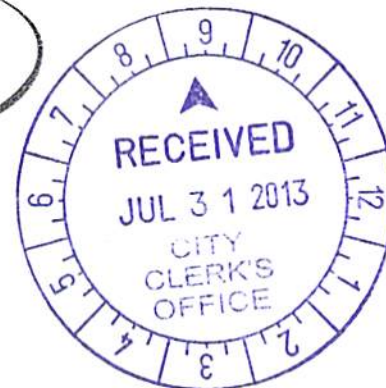


# Bethany Lutheran Homes

A GUNDERSEN LUTHERAN AFFILIATE

GREAT PEOPLE, GREAT CARE!



July 29, 2013

La Crosse Planning Committee and City Council:

I would like to take this opportunity to provide you with additional information and help you better understand some of the unique circumstances surrounding our planned Eagle Crest South project.

Our Eagle Crest South project is the result of 4 years of work and over ½ million dollars already invested in developing a senior living project in La Crosse as desired by your constituents. Last summer we announced our plan to build Eagle Crest South in La Crosse and within a week's time we had over 100 people call to be placed on the reservation list, that number is closer to 200 today. The number of seniors is growing every day. Over the next 27 years the number of seniors needing the services that Bethany Lutheran Homes desires to provide, will more than double. The message is the longer we delay a project that is so desired the less time we have to serve those who need the service; people continue to age every single day.

What most people see when a project like this is coming together are the pretty pictures and a vision of what it will look like and include when it is built. What they don't see are the very detailed technical aspects of putting a project like this together and making it work. I cannot overestimate the technical aspects that go into developing a senior housing project that provides the living experience and amenities that will be provided at Eagle Crest South. Senior housing projects are very cost sensitive, every dollar that goes into developing the project, all operational costs, taxes, PILOT, fees, etc. are built into the cost of living there. The higher the cost of living the fewer seniors will be able to afford the cost to live there. Our Eagle Crest projects are abnormal as compared to comparable senior living projects around the country. Senior living communities of this caliber have always been funded by charging those moving in entry fees ranging from \$75,000 to \$250,000 which may or may not be refundable in whole or part if a person decides to move out or passes away.

By working with the best consultants in the business and an architect that specializes in senior housing projects we have found a way to value engineer our projects so even seniors with modest income levels can afford to live there. We charge a refundable \$1000 damage deposit to reserve an apartment and we only require a 30 day notice to move out; nowhere in the country will you find that kind of deal for the same caliber of senior living as our Eagle Crest projects. We are also able to accept those who qualify for Western Wisconsin Cares payment if they are not able to pay privately. WWC payment is typically 75-80% of our normal fee structure. Our mission is to serve as many people as we possibly can.

#### Corporate Office

2575 South 7th Street • La Crosse, WI 54601 • (608) 775-9900 • Fax (608) 775-8270  
[www.bethanylutheranhomes.org](http://www.bethanylutheranhomes.org)

One of the issues the City attorney has brought up is a state code which sets municipal limits on the number of licensed CBRF apartments within a municipal boundary. We believe we are well within the number allowed, which allows for up to 1% of the municipal population or about 500 licensed apartments. The number of licensed apartments is currently 223, Eagle Crest South will add 64 more for a total of 287. Subsequent language in the same code also restricts how close CBRF facilities can be from one another. The code states they cannot be any closer than 2500 feet from one another without a waiver. This district already has three CBRF's within the 2500 foot distance from one another. Bethany Lutheran Homes has Hearten House I & II on our existing Riverside campus which are located about twenty feet from one another. Gundersen also owns Sagen Center which is a licensed CBRF (Bethany Lutheran Homes Manages this Facility for Gundersen) which is located at 2221 Simms Place, across the street from our planned Eagle Crest South project. If a waiver is needed, we respectfully request the counsel's support in granting the waiver required by the City of La Crosse.

