

Minutes of the New Jersey Health Care Facilities Financing Authority Special Meeting held on October 19, 2007 on the fourth floor of Building #4, Station Plaza, 22 South Clinton Avenue, Trenton, New Jersey.

The following **Authority Members** were in attendance:

Gus Escher, Public Member (Chairing as Vice Chairman); Moshe Cohen, Public Member (via telephone); Ulysses Lee, Public Member (via telephone); Eileen Stokley, Designee of the Commissioner of Human Services; Maryann Kralik, Designee of the Commissioner of Banking and Insurance; and Edward Tetelman, Designee of the Commissioner of Health and Senior Services (via telephone).

The following **Authority staff members** were in attendance:

Mark Hopkins, Steve Fillebrown, Susan Tonry, Carole Conover, Suzanne Walton, and Stephanie Bilovsky.

The following **representatives from State offices and/or the public** were in attendance:

Dan Kane, Ruth Dugan, Bayonne Medical Center; Sharon Price-Cates, Governor's Authorities Unit; and, Clifford T. Rones, Deputy Attorney General.

CALL TO ORDER

Mr. Escher called the meeting to order at 10:05 a.m. and announced that this was a special meeting of the Authority. In accordance with the provisions of the Open Public Meetings Act and the Authority's By-laws, notice of this meeting was advertised in *The Star-Ledger* and the *Courier Post* 48 hours in advance of the meeting.

APPROVAL OF LOAN TO BAYONNE MEDICAL CENTER

Mark Hopkins stated that the Members are being asked to consider lending \$2.5 million of the Authority's fund balance to Bayonne Medical Center ("BMC"). He reminded the Members that BMC is in bankruptcy and has requested that the Authority provide the loan to help BMC reach a transaction with a potential purchaser determined through a bankruptcy auction process.

After rejecting two proposed bids as insufficient, the bankruptcy judge ordered an open auction to take place on Wednesday, October 24, 2007. The auction may not result in a purchaser satisfactory to the bankruptcy court, however, if the bankruptcy court approves a purchaser after the auction, it is expected that BMC will need additional funds to continue its operations until the transaction with the purchaser can be completed.

Mr. Hopkins presented two scenarios of conditions and stated that staff recommends that any loan issued from the Authority's fund balance to BMC be subject to either all of the conditions set forth in Scenario 1 or all of the conditions set forth in Scenario 2. The scenarios presented are as follows:

SCENARIO 1

- (a) the Authority receives an equal security interest in the mortgage and other security (pari passu) under the debtor-in-possession financing provided by Kimco;
- (b) the bankruptcy court identifies a purchaser no later than October 26th, 2007;
- (c) the purchaser indicates it intends to operate at least a substantial portion of the facility as a health care facility, including emergency services;
- (d) the purchaser is acceptable to the Authority, taking into consideration the purchaser's demonstrated ability to capitalize the acquisition of BMC and the purchaser's demonstrated experience in operating a health care facility; and
- (e) there are sufficient funds available, including the Authority's \$2.5 million loan, to continue the operations of BMC through the projected date of acquisition by the purchaser, (these funds may come from funds provided by the purchaser, or funds provided by the City of Bayonne through a bond or note issue by it);

-- or --

SCENARIO 2

- (a) the Authority receives a priority security interest second to Kimco on the mortgage and other security that secures the DIP loan;
- (b) the bankruptcy court identifies a purchaser no later than October 26th, 2007;
- (c) the purchaser agrees that it will assume the Authority loan, with the bankruptcy court's approval, under the same terms and conditions offered to BMC, with the addition of the security required by subsection (e) below;
- (d) the purchaser is a "health care organization" as defined by the Authority's enabling statute and agrees to operate at least a substantial portion of the facility as a health care facility, including emergency services;
- (e) the purchaser provides sufficient security for the loan in the form of a gross revenues pledge and/or a mortgage on all or a portion of the property;
- (f) the purchaser is otherwise acceptable to the Authority, taking into consideration the purchaser's demonstrated ability to capitalize the acquisition of Bayonne Medical Center and the purchaser's demonstrated experience in operating a health care facility; and
- (g) there are sufficient funds available, including the Authority's \$2.5 million loan, to continue the operations of Bayonne Medical Center through the projected date of acquisition by the purchaser (any additional funds may come from funds provided by the purchaser, or

funds provided by the City of Bayonne through a bond or note issue by it).

