

June 23, 2011

Beth Mason, President
City Council
Hoboken City Hall
Hoboken, NJ

Re: Resolution No. 12 re City Council CHAPA-like Review

Dear Councilwoman Mason:

I am writing to you regarding the above Resolution to request that you hold a hearing pursuant to the principles of the Community Healthcare Assets Protection Act as soon as possible. The importance of such review cannot be overemphasized given the fact that the anticipated Certificate of Need review undertaken by the Department of Health and Senior Service will not analyze the fairness of the proposed sale of Hoboken University Hospital to an investment group whose principals own and operate Bayonne Medical Center. Furthermore, the Mayor is making public statements about the transaction in financial terms that cannot be supported by the public information known about the deal. At this time, the Asset Purchase Agreement, dated April 20, 2011, without schedules and exhibits, is the only document that the Authority has released to the City Council and other members of the public who requested it pursuant to OPRA. Such document simply does not support the Mayor's claim that the transaction is valued at \$91 million. Your investigation, review and public comment upon this matter is urgently needed.

A review of the APA indicates the following: The buyers are purchasing the Hospital for \$51.6 million to defease the outstanding bonds (APA, § 3.1(b) at p.21), accepting the Hospital's liabilities that approximate \$9.177 million dollars, and buying the Hospital's accounts receivables for \$8 million (APA, § 3.1(d) at p. 21). The \$9.177 million in liabilities includes \$2 million to settle the claims of unsecured creditors (APA, § 3.1(c) at p. 21), up to \$4 million to acquire insurance tail coverage (APA, § 8.30 at p. 60), up to \$2.5 million to pay pension penalties, over a 20 year period (APA, § 8.24 at p. 58), and a sum not to exceed \$677,000 for executive severance pay. (APA, § 8.20(b) at p.60); not the \$19 million in liabilities included in the Mayor's announcement to the public. On its face, the APA thus supports a value of \$68.777 (at best), not \$91 million as claimed by the Mayor.

New Jersey Appleseed
Public Interest Law Center of New Jersey
744 Broad Street, Suite 1600
Newark, New Jersey 07102

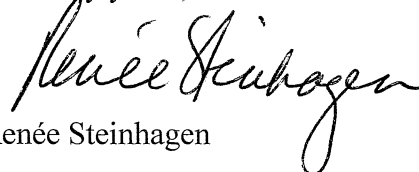
Phone: 973.735.0523 Fax: 973.735.0524
Email: rsteinhagen@lawsuites.net
Website: www.njappleseed.net

It should be noted that the APA does not include a commitment to expend \$20 million in capital improvements. See APA , § 8.17 at p. 56 (“Capital commitments purchaser may make available in purchaser’s sole and absolute discretion, (but without any obligation to do so) in amount up to \$20.9 million in the aggregate . . .”). If such commitment is discretionary and not mandated in the APA, it is a promise that is simply hortatory, not enforceable. In addition, there are several outstanding questions regarding the monies that are explicitly included. For example, assuming that Hoboken University Hospital’s accounts receivable at any given time are in the \$15-\$17 million range net bad (based on 2009 and 2010 financials), why are the purchasers paying only \$8 million? Also, why are the buyers able to reap the benefit of the Hospital’s eligibility for an award of federal funds to the Hospital solely because of its satisfaction of Electronic Medical Record “meaningful use” criteria? Revenue expected from such fund is \$2.97 million in 2011 (with only \$1.9 million owing the seller, APA , § 2.1 at p.16) with the remainder of a total exceeding \$8 million to be paid between 2012-15. These questions need to be fully explored and answered.

Another aspect of this transaction that the City Council must investigate is the fact that Medical Properties Trust (“MPT”), a Real Estate Investment Trust (“REIT”) announced in its quarterly report, that the proposed purchasers of Hoboken University Hospital have agreed to sell the Hospital for \$75 million. Selling the hospital’s buildings for \$75 million in a sale lease back is the way the owners of Bayonne Medical Center raised the capital necessary to defease the bonds, and purchase the real and personal property of the hospital. That is, they bought BMC for \$18 million out of bankruptcy, and recently sold the property to a REIT for \$58 million. The sale of real estate to MPT, at a profit, has already been approved by the Hoboken Municipal Hospital Authority. APA , § 13.9 at p. 72; § 10.1 at 63. The terms of this sale must be explored by the City Council for it could pose significant risks to the community. This is the case, because the REIT is not subject to the any type of licensure requirement of DHSS, and, we can assume that it will be able to foreclose on the operators of the facility if the Hospital does not meet its financial demands.

The APA also includes several contradictory provisions with respect to the commitment to hire at least 75% of the employees, but not to recognize current unions as successor unions. These aspects of the APA need to be further investigated and carefully explained to the public so it can determine whether this is as good a deal for the citizens of Hoboken as the Mayor proclaims.

Sincerely yours,



Renée Steinhagen

Cc: Mayor Dawn Zimmer
Attorney General Dow
Jay Ganzman, DAG
Hoboken City Council