
Mark Hennessey: ...of the Continuing Care Retirement Community Council. I am Mark Hennessey, the chair of the council. I would like to call the meeting to order and welcome members, participants, and observers. Just to remind council members, staff, and audience, this meeting is subject to open-meeting law and is broadcast over the Internet. Webcasts are accessed at the Department of Health website, which is www.health.ny.gov. The on-demand webcast will be available no later than seven days after the meeting for a minimum of 30 days, and then a copy will be retained in the department for four months. There are some suggestions. We cover these during every meeting, but we will do it again. Here are some suggestions and ground rules for making this a successful meeting. We have synchronized captioning, which means that it is really important that the first time that you talk, you make sure that you announce who you are, and that will help when we get everything sort of captioned. We also have to make sure that people don't talk over each other, so we are going to have one at a time, if that is possible. If council members want to discuss something, please just give me a hand-up sign or something like that. No waving frantically; that is not necessary. I will keep an eye on everybody as we go along. So we have already covered some of the ground rules. I want to make sure that when you do put your hand up, you know that we will call on you in order. That also goes for people in the public. If you are a member of the public and you wish to speak before the council, there is going to be a public-comment period. But let me cover some of the requirements for making sure that that happens the right way. There is a form that you need to fill out if you are going to be here in the room. It is to keep us in accordance with the joint commission on public ethics and executive law Section 166. The form is also on the Department of Health website, if you want to save some time in the future. Again, that is www.health.ny.gov, under the council section of the CCRC page, so please make sure you fill out that form if you are here in the room today. I mentioned earlier that we will have a public-comment period. You are only allowed to address the council if you sign up to speak. So if you are intending to speak, you would want to go see one of the people in the back of the room there, and Susan has got her hand up, we have fantastic forms, and people can do that. And so, you can't hand out materials to the council, and we just want to make sure that if you want to have public comments, it is limited to public comments, and it will be limited to three minutes in duration. Okay?

The first order on the agenda is a report to the council on Glen Arden. Mr. Heeran?

Mr. Heeran: Hello. Before I start my report, I just kind of wanted to explain why we are here and having this discussion on this agenda item. As you are aware, council members have been notified that the department took action to temporarily suspend operating certificate of authority of Glen Arden, and the purpose of the meeting today is to take further action on that and address it with the council, and we will have those conversations shortly after I give my report, so again, I wanted to frame that for all of you, so you understand where we are going with this. So just to review the events that have occurred since the last council meeting, as it relates to Glen Arden; back in the June 20th meeting of the council, representatives of Glen Arden kind of laid out a timeline of events that would occur and certain objectives that were going to be met by their deadline of October first of this year. Council members were provided with a transcript of the meeting and the presentation that was made by Glen Arden at that meeting, which outlines those milestone events. As of September first of this year, it became apparent to DOH that the CCRC

was not going to meet the timeline and objectives as presented to the council. DOH observed that the CCRC had not made significant progress on the conditions imposed by the CCRC Council on the COA back in 2018 and a subsequent agreement with DOH. Specifically, the CCRC had failed to enter into an agreement with a third party to provide oversight on the CCRC's progress in implementing a strategic plan to correct operational deficiencies. The CCRC also failed to make progress, as per agreement with DOH, to restore a portion of the minimum liquid reserve by August of this year. Occupancy at the CCRC remains stagnant and therefore limiting monthly fee revenue. The CCRC remains reliant on cash resources from Elant, Inc. to subsidize operational cash losses. The amount of the assets remaining to support the CCRC has become questionable as to the value to be realized. The CCRC board failed to consider alternative options for addressing the CCRC's financial situation other than to continue to achieve a level of sales that would support operations. DOH requested the board to consider alternative options at the July 2019 board meeting, but it was later reported to the department that they did not have the time to discuss such options. DOH became concerned that the appropriate disclosure of relevant information was not being provided to perspective residents. This was based on direct questioning of the CCRC CEO on communications that she was having with perspective residents and DFS concerns raised to the CCRC on the adequacy of the disclosure statement to perspective residents. DOH wants to note that Elant, Inc. is the sole corporate member of Glen Arden, Inc. and the co-operator of the CCRC. As such, Elant, Inc. has the ability to transfer assets to and from Glen Arden and other Elant affiliates. Currently, Glen Arden is the only active Elant affiliate providing services and generating revenue. So to point out that the board, which is the same board for both entities, has a fiduciary duty not only to Glen Arden, but they also have a fiduciary duty to Elant, Inc., as well. As the council knows, on September 4th, we exercised our authority at a public health law to temporarily suspend the certificate of authority of Glen Arden. Council members were immediately notified, as required under the law, and provided with a copy of the notice to the CCRC. In the notice, DOH indicated that the CCRC had the option to discuss the potential receivership with an entity to assume operational control of the CCRC. DOH has been working with the operator to execute a management agreement that would transition day-to-day operations to an entity that would provide short-term operational savings and eventual transfer of operations. To date, such an agreement has not been finalized. As of yesterday, the CCRC's occupancy has been reported as follows: Independent living – 92 out of 148 units, 62 percent occupancy; enriched housing – 18 of the 28 units, for 64 percent occupancy; skilled nursing – 34 out of 40 beds, at 85 percent occupancy, and there are a total of 134 people residing at Glen Arden. At this time, I would like to notify the CCRC Council chair the read of my report includes historical information of a financial nature relating to the corporation and may require us to enter an executive session.