If given the option Bethany Lutheran would choose not to license the 64 apartments as CBRF. The reasons being the regulations are much greater than RCAC assisted living regulations. Also the cost to build the 64 apartments as CBRF is adding about two million dollars in extra cost to the project due to the state building code requirement for the construction of CBRF facilities (it must be steel frame non combustible).

**Project Summary:**

Cost \$30,000,000

BLH Equity Contribution \$6,000,000

Financing Amount \$24,000,000

Construction Length 14 months

New Employees 70

Projected Opening Fall 2014

**Project Make-up**

80 RCAC Independent Living Plus Apartments

34 CBRF High Acuity Assisted Living Apartments

18 CBRF Memory Care Apartments

12 CBRF End of Life Hospice Eligible Apartments

**Total 144**

The reason we are licensing the 64 apartments as CBRF are threefold. 1) In order to provide services to those needing end of life hospice care, we need to do so in a CBRF setting if we want to be able to provide the levels of care that will be needed. The CBRF license allows the highest level of care and nursing hours possible outside of a nursing home. If a person is eligible for hospice services the nursing hour limitation is waived in a CBRF licensed facility so we can provide unlimited levels of care and support for the families; 2) Our mission compels us to provide care in the setting most desired. One of the biggest reasons a person ends up in a nursing home for long periods of time is due to the fact that

traditional RCAC assisted living is not designed to care for people with higher care needs and in need of help with transferring or other assistive devices. The RCAC assisted living license also has a much less patient care limitation so once they max out the care limits allowed by the RCAC license they have to be discharged to a nursing home. We believe that long-term care should be provided in the assisted living setting and nursing home care should be reserved for short term transitional care and rehabilitation. We are taking a bold step in designing a CBRF licensed facility that will be able to care for the typical long-term nursing home patient in an assisted living setting where they have their own private apartment, and a lot of amenities and conveniences at less cost than nursing home care, and to continue to enjoy their life to its fullest. We believe this is the future of long-term care; 3) Memory care at higher levels can only be provided in a CBRF licensed facility. Bethany Lutheran currently has 4 CBRF licensed facilities providing memory care in our continuum of care and the Eagle Crest South project would also provide memory care.

**Restrictions on the use of the land Bethany Lutheran Homes is leasing for the project:**

When the permit was issued to Gundersen to fill the area of land that our project sits on they also imposed very strict limitations on what could be built on the site and that it must be owned and operated by a non-profit. The limitations for use on this piece of property essentially make it undevelopable by a for-profit or other types of development outside the very limited exceptions. To follow is an excerpt from the language from the DNR regarding the use of the land we will be leasing for the Eagle Crest South project.

(Information continues on next page)



*H. D. Simon*

*Wale Ahlstrom -  
La Crosse*

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl  
Secretary

BOX 7921  
MADISON, WISCONSIN 53707

September 5, 1978

IN REPLY REFER TO: 8300

Mr. Robert D. Smyth  
Attorney at Law  
Suite 400 Newburg Building  
421 Main Street  
P. O. Box 2047  
La Crosse, Wisconsin 54601

RECEIVED  
SEP 8 1978  
DNR La Crosse Area

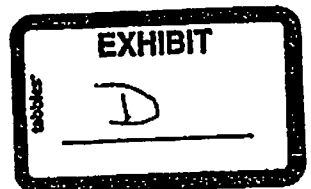
Dear Mr. Smyth:

You have been in communication with Department Attorney George Meyer as to whether a proposed sale of filled La Crosse Lutheran Hospital property to Bethany Lutheran Home would be in compliance with condition #12 of Permit 3-WR-1594. That condition required that the filled areas be used only for public purposes.

Our review has indicated that the property to be transferred to Bethany Lutheran Home will be used for the construction of a nursing home for the elderly. The information you submitted also illustrates that Bethany Lutheran Home is a nonstock and nonprofit organization.

You have also indicated that a deed restriction will be placed on the property requiring that it be solely used for a nursing home and related services pertaining to the care of the elderly.

