

# GENERAL COUNSEL'S REPORT COVER PAGE

October 26, 2016

- D. McKendree Village, Hermitage (Davidson County), TN – CN1202-010AEE and McKendree Village, Hermitage (Davidson County), TN – CN1303-007AE

Request for a 19 month extension, from December 1, 2016 to July 1, 2018.

McKendree Village, Hermitage (Davidson County), TN – CN1202-010AEE -

The addition of thirty (30)\* Medicare skilled nursing facility nursing home beds to the 150 nursing home beds it currently operates. Upon Certificate of Need approval and the licensure of this project, McKendree Village will operate a 180 licensed bed nursing home facility. McKendree Village will provide Medicare/Medicaid skilled nursing facility services in these proposed 30 nursing home beds. The estimated project cost was \$1,303,000.00

\*Subject to the 2011-2012 Nursing Home Bed Pool.

McKendree Village, Hermitage (Davidson County), TN – CN1303-007AE

The renovation, construction, and partial repositioning of fifty (50) existing dually certified beds in addition to the modification of CN1202-010A approved for thirty (30) dually certified nursing home beds. The nursing home's licensed bed complement of one hundred eighty (180) beds after implementation of CN1202-010A will not change. The estimated project cost was \$3,808,150.

- On May 23, 2013, CN1202-010A was approved unanimously to add 30 SNF beds to the existing 150-bed facility. On June 26, 2013, CN1303-007A was approved unanimously for additional improvements to the facility with the understanding that both projects would be undertaken as a single construction project. On November 20, 2013, a 13-month extension of the expiration date was requested for CN1202-010A from July 1, 2014 to August 1, 2015 so that it would coincide with CN1303-007A.
- On May 27, 2015, a 16-month extension of the expiration date was requested for both certificates of need from August 1, 2015 until December 1, 2016. McKendree noted before beginning the renovations it was necessary to make significant renovations to the critical plant infrastructure, including replacement of the central mechanical plant, installation of environmental control technology and replacement of failed roofing systems.
- Construction delay is detailed in Item 2 of the September 30, 2016 letter on behalf of McKendree Village. Renovations that prompted earlier extension requests due to extensive upgrades or replacements are now complete (roof and mechanical supply systems). Subsequent architectural plan revisions and the bidding and negotiating process for construction services are identified as challenges which resulted in increased prices and lengthened schedules which required value engineering and a redesign to complete the project within a reasonable time period and budget.

TRAUGER & TUKE  
ATTORNEYS AT LAW  
THE SOUTHERN TURF BUILDING  
222 FOURTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37219-2117  
TELEPHONE (615) 256-8585  
TELECOPIER (615) 256-7444

September 30, 2016

Mr. Mark Farber  
Deputy Director  
Tennessee Health Services and Development Agency  
502 Deaderick Street, 9th Floor  
Nashville, Tennessee 37243

Re: Request to Combine Approved Certificates of Need #CN1202-010 and #CN1303-007  
Nashville Senior Care, LLC, d/b/a McKendree Village

Dear Mr. Farber:

Thank you for taking time to meet with me on August 18, 2016 regarding the above-referenced, approved Certificates of Need issued to my client, Nashville Senior Care, LLC. Per your request, we are providing the below responses in support of our request to combine these two CONs so that these projects can be appropriately submitted and reviewed by the Division of Health Licensure and Regulation's Office of Health Care Facilities in order for the combined project to commence. We are also requesting an extension of time to complete the combined project, until July 1, 2018.

1. Explain the difference in our physical plans as compared to the plans contemplated by the two original CONs:

The approved Certificates of Need call for the complete renovation of South 1 wing into 27 private rooms, South 2 wing into 26 private rooms, and North 2 wing into 27 private rooms at McKendree Village, Hermitage, Tennessee. Currently South 1 and 2 wings are unoccupied, while North 2 wing contains 30 private beds and 20 semi-private beds licensed and in operation. Our revised plan calls for North 1 to be renovated with the addition of 30 private beds and full private bathrooms with showers as well as fully renovated support and common area spaces. The plan for North 2 wing is to renovate support and common areas with new finishes in the SNF rooms with no change to the current configuration of 30 private beds and 20 semi-private beds. This new renovation plan will bring the total SNF bed count to 180 in the Health Center.