Mark Hennessey: So, I would like to have a motion to move to an executive session to discuss the financial; I am going to repeat that. I would like to have a motion to move to an executive session to discuss the financial and credit history of the corporation and matters leading to the discipline, suspension, or dismissal of the corporation under Section 105 of the Public Officers Law. May I have such a motion? Councilmember Barnett. May I have a second? Councilmember Nealon. All in favor say aye.

All: Aye.

Mark Hennessey: Any opposed? The motion carries; we are moving to executive session.some information, and we will resume.

Mr. Heeran: Okay, just to finish out the report; I just want to state before we go any further to finish this out that the goal here and our intent here is to keep the CCRC operational, and we have been working towards efforts to keep the CCRC operational for the residents. It is their home. It is where they live. They have been promised these services, and they moved into the CCRC permanently to be cared for, for the rest of their lives to get the promise of that long-term care. And our efforts here have been towards that goal, and that's what we want to focus on, and that has kind of been our little mission statement, as we worked going through this. So again, I just want to make sure I end with that. It is about the residents.

Mark Hennessey: Okay, so is there any other discussion about the presentation?
Councilmember Kaplan?

Councilmember Kaplan: I just have one quick, I just want to understand. You mentioned the receiver, and then you segway kind of into a management agreement. Can you just, I mean those are two different things. Can you just explain what you meant?

Mr. Heeran: So we have never been here before in Public Health Law, so we are into areas of Public Health Law that have really never been tested. The law was written a long time ago, and we are, as we do that and are working with entities, we bucked up into some things, and I think we will be talking about some of those issues that we have been trying to resolve. We are really right now focused on a short-term approach, and the quickest way we think to that is some sort of management agreement. It is quicker and easier to implement, and some of these issues that are in Public Health Law need some time to work out for a receiver. For example, capital; how the line is drawn, the contractor's responsibilities. That is all problematic right now and needs to be looked at in receivership, but in the interest of time, which is important here, we are trying to find a way to get somebody in short term, start the process, and look at the books as we can work through. The eventual goal here is a transfer of operations. It may result in management to a receivership to an eventual application to this council to transfer operations. We have to figure that out, but short term, it is to stabilize; long term, the entities that we have been talking to are, the goal has been to develop a short-term plan and then a long-term plan, and that long-term plan has to include a transition.

Mark Hennessey: So at this point, I would like to put together a couple of motions, and so I would ask for people to just follow along a little bit. So the first thing I would like to do is, may I have a motion to approve the action by the Department of Health to suspend the certificate of authority of Glen Arden Continuing Care Retirement Community, pursuant to Public Health Law Section 46022H and suspend the certificate of authority of Glen Arden Continuing Care Retirement Community, pursuant to Public Health Law Section 46151H? May I have a motion? A motion is made by Councilmember Nealon? Can I have a second? Councilmember Barnett seconds it. Discussion? Alright, we will put it up for a vote. All in favor, aye.

All: Aye.

Mark Hennessey: Any opposed? The motion carries.

Mr. Heeran: All ayes, no abstentions, correct?

Mark Hennessey: Correct. Second, may I have a motion to schedule a hearing on November 4, 2019, regarding the suspension of Glen Arden's certificate of authority, pursuant to Public Health Law Section 46152? Actually, let me just reread that motion because I skipped something. May I have a motion to schedule a hearing on November 4, 2019, regarding the suspension of Glen Arden's certificate of authority pursuant to Public Health Law Section 46152? May I have that motion? Councilmember Davis? Second? Councilmember Barnett? Any discussion? All in favor say aye.