It is this agency's opinion that the proposed use will be consistent with condition #12 of Permit 3-WR-1594 if the above-stated deed restriction is modified to ensure that the nursing home be operated as a nonprofit organization. Another deed restriction should also be included that no further change be made in usage of the property without written concurrence from the Wisconsin Department of Natural Resources that the then new use will be for a public purpose.





**TAYLOR LAW GROUP • LLC**

MEDICAL | EMPLOYMENT | CORPORATE | LITIGATION

April 14, 2011

Secretary Cathy Stepp  
Wisconsin Dept. of Natural Resources  
101 S. Webster Street - AD/8  
P.O. Box 7921  
Madison WI 53707-7921

RE: *Gundersen Lutheran Medical Center, Inc.*  
*f/k/a Lutheran Hospital – La Crosse, Inc.*  
*Dredging Permit*  
*Permit to Realign Swift Creek and Establish New Bulkhead Lines*  
*DNR File No. 3-WR-1594*  
*City of La Crosse Bulkhead Ordinance, §21.15*

Dear Secretary Stepp:

Our law firm has been retained to represent Gundersen Lutheran Medical Center, Inc. f/k/a Lutheran Hospital – La Crosse, Inc. (“Hospital”) in connection with the above-referenced Department of Natural Resources (“DNR”) file and permits. The Hospital respectfully requests DNR permission to lease an approximately 8-acre parcel of the filled land at the intersection of Seventh Street and Bennora Lee Court to an affiliated nonprofit organization. The lease would allow the affiliated nonprofit organization to construct a new Senior Living Complex and Care Center for elderly, cognitively impaired and other patients.

With this letter, we will provide you with additional background information concerning this request. For the reasons hereinafter set forth, we believe that the requested use is consistent with the terms of the above permits and Wisconsin’s public purpose doctrine as reflected in applicable Wisconsin case law.

**I. General Background Concerning The Hospital.**

Gundersen Lutheran Medical Center, Inc. (“Hospital”) is a Wisconsin nonprofit corporation and tertiary hospital with its principal offices at 1910 South Avenue, La Crosse, Wisconsin 54601. Incorporated in 1899, the Hospital currently has 325 licensed beds and provides inpatient and outpatient hospital services in LaCrosse,

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Wisconsin to patients who reside in western Wisconsin, northeastern Iowa and southeastern Minnesota.

The Hospital has been nationally recognized for providing high quality patient care. The Hospital recently received a 2011 HealthGrades Distinguished Hospital Award for Clinical Excellence. Gundersen Lutheran was one of the 268 nationwide hospitals to achieve that distinction. Other awards received by the Hospital in 2011 include:

- A HealthGrades 2011 Excellence Awards for Cardiac Care, Cardiac Surgery, Coronary Intervention, Orthopaedic Surgery, Joint Replacement Surgery, Pulmonary Care, Prostatectomy, General Surgery, Gastroenterology (GI) Care and GI Surgery and Critical Care.
- Recognition by Thompson Reuters healthcare as a Top 100 Hospital in terms of National Benchmarks for Success, Performance Improvement Leaders, and Cardiovascular Benchmarks for Success.

The Hospital recently broke ground on a major new critical care hospital tower that will further enhance its ability to provide high quality trauma, surgical, cardiac and other care to patients in the tri-state area.

## **II. Proposed New Senior Living Complex And Care Center.**

The Hospital and an affiliated nonprofit organization are considering the possibility of a new Senior Living Complex and Care Center that would be located at the intersection of Seventh Street and Bennora Lee Court in La Crosse, Wisconsin. The parcel in question includes approximately 8 acres of land bounded by Bennora Lee Court on the north, the Gundersen Lutheran Child Care Center on the east, Swift Creek on the south, and Seventh Street on the west.

