

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MORTON PLANT HOSPITAL)
ASSOCIATION, INC., d/b/a)
NORTH BAY HOSPITAL,)
)
Petitioner,)

vs.)

Case No. 02-3232CON

AGENCY FOR HEALTH CARE)
ADMINISTRATION and NEW PORT)
RICHEY HOSPITAL, INC., d/b/a)
COMMUNITY HOSPITAL OF NEW)
PORT RICHEY,)
)
Respondents.)

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)
NEW PORT RICHEY HOSPITAL,)
INC., d/b/a COMMUNITY)
HOSPITAL OF NEW PORT RICHEY,)
)
Petitioner,)

vs.)

Case No. 02-3233CON

AGENCY FOR HEALTH CARE)
ADMINISTRATION and MORTON)
PLANT HOSPITAL ASSOCIATION,)
INC., d/b/a NORTH BAY)
HOSPITAL,)
)
Respondents.)

-----)
)
TARPON SPRINGS HOSPITAL)
FOUNDATION, INC., d/b/a HELEN)
ELLIS MEMORIAL HOSPITAL,)
)
Petitioner,)

vs.)

Case No. 02-3234CON

AGENCY FOR HEALTH CARE)
ADMINISTRATION and NEW PORT)

RICHEY, INC., d/b/a COMMUNITY)
HOSPITAL OF NEW PORT RICHEY,)

Respondents.)

TARPON SPRINGS HOSPITAL)
FOUNDATION, INC., d/b/a HELEN)
ELLIS MEMORIAL HOSPITAL,)

Petitioner,)

vs.)

AGENCY FOR HEALTH CARE)
ADMINISTRATION and MORTON)
PLANT HOSPITAL ASSOCIATION,)
INC., d/b/a NORTH BAY)
HOSPITAL,)

Respondents.)

Case No. 02-3235CON

TRUSTEES OF MEASE HOSPITAL,)
INC.,)

Petitioner,)

vs.)

AGENCY FOR HEALTH CARE)
ADMINISTRATION and NEW PORT)
RICHEY, INC., d/b/a COMMUNITY)
HOSPITAL OF NEW PORT RICHEY,)

Respondents.)

Case No. 02-3237CON

TRUSTEES OF MEASE HOSPITAL,)
INC.,)

Petitioner,)

vs.)

AGENCY FOR HEALTH CARE)
ADMINISTRATION and MORTON)
PLANT HOSPITAL ASSOCIATION,)

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STATEMENT OF THE ISSUES

Whether the certificate of need (CON) applications filed by New Port Richey Hospital, Inc., d/b/a Community Hospital of New Port Richey (Community Hospital) (CON No. 9539), and Morton Plant Hospital Association, Inc., d/b/a North Bay Hospital (North Bay) (CON No. 9538), each seeking to replace and relocate their respective general acute care hospital, satisfy, on balance, the applicable statutory and rule criteria.

PRELIMINARY STATEMENT

In April 2002, Community Hospital and North Bay each

filed an application for a CON to replace and relocate their respective general acute care hospitals in Pasco County, the Agency for Health Care Administration's (AHCA) health planning Sub-District 5-1. On June 28, 2002, in Volume 28, Number 26, of the Florida Administrative Weekly, AHCA noticed its intent to approve both applications.

Thereafter, North Bay timely filed a Petition for Formal Administrative Hearing challenging Community Hospital's preliminary approval, and Community Hospital filed a petition pursuant to Florida Administrative Code Rule 59C-1.012(2)(a), requesting that its application be approved in the event that the two applications were considered mutually exclusive.

Tarpon Springs Hospital Foundation, Inc., d/b/a Helen Ellis Memorial Hospital (Helen Ellis), timely filed a Petition for Formal Administrative Hearing challenging North Bay's and Community Hospital's approval. Helen Ellis is an existing hospital in Pinellas County located within AHCA's health planning District 5.

Trustees of Mease Hospital, Inc. (Mease) also filed a petition contesting North Bay's and Community Hospital's approval. Mease is the licensee of Mease Countryside Hospital and Mease Dunedin Hospital. Both hospitals are located in District 5, within Pinellas County.

At the consolidated final hearing, Community Hospital

presented the testimony of Ernie Meier, CEO, expert in hospital administration; Andy Capps, expert in health care engineering with a specialty in mechanical and electrical engineering; Matt Harrell, expert in health care architecture; Steve Klein, expert in health care architecture; Robert Pergolizzi, expert in transportation planning and land use planning; Sharon Gordon-Girvin, expert in health care planning; Richard Baehr, expert in health care planning and health care finance; Jeffrey Gregg, expert in health care planning; and Darryl Weiner, expert in health care finance.

In addition, Community Hospital introduced the deposition transcripts of the following witnesses as exhibits: Samuel P. Steffey, II; Jennifer Farias, R.N.; Barry Frazier; Michael H. Carroll; Mary Jane Stanley; Sam Stebbins, P.E.; John Shim, M.D.; Richard Miller, D.O.; Keith Giger; and James A. Pfeiffer, no relation to the undersigned. Community Hospital's Exhibits numbered 1 through 60 were received in evidence.

At the final hearing, North Bay presented the testimony of Lewis Friedland, expert in residential and commercial development planning and residential and commercial growth and development in Pasco County; William Jennings, expert in hospital administration; Juan C. Vila, M.D., expert in

cardiology and internal medicine; Diana Davis, R.N., expert in critical care nursing, post-anesthesia recovery nursing and unit management, and acute care hospital central sterile processing and supply; John Clees, expert in health care architecture; Ron Harn, expert in health care facilities management; Robin Lapham, R.N., expert in acute care nursing, critical care nursing, rehabilitation nursing, and nursing administration; Douglas Brooks, M.D., expert in family medicine; Nancy Burden, expert in ambulatory care services, operation and management; Rick Knapp, expert in health care finance; Ramana V. Amar, M.D., expert in rehabilitation medicine; Mark Richardson, expert in health care planning; Ken Dickerman, expert in health care architecture and design; and Roland Dove, expert in civil engineering.

In addition, North Bay introduced deposition transcripts of Elizabeth Ditzenberger and Tommy Inzina. North Bay's Exhibits numbered 1 through 31 were received in evidence.

At the final hearing, Helen Ellis presented the testimony of Peter Wozniak, expert in hospital operations, nursing and quality of care assessment; Elizabeth Rugg, expert in health planning; Chris Bell, expert in hospital architecture; and Michael C. Carroll, expert in health care planning and health care finance.

In addition, Helen Ellis introduced deposition transcripts of the following witnesses as exhibits: Gerald Seeber, Fred Metcalf, and Chief Dan Azzariti. Helen Ellis' Exhibits numbered 1 through 22 were received into evidence.

At final hearing, Mease presented the testimony of Richard Dutter, expert in land use and community planning; John Blassick, expert in health care architecture; Jay Cushman, expert in health care planning; and Judy Horowitz, expert in health care finance.