All: Aye.

Mark Hennessey: Any opposed? No abstentions? The motion carries. Last, may I have a motion instructing the Department of Health to coordinate efforts related to all other subsequent actions required to address the suspension of Glen Arden's certificate of authority, included but not limited to conversion of the suspension to a limitation through Glen Arden entering into a letter agreement with the department pursuant to Section, Public Health Law Section 46151A and adhering in a timely fashion to all instructions of the Department of Financial Services. May I have such a motion? Councilmember Nealon? May I have a second? Councilmember Kaplan. Any discussion? All in favor say aye.

All: Aye.

Mark Hennessey: Any opposed? Any abstentions? The motion carries. Alright, thank you for your patience. The next item on the agenda is the public comment period. I don't know if we have had anybody express any interest to come up and speak before the council. Okay, so there is no public, and I am just clarifying, no public comment at this time? Okay, thank you very much. The transcript from the last meeting of the council was distributed as part of today's meeting materials. That transcript contains a discussion we had and will serve as the minutes for the council meeting as authorized by the council's bylaws. Before I make a motion to adopt the transcript, does anyone have additions or changes that they would like to have considered? So that sounds like silence, right? Okay, at this point, I will make a motion to call a vote on the adoption of the transcript, so I will make that motion. Or I should say, can I have a motion for that? Councilmember Barnett. Can I have a second? Councilmember Kaplan. Any discussion? Okay, now we will take a vote on it. All in favor say aye.

All: Aye.

Mark Hennessey: Any opposed? Any abstentions? Okay, the minutes are adopted. The next things are we have a couple of presentations by CCRC's, which have joined us here today. By the way, for our friends in the CCRC community who have traveled here from Western New

York, it is good to have you here. We really, really appreciate you coming to see us. The first, the first group that we are going to have come and talk to us today is Canterbury Woods, and so if the representatives from Canterbury Woods could come up, I would appreciate it. You can sit right at this table, right here, where it says reserved for speakers, and if you would just state your name, please, for the transcription and all that, we would appreciate it, and the organization that you work for. Thank you.

Rob Wallace: Well I work for Canterbury Woods.

Mark Hennessey: We are really glad that you are here, so, please go on.

Rob Wallace: Actually, I work for the Episcopal Church Home Affiliates, which is the parent company of Canterbury Woods. I am Rob Wallace. I am the president and CEO.

Mark Hennessey: Okay, great. So, anything you would like to tell us about the operations of the organization and how things are going and all that? We would appreciate it.

Rob Wallace: What have you heard?

Mark Hennessey: Not much, so far, so we are waiting for you.

Rob Wallace: So as I am sure you are aware, Canterbury Woods is, we just celebrated our 20th anniversary, so we were built, we actually opened in the spring of 1999. I think we were the second or third CCRC in the state, and we just celebrated yesterday the anniversary of our second campus; Canterbury Woods at Gates Circle, Canterbury Woods at Gates Circle, which is in downtown Buffalo, as I am sure you're aware. So that is two years old now, so that makes us the biggest CCRC in the state and the only one with multi-sites and certainly the only one with an urban-based CCRC, as Gates Circle sits right in the downtown area of Buffalo. At our main campus, which is in Williamsville, just in terms of size, I mean I am stating statistics that I am assuming that this council knows, 243 independent living, including 40 patio homes. On the main campus, there are 33 assisted living units, 12 of which are memory care; 48, soon to be 50, as we are expanding that out just by two beds. And then at Canterbury Woods at Gates Circle, it is a six-story building on about 0.6 acres, right in a very iconic area of downtown Buffalo, if you know Buffalo at all, 53 independent-living units and just five assisted living, so it is a small assisted-living facility, certainly in New York State. A little caveat by that; when I went to, at the time was Linda Gawdy and told her that that is what I wanted to do, she told me it couldn't be done, and guess what? We did it. And we did it as a, and I have to thank Mike over here, cause, I will tell you a little sidebar on Mike too, so Mike has been in and out of this job a couple of times, and when he came in the job, we educated him and educated him and got him right where we wanted him, and then he left. We all cried, and then he came back, and we all had a party because Mike gets it, and I can tell you that he, you know, without Mike Heeran in this role, you know, we feel like we have no advocacy within the State of New York. You know, we are a very small component of the regulatory process, a process of which I am going to go into detail, which is broken. It is certainly broken for the CCRC world. But, you know, when I had the idea with Mike, and he worked with me and worked with me and worked with me and