Mr. Hopkins recommended that both scenarios be approved, allowing the purchaser to select which scenario of conditions it would prefer.

Staff also recommends that if the Authority Members approve a loan it should be for no more than a three to five year period with monthly payments at an interest rate, adjusted monthly, equal to the New Jersey Cash Management Fund interest rate as of the first day of each previous month plus 2%.

Further, should the loan be approved, BMC requests an expedited review of the minutes of the Authority's meeting and specific approval by the Governor because failure to issue the loan by October 24th may result in BMC's inability to continue its operations past October 25th until a transaction can be consummated with a purchaser.

Mr. Hopkins added that the conditions recommended by staff were included in order to help ensure that health care services will continue in the city of Bayonne and to protect the security of the bond insurer, FSA, whose security could be damaged if there is no purchaser selected.

Mr. Rones pointed out that language in the memo states "acceptable to the Authority" which generally requires Authority Board action. It was clarified that, in this case, the ability to identify what is "acceptable to the Authority" would be delegated to the Authority's Executive Director, with the advice of the Attorney General's office. It was agreed that language clarifying that definition of "acceptable to the Authority" would be added to the Resolution and all motions going forward with respect to the proposed Bayonne Medical Center loan would assume that definition.

At this point, Mr. Tetelman made a motion to approve the loan in the amount of \$2.5 million on behalf of BMC, contingent upon the conditions set forth in either Scenario 1 or Scenario 2. Ms. Stokley seconded.

Dr. Cohen asked if the physicians support the purchase of the hospital, to which Ms. Dugan replied that the physicians do support the purchase, have sent letters stating such, and were willing to attend this meeting if necessary to show the support, though they were informed that it was not necessary. Mr. Kane added that there is significant involvement on the physicians' part in working with the bidders, as well. One of the expected bids includes physician investors, and 20 to 30 doctors have already signed on with interest in this opportunity.

Mr. Tetelman asked if the bidders are for-profit, to which Mr. Kane replied that interest has been shown by both for-profit and non-profit bidders, the latter being a real estate group working with a non-profit entity, and the former is a limited liability company that has engaged in discussions with the Authority and the union. This for-profit entity is also the one involving physician investment.

Ms. Dugan replied to a question from Mr. Escher, stating that yes, multiple bids are expected. The deadline for the bids is Monday October 22nd, the auction will be held on Wednesday, October 24th.

Mr. Hopkins replied to a question from Mr. Tetelman stating that, in Scenario 2, the Authority would be second in line to Kimco and the danger in that would be if the approved purchaser agrees to the Authority's conditions, leading the Authority to close on the loan, and then the purchaser backs out of the sale. In that situation, if the facility

was then sold off in bankruptcy, and the recovered funds fell short of Kimco's repayment, the Authority would not be repaid.

Mr. Kane stated that projections show that BMC will deplete all its cash by the first week of November. At that point, the Authority's funds would be loaned to the Medical Center. Mr. Hopkins added that, according to the projected timeline, the Authority's loan would be outstanding and at risk for approximately two to three months. The condition that softens the Authority's risk in the purchaser pull-out situation, is that the Authority can deny the issuance of the loan if the Authority fears that the purchaser does not have significant cash to complete the sale.

Dr. Cohen stated that he would like to impose a condition that the Authority receive a mortgage on the full property. Mr. Hopkins noted that the Authority likely will not be able to require more security than the loan is worth, which a mortgage on the full property would surely be. Dr. Cohen expressed that while cash can be depleted, real estate remains and he would like that security upon issuance of the loan in the event that the purchaser backs out of the sale. It was clarified that Kimco currently holds the mortgage and the Authority would not be able to get a mortgage until after the closing of the purchase, regardless. Mr. Hopkins added that the mortgage requirement can only be included at all if Scenario 1 is selected. He also noted that Kimco has already expressed disinterest in allowing the Authority to participate in the DIP financing.