In addition, Mease introduced the deposition testimony of Robert Friedman and Raymond Parham. Mease's Exhibits numbered 1 through 13 were received into evidence.

The hearing concluded on June 20, 2003. Following an Order Granting an Extension of Time for Filing Proposed Recommended Orders, each of the parties timely filed their respective proposed recommended order's in December 2003, and they have been duly considered.

Positions of the Parties

AHCA preliminarily approved both applications. Community Hospital submits that both applications should be approved. However, Community Hospital contends its application better satisfies the applicable review criteria and should be selected if only one application is approved. North Bay argues that only its application should be approved. Helen Ellis and Mease contend that both applications should be denied.

Numeric Need

Neither application proposes to add licensed hospital beds to Sub-District 5-1. Consequently, AHCA's numeric net need calculation for acute care beds in Sub-District 5-1 is not applicable in this case.

Pre-hearing Stipulations

The parties stipulated to the following in their Joint

Pre-Hearing Stipulation:

With respect to Section 408.035(3), Florida Statutes (2000), both Community Hospital and North Bay have a record of providing high quality of care at their existing hospitals, and have the ability to provide high quality of care at their replacement hospitals. Both applicants reserved the right to offer evidence concerning the impact of their proposed replacement hospitals on quality of care.

With respect to Section 408.035(4), (5), and (12), Florida Statutes (2002), the parties stipulated that the criteria are not applicable to this case.

With respect to Section 408.035(6), Florida Statutes (2000), both Community Hospital and North Bay have available health personnel and management personnel resources for project accomplishment and operation. The compliance of the two applications with Section 408.035(6), Florida Statutes (2000), is otherwise in dispute.

The parties agree that the applicants' letters of intent and CON applications were timely filed, and the project costs in Schedule 1 in each application are sufficient for each of the respective proposals. Furthermore, it is stipulated that Schedule 6A in the applications, concerning staffing, is not at issue or in dispute for either of the two applications; however, Mease challenges the ancillary staff projections in

North Bay's Schedule 6A. The parties agree that both applicants can recruit the additional incremental staff for implementation of their respective proposals. Finally, the parties have not stipulated to the degree to which Helen Ellis and Mease would be adversely affected by the approval of either application.

FINDINGS OF FACT

I. The Parties

AHCA

1. AHCA is the single state agency responsible for the administration of the CON program in Florida pursuant to Chapter 408, Florida Statutes (2000). The agency separately reviewed and preliminarily approved both applications.

Community Hospital

2. Community Hospital is a 300,000 square feet, accredited hospital with 345 licensed acute care beds and 56 licensed adult psychiatric beds, located in southern New Port Richey, Florida, within Sub-District 5-1. Community Hospital is seeking to construct a replacement facility approximately five miles to the southeast within a rapidly developing suburb known as "Trinity."

3. Community Hospital currently provides a wide array of comprehensive inpatient and outpatient services and is the only provider of obstetrical and adult psychiatric services in

Sub-District 5-1. It is the largest provider of emergency services in Pasco County with approximately 35,000 visits annually. It is also the largest provider of Medicaid and indigent patient days in Sub-District 5-1.

4. Community Hospital was originally built in 1969 and is an aging facility. Although it has been renovated over time, the hospital is in poor condition. Community Hospital's average daily census is below 50 percent.

North Bay

5. North Bay is a 122-bed facility containing 102 licensed acute care beds and 20 licensed comprehensive medical rehabilitation beds, located approximately one mile north of Community Hospital in Sub-District 5-1. It serves a large elderly population and does not provide pediatric or obstetrical care. North Bay is also an aging facility and proposes to construct a replacement facility in the Trinity area. Notably, however, North Bay has spent approximately 12 million dollars over the past three years for physical improvements and is in reasonable physical condition.

Helen Ellis

6. Helen Ellis is an accredited hospital with 150 licensed acute care beds and 18 licensed skilled nursing unit beds. It is located in northern Pinellas County, approximately eight miles south of Community Hospital and nine miles south of North Bay.

7. Helen Ellis provides a full array of acute care services including obstetrics and cardiac catheterization. Its daily census average has fluctuated over the years but is

approximately 45 percent.

Mease

8. Mease operates two acute care hospitals in Pinellas County including Mease Dunedin Hospital, located approximately 18 to 20 miles south of the applicants and Mease Countryside Hospital, located approximately 16 to 18 miles south of Community and North Bay. Each hospital operates 189 licensed beds. The Mease hospitals are located in the adjacent acute care sub-district but compete with the applicants.

II. The Health Planning District

9. AHCA's Health Planning District 5 consists of Pinellas and Pasco Counties. U.S. Highway 41 runs north and south through the District and splits Pasco County into Sub-District 5-1 and Sub-District 5-2. Sub-District 5-1, where Community Hospital and North Bay are located, extends from U.S. 41 west to the Gulf Coast. Sub-District 5-2 extends from U.S. 41 to the eastern edge of Pasco County.

10. Pinellas County is the most densely populated county in Florida and steadily grows at 5.52 percent per year. On the other hand, its neighbor to the north, Pasco County, has been experiencing over 15 percent annual growth in population.

The evidence demonstrates that the area known as Trinity, located four to five miles southeast of New Port Richey, is largely responsible for the growth. With its large, single-owner land tracts, Trinity has become the area's fuel for

growth, while New

Port Richey, the older coastal anchor which houses the applicants' facilities, remains static.

11. In addition to the available land in Trinity, roadway development in the southwest section of Pasco County is further fueling growth. For example, the Suncoast Highway, a major highway, was recently extended north from Hillsborough County through Sub-District 5-1, west of U.S. 41. It intersects with several large east-west thoroughfares including State Road 54, providing easy highway access to the Tampa area.

III. The General Proposals

Community Hospital's Proposal

12. Community Hospital's CON application proposes to replace its existing, 401-bed hospital with a 376-bed state-of-the-art facility and relocate it approximately five miles to the southeast in the Trinity area. Community Hospital intends to construct a large medical office adjacent to its new facility and provide all of its current services including obstetrical care. It does not intend to change its primary service area.

North Bay's Proposal

13. North Bay's CON application proposes to replace its existing hospital with a 122-bed state-of-the-art facility and also plans to relocate it approximately eight miles to the

southeast in the Trinity area of southwestern Pasco County.
North Bay intends to provide the same array of services it

currently offers its patients and will not provide pediatric and obstetrical care in the proposed facility.

14. The proposed relocation site is adjacent to the Trinity Outpatient Center which is owned by North Bay's parent company, Morton Plant. The Outpatient Center offers a full range of diagnostic imaging services including nuclear medicine, cardiac nuclear stress testing, bone density scanning, CAT scanning, mammography, ultrasound, as well as many others. It also offers general and specialty ambulatory surgical services including urology; ear, nose and throat; ophthalmology; gastroenterology; endoscopy; and pain management. Approximately 14 physician offices are currently located at the Trinity Outpatient Center.