worked with me on it, to the benefit of the Western New York State community for seniors, to the benefit of the City of Buffalo, which, as, you know, some urban centers in New York State are going through a bit of a renaissance, certainly Buffalo is, and that was, that is a 43 million-dollar construction project that we did in downtown Buffalo to be part of that renaissance and really allowing the senior population of Western New York who want to stay in an urban area to be able to do that. I am sure that certainly this council has educated themselves on knowing that more and more people want to stay in their communities, that the suburban traditional campus is great, but it is not the wave of the future, so to speak, and the bricks and sticks models are evolving, and Canterbury Woods Gates Circle is a perfect example of that and a perfect example of, you know, working through the regulatory process, working with Mike to make something very, very positive happening, happen within the CCRC world. Unfortunately you folks, you are dealing with a lot of negative stuff, and I know that you just did. Canterbury Woods at Gates Circle is an example of what CCRC's in New York State can be. I can tell you that, you know, we built our main campus for 75 million dollars back in 1999, and built this second campus for 43 million dollars and opened it two years ago. Our total debt on both of those sites, as I sit here today, is less than eight million dollars. And so, I passed around our annual report, and you will see that Canterbury Woods at both sites cash flowed over 15 million dollars over the last two years. The way we set up the two sites is according to New York State Public Health Law, it is one organization, so we didn't go out looking for a separate certificate of authority. We couldn't do that. We set it up with Mike's help as an expansion of the existing campus and so from a financial standpoint that smaller campus has the strength of Williamsville to be able to offset the opening costs of the new campus and the fill and so on and so forth. Obviously, when you are, you know, when you do a new campus or do a campus this small doesn't make any sense at least initially, we weren't going to put any healthcare on this campus, but in doing our research from a marketing standpoint, we fully realized that from a public perception, we had to do something in order to sell the public that this is a true CCRC, and there was a continuum there. So that's why we decided to do the very, very small assisted living. And again, when I went to the state and said we just want to do five and we want to do them at a single site, they choked a little bit, and because there is not a lot of experience at the assisted living level or the skilled nursing level within the state at the CCRC, you still have to go through the same process and convince them that even though the five beds that we put at this downtown campus are going to bleed money, it is part of the greater good, so to speak. So that's the regulatory component that is confounding. You know, we, this is, I know I am highlighting Gates Circle, but this is a scaled-down model of what a CCRC is and again, it is an example of the direction that many CCRC's have been and are going to in the country. Many CCRC's aren't building skilled nursing any more. They are contracting out, they are obviously skilled nursing and assisted living in what you can do, and those levels of care have changed dramatically over the last ten or fifteen years. So, you know, it challenges us as providers to be able to recreate our model. From a square-footage standpoint, there is no pool, there is no, we can go on and on about the stuff that you typically see in a, like in our Williamsville Campus, there is none of that at the downtown campus simply because we don't need it. We can contract out. We want people to use the community space. It is in a very walkable area, so that is all part of the, you know, kind of the next generation of these communities, as they go forward, not only in New York State, but you see this trend happening throughout the country. It has been very successful. Right now, we are at about 80 percent sold. The challenge for us at this particular site is that there is another developer that was supposed to