TRAUGER & TUKE

Mr. Mark Farber  
September 30, 2016  
Page two

2. Explain the reasons for the delay in completing the project.

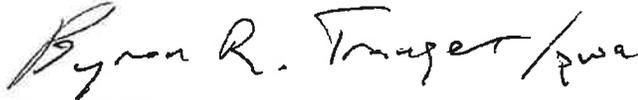
Delays in commencement of construction have resulted from a number of mitigating circumstances. First, prior to starting renovation of the Health Center, a new roofing system had to be completed over these areas due to extensive damage unknown to the Applicant. Second, mechanical supply systems for these areas required complete renovation and upgrade of the facility central plant whereby new chillers and related pump systems and controls were installed. Third, the latest architectural plan was one of a series of upgraded revisions to the original plan requiring time to complete and submit to city officials for review. Finally, the bidding and negotiating process has been challenging due to an unprecedented demand for construction services in the Nashville area. These constraints have resulted in increased prices and lengthened schedules which required us to value engineer and redesign the entire renovation and 30-bed addition in order to complete the project in a reasonable period of time and at a reasonable budget.

3. Separate out the cost of the additional 30 nursing home beds from the other costs of the project.

We anticipate that the cost of the 30-bed skilled nursing facility addition will be \$3.5 million. The renovation costs for the existing 150 beds on East 1 and 2 wings and North 2 wing are estimated to total \$5.8 million.

Thank you in advance for the Agency's consideration of my client's request to combine these Certificates of Need and extend their completion deadline until July 1, 2018. Finally, as we discussed in August, by this letter we are asking that this request be placed on the agenda for the Agency's October meeting as a General Counsel's report.

Very truly yours,



Byron R. Trauger

BRT/ssw



**State of Tennessee**

**Health Services and Development Agency**

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243  
www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

---

September 23, 2015

Byron Trauger, Esq.  
Trauger & Tuke  
The Southern Turf Building  
222 Fourth Avenue North  
Nashville, Tennessee 37219

**RE: McKendree Village – CN1202-010AEE**

Dear Mr. Trauger:

As referenced in our recent letter, please find enclosed your revised Certificate of Need for the above-referenced application, which modifications and/or an extension of the expiration date were approved at the May 27, 2015 meeting of the Tennessee Health Services and Development Agency.

Should you have any questions or require further information regarding this Certificate, please do not hesitate to contact this office.

Sincerely,

  
James B. Christoffersen  
General Counsel

jbc/ma

cc: Trent Sansing, TDH/Health Statistics, PPA  
Ann R. Reed, TDH/HCF  
Bill Harmon, TDH/HCF

---

STATE OF TENNESSEE  
Health Services and Development Agency



Certificate of Need No. CN1202-010AEE is hereby granted under the provisions of T.C.A. § 68-11-1601, *et seq.*, and rules and regulations issued thereunder by this Agency.

To: Nashville Senior Care, LLC d/b/a McKendree Village  
4347 Lebanon Road  
Hermitage, TN 37076

For: McKendree Village

This Certificate is issued for: The addition of thirty (30)\* Medicare skilled nursing facility nursing home beds to the 150 nursing home beds it currently operates. McKendree Village will provide Medicare/Medicaid skilled nursing facility services in these proposed 30 nursing home beds.

\*Subject to the 2011-2012 Nursing Home Bed Pool.

\* This Certificate is a replacement of the originally issued Certificate of Need pursuant to Agency Rule 0720-10-06 Expiration, Revocation, and Modification of issued Certificates. The second request for Extension of Expiration date for sixteen (16) months from August 1, 2015 to December 1, 2016 was granted on May 27, 2015. The first request for an Extension of Expiration date for thirteen (13) months from July 1, 2014 to August 1, 2015 was granted at the November 20, 2013 Health Services and Development Agency Meeting. This project was originally approved on May 23, 2012.