IV. The Condition of Community Hospital Facility

15. Community Hospital's core facilities were constructed between 1969 and 1971. Additions to the hospital were made in 1973, 1975, 1976, 1977, 1979, 1981, 1992, and 1999. With an area of approximately 294,000 square feet and 401 licensed beds, or 733 square feet per bed, Community Hospital's gross area-to-bed ratio is approximately half of current hospital planning standards of 1,600 square feet per bed. With the exception of the "E" wing which was completed in 1999, all of the clinical and support departments are

undersized.

Medical-Surgical Beds And Intensive Care Units

16. Community Hospital's "D" wing, constructed in 1975, is made up of two general medical-surgical unit floors which are grossly undersized. Each floor operates 47 general medical-surgical beds, 24 of which are in three-bed wards and 23 in semi-private rooms. None of the patient rooms in the "D" wing have showers or tubs so the patients bathe in a single facility located at the center of the wing on each floor.

17. Community Hospital's "A" wing, added in 1973, is situated at the west end of the second floor and is also undersized. It too has a combination of semi-private rooms and three-bed wards without showers or tubs.

18. Community Hospital's "F" wing, added in 1979, includes a medical-surgical unit on the second and third floor, each with semi-private and private rooms. The second floor unit is centrally located between a 56-bed adult psychiatric unit and the Surgical Intensive Care Unit (SICU) which creates security and privacy issues. The third floor unit is adjacent to the Medical Intensive Care Unit (MICU) which must be accessed through the medical-surgical unit. Neither intensive care unit (ICU) possesses an isolation area.

19. Although the three-bed wards are generally restricted to in-season use, and not always full, they pose

significant privacy, security, safety, and health concerns. They fail to meet minimum space requirements and are a serious health risk. The evidence demonstrates that reconfiguring the wards would be extremely costly and impractical due to code compliance issues. The wards hinder the hospital's acute care utilization, and impair its ability to effectively compete with other hospitals.

Surgical Department and Recovery

20. Community Hospital's surgical department is separated into two locations including the main surgical suite on the second floor and the Endoscopy/Pain Management unit located on the first floor of "C" wing. Consequently, the department cannot share support staff and space such as preparation and recovery.

21. The main surgical suite, adjacent recovery room, and central sterile processing are 25 years old. This unit's operating rooms, cystoscopy rooms, storage areas, work-stations, central sterile, and recovery rooms are undersized and antiquated. The 12-bay Recovery Room has no patient toilet and is lacking storage. The soiled utility room is deficient.

22. In addition, the patient bays are extremely narrow and separated by curtains. There is no direct connection to the sterile corridor, and staff must break the sterile field

to transport patients from surgery to recovery. Moreover, surgery outpatients must pass through a major public lobby going to and returning from surgery.

The Emergency Department

23. Community Hospital's existing emergency department was constructed in 1992 and is the largest provider of hospital emergency services in Pasco County, handling approximately 35,000 visits per year. The hospital is also designated a "Baker Act" receiving facility under Chapter 394, Florida Statutes, and utilizes two secure examination rooms for emergent psychiatric patients. At less than 8,000 total square feet, the emergency department is severely undersized to meet the needs of its patients.

24. The emergency department is currently undergoing renovation which will connect the triage area to the main emergency department. The renovation will not enlarge the entrance, waiting area, storage, nursing station, nor add privacy to the patient care areas in the emergency department.

The renovation will not increase the total size of the emergency department, but in fact, the department's total bed availability will decrease by five beds. Similar to other departments, a more meaningful renovation cannot occur within the emergency department without triggering costly building code compliance measures.

25. In addition to its space limitations, the emergency department is awkwardly located. In 1992, the emergency department was relocated to the front of the hospital and is completely separated from the diagnostic imaging department which remained in the original 1971 building. Consequently, emergency patients are routinely transported across the hospital for imaging and CT scans.

V. Issues Relating to Replacement of Community Hospital

26. Although physically possible, renovating and expanding Community Hospital's existing facility is unreasonable. First, it is cost prohibitive. Any significant renovation to the 1971, 1975, 1977, and 1979 structures would require asbestos abatement prior to construction, at an estimated cost of \$1,000,000. In addition, as previously noted, the hospital will be saddled with the major expense of complying with all current building code requirements in the 40-year-old facility. Merely installing showers in patient rooms would immediately trigger a host of expensive, albeit necessary, code requirements involving access, wiring, square footage, fireproofing columns and beams, as well as floor/ceiling and roof/ceiling assemblies. Concurrent with the significant demolition and construction costs, the hospital will experience the incalculable expense and loss of revenue related to closing major portions, if not all, of the

hospital.

27. Second, renovation and expansion to the existing facility is an unreasonable option due to its physical restrictions. The 12'4" height of the hospital's first floor limits its ability to accommodate HVAC ductwork large enough to meet current ventilation requirements. In addition, there is inadequate space to expand any department within the confines of the existing hospital without cannibalizing adjacent areas, and vertical expansion is not an option.

28. Community Hospital's application includes a lengthy Facility Condition Assessment which factually details the architectural, mechanical, and electrical deficiencies of the hospital's existing physical plant. The assessment is accurate and reasonable.

VI. Community Hospital's Proposed Replacement

29. Community Hospital proposes to construct a six-story, 320 licensed beds, acute care replacement facility. The hospital will consist of 548,995 gross square feet and include a 56-bed adult psychiatric unit connected by a hallway to the first floor of the main hospital building. The proposal also includes the construction of an adjacent medical office building to centralize the outpatient offices and staff physicians.

30. The evidence establishes that the deficiencies inherent in Community Hospital's existing hospital will be cured by its replacement hospital. All patients will be provided large private rooms. The emergency department will double in size, and contain private examination rooms. All building code requirements will be met or exceeded. Patients and staff will have separate elevators from the public.

31. In addition, the surgical department will have large operating rooms, and adequate storage. The MICU and SICU will be adjacent to each other on the second floor to avoid

unnecessary traffic within the hospital. Surgical patients will be transported to the ICU via a private elevator dedicated to that purpose. Medical-surgical patient rooms will be efficiently located on the third through sixth floors, in "double-T" configuration.

VII. Community Hospital's Existing and Proposed Sites

32. Community Hospital is currently located on a 23-acre site inside the southern boundary of New Port Richey. Single-family homes and offices occupy the two-lane residential streets that surround the site on all sides.

33. The hospital buildings are situated on the northern half of the site, with the main parking lot located to the south, in front of the main entrance to the hospital. Marine Parkway cuts through the southern half of the site from the west, and enters the main parking lot. A private medical mall sits immediately to the west of the main parking lot and a one-acre storm-water retention pond sits to the west of the mall. A private medical office building occupies the south end of the main parking lot and a four-acre drainage easement is located in the southwest corner of the site.