develop this site with us, in conjunction with us. They haven't. So, you know, we are kind of sitting on a bit of an island there, but despite that, we are tracking right along with what our financial model is supposed to be. It certainly helps that at Williamsville, we are 99 percent occupied, and so the cash flow from Williamsville and the plan that we had that Williamsville would continue to be the heart of the organization has worked wonderfully. So this is our second year. We already have positive cash flow at our downtown campus in year two, and we projected a loss overall, I think, this year of about \$400,000.00, just because of the new campus. We are actually projecting a positive of above \$400,000.00. We are projecting about an \$800,000.00 positive within, by the second year. What do we do with that money? We pour it in to both campuses. I mean, it is not rocket science how CCRC's continue to thrive. They continue to thrive by continuing to recreate themselves, continuing to have strategically looking at the residents that are coming in five years from now, ten years from now, what do they want? What do they need? What are their value systems? The CCRC world, as you have heard, is in flux. It is changing from the silent generation to the baby boomers; completely different value system, completely different communication needs, completely different amenity needs. So if you are a CCRC and you haven't recognized that in 2019 and haven't been planning for that for five years, you are already in trouble. In 1999, Canterbury Woods in Williamsville was built for the silent generation, meaning there were very few enhanced amenity spaces. We didn't have a café, we didn't have a bar and a liquor license. We didn't have a gym, we didn't have a wellness center. We certainly didn't have a spa. We have all of that and more now because you have to because twenty years later, the residents that you are serving and are going to serve have a different expectation of what their lifestyle choices are going to be. Next year, Canterbury Woods will be building a 250-seat performing arts center, right on our campus. It is about a five-million-dollar project. We have already raised about two million dollars towards that project through private donation. It will be a community performing arts center, meaning it will be partnering with the greater community to use that space both for residents and for inviting the community into see your space. The greatest marketing of a CCRC is not sitting there as an island; it is inviting the greater community in to see what you do, to experience your space, and to think about, wow, this might be cool for mom and dad or me. It is the cheapest marketing, it is the best marketing that you can do. So that evolution of the community, evolution of amenity space, evolution of lifestyle choices is the critical factor when you are looking at how these organizations grow, how do they succeed? We have already identified at Canterbury Woods, you know, with respect to Bill, Bill is down in Buffalo as well, but we don't really compete with each other. You know, we have two different market places. CCRC's in Western New York and throughout the country; our biggest competition is people that want to stay home. It is our number-one competition, and that is going to grow. So how do you combat that? Well you have to have stuff, you have to have choices, you have to make sure that as soon as people pull up to your parking lot, they think it is the greatest place they have ever seen. Questions? Yes, Mr. Kaplan.

Councilmember Kaplan: How do you properly staff a five-bed assisted living facility?

Rob Wallace: How would you staff it? You are in the assisted-living business.

Laughter

Councilmember Kaplan: We have a lot of trouble staffing as it is, so I am wondering how you do it for five beds.

Rob Wallace: Well, you know, you staff it according to the regulations, but we, you know, we have, I've got an LPN there sixteen hours a day, and that LPN does double duty between the assisted living and also acts as the wellness nurse for the independent-living residents, and so that person, I can offset that cost. The way I have it designed, I have an office there that independent-living residents can come in for wellness stuff and also the assisted-living residents are there. There are only three people in there. It is like the utopia of assisted living right now. There are only three of five, so if you, how do I staff it? Very easily because anybody that wants to work in assisted living wants to work there. It's easy. So you have to look at it in context. This is the CCRC. We know, you know, just like our skilled nursing is only 48, soon to be 50 beds; we are not making any money there, you know, we are not in the business to make any money from the staffing perspective. We are in the business to provide outstanding care and have outstanding outcomes. We are making our money and driving our marketing by, on the independent side. So anything we do, I always say to the folks at Canterbury Woods, I am a nursing home administrator by training; assisted living, dementia, you name it, in seven different states. I don't care how beautiful your CCRC is and how much money you pour into it, you are only as good every single day as the outcomes in your health center. So that is how we check ourselves as a CCRC, that one included.

Councilmember Kaplan: Congratulations to you guys because we know that not all the CCRC's are as successful as you seem to be.

Rob Wallace: Well it is not seem, it is a fact, black and white. Questions?

Mark Hennessey: I was going to say, are there questions from our councilmembers? I have to say, I don't have a question, but I think it is really refreshing to hear about the dynamic quality of what you are trying to do, and it really sounds like you have got your eyes on what's going to be happening five, ten years down the road, and that is really encouraging. And I have also got to say, I applaud you for setting up shop in the City of Buffalo, one of the best cities in the United States, and it is like a third hometown to me, and I miss being around there, so I, so at some point, I would love to come and see the facility and see what that is all about.

Rob Wallace: Yeah, open invitation. I appreciate that. I am a non-Buffalonian, so it took me a while to figure it out in Buffalo that it is really a former big city that people in Buffalo still feel like it is this big city, even though it is really not anymore. So from an architectural standpoint and a cultural standpoint, it is very vibrant in that area, and it took us a while to figure that out, and once we kind of got it, that is when it made sense. And it is, you know, quite honestly a shame that there is no, I mean, there should be 50 CCRC's in New York City, and it is a shame that there aren't. I know that we are moving towards that, but it is a real shame that there isn't. And we know that there is a lot of hurdles in front of that. If I may, one of the things that I want to talk about a little bit is the challenges of CCRC's in the state. And I am going to be very frank, if you don't mind.