Dr. Cohen stated that he would like the option to vote to only allow the loan under Scenario 1. Mr. Tetelman agreed that once the question session was finished, he would amend his motion accordingly so that this option would also be available for the Members.

Mr. Lee asked, in reference to Scenario 2 [condition (a)], if the order of repayment for the DIP financing's other security holders would be worked out by Kimco, to which Mr. Hopkins replied that it would likely be the court that decides where those creditors fall in line for repayment. Mr. Lee asked if Scenario 2 could be met with resistance from the other security creditors of the DIP financing, to which Mr. Hopkins said it is possible. In previous discussions regarding the Authority's potential loan, FSA was not opposed to this format, though its position may have since changed. Mr. Lee asked if Kimco could unilaterally grant participation in the DIP financing, to which Mr. Hopkins replied he believes that such participation would also be determined by the court.

Mr. Hopkins replied to a question from Mr. Escher, stating that the court may reject all bids, in which case no funds would be loaned by the Authority. Mr. Escher noted that Scenario 2 requires that the purchaser be a health care organization, but the first scenario does not. Mr. Hopkins explained that, in the second scenario, the purchaser assumes the loan, and in order for the Authority to be able to loan funds directly to that purchaser, it must be a health care organization.

There were no further questions. Mr. Tetelman amended his resolution to make a motion that the Authority approve the loan in the amount of \$2.5 million on behalf of BMC, contingent upon the conditions set forth in only Scenario 1. Ms. Stokley amended her second to match the new motion. Mr. Escher voted yes, Dr. Cohen voted yes, Mr. Lee voted no, Ms. Kralik voted yes, Ms. Stokley voted yes, and Mr. Tetelman voted no. The motion carried.

AB RESOLUTION NO. HH-59

NOW, THEREFORE, BE IT RESOLVED, That the Authority hereby adopts the resolution entitled “RESOLUTION AUTHORIZING A LOAN FROM THE NEW JERSEY HEALTH CARE FACILITIES FUND BALANCE TO BAYONNE MEDICAL CENTER”, however, only allowing the loan to be issued contingent upon the conditions of Scenario 1.

Mr. Tetelman then made a second motion to approve the loan in the amount of \$2.5 million on behalf of BMC, contingent upon the conditions set forth in *either* Scenario 1 or Scenario 2. Mr. Escher seconded.

Mr. Roncs clarified that this follow-up motion would then render the motion just approved to effectively be the same as the original motion moved by Mr. Tetelman at the start of the meeting. Therefore, approval of this motion currently on the table would override the requirement for the loan to fit Scenario 1, allowing the loan to fit either Scenario 1 or Scenario 2. Mr. Escher voted yes, Dr. Cohen voted no, Mr. Lee voted yes, Ms. Kralik abstained, Ms. Stokley voted yes, and Mr. Tetelman voted yes. The motion carried.

AB RESOLUTION NO. HH-60

NOW, THEREFORE, BE IT RESOLVED, That the Authority hereby adopts the resolution entitled “RESOLUTION AUTHORIZING A LOAN FROM THE NEW JERSEY HEALTH CARE FACILITIES FUND BALANCE TO BAYONNE MEDICAL CENTER”, allowing the loan to be issued under either all the conditions set forth in Scenario 1 or all the conditions set forth in Scenario 2.

EXPEDITED REVIEW OF THE MINUTES

Mr. Tetelman then made a motion authorizing the Assistant Secretary to execute a certified copy of minutes from this portion of the meeting to be forwarded to the Governor for his consideration of these actions; Mr. Lee seconded. The vote was unanimous and the motion carried.

Mr. Kane thanked the Authority for working on such short notice to help Bayonne Medical Center continue to provide services in the city of Bayonne.

ADJOURNMENT

As there was no further business to be addressed, Mr. Tetelman moved to adjourn the meeting, Ms. Kralik seconded. The vote was unanimous, and the motion carried at approximately 10:35 a.m.

I HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE COPY
OF MINUTES OF THE NEW
JERSEY HEALTH CARE
FACILITIES FINANCING
AUTHORITY SPECIAL MEETING
HELD ON OCTOBER 19, 2007.