34. Community Hospital's administration has actively analyzed its existing site, aging facility, and adjacent areas. It has commissioned studies by civil engineers, health care consultants, and architects. The collective evidence

demonstrates that, although on-site relocation is potentially an option, on balance, it is not a reasonable option.

35. Replacing Community Hospital on its existing site is not practical for several reasons. First, the hospital will experience significant disruption and may be required to completely close down for a period of time. Second, the site's southwestern large four-acre parcel is necessary for storm-water retention and is unavailable for expansion. Third, a reliable cost differential is unknown given Community Hospital's inability to successfully negotiate with the city and owners of the adjacent medical office complexes to acquire additional parcels. Fourth, acquiring other adjacent properties is not a viable option since they consist of individually owned residential lots.

36. In addition to the site's physical restrictions, the site is hindered by its location. The hospital is situated in a neighborhood between small streets and a local school. From the north and south, motorists utilize either U.S. 19, a congested corridor that accommodates approximately 50,000 vehicles per day, or Grand and Madison Streets, two-lane streets within a school zone. From the east and west, motorists utilize similar two-lane neighborhood streets including Marine Parkway, which often floods in heavy rains.

37. Community Hospital's proposed site, on the other hand, is a 53-acre tract positioned five miles from its current facility, at the intersection of two major

thoroughfares in southwestern Pasco County. The proposed site offers ample space

for all facilities, parking, outpatient care, and future expansion.

38. In addition, Community Hospital's proposed site provides reasonable access to all patients within its existing primary service area made up of zip codes 34652, 34653, 34668, 34655, 34690, and 34691. For example, the average drive times from the population centers of each zip code to the existing site of the hospital and the proposed site are as follows:

<u>Zip code</u>	<u>Existing site</u>	<u>Proposed site</u>	
			<u>Difference</u>
34652	3 minutes	14 minutes	11
			minutes
34653	8 minutes	11 minutes	3
			minutes
34668	15 minutes	21 minutes	6
			minutes
34655	11 minutes	4 minutes	-7
			minutes
34690	11 minutes	13 minutes	2
			minutes
34691	11 minutes	17 minutes	6
			minutes

39. While the average drive time from the population centroids of zip codes 34653, 34668, 34690, and 34691 to the

proposed site slightly increases, it decreases from the Trinity area, where population growth has been most significant in southwestern Pasco County. In addition, a motorist's average drive time from Community Hospital's existing location to its proposed site is only 10 to 11 minutes, and patients utilizing public transportation will be able to access the new hospital via a bus stop located adjacent to the proposed site.

VIII. The Condition of North Bay

Facility

40. North Bay Hospital is also an aging facility. Its original structure and portions of its physical plant are approximately 30 years old. Portions of its major mechanical systems will soon require replacement including its boilers, air handlers, and chillers. In addition, the hospital is undersized and awkwardly configured.

41. Despite its shortcomings, however, North Bay is generally in good condition. The hospital has been consistently renovated and updated over time and is aesthetically pleasing. Moreover, its second and third floors were added in 1986, are in good shape, and structurally capable of vertical expansion.

Medical Surgical Beds and ICU Units

42. By-in-large, North Bay is comprised of undersized, semi-private rooms containing toilet and shower facilities. The hospital does not have any three-bed wards.

43. North Bay's first floor houses all ancillary and support services including lab, radiology, pharmacy, surgery, pre-op, post-anesthesia recovery, central sterile processing and supply, kitchen and cafeteria, housekeeping and administration, as well as the mechanical, electrical, and facilities maintenance and engineering. The first floor also

contains a 20-bed CMR unit and a 15-bed acute care unit.

44. North Bay's second and third floors are mostly comprised of semi-private rooms and supporting nursing stations.

Although the rooms and stations are not ideally sized, they are in relatively good shape.

45. North Bay utilizes a single ICU with ten critical care beds. The ICU rooms and nursing stations are also undersized. A four-bed ICU ward and former nursery are routinely used to serve overflow patients.

Surgery Department and Recovery

46. North Bay utilizes a single pre-operative surgical room for all of its surgery patients. The room accommodates up to five patient beds, but has limited space for storage and pre-operative procedures. Its operating rooms are sufficiently sized. While carts and large equipment are routinely stored in hallways throughout the surgical suite, North Bay has converted the former obstetrics recovery room to surgical storage and has made efficient use of other available space.

47. North Bay operates a small six-bed Post Anesthesia Care Unit. Nurses routinely prepare patient medications in the unit which is often crowded with staff and patients.

The Emergency Department

48. North Bay has recently expanded its emergency

department. The evidence demonstrates that this department is sufficient and meets current and future expected patient volumes.

IX. Replacement Issues Relating to North Bay

49. While it is clear that areas of North Bay's physical plant are aging, the facility is in relatively good condition.

It is apparent that North Bay must soon replace significant equipment, including cast-iron sewer pipes, plumbing, boilers, and chillers which will cause some interruption to hospital operations. However, North Bay's four-page written assessment of the facility and its argument citing the need for total replacement is, on balance, not persuasive.

X. North Bay's Proposed Replacement

50. North Bay proposes to construct a new, state-of-the-art, hospital approximately eight miles southeast of its existing facility and intends to offer the identical array of services the hospital currently provides.

XI. North Bay's Existing and Proposed Sites

51. North Bay's existing hospital is located on an eight-acre site with limited storm-water drainage capacity. Consequently, much of its parking area is covered by deep, porous, gravel instead of asphalt.

52. North Bay's existing site is generally surrounded by residential properties. While the city has committed, in writing, its willingness to assist both applicants with on-site expansion, it is unknown whether North Bay can acquire additional adjacent property.

53. North Bay's proposed site is located at the intersection of Trinity Oaks Boulevard and Mitchell Boulevard, south of Community Hospital's proposed site, and is quite spacious. It contains sufficient land for the facilities, parking, and future growth, and has all necessary infrastructure in place, including utility systems, storm-water structures, and roadways. Currently however, there is no public transportation service available to North Bay's proposed site.

XII. Projected Utilization by Applicants

54. The evidence presented at hearing indicates that, statewide, replacement hospitals often increase a provider's acute care bed utilization. For example, Bartow Memorial Hospital, Heart of Florida Regional Medical Center, Lake City Medical Center, Florida Hospital Heartland Medical Center, South Lake Hospital, and Florida Hospital-Fish Memorial each experienced significant increases in utilization following the opening of their new hospital.

55. The applicants in this case each project an increase in utilization following the construction of their new facility. Specifically, Community Hospital's application projects 82,685 total hospital patient days (64,427 acute care patient days) in year one (2006) of the operation of its proposed replacement facility, and 86,201 total hospital

patient days (67,648 acute care patient days) in year two
(2007).