Mark Hennessey: We invited you here to talk about the operations of your organization. If there are challenges that your organization is facing...

Rob Wallace: Well, I think that this committee needs to hear from us as providers, right? I mean, you, you, you invited me here, so I am going to be honest with you. You know, there are twelve of us, now eleven, you know, there have been three bankruptcies in the state. The biggest challenge for us, I feel, this is just me talking, is the regulatory climate, including this council, I will be very frank with you. We have twelve CCRC's, we are regulated more heavily than skilled nursing, assisted living, hospitals. Skilled nursing doesn't have two, three bodies. I am a nursing home administrator. Assisted living doesn't have two or three bodies over the top of them. Hospitals certainly don't, but CCRC's, and we get it in context, it is this, you know, consume, we have to protect the consumer, protect the consumer, I get that in concept, but it is overwhelming for CCRC's under this regulatory climate to have to go through what we have to go through with the layers of regulation to get anything done. It doesn't make sense, and quite honestly, it hasn't worked. You know, point to the three bankruptcies now, and I know that there are other CCRC's in the state that have issues, as well. I don't understand this council. I will be perfectly honest with you. I don't understand its role. I don't understand the value that it brings to what we try to do every day. With all due respect to Mr. Kaplan; now he is a for-profit provider in assisted living in Western New York and other places. I am in the assisted living business. I like to be able to open up my assisted living if the opportunity to admit people from outside of my continuum, but under New York State law, I can't anymore. If I wanted to change that, what is Mr. Kaplan going to say? I think he has an inherent conflict of interest, so I don't even understand the membership of this council in relation to overseeing CCRC's. It makes no sense to me as a provider, and I wonder if you could comment on that.

Mark Hennessey: Well, I think we asked you here today to give us an understanding of how your organization is running. The council serves a purpose to consider information that is put in front of us, to act upon issues as they arise, where appropriate, and to approve transactions when it makes sense to do so. That is really the role of the council. So part of that process is bringing folks like yourself here, so that we can hear from you, and you know, I think we take the opportunity to have you here to get an understanding of the things that are challenging to you, and I think, you know, you have made a case for that, so we appreciate that.

Rob Wallace: So what you are saying is you don't really have an answer for me.

Mark Hennessey: I think I answered your question.

Rob Wallace: Okay. We will have to agree to disagree.

Mark Hennessey: That's fine. Anybody else?

James Davis: As I provider and a councilmember, first of all, I think anybody in this council would make decisions that are in the best interest of the

Rob Wallace: Jim, I don't agree with you. There should be, there should be at least

Mark Hennessey: Hold on. Just one second.

Rob Wallace: There should be at least three CCRC providers on this council.

Mark Hennessey: I appreciate, listen, I appreciate, but one of the things, we want to show courtesy to the people, so if you will give Councilmember Davis an opportunity to speak, I would appreciate it. Thank you.

James Davis: I am going to get to that point in a second. So I think that anybody in this council would make a decision that is in the interest of the applicant and wouldn't be conflicted; that's number one, and number two, there has been some efforts to make some changes to the legislation. Dan Hime is sitting behind us. Do you think those kinds of changes are the things that you need to help you as a provider?

Rob Wallace: I think that those changes are all great. Many of those changes that we have been working on through LeadingAge, which is, you know, a great organization, have been on the table for years, if not a decade. You know, I will look at regulation 140. Regulation 140, which is still not done in New York State, and I know all of you are aware of that issue, I have been working on it myself for twelve years; not done, so yeah, I mean, all of those are great things, but because of the layers of bureaucracy it takes years and years and years and years to get anything positive accomplished, and quite honestly, that is why there are twelve CCRC's in the state, maybe soon to be eleven, because it is crushing level, and Jim, you and I have had conversations, and you know, I can't put words in your mouth, but that's the reality. It is a crushing level of regulatory pressure.

Jim Davis: Are there things beyond that legislation that you would like to see happen? And if so, would you be prepared to submit

Rob Wallace: Can you make a call and get 140 taken care of today?

Jim Davis: Can I do that? No. But seriously, are there, if there are other things that you think that we should look at to give you the kinds of regulatory relief you are looking for, if you could submit something in writing, that would be helpful.

