

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.,

2015 OCT 15 P 2: 33

Cross-Petitioner,

DOAH No. 15-1921CON

vs.

AHCA No. 2015003346
CON No. 10326

OSCEOLA CON, LLC,

Cross-Respondent.

OSCEOLA CON, LLC,

Petitioner,

DOAH No. 15-1923CON

vs.

AHCA No. 2015002640
CON Nos. 10326
10328

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,
and TRI-COUNTY NURSING AND
REHABILITATION CENTER, INC.,

Respondent.

FINAL ORDER

THIS CAUSE is before the State of Florida, Agency for Health Care Administration ("the Agency") concerning the preliminary approval of Certificate of Need ("CON") 10328 filed by Tri-County Nursing and Rehabilitation Center, Inc. ("Tri-County") to establish a new 120-bed community nursing home, and the preliminary denial of CON 10326 filed by Osceola CON, LLC ("Osceola"), to establish a new 120-bed community nursing home, with respect to the fixed need pool for Sub-District 7-3.

1. The Agency comparatively reviewed CON applications for other beds and programs batching cycle with an application due date of November 19, 2014, for the fixed need pool for Sub-District 7-3. For the case at hand, the reviews included in relevant part:

10324	7-3 CON LLC	120 Beds	Denied
10325	Kissimmee HRC, LLC	130 Beds	Denied
10326	Osceola CON, LLC	120 Beds	Denied
10327	Osceola Springs NH, LLC	130 Beds	Denied
10328	Tri-County Nursing & Rehabilitation Center, Inc.	120 Beds	Approved

2. On February 23, 2015, the Agency published notice in the Florida Administrative Register of its decisions regarding the preliminary approval of CON 10328 and denials of CON Nos. 10324, 10325, 10326 and 10327.

3. On March 16, 2015, Osceola filed a Petition for Formal Administrative Hearing contesting the denial of its CON 10326 and the approval of Tri-County’s CON 10328.

4. On March 25, 2015, Tri-County filed a Petition Challenging Co-Batched Applicants and Assertion of Right to a 60-Day Hearing challenging all co-batched applicants.

5. The Agency referred the petitions to the Division of Administrative Hearings (“DOAH”) and an Administrative Law Judge (“ALJ”) was assigned.

6. On May 6, 2015, the ALJ entered an Order of Consolidation consolidating DOAH Case 15-1921CON and DOAH Case 15-1923CON.

7. On July 29, 2015, Osceola filed a Notice of Voluntary Dismissal voluntarily dismissing and withdrawing its petition for hearing with prejudice.

8. July 29, 2015, Tri-County filed a Motion to Remand stating that Tri-County is the approved applicant and that the only party that challenged its approval was Osceola. Given that Osceola dismissed its petition for hearing with prejudice, there were no remaining challenges to Tri-County’s CON.


9. On July 30, 2015, the ALJ entered an Order Closing Files and Relinquishing Jurisdiction.

It is therefore **ORDERED:**

1. The denial of Osceola’s CON 10326 is UPHELD.

2. The approval of Tri-County's CON 10328 is UPHeld. The Agency shall issue CON 10328 to Tri-County Nursing & Rehabilitation Center, Inc.

ORDERED in Tallahassee, Florida, on this 15 day of October, 2015.



Elizabeth Dudek, Secretary
Agency For Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing the original Notice of Appeal with the Agency Clerk of AHCA, and a copy along with the filing fee prescribed by law with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of the rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by the method designated to the persons named below on this 15th day of October, 2015.



Richard J. Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
(850) 412-3630

The Honorable Robert S. Cohen
Administrative Law Judge
Division of Administrative Hearings
(Electronic Filing)

Stephen K. Boone, Esquire
Boone, Boone, Boone, and Koda, P.A.
1001 Avenida Del Circo
Post Office Box 1596
Venice, Florida 34284
Attorney for Tri-County Nursing and Rehabilitation Center, Inc.
sboone@boone-law.com
PWilliamson@boone-law.com
(Electronic Filing)

Jay Adams, Esquire
Frank P. Rainer, Esquire
Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Attorneys for Osceola CON, LLC
jadams@broadandcassel.com
frainer@broadandcassel.com
kdilworth@broadandcassel.com
(Electronic Mail)

Richard Joseph Saliba, Esquire
Logan A. White, Esquire
Assistants General Counsel
Office of the General Counsel
Agency for Health Care Administration
(Electronic Mail)

Janice K. Mills, Government Analyst II
Facilities Intake Unit
Agency for Health Care Administration
(Electronic Mail)

Marisol M. Fitch, Unit Manager
Certificate of Need Unit
Agency for Health Care Administration
(Electronic Mail)

Bernard Hudson, Unit Manager
Long Term Care Unit
Agency for Health Care Administration
(Electronic Mail)