The Hospital would enter into a long-term land lease with Bethany Lutheran, leasing the 8 acre parcel of land for a period of 30 to 40 years, with several options to renew. Upon expiration or early termination of the lease, the real estate and improvements would revert to the Hospital. The nonprofit affiliated would construct a new Senior Living Complex and Care Center that, as currently contemplated, would include:

- 225 to 250 apartments affording different levels of care including independent living, assisted living, memory care, high acuity assisted living, and hospice care;

- Select medical care services to be provided by the Hospital and its nonprofit affiliates in the Gundersen Lutheran Health System that are complementary to the resident population such as on-site patient examination rooms for the provision of medical care to elderly, cognitively impaired and other patients

### III. Background And History Of Previous DNR Determinations.

Prior to 1969, Swift Creek was located just to the south of the current BNSF Railway Company right-of-way. On December 9, 1969, the DNR issued a ruling and channel realignment permit, authorizing the City of La Crosse and the Hospital - then known as La Crosse Lutheran Hospital, Inc. - to proceed with the realignment of Swift Creek. In connection with ruling, the DNR authorized the City to establish a new bulkhead line, relocating Swift Creek. That was completed by the City on July 12, 1973, contingent upon the DNR's issuance of permits authorizing the Hospital to fill the area with dredged sand from the Mississippi River.

The purpose of the foregoing project was several-fold: first, to allow relocation of the existing BNSF railroad right-of-way; second, to allow a major expansion of the Hospital; third, to facilitate relocation of the Hospital's front entrance from South Avenue to the south side of the building; and, fourth, to pave the way for other Hospital facilities including the inpatient psychiatric hospital, resident housing, the child care center, and other health-related nonprofit housing facilities.

After a long regulatory process, the DNR issued a ruling on July 18, 1973, followed by a dredging permit two days later, authorizing the Hospital to proceed with the project. See Permits 3-WR-1594. Copies of those permits are attached hereto and incorporated by reference as Exhibits A and B. One of the key conditions of the ruling and the dredging permit was that "[t]he filled area shall only be used for public purposes." As subsequently interpreted by the DNR and the Hospital, that means that the filled area:

shall be used for such legal activities as the Board of Trustees of the La Crosse Lutheran Hospital may determine to engage in, including use for health, health related and health connected facilities, as determined from time to time by the said Board. Said services and facilities shall include, but not be limited to, such ancillary, eleemosynary, housing, geriatric, and recreational uses as are consistent with such health, health related and health connected services.

See DNR Letter to Maury Mertz dated December 21, 2000. A copy of that letter is attached hereto as Exhibit C.

Several years later, on September 5, 1978, the DNR authorized the Hospital to sell a portion of the filled land to Bethany Lutheran for the Bethany Riverside Nursing Home. See DNR Letter to Robert Smyth dated September 5, 1978. A copy of that letter is attached hereto as Exhibit D. In doing so, the DNR determined that the sale and proposed use was consistent with the "public purpose" condition in Permit 3-WR-1594. It is important to note, however, that the DNR's approval was contingent upon several things:

- First, the Hospital's representation that Bethany Lutheran was a nonstock, nonprofit organization;
- Second, the Hospital's representation that the parcel would be used for construction of a nursing home for the elderly; and
- Third, the Hospital's agreement to place a deed restriction on the parcel, requiring that "it be solely used for a nursing home and related services pertaining to the care of the elderly."

**IV. The Proposed Lease Is Consistent With The Public Purpose Doctrine And The Past Rulings Of The DNR.**

As previously noted, the Hospital is proposing to lease the 8-acre parcel in question to an affiliated nonprofit organization for the express purpose of constructing a Senior Living Complex and Care Center.

- The land would continue to be owned by the Hospital;
- The proposed facility would be constructed and operated by a nonprofit organization;
- The facility would provide health and other care to elderly, cognitively impaired and other patients; and
- Upon expiration of the lease, the land and the facility would revert to the Hospital.



April 14, 2011  
Page - 5 -

- There would be no transfer or conveyance of the land and the facility to any person or entity other than the Hospital without obtaining DNR permission.

In short, the terms and conditions proposed by the Hospital are consistent with the public purpose doctrine and the conditions established by the DNR in 1973.