56. Using projected 2006 and 2007 population estimates, applying 2002 acute care hospital use rates which are below 50 percent, and keeping Community Hospital's acute care market share constant at its 2002 level, it is reasonably estimated that Community Hospital's existing hospital will experience 52,623 acute care patient days in 2006, and 53,451 acute care patient days in 2007. Consequently, Community Hospital's proposed facility must attain 11,804 additional acute care patient days in 2006, and 14,197 more acute care patient days in 2007, in order to achieve its projected acute care utilization.

57. Although Community Hospital lost eight percent of the acute care market in its service area between 1995 and 2002, two-thirds of that loss was due to residents of Sub-District 5-1 acquiring services in another area. While Community Hospital experienced 78,444 acute care patient days in 1995, it projects only 64,427 acute care patient days in year one. Given the new facility and population factors, it is reasonable that the hospital will recapture half of its lost acute care market share and achieve its projections.

58. With respect to its psychiatric unit, Community Hospital projects 16,615 adult psychiatric inpatient days in year one (2006) and 17,069 adult inpatient days in year two (2007) of the proposed replacement hospital. The evidence

indicates that these projections are reasonable.

59. Similarly, North Bay's acute care utilization rate has been consistently below 50 percent. Since 1999, the hospital has experienced declining utilization. In its application, North Bay states that it achieved total actual acute care patient days of 21,925 in 2000 and 19,824 in 2001 and the evidence at hearing indicates that North Bay experienced 17,693 total acute care patient days in 2002. North Bay projects 25,909 acute care patient days in the first year of operation of its proposed replacement hospital, and 27,334 acute care patient days in the second year of operation.

60. Despite each applicant's current facility utilization rate, Community Hospital must increase its current acute care patient days by 20 percent to reach its projected utilization, and North Bay must increase its patient days by at least 50 percent. Given the population trends, service mix and existing competition, the evidence demonstrates that it is not possible for both applicants to simultaneously achieve their projections. In fact, it is strongly noted that the applicants' own projections are predicated upon only one applicant being approved and cannot be supported with the approval of two facilities.

XIII. Local Health Plan Preferences

61. In its local health plan for District 5, the

Suncoast Health Council, Inc., adopted acute care preferences in October, 2000. The replacement of an existing hospital is not specifically addressed by any of the preferences.

However, certain acute care preferences and specialty care preferences are applicable.

62. The first applicable preference provides that preference "shall be given to an applicant who proposes to locate a new facility in an area that will improve access for Medicaid and indigent patients." It is clear that the majority of Medicaid and indigent patients live closer to the existing hospitals. However, Community Hospital proposes to move 5.5 miles from its current location, whereas North Bay proposes to move eight miles from its current location. While the short distances alone are less than significant, North Bay's proposed location is further removed from New Port Richey, is not located on a major highway or bus-route, and would therefore be less accessible to the medically indigent residents.

63. Community Hospital's proposed site will be accessible using public transportation. Furthermore, Community Hospital has consistently provided excellent service to the medically indigent and its proposal would better serve that population. In 2000, Community Hospital provided 7.4

percent of its total patient days to Medicaid patients and 0.8 percent of its total patient days to charity patients.

Community Hospital provided the highest percentage and greatest number of Medicaid patient days in Sub-District 5-1.

By comparison, North Bay provided 5.8 percent of its total patient days to Medicaid patients and 0.9 percent of its total patient days to charity patients. In 2002, North Bay's Medicaid patients days declined to 3.56 percent. Finally, given the closeness and available bed space of the existing providers and the increasing population in the Trinity area, access will be improved by Community Hospital's relocation.

64. The second local health plan preference provides that "[i]n cases where an applicant is a corporation with previously awarded certificates of need, preference shall be given to those which follow through in a timely manner to construct and operate the additional facilities or beds and do not use them for later negotiations with other organizations seeking to enter or expand the number of beds they own or control." Both applicants meet this preference.

65. The third local health plan preference recognizes "Certificate of Need applications that provide AHCA with documentation that they provide, or propose to provide, the largest percentage of Medicaid and charity care patient days in relation to other hospitals in the sub-district."

Community Hospital provides the largest percentage of Medicaid and charity care patient days in relation to other hospitals in Sub-District 5-1, and therefore meets this preference.

66. The fourth local health plan preference applies to "Certificate of Need applications that demonstrate intent to serve HIV/AIDS infected persons." Both applicants accept and treat HIV/AIDS infected persons, and would continue to do so in their proposed replacement hospitals.

67. The fifth local health plan preference recognizes "Certificate of Need applications that commit to provide a full array of acute care services including medical-surgical, intensive care, pediatric, and obstetrical services within the sub-district for which they are applying." Community Hospital qualifies since it will continue to provide its current services, including obstetrical care and psychiatric care, in its proposed replacement hospital. North Bay discontinued its pediatric and obstetrical programs in 2001, does not intend to provide them in its proposed replacement hospital, and will not provide psychiatric care.

XIV. Agency Rule Preferences

68. Florida Administrative Code Rule 59C-1.038(6) provides an applicable preference to a facility proposing "new acute care services and capital expenditures" that has "a documented history of providing services to medically indigent

patients or a commitment to do so." As the largest Medicaid provider in Sub-District 5-1, Community Hospital meets this preference better than does North Bay. North Bay's history demonstrates a declining rate of service to the medically indigent.

XV. Statutory Review Criteria

Section 408.035(1), Florida Statutes: The need for the health care facilities and health services being proposed in relation to the applicable district health plan

69. District 5 includes Pasco and Pinellas County.

Pasco County is rapidly developing, whereas Pinellas County is the most densely populated county in Florida. Given the population trends, service mix, and utilization rates of the existing providers, on balance, there is a need for a replacement hospital in the Trinity area.

Section 408.035(2), Florida Statutes: The availability, quality of care, accessibility, and extent of utilization of existing health care facilities and health services in the service district of the applicant

70. Community Hospital and North Bay are both located in Sub-District 5-1. Each proposes to relocate to an area of southwestern Pasco County which is experiencing explosive population growth. The other general acute care hospital located in Sub-District 5-1 is Regional Medical Center Bayonet Point, which is located further north, in the Hudson area of western Pasco County. The only other acute care hospitals in

Pasco County are East Pasco Medical Center, in Zephyrhills, and Pasco Community Hospital, in Dade City. Those hospitals are located in Sub-District 5-2, east Pasco County, far from the area proposed to be served by either Community Hospital or North Bay.

71. District 5 includes Pinellas County as well as Pasco County. Helen Ellis and Mease are existing hospital providers located in Pinellas County. Helen Ellis has 168 licensed beds, consisting of 150 acute care beds and an 18-bed skilled nursing unit, and is located 7.9 miles from Community Hospital's existing location and 10.8 miles from Community Hospital's proposed location. Access to Helen Ellis for patients originating from southwestern Pasco County requires those patients to travel congested U.S. 19 south to Tarpon Springs. As a result, the average drive time from Community Hospital's existing and proposed site to Helen Ellis is approximately 22 minutes.