Mark Hennessey: And just to, to echo that, I mean, we have been very happy to hear from people, and I will tell you the truth, I think everybody on this council has a commitment to try and figure out if there are ways to make it easier. And we agree with you, I mean, to be honest with you, your model is a compelling one. It seems to be working. More of it would be, I think, a good thing, so what we would like to hear from you, if you do have, as Councilmember Davis was saying, ideas about things that might be helpful to you as an organization or to CCRC's more generally, if you would put it in writing and get it to us, we would appreciate that, and, and it will actually be thought about and considered. It is not the type of thing that we will get a letter, and it will be the last time you hear about it, okay?

Rob Wallace: Okay. Well I appreciate, I'm sorry.

Jim Davis: We do have a Regulatory Subcommittee that is looking at some of these issues, so that information would be useful to them.

Rob Wallace: To the committee, I appreciate this opportunity, I really do. I appreciate you giving me the opportunity to be frank. As Mike knows, he probably expected it, but, you know, I appreciate the honest dialogue. You know, I heard Mike say this, and I know you believe this, what we are doing is, you know, for the benefit of the residents that we serve, and if I didn't feel passionate about that, then I wouldn't bring this up, I wouldn't bother to have this level of conversation if I didn't feel passionate about what I do. And if I didn't feel passionate about what I do, Canterbury Woods wouldn't be as successful as it is. So I bring this passion to the table in order to continue to move everything that we do in New York State forward.

Mark Hennessey: We appreciate that. Thank you for your time today.

Rob Wallace: Thanks.

Mark Hennessey: The next item on the agenda is a discussion from Fox Run CCRC, and we appreciate you joining us. Again, if you just state your name for the camera, so that they can, you know, get that down, and it will help with our captioning. I appreciate it.

Bill Wlodarczyk: Good afternoon, everyone. I am Bill Wlodarczyk. I am the CEO of Fox Run at Orchard Park. It was nice to hear from Rob just before this; although, he said we were not competitors, I was disappointed to hear that he is at 99 percent because we are only at 98 percent. I hate to give him his just to, but the truth is, we are friendly competitors, where we do lean on each other because as Rob said when I first started in 2010, our success, Fox Run's success, is as important to Canterbury Woods, and that is obvious, as I now hear what is going on with other communities. It scares you a little bit. It frightens our perspective residents to know that not all of us are successful as the other. But I don't have any handouts for you. I apologize. It is on our marketing director's desk, so that is my fault. I left it there, but my hope today was just to kind of talk a little bit about Fox Run; talk about our culture, maybe help you to get to know us a little better. I want to talk about our history a little bit because we are unique, and we are unique in that we went down a pretty dark path early on, and we were able to come through. I will touch on regulation a little bit. I think our deliveries may be a little bit different, but I think our message, I stand with Rob and all the other twelve CCRC's that we do need some change. But we will get to that later. So, how is Fox Run? Well, we are located in Orchard Park, New York. If you are from Western New York, we are the south towns; Canterbury Woods is in the north towns, and there is a giant canyon in between that you cannot cross. Rob has found a way with his downtown campus, which is beautiful, but we are a mile from Ralph Wilson Stadium, where the Bills play, so it creates a little bit of a unique havoc with our traffic during game day, and we do get some tailgaters. I want to assure this council that when you watch videos on TV, and you see people jumping off their cars onto flaming cables, breaking them in half, as far as I know, none of them are Fox Run residents.