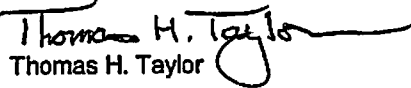
**V. Conclusion.**

For all of the foregoing reasons, the Hospital respectfully requests that the DNR authorize the Hospital to proceed with the foregoing transaction as proposed. The Hospital and the affiliated nonprofit organization in question are hoping to break ground on the construction of the new facility during September or October 2011. To facilitate that process, we would be pleased to meet with DNR officials and representatives in the near future to answer any questions that you might have.

Thank you for your assistance and cooperation in reviewing this request. If you have any questions during the interim, please contact me at either (608) 783-3003 or [ttaylor@taylorlawgroup-llc.com](mailto:ttaylor@taylorlawgroup-llc.com).

Sincerely yours,

**TAYLOR LAW GROUP, LLC**

  
Thomas H. Taylor

THT:slf

Enclosures

cc: Daniel J. Lilly, CPA, JD, General Counsel  
Daryl Applebury, Chief, Corporate Ventures, Partnerships & Investments

**Tax Exempt/PMS agreement:**

We hope to pay a PILOT/PMS because that means that the City Assessor has done his analysis and determined that the property is tax exempt. The City attorney has explained to us that he cannot interfere with the Assessor's legal obligation to do his analysis when the project is complete and decide if the property is tax exempt, therefore he cannot draft an agreement that includes the condition that the property be tax exempt ahead of time. We understand the factors involved in the Assessor's analysis because of our Onalaska project. We hope that the City Assessor determines that the property is tax exempt and that puts us into a position of being able to make a payment in lieu of taxes or payment for municipal services. Like the City, we cannot agree to do both, and therefore we are forced to wait for the project completion and for City Assessor's analysis. We want to be good neighbors in the community we believe the emergency services provided are good and valuable to our residents. We do intend to make a reasonable payment for municipal services, assuming the Assessor comes back with the determination of tax-exempt. Unfortunately, our verbal intentions are the best that we can give you at this time.

**Removal of Bethany Lutheran Home's project from Gundersen's Development Agreement with the City of La Crosse.**

Both the City of La Crosse and Gundersen agree that the land we are leasing is not included in the development agreement. However, the company doing the title work for our financing said there is enough vagueness in the language to make people wanting to finance the project leery. Therefore they recommend that it be clearly stated in the City record that this parcel of land and our project are not included in the development agreement between Gundersen and the City.

Because there is no language in the city code book for doing this, it was indicated we need to have either the mayor or a council member sponsor our request to have it removed from the development agreement to satisfy the title insurance requirement.

If you have any questions please do not hesitate to e-mail or give me a call. [tdwilson@gundersenhealth.org](mailto:tdwilson@gundersenhealth.org) Office, 608-775-9907 cell 608-769-3613. I will be on vacation the week of August 5<sup>th</sup>.

Respectfully

Todd D. Wilson, CEO  
Bethany Lutheran Homes Inc.  
2575 S. 7<sup>th</sup> Street  
La Crosse, WI 54601



DIVISION OF INDUSTRY SERVICES  
3824 N CREEKSIDE LA  
HOLMEN WI 54636  
Contact Through Relay  
www.dsps.wi.gov/sb/  
www.wisconsin.gov

Scott Walker, Governor  
Dave Ross, Secretary

July 30, 2013

CUST ID No. 1256392

*ATTN: Buildings & Structures Inspector*

WARD ISAACSON  
Pope Architects  
1295 BANDANA BLVD SUITE 200  
ST PAUL MN 55105

BUILDING INSPECTION  
CITY OF LA CROSSE  
400 LA CROSSE ST  
LA CROSSE WI 54601

**PERMISSION TO START CONSTRUCTION**

**SITE:**

Bethany Lutheran Eagle Crest South  
Bennora Lee Court  
City of La Crosse, 54601  
La Crosse County

**FOR:**

**Facility:** 732423 BETHANY LUTHERAN EAGLE CREST SOUTH  
BENNORA LEE COURT  
LA CROSSE 54601

Identification Numbers
Transaction ID No. 2254378 Site ID No. 791444
Please refer to both identification numbers, above, in all correspondence with the agency.