72. Helen Ellis is not a reasonable alternative to Community Hospital's proposal. The applicants' proposals are specifically designed for the current and future health care needs of southwestern Pasco County. Given its financial history, it is unknown whether Helen Ellis will be financially capable of providing the necessary care to the residents of southwestern Pasco.

73. Mease Countryside Hospital has 189 licensed acute care beds. It is located 16.0 miles from Community Hospital's existing location and 13.8 miles from Community Hospital's proposed location. The average drive time to Mease Countryside is 32 minutes from Community Hospital's existing site and 24 minutes from its proposed site.

74. In addition, Mease Countryside Hospital has experienced extremely high utilization over the past several years, in excess of 90 percent for calendar years 2000 and 2001. Utilization at Mease Countryside Hospital has remained over 80 percent despite the addition of 45 acute care beds in April 2002. Given the growth and demand, it is unknown whether Mease can accommodate the residents in southwest Pasco County.

75. Mease Dunedin Hospital has 189 licensed beds, consisting of 149 acute care beds, a 30-bed skilled nursing unit, five Level 2 neonatal intensive care beds, and five Level 3 neonatal intensive care beds. Its former 15-bed adult psychiatric unit has been converted into acute care beds. It is transferring its entire obstetrics program at Mease Dunedin Hospital to Mease Countryside Hospital. Mease Dunedin Hospital is located approximately 18 to 20 miles from the applicants' existing and proposed locations with an average drive time of 35-38 minutes.

76. With their remote location, and the exceedingly high utilization at Mease Countryside Hospital, neither of the two Mease hospitals is a viable alternative to the applicants' proposals.

77. In addition, the construction of a replacement hospital would positively impact economic development and further attract medical professionals to Sub-District 5-1. On balance, given the proximity, utilization, service array, and accessibility of the existing providers, including the applicants, the relocation of Community Hospital will enhance access to health care to the residents.

Section 408.035(3), Florida Statutes: The ability of the applicant to provide quality of care and the applicant's record of providing quality of care

78. As stipulated, both applicants provide excellent quality of care. However, Community Hospital's proposal will better enhance its ability to provide quality care. Community is currently undersized, non-compliant with today's standards, and located on a site that does not allow for reasonable expansion. Its emergency department is inadequate for patient volume, and the configuration of the first floor leads to inefficiencies in the diagnosis and treatment of emergency patients. Again, most inpatients are placed in semi-private rooms and three-bed wards, with no showers or tubs, little privacy, and an increased risk of infection. The hospital's waiting areas for families of patients are antiquated and undersized, its nursing stations are small and cramped and the operating rooms and storage facilities are undersized.

79. Community Hospital's deficiencies will be effectively eliminated by its proposed replacement hospital. As a result, patients will experience qualitatively better care by the staff who serve them.

80. Conversely, North Bay is in better physical condition and not in need of replacement. It has more reasonable options to expand or relocate its facility on site. Quality of care at North Bay will not be markedly enhanced by the construction of a new hospital.

Sections 408.035(4)and(5), Florida Statutes, have been stipulated as not applicable in this case.

Section 408.035(6), Florida Statutes: The availability of resources, including health personnel, management personnel, and funds available for capital and operating expenditures, for project accomplishment and operation

81. The parties stipulated that both Community Hospital and North Bay have available health personnel and management personnel for project accomplishment and operation. In addition, the evidence proves that both applicants have sufficient funds for capital and operating expenditures.

82. Community Hospital proposes to rely on its parent company to finance the project. Keith Giger, Vice-President of Finance for HCA, Inc., Community Hospital's parent organization, provided credible deposition testimony that HCA, Inc., will finance 100 percent of the total project cost by an inter-company loan at eight percent interest. Moreover, it is noted that the amount to be financed is actually \$20 million less than the \$196,849,328 stated in the CON Application, since Community Hospital previously purchased the proposed site in June 2003 with existing funds and does not need to finance the land acquisition. Community Hospital has sufficient working capital for operating expenditures of the proposed replacement hospital.

83. North Bay, on the other hand, proposes to acquire financing from BayCare Obligated Group which includes Morton

Plant Hospital Association, Inc.; Mease; and several other hospital entities. Its proposal, while feasible, is less certain since member hospitals must approve the indebtedness, thereby providing Mease with the ability to derail North Bay's proposed bond financing.

Section 408.035(7), Florida Statutes: The extent to which the proposed services will enhance access to health care for residents of the service district

84. The evidence proves that either proposal will enhance geographical access to the growing population in the service district. However, with its provision of obstetrical services, Community Hospital is better suited to address the needs of the younger community. With respect to financial access, both proposed relocation sites are slightly farther away from the higher elderly and indigent population centers.

Since the evidence demonstrates that it is unreasonable to relocate both facilities away from the down-town area, Community Hospital's proposal, on balance, provides better access to poor patients. First, public transportation will be available to Community Hospital's site. Second, Community Hospital has an excellent record of providing care to the poor and indigent and has accepted the agency's condition to provide ten percent of its total annual patient days to Medicaid recipients

85. To the contrary, North Bay's site will not be

accessible by public transportation. In addition, North Bay has a less impressive record of providing care to the poor and indigent. Although AHCA conditioned North Bay's approval upon it providing 9.7 percent of total annual patient days to Medicaid and charity patients, instead of the 9.7 percent of gross annual revenue proposed in its application, North Bay has consistently

provided Medicaid and charity patients less than seven percent of its total annual patient days.

Section 408.035(8), Florida Statutes: The immediate and long-term financial feasibility of the proposal

86. Immediate financial feasibility refers to the availability of funds to capitalize and operate the proposal.

See Memorial Healthcare Group, Ltd. d/b/a Memorial Hospital Jacksonville vs. AHCA et al., Case No. 02-0447 et seq.

Community Hospital has acquired reliable financing for the project and has sufficiently demonstrated that its project is immediately financially feasible.

87. North Bay's short-term financial proposal is less secure. As noted, North Bay intends to acquire financing from BayCare Obligated Group. As a member of the group, Mease, the parent company of two hospitals that oppose North Bay's application, must approve the plan.

88. Long-term financial feasibility is the ability of the project to reach a break-even point within a reasonable period of time and at a reasonable achievable point in the future. Big Bend Hospice, Inc. vs. AHCA and Covenant Hospice, Inc., Case No. 02-0455. Although CON pro forma financial schedules typically show profitability within two to three years of operation, it is not a requirement. In fact, in some circumstances, such as the case of a replacement hospital, it

may

be unrealistic for the proposal to project profitability before the third or fourth year of operation.

