to have organizations come to those areas to help provide some relief on the cost of medical care,” she said, according to an audio recording of the hearing.

In addition to saving money in health care costs, Parker said the convenient evening and weekend hours mean that employees can have their needs met without having to take time away from work, which also is a benefit to the public employers she represents.

Similarly, Grafton County Commissioner Wendy Piper, an Enfield resident, spoke in favor of ConvenientMD’s presence both in Lebanon and in Littleton, N.H. Rising health insurance costs for county employees “inflates the tax rate” for Grafton County taxpayers, she said.

In a Sept. 9 letter to the board, Paula MacKinnon, the president-elect of the New Hampshire School Nurses’ Association, said ConvenientMD has worked with the association to develop a “School Nurse Partnership” program that includes free care and sports physicals for children referred to the facilities by school nurses; free flu shots for students, faculty and families; free vaccines to students under 18; concussion baseline testing for \$10 or less; help obtaining free Epi-Pens; and phone triage and continuing education for school nurses.

“In short, ConvenientMD’s outreach and support of the local communities it serves is truly unprecedented, and they provide a tremendous service to the communities they serve,” MacKinnon wrote. “You would be fortunate to have them in Lebanon.”

But some disagree. At least two critical access hospitals in rural parts of New Hampshire recently filed complaints with state regulators, saying ConvenientMD clinics near them threaten their revenue streams.

“Having duplicate services just down the street will have an adverse effect on our ability to provide our full range of health services,” Littleton Regional Healthcare CEO Robert Nutter said in a news release earlier this month.

The Littleton hospital, an important provider in northern Grafton County of obstetrics and behavioral health services, said that it stands to lose \$3.2 million annually to the ConvenientMD in town.

“While we believe competition is generally good, this situation assumes a for-profit entity that provides very specific services is the same as a nonprofit critical access hospital,” Nutter said in the release. “This is clearly not the case.”

Grafton Superior Court Judge Lawrence MacLeod Jr. this month dismissed a suit the Littleton hospital filed against the New Hampshire Department of Health and Human Services that asserted that the department should not have granted ConvenientMD a license to set up a clinic just miles from an urgent care clinic operated by the hospital. MacLeod said his court did not have jurisdiction in the case.

The other critical access hospital in New Hampshire that has disputed DHHS commissioner’s approval of licenses allowing for-profit urgent care centers to locate near them is LRGHealthcare’s Franklin (N.H.) Regional Hospital, which has objected to DHHS’s approval of a license for a ConvenientMD in Belmont, N.H.

Central to the dispute is a process instituted by a 2016 law passed when New Hampshire’s certificate of need process sunsetted. That law requires the health commissioner to make a “material adverse impact” determination before approving licenses for new health facilities near critical access hospitals. But Commissioner Jeffrey Meyers, who left the post earlier this month, said that he didn’t have the ability to conduct a review, so he approved all applications he received.

Bradley’s bill last session, SB 97, initially set out to require a third-party review, but ended up creating a committee to study the issue instead.

In Vermont, urgent care clinics are considered physicians’ offices and therefore are not subject to a certificate of need review by regulators. ClearChoiceMD operates four clinics in Vermont in South Burlington, Berlin, Rutland and Brattleboro. ConvenientMD does not yet have any clinics in the state.

Puyanik said his company has set up clinics “where insurance companies asked us to go.” He hasn’t “had that communication yet from the insurance companies in Vermont.”

Several hospitals around the region, including Valley Regional Hospital in Claremont and Springfield (Vt.) Medical Care Systems, operate their own urgent care clinics in an effort to meet patients’ needs for same-day access without sending them to the emergency department.

Lebanon’s critical access hospital Alice Peck Day Memorial Hospital, which has been trying to encourage more people to [visit its emergency department](#), said in an email that so far, “We haven’t seen any great variation in the number of (emergency department) patients we care for since other urgent care centers have opened in our region.”

ClearChoiceMD first opened on Miracle Mile in 2014. Hampers said his approach is collaborative.

It “has to be a collaborative for it to really benefit the community,” he said.

ClearChoiceMD does not offer infusion therapies that are revenue-generators for critical access hospitals, he said. ClearChoice also shares ownership of some of its clinics with hospitals.

“Services that we provide are no threat to the hospitals,” Hampers said.

Puyanik, ConvenientMD’s CEO, said that it’s unfair to consumers to deny them a cheaper alternative just to shore up hospitals’ finances.

“If we as a system are only looking to try to maintain the status quo by charging unfair prices ... that’s not going to help us,” he said.

Though she had never been to an urgent care clinic before this year, Winham found herself turning to them more than once. She made a couple of stops during a recent trip back to Hawaii, including for a sinus infection of her own and for her son's pneumonia. She was glad to find that they saw the same clinician each time.

"Some things I was afraid of going in didn't manifest," she said.

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