Carole Conover
Assistant Secretary

See **AB RESOLUTIONS NO. HH-59** and **HH-60**

**RESOLUTION AUTHORIZING A LOAN FROM THE NEW JERSEY
HEALTH CARE FACILITIES FUND BALANCE TO BAYONNE
MEDICAL CENTER**

WHEREAS, Bayonne Medical Center has requested that the New Jersey Health Care Facilities Financing Authority provide a \$2,500,000 bridge loan to Bayonne Medical Center, and

WHEREAS, Bayonne Medical Center is in bankruptcy, and

WHEREAS, Bayonne Medical Center requests that the Authority provide the loan to help the Medical Center reach a transaction with a potential purchaser determined through a bankruptcy auction process, and

WHEREAS, after rejecting two proposed bids as insufficient, the bankruptcy judge ordered an open auction to take place on Wednesday, October 24, 2007, and

WHEREAS, if the bankruptcy court approves a purchaser after the auction, it is expected that Bayonne Medical Center will need additional funds to continue its operations until the transaction with the purchaser can be completed, and

WHEREAS, the Authority is authorized to make loans to health care organizations as defined in the Authority's enabling legislation.

NOW THEREFORE BE IT RESOLVED, That the Authority hereby authorizes a loan from its fund balance of an amount not to exceed \$2,500,000 to Bayonne Medical Center for a period of not to exceed five years at an interest, adjusted monthly, equal to the New Jersey Cash Management Fund interest rate as of the first of each previous month plus 2%, under the following conditions:

Scenario 1.

(a) the Authority receives an equal security interest in the mortgage and other security (pari passu) under the debtor-in-possession financing provided by Kimco;

(b) the bankruptcy court identifies a purchaser no later than October 26th, 2007;

(c) the purchaser indicates it intends to operate at least a substantial portion of the facility as a health care facility, including emergency services;

(d) the purchaser is acceptable to the Authority, taking into consideration the purchaser's demonstrated ability to capitalize the acquisition of Bayonne Medical Center and the purchaser's demonstrated experience in operating a health care facility; and

(e) there are sufficient funds available, including the Authority's \$2.5 million loan, to continue the operations of Bayonne Medical Center through the projected date of acquisition by the purchaser, (these funds may come from funds provided by the purchaser, or funds provided by the City of Bayonne through a bond or note issue by it);

-- or --

Scenario 2.

(a) the Authority receives a priority security interest second to Kimco on the mortgage and other security that secures the DIP loan;

(b) the bankruptcy court identifies a purchaser no later than October 26th, 2007;

(c) the purchaser agrees that it will assume the Authority loan, with the bankruptcy court's approval, under the same terms and conditions offered to BMC, with the addition of the security required by subsection (e) below;

(d) the purchaser is a "health care organization" as defined by the Authority's enabling statute and agrees to operate at least a substantial portion of the facility as a health care facility, including emergency services;

(e) the purchaser provides sufficient security for the loan in the form of a gross revenues pledge and/or a mortgage on all or a portion of the property;

(f) the purchaser is otherwise acceptable to the Authority, taking into consideration the purchaser's demonstrated ability to capitalize the acquisition of Bayonne Medical Center and the purchaser's demonstrated experience in operating a health care facility; and

(g) there are sufficient funds available, including the Authority's \$2.5 million loan, to continue the operations of Bayonne Medical Center through the projected date of acquisition by the purchaser (any additional funds may come from funds provided by the purchaser, or funds provided by the City of Bayonne through a bond or note issue by it).

BE IT FURTHER RESOLVED, That the Executive Director of the Authority, with the advice of the Attorney General's office, is hereby authorized to determine whether or not a purchaser of Bayonne Medical Center is "acceptable to the Authority", and that the Chairman, Vice-Chairman, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, Executive Director or Deputy Executive Director of the Authority are hereby authorized to execute and deliver on behalf of the Authority any document required to effectuate the loan transaction in forms satisfactory to the authorized officer and the Attorney General and upon receipt of such opinions and other documents as the Attorney General may require.