89. In this case, Community Hospital's utilization projections, gross and net revenues, and expense figures are reasonable. The evidence reliably demonstrates that its replacement hospital will be profitable by the fourth year of operation. The hospital's financial projections are further supported by credible evidence, including the fact that the hospital experienced financial improvement in 2002 despite its poor physical condition, declining utilization, and lost market share to providers outside of its district. In addition, the development and population trends in the Trinity area support the need for a replacement hospital in the area. Also, Community Hospital has benefited from increases in its Medicaid per diem and renegotiated managed care contracts.

90. North Bay's long-term financial feasibility of its proposal is less certain. In calendar year 2001, North Bay incurred an operating loss of \$306,000. In calendar year 2002, it incurred a loss of \$1,160,000. In its CON application, however, North Bay projects operating income of \$1,538,827 in 2007, yet omitted the ongoing expenses of interest (\$1,600,000) and depreciation (\$3,000,000) from its existing facility that North Bay intends to continue

operating. Since North Bay's proposal does not project beyond year two, it is less certain whether it is financially feasible in the third or fourth year.

91. In addition to the interest and depreciation issues, North Bay's utilization projections are less reasonable than Community Hospital's proposal. While possible, North Bay will have a difficult task achieving its projected 55 percent increase in acute care patient days in its second year of operation given its declining utilization, loss of obstetric/pediatric services and termination of two exclusive managed care contracts.

Section 408.035(9), Florida Statutes: The extent to which the proposal will foster competition that promotes quality and cost-effectiveness

92. Both applicants have substantial unused capacity. However, Community Hospital's existing facility is at a distinct competitive disadvantage in the market place. In fact, from 1994 to 1998, Community Hospital's overall market share in its service area declined from 40.3 percent to 35.3 percent. During that same period, Helen Ellis' overall market share in Community Hospital's service area increased from 7.2 percent to 9.2 percent. From 1995 to the 12-month period ending June 30, 2002, Community Hospital's acute care market share in its service area declined from 34.0 percent to 25.9 percent. During that same period, Helen Ellis' acute care

market share in Community Hospital's service area increased from 11.7 percent to 12.0 percent.

93. In addition, acute care average occupancy rates at Mease Dunedin Hospital increased each year from 1999 through 2002. Acute care average occupancy at Mease Countryside Hospital exceeded 90 percent in 2000 and 2001, and was approximately 85 percent for the period ending June 30, 2002.

94. Some of the loss in Community Hospital's market share is due to an out-migration of patients from its service area to hospitals in northern Pinellas and Hillsborough Counties. Market share in Community's service area by out-of-market providers increased from 33 percent in 1995 to 40 percent in 2002. Community Hospital's outdated hospital has hampered its ability to compete for patients in its service area.

95. Mease is increasing its efforts to attract patients and currently completing a \$92 million expansion of Mease Countryside Hospital. The project includes the development of 1,134 parking spaces on 30 acres of raw land north of the Mease Countryside Hospital campus and the addition of two floors to the hospital. It also involves the relocation of 51 acute care beds, the obstetrics program and the Neonatal Intensive Care Units from Mease Dunedin Hospital to Mease

Countryside Hospital. Mease is also seeking to more than double the size of the Countryside emergency department to handle its 62,000 emergency visits.

96. With the transfer of licensed beds from Mease Dunedin Hospital to Mease Countryside Hospital, Mease will also convert formerly semi-private patient rooms to private rooms at Mease Dunedin Hospital. The approval of Community Hospital's relocated facility will enable it to better compete with the hospitals in the area and promote quality and cost-effectiveness.

97. North Bay, on the other hand, is not operating at a distinct disadvantage, yet is still experiencing declining utilization. North Bay is the only community-owned, not-for-profit provider in western Pasco County and is a valuable asset to the city.

Section 408.035(10), Florida Statutes: The costs and methods of the proposed construction, including the costs and methods or energy provision and the availability of alternative, less costly, or more effective methods of construction

98. The parties stipulated that the project costs in both applications are reasonable to construct the replacement hospitals. Community Hospital's proposed construction cost per square foot is \$175, and slightly less than North Bay's \$178 proposal. The costs and methods of proposed construction for each proposal is reasonable.

99. Given Community Hospital's severe site and facility problems, the evidence demonstrates that there is no reasonable, less costly, or more effective methods of construction available for its proposed replacement hospital.

Additional "band-aide" approaches are not financially reasonable and will not enable Community Hospital to effectively compete. The facility is currently licensed for 401 beds, operates approximately 311 beds and is still undersized.

100. The proposed replacement hospital will meet the standards in Florida Administrative Code Rule 59A-3.081, and will meet current building codes, including the Americans with Disabilities Act and the Guidelines for Design and Construction of Hospitals and Health Care Facilities, developed by the American Institute of Architects.

101. The opponents' argue that Community Hospital will not utilize the 320 acute care beds proposed in its CON application, and therefore, a smaller facility is a less-costly alternative. In addition, Helen Ellis' architectural expert witness provided schematic design alternatives for Community Hospital to be expanded and replaced on-site, without providing a detailed and credible cost accounting of the alternatives. Given the evidence and the law, their arguments are not persuasive.

102. While North Bay's replacement cost figures are reasonable, given the aforementioned reasons, including the fact that the facility is in reasonably good condition and can expand vertically, on balance, it is unreasonable for North Bay to construct a replacement facility in the Trinity area.

Section 408.035(11), Florida Statutes: The applicant's past and proposed provision of health care services to Medicaid patients and the medically indigent

103. Community Hospital has consistently provided the most health care services to Medicaid patients and the medically indigent in Sub-District 5-1. Community Hospital agreed to provide at least ten percent of its patient days to Medicaid recipients. Similarly, North Bay agreed to provide 9.7 percent of its total annual patient days to Medicaid and charity patients combined. North Bay, by contrast, provided only 3.56 percent of its total patient days to Medicaid patients in 2002, and would have to significantly reverse a declining trend in its Medicaid provision to comply with the imposed condition. Community Hospital better satisfies the criterion.

Section 408.035(12) has been stipulated as not applicable in this case.

XVI. Adverse Impact on Existing Providers

104. Historical figures demonstrate that hospital market

shares are not static, but fluctuate with competition. No hospital is entitled to a specific or historic market share free from competition. While the applicants are located in health planning Sub-District 5-1 and Helen Ellis and the two Mease hospitals are located in health planning Sub-District 5-2, they compete for business. None of the opponents is a disproportionate share, safety net, Medicaid provider. As a result, AHCA gives less consideration to any potential adverse financial impact upon them resulting from the approval of either application as a low priority.

105. The opponents, however, argue that the approval of either replacement hospital would severely affect each of them. While the precise distance from the existing facilities to the relocation sites is relevant, it is clear that neither applicants' proposed site is unreasonably close to any of the existing providers. In fact, Community Hospital intends to locate its replacement facility three miles farther away from Helen Ellis and 1.5 miles farther away from Mease Dunedin Hospital.