On the premises located at: 4347 Lebanon Road  
Hermitage (Davidson County), TN 37076

For an estimated project cost of: \$1,303,000.00

The Expiration Date for this Certificate of Need is

\* December 1, 2016

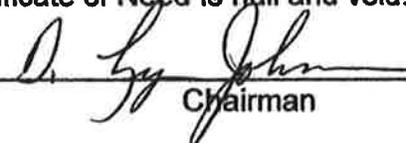
or upon completion of the action for which the Certificate of Need was granted, whichever occurs first. After the expiration date, this Certificate of Need is null and void.

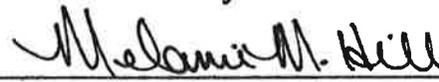
Date Approved: May 23, 2012

Date Issued: June 27, 2012

1<sup>st</sup> Date Re-Issued: May 28, 2014

Date Re-Issued: September 22, 2015

  
Chairman

  
Executive Director



**State of Tennessee**

**Health Services and Development Agency**

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda) Phone: 615-741-2364 Fax: 615-741-9884

---

September 23, 2015

Byron Trauger, Esq.  
Trauger & Tuke  
The Southern Turf Building  
222 Fourth Avenue North  
Nashville, Tennessee 37219

**RE: McKendree Village – CN1303-007AE**

Dear Mr. Trauger:

As referenced in our recent letter, please find enclosed the revised Certificate of Need for the above-referenced application, which modifications and/or an extension of the expiration date were approved at the May 27, 2015 meeting of the Tennessee Health Services and Development Agency.

Should you have any questions or require further information regarding this Certificate, please do not hesitate to contact this office.

Sincerely,

James B. Christoffersen  
General Counsel

cc: Trent Sansing, TDH/Health Statistics, PPA  
Ann R. Reed, TDH/HCF  
Bill Harmon, TDH/HCF

---

STATE OF TENNESSEE  
Health Services and Development Agency



Certificate of Need No. CN1303-007AE is hereby granted under the provisions of T.C.A. § 68-11-1601, *et seq.*, and rules and regulations issued thereunder by this Agency.

To: Nashville Senior Care, LLC d/b/a McKendree Village  
4347 Lebanon Road  
Hermitage, TN 37076

For: McKendree Village

This Certificate is issued for: The renovation, construction, and partial repositioning of fifty (50) existing dually certified beds in addition to the modification of CN1202-010A approved for thirty (30) dually certified nursing home beds. The nursing home's licensed bed complement of one hundred eighty (180) beds after implementation of CN1202-010A will not change.

\* This Certificate is a replacement of the originally issued Certificate of Need pursuant to Agency Rule 0720-10-.06 Expiration, Revocation, and Modification of issued Certificates. The second request for Extension of Expiration date for sixteen (16) months from August 1, 2015 to December 1, 2016 was granted on May 27, 2015. This project was originally approved on June 26, 2013.

On the premises located at: 4347 Lebanon Road  
Hermitage (Davidson County), TN 37076

For an estimated project cost of: \$3,808,150.00

The Expiration Date for this Certificate of Need is

December 1, 2016

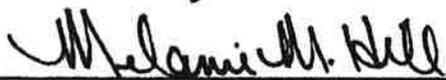
or upon completion of the action for which the Certificate of Need was granted, whichever occurs first. After the expiration date, this Certificate of Need is null and void.

Date Approved: June 26, 2013

  
Chairman

Date Issued: July 24, 2013

Date Re-Issued: September 22, 2015

  
Executive Director

## Mark Ausbrooks

---

**From:** Melanie Hill  
**Sent:** Tuesday, October 18, 2016 5:41 PM  
**To:** Mark Farber; Mark Ausbrooks; Jim Christoffersen  
**Subject:** FW: McKendree

*Melanie*

Melanie M. Hill, Executive Director  
Tennessee Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda)

Phone: 615-741-2364

Fax: 615-741-9884

---

**From:** Byron R. Trauger [mailto:[brt@tntlaw.net](mailto:brt@tntlaw.net)]  
**Sent:** Tuesday, October 18, 2016 2:30 PM  
**To:** Melanie Hill  
**Subject:** RE: McKendree