**Object Type: Building ICC** Regulated Object ID No.: 1431473 Code Applies Date: 05/29/13  
Major Occupancy: Residential; Type VA Combustible Protected class of construction; New plan;  
213,083 project sq ft; Completely Sprinklered; Occupancy: A-2 Dining & Drinking, A-3 Other  
Assembly Uses, I-2 CBRFs, R-2 Apartments & Dormitories, S-1 Storage Moderate-Hazard, S-2  
Storage Low-Hazard; Sprinkler Design: NFPA-13 Sprinkler; Allowable area determined by: Fire  
Walls

The Department of Safety & Professional Services has received construction plans for review for the subject project, submitted in accordance with the provisions of SPS 361.32, accompanied by the owner's request to begin construction work on the footings and foundations prior to departmental review and approval.

This letter will serve as the department's permission to the local building officials to allow construction of the footings and foundations only, for the subject project prior to review and approval by this department.

**NO REVIEW OF THE SUBMITTED DOCUMENTS HAS BEEN UNDERTAKEN BY THE DEPARTMENT AT THIS TIME FOR CODE COMPLIANCE.**

In accordance with the provisions of the owner's signed request to begin construction prior to departmental review and approval, the owner will be required to make any changes after the plans

have been reviewed, and to remove or replace non-code complying parts of the foundations and/or footings.

Prior to the start of construction, all applicable building permits should be obtained from the local authorities having jurisdiction in accordance with local laws and ordinances. You are responsible for complying with state and federal laws concerning construction near or on wetlands, lakes, and streams. For more information, visit the Department of Natural Resources wetlands identification web page or contact a Department of Natural Resources service center. Nothing in this approval limits the power of municipalities to make or enforce additional or more stringent regulations, providing the regulations do not conflict with this code or any other rule of the department or any law.

#### **DEPARTMENT CONDITIONS**

1. If this project is in an unsewered area, a sanitary permit must be obtained prior to the issuance of a local building permit.
2. This permission is only for footing and foundation work. Construction of the remainder of the building shall not take place prior to departmental review and conditional approval of the construction plans.
3. If this construction project will disturb one or more acres of land, a Water Resources Application for Project Permits (WRAPP) (previously known as the Notice of Intent) shall be filed with the Department of Natural Resources prior to any land-disturbing activities. More information regarding the DNR's permitting requirements for runoff management for construction sites can be found at the DNR's website, <http://dnr.wi.gov/runoff/stormwater/constrforms.htm> .
4. This "Permission to Start" does not include permission to install any underground plumbing, including sanitary/storm sewers, or water or mains. All projects needing submittal per SPS Tables 382.20-1&2 must have complete plumbing plans, application, and fees submitted and approved prior to commencement of any plumbing work.
5. A copy of the plans that were submitted to our agency for which this Permission to Start was issued shall be kept on the jobsite with this letter.

Inquiries concerning this correspondence may be made to me at the telephone number listed below, or at the address on this letterhead. Please refer to **Transaction ID No.** referred to in **the regarding line** when making an inquiry or submitting additional information.

Sincerely,



John P Pearse

Architect / Bldg Plan Reviewer , Integrated Services  
(608)789-7852, Mon - Fri, 8:00 a.m. - 4:30 p.m.  
john.pearse@wi.gov

Fee Received \$ 0.00

WiSMART code: 7648

cc: Leonard Alexander, State Building Inspector, (608) 235-0582, Friday, 7:45 a.m. - 4:30 p.m.  
Todd Wilson, Bethany Lutheran Homes Inc  
Jon R Pope, Pope Architects  
David E Holmes, Elevator Inspector, (715) 828-5901, Friday, 7:00 a.m. - 3:30 p.m.