106. While Helen Ellis' primary service area is seemingly fluid, as noted by its chief operating officer's hearing and deposition testimony, and the Mease hospitals are located 15 to 20 miles south, they overlap parts of the applicants' primary service areas. Accordingly, each

applicant concedes that the proposed increase in their patient volume would be derived from the growing population as well as existing providers.

107. Although it is clear that the existing providers may be more affected by the approval of Community Hospital's proposal, the exact degree to which they will be adversely impacted by either applicant is unknown. All parties agree, however, that the existing providers will experience less adverse affects by the approval of only one applicant, as opposed to two. Furthermore, Mease concedes that its hospitals will continue to aggressively compete and will remain profitable. In fact, Mease's adverse impact analysis does not show any credible reduction in loss of acute care admissions at Mease Countryside Hospital or Mease Dunedin Hospital until 2010. Even then, the reliable evidence demonstrates that the impact is negligible.

108. Helen Ellis, on the other hand, will likely experience a greater loss of patient volume. To achieve its utilization projections, Community Hospital will aggressively compete for and increase market share in Pinellas County zip code 34689, which borders Pasco County. While that increase does not facially prove that Helen Ellis will be materially affected by Community Hospital's replacement hospital, Helen Ellis will confront targeted competition. To minimize the

potential adverse affect, Helen Ellis will aggressively compete to expand its market share in the Pinellas County zip codes south of 34689, which is experiencing population growth.

In addition, Helen Ellis is targeting broader service markets, and has filed an application to establish an open-heart surgery program.

109. While Helen Ellis will experience greater competition and financial loss, there is insufficient evidence to conclude that it will experience material financial adverse impact as a result of Community Hospital's proposed relocation. In fact, Helen Ellis' impact analysis is less than reliable. In its contribution-margin analysis, Helen Ellis utilized its actual hospital financial data as filed with AHCA for the fiscal year October 1, 2001, to September 30, 2002. The analysis included total inpatient and total outpatient service revenues found in the filed financial data, including ambulatory services and ancillary services, yet it did not include the expenses incurred in generating ambulatory or ancillary services revenue. As a result, the overstated net revenue per patient day was applied to its speculative lost number of patient days which resulted in an inflated loss of net patient service revenue.

110. Moreover, the evidence indicates that Helen Ellis' analysis incorrectly included operational revenue and excluded expenses related to its 18-bed skilled nursing unit since neither applicant intends to operate a skilled nursing unit. While including the skilled nursing unit revenues, the analysis failed to include the sub-acute inpatient days that produced those revenues, and thereby over inflated the projected total lost net patient service revenue by over one million dollars.

CONCLUSIONS OF LAW

111. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case pursuant to Sections 120.569, 120.579(1), and 408.039(5), Florida Statutes (2003). Based on the evidence presented, Helen Ellis and the Mease hospitals have standing in this proceeding. § 408.039(5)(c), Fla. Stat. (2003). This is a de novo proceeding and there is no presumption of correctness attached to AHCA's preliminary decision. Florida Dept. of Transportation v. J.W.C., 396 So. 2d 778 (Fla. 1st DCA 1981).

112. An applicant for a CON has the burden of demonstrating that its application should be granted. Boca Raton Artificial Kidney Center v. Department of Health and Rehabilitative Services, 475 So. 2d 250 (Fla. 1st DCA 1985). The award of a CON must be based on the balanced review and

consideration of the relevant statutory and rule criteria. Department of Health and Rehabilitative Services v. Johnson and Johnson Home Healthcare Inc., 447 So. 2d 361 (Fla. 1st DCA 1984); Balsam v. Department of Health and Rehabilitative Services, 486 So. 2d 1314 (Fla. 1st DCA 1988). The weight to be given each criterion is not fixed, but varies depending on the facts of each case. Collier Medical Center, Inc. v. Department of Health and Rehabilitative Services, 462 So. 2d 83 (Fla. 1st DCA 1985).

113. While the two applications were both preliminarily approved by AHCA, the evidence presented at the hearing proves that, on balance, it is unreasonable to approve both applications. Not only will a relocation of both hospitals decrease the availability of health services in the down-town area, it is financially irresponsible to approve the construction of both hospitals given their proximity, service areas, recent utilization rates, existing competition, and scope of services.

114. Upon a careful weighing and balancing of the applicable statutory and rule criteria, the evidence proves that Community Hospital's proposal reasonably satisfies each criterion and should be approved. While North Bay's proposal has merit, it does not, on balance, warrant approval.

115. The evidence proves that Community Hospital's

existing facility is in bad condition and needs to be replaced. North Bay's facility placement does not. It is not a prudent use of resources for Community Hospital to be replaced or renovated on its current site.

116. The problems inherent in replacing an outdated hospital on-site have been recognized by AHCA. See HCA Health Services of Florida, Inc. d/b/a Oak Hill Hospital vs. AHCA and HMA Hernando, Inc. d/b/a Brooksville Regional Hospital, Case No. 02-0454, __ F.A.L.R. __ (AHCA 2003). In Brooksville, the following finding was made and adopted by AHCA:

Some deficiencies at Brooksville Regional's existing site, lack of compliance with various codes and the ADA, flooding due to inadequate elevation, inadequate size, and location on a two-lane street, cannot reasonably be corrected onsite. Others including electrical upgrades, improvements in the HVAC system and enlarged spaces would necessitate closing the hospital to make substantial renovations. The only cost-efficient alternative is relocation and construction of a new hospital, consistent with Subsection 408.035(10), Florida Statutes.

117. Similarly, many of Community Hospital's deficiencies cannot reasonably be corrected onsite. Renovation or replacement on-site is impractical and not cost-effective. Its only cost-efficient alternative is relocation and construction of a new hospital.

118. The evidence further proves that Community Hospital's proposed facility will better serve the growing population in the Trinity area, as well as the existing residents in Sub-District 5-1, given its broad array of health care services, utilization experience, historic and projected

care to the poor and medically indigent, and location.

119. Finally, the evidence proves that Community Hospital's projected utilization is reasonable, its proposal is financially feasible in the short and long-term, and it will foster healthy competition. While existing providers will face a more competitive market and the potential loss of revenue, there is insufficient evidence to conclude that any provider will be substantially adversely affected. On balance, Community Hospital's proposal satisfies the current statutory review criteria of Section 408.035, Florida Statutes (2000), and should be approved.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that:

1. Community Hospital's CON Application No. 9539, to establish a 376-bed replacement hospital in Pasco County, Sub-District 5-1, be granted; and

2. North Bay's CON Application No. 9538, to establish a 122-bed replacement hospital in Pasco County, Sub-District 5-1, be denied.

DONE AND ENTERED this 19th day of March, 2004, in
Tallahassee, Leon County, Florida.



WILLIAM R. PFEIFFER
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.