

**BEFORE THE ARKANSAS HEALTH SERVICES PERMIT AGENCY**

**In the Matter of:**  
**Orchard Court**  
**File # HSPA (1275)-10**

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

**Findings of Fact**

The applicant, **Orchard Court, LLC**, is seeking a Permit of Approval (POA) for the purpose of constructing a new 75 bed Assisted Living Level II Facility to be called **Orchard Court**, located at Pittman and Airport Rd, Hot Springs, AR (Garland County). Projected capital expenditure is \$3,920,000. The Agency makes the following findings of fact:

**NEED:** The net need for Assisted Living beds in Garland County is **393**; there is one (1) operating ALF in the county that is licensed for 40 beds and two ALFs approved for 125 beds. There are 128 beds in the six Residential Care Facilities in the county. There are currently 293 approved and licensed beds in Garland County, there is also an additional application for 75 ALF beds; the addition of these 75 beds will bring the total to 443.

**STAFFING:** The Agency has no objective reason to believe the proposed facility could not be adequately staffed. The applicant provided a staffing list based on 75 beds and plans to exceed minimum staffing standards. The applicant plans to recruit locally by word of mouth and by using newspapers.

**ECONOMIC FEASIBILITY:** The applicant provided a construction budget that reflects the 75 beds. Construction costs for the overall project amounts to approximately \$3.5 million based on 40,000 sq/ft at \$105 per sq/ft, which is below the national average. The applicant plans a payor ratio of 100% commercial loans. The applicant provided a letter from *Iberia Bank* for \$3.9 million, dependent upon “negotiation of final documentation and evidence of approval by the Agency and awarding of the Permit of Approval.” The applicant provided a new pro forma budget that reflects a 75 bed facility with increasing census from year one through year three.

**COST CONTAINMENT:** Applicant states that the new assisted living facility will incorporate new environmental equipment and lay out concepts that will improve efficiency and a new facility will provide short and long term stay for patients not qualifying for skilling nursing home care. Applicant also states that the availability of a placement source will enhance community services and may reduce the incidence of injury or re-injury associated with non-compliant discharge orders.

**LETTERS OF OPPOSITION AND RESPONSES:** There was one letter of opposition submitted by Leo N Levi Memorial Hospital.

#### Opponent's Comments

Levi Hospital alleges that Mr. Montgomery does not have the financial wherewithal to acquire and fully implement this Permit of Approval.

#### Applicant's Response

The applicant's attorney states that the applicant has several projects nearing completion. The Opponent seeks to confuse the issues by interjecting a private litigation matter into the public forum. The Applicant states that the regulatory requirements for issuance of a POA have been met.

#### Conclusions of Law

The application **DOES NOT SATISFY** the statutory and regulatory requirements for the issuance of a Permit of Approval to construct a new 75 bed Assisted Living Level II Facility to be called **Orchard Court**. This project is to be financed 100% with commercial loans. Although the applicant provided a letter from Iberia Bank, the letter lacks the commitment required by the Agency to assure that adequate funding is securely in place to finance the project. Agency contacts with the bank in February 2010 indicated that the bank considered the loan "likely" but that additional documentation was needed before a decision could be made. Recent conversation with the bank of April 15<sup>th</sup> indicated that the bank had no additional conversation or information with the applicant and was still in need of

additional information in order to make a decision on a loan. There was one letter of opposition to this application.

### ORDER

Based on the above Findings of Fact and Conclusions of Law, the Agency hereby orders that the Applicant, **Orchard Court, LLC**, be **DENIED** a Permit of Approval (POA) for the purpose of constructing a new 75 bed Assisted Living Level II Facility to be called **Orchard Court**, located at the corner of Pittman and Airport Rd, Hot Springs, AR (Garland County). The projected capital expenditure is \$3,920,000.

Appeals before the Health Services Commission are provided for under Section V.B. 15, Policies and Procedures for Permit of Approval Review, and will be conducted in accordance with the State Administrative Procedure Act, Act 434 of 1967, as amended. **All appeals must be filed in writing within 30 days of the receipt of these findings.** Appeals will be heard on June 16, 2010, at the AR Department of Environmental Quality on North Shore Drive in North Little Rock at 10:00 AM.

IT IS SO ORDERED THIS 19<sup>th</sup> DAY OF APRIL 2010

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DIRECTOR, HEALTH SERVICES PERMIT AGENCY