Melanie,

In response to your two questions:

1. Yes, there is a difference in the number of private rooms. Whereas in the original application, we anticipated renovating spaces into 50 private rooms and 15 semi-private rooms (30 semiprivate beds), we now will create 60 private rooms and 10 semi-private rooms (20 semi-private beds). So, we have increased the number of private rooms by ten and decreased the number of semi-private rooms by five.
2. During the course of this project, we have concluded that it makes sense to do extensive renovations in areas that do not require certificates of need – such as the roof, chillers, etc. This has increased the cost of the project but in areas separate and apart from the addition of the 30 beds (which, of course does require a CON). You are correct that the total cost is now \$9.3 million, but again, I would emphasize that the bulk of that cost is for renovations and improvements that do not now require a certificate of need.

If we can provide additional information that would be helpful, please let me know.

**Byron R. Trauger**

**TRAUGER & TUKE, Attorneys at Law, The Southern Turf Building, 222 Fourth Avenue North,  
Nashville, Tennessee 37219-2117, (615) 256-8585, FAX (615) 256-7444, [www.tntlaw.net](http://www.tntlaw.net)**

NOTE: This e-mail may contain PRIVILEGED and CONFIDENTIAL information and is intended only for the use of the specific individual(s) to which it is addressed. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use, dissemination or copying of this e-mail or the information contained in it or attached to it is strictly prohibited. If you have received this e-mail in error, please delete it and immediately notify the person named above by reply e-mail. We are required by the IRS

---

**From:** Melanie Hill [<mailto:Melanie.Hill@tn.gov>]  
**Sent:** Friday, October 14, 2016 4:13 PM  
**To:** Byron R. Trauger  
**Subject:** RE: McKendree

yes

*Melanie*

Melanie M. Hill, Executive Director  
Tennessee Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda)  
Phone: 615-741-2364  
Fax: 615-741-9884

---

**From:** Byron R. Trauger [<mailto:brt@tnlaw.net>]  
**Sent:** Friday, October 14, 2016 4:11 PM  
**To:** Melanie Hill  
**Subject:** RE: McKendree

**\*\*\* This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. - STS-Security\*\*\***

Melanie,

It has been complicated, hasn't it?

I think that you're right, but I am checking with my folks to be certain. Would it be OK to get back to you on Monday?

Byron R. Trauger

TRAUGER & TUKE, Attorneys at Law, The Southern Turf Building, 222 Fourth Avenue North,  
Nashville, Tennessee 37219-2117, (615) 256-8585, FAX (615) 256-7444, [www.tnlaw.net](http://www.tnlaw.net)

NOTE: This e-mail may contain PRIVILEGED and CONFIDENTIAL information and is intended only for the use of the specific individual(s) to which it is addressed. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use, dissemination or copying of this e-mail or the information contained in it or attached to it is strictly prohibited. If you have received this e-mail in error, please delete it and immediately notify the person named above by reply e-mail. We are required by the IRS Circular 230 to inform you that any statements contained herein are not intended or written to be used, and cannot be used, by you or any other taxpayer, for the purpose of avoiding any penalties that may be imposed by federal tax law. Thank you.

---

**From:** Melanie Hill [<mailto:Melanie.Hill@tn.gov>]  
**Sent:** Friday, October 14, 2016 3:36 PM

**To:** Byron R. Trauger  
**Subject:** McKendree

I apologize for the confusion on this.

I'm reading over your letter and getting bogged down in all the past extensions I think.

Item 1 in your letter- are the number of private beds different now than before?

Item 3- It looks like the cost of the 30 beds have decreased slightly but the renovations costs have soared. I'm assuming that is because of the new roof and the chillers, etc? Correct?

So the total cost for both projects is now in the neighborhood of \$ 9.3 million as opposed to \$5.1 when it all began?

*Melanie*

Melanie M. Hill, Executive Director  
Tennessee Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda)

Phone: 615-741-2364

Fax: 615-741-9884