Laughter

Bill Wlodarczyk: So, a little bit of our history; we, well first our statistics. We are on a 54-acre campus. We have 180 independent-living units, 150 are apartments in various sizes, and 30; we call them patio homes in Buffalo. I think other parts of the state call them cottages. Among those 180, there are 25 different sizes and styles, ranging from a 600-square-foot studio to a 2,400-square-foot patio home with a loft. It is a nightmare for our marketing team to sell that variation, but it is great for the consumer. Currently, our independent-living occupancy is at 176 out of 180 or 98 percent, which is lower than 99. Our health center; we have a 34-bed assisted-living unit, which is full; 18-bed memory-care unit, which we have 17 of 18 as of today; and skilled nursing, where we are 55 out of 60. And then we have a nice project, which I will get to when I go through our history. So we opened in 2006, no, I am sorry, we got our funding in 2006, and we opened in late 2007, right in the teeth of the crisis. It was not a good time to be a new CCRC. We lost more than half of our depositors on the day we opened, so we were put in a tough position at the time. My predecessor had to take kind of a tight-belt approach with how we spend. We focused all of our spending on resident care and what is best for our community, and we were very careful on some of the extras. We were able to weather that storm and through help of regulators, DFS and DOH, they helped us reprice our patio homes, so the way our campus is developed, the front of our campus had 18 patio homes, and one was full in our first three years. We were parking our cars in the driveways, we were turning on lights with timers to look as though it was lived in to try to fool the public to come to us. But truly, we needed something different. And it is kind of a before and after regulation, and I will get to the after later, but very quickly, we were able to work through both departments in 2010 to get a repricing of those patio homes, and it was like that, and it worked, it really helped us. Fast forward, no I am sorry, so I started in 2010, and we had eight days of cash on hand at the end of 2010. We had, I had started, I came from a CPA firm, so I am a CPA by trade, and within the first week, my predecessor said, you know, we need to talk to some bankers and attorneys about possible bankruptcy, and I thought, what have I done, leaving a successful firm and coming to this environment. But we weren't there, we weren't that close, but it was a discussion that we needed to have, so thanks to that repricing of our patio homes and kind of staying the course and really focusing on what our mission was, we were able to get through that crisis, and today, today, we have, we are one of the few CCRC's with investment-grade rated bonds. We are very successful. We are used as a model for both our food service provider Morrison to share with others around the country, and Zeigler Capital has used us as a model, as well. I spoke to our banker just last week, and he was telling the story of Fox Fun. He said that not only is this a CCRC that survived, but they are thriving. We are, I like to say, wildly successful, and we are, as Rob pointed out, we are already planning for the next five years; how we need to expand, what it is going to look like. We got through it, and now, now we are doing extremely well. So our culture; what makes us special? Well, it is our culture. We are, I think we are unique. I think every community has a great facility, it is a beautiful place and wonderful people. We are a very active and involved community. Our residents, obviously they do all the activities any other CCRC does. We are a fit community. I was at a conference, just to give you an example, I was at a conference last week, and there is a single-site provider who was on a panel and said we just redid our fitness center, and we have added all brand-new equipment, and we are up to 32

percent of our people, this is the other provider, that are involved in fitness classes. We need new equipment, and we need to upgrade our, update our fitness center; that is probably our next project, but 70 percent of the Fox Run residents participate in one class or another, so why does that happen? It is our culture. You are brand new, you move in in June, and on June first and June second, you have your neighbor dragging you to a class because we want you to be part of this. And that is who we are. I tell all new staff when they come into Fox Run during general orientation, I want you to do a couple of things, number one, you are part of the experience. It doesn't matter whether you are the CEO or you are a 17-year-old server in our dining room. All of you are part of their experience. We are lucky to be working in their home, and by having that culture and that environment from our staff, it perpetuates with our residents as well. Just think; you go to the same restaurant every day. You are interacting with that teenager now; you are part of their life, so I have them remember that. I also ask them to get to know a resident. First of all, do your job that we are paying you for, but get to know someone. There are brilliant people that live at Fox Run, at any community. As you might expect, we have doctors, we have lawyers, we have judges, we have police officers, we have a lot of teachers, homemakers, we have farmers, and a couple of rocket scientists. Those folks are successful in their careers for a reason. Those folks are successful in life because they have great life experience. Get to know them; you will get something out of it. So as we tell staff that, they stick around. They like working there. Similar to Canterbury Woods, we struggle with, some of our challenges are getting nurses, getting aides, but they are choosing to come to communities like ours because of our culture, because we are a great place to work. We are able to provide environment; part of it is because we are smaller, but it is also our environment, so we are very lucky in that regard. Let's see, so what are our challenges now? Our challenges are, just like anyone else, staffing, minimum wage, but I, I agree with Rob, it is regulation that is tricky for us. Reg 140 is, I like to think the best of folks, that these regulations were created with the best of intentions in mind, but as we have to change, as generations change, as our models change, so do too of those regulations. They need to kind of follow where the future is going. Just to oversimplify Reg 140, we had a pile of cash at one time that we were, it was just sitting earning nothing, and it is earning nothing because it is meant, Reg 140 is meant to protect the consumer, to protect those deposits, right? We don't want to blow it in an aggressive investment. Well actually the opposite happens. Because we can't purchase a mutual fund with more than five percent of our assets, the value of our investments is actually declining compared to the rest of the world because of that, and those are less dollars that we can reinvest back in our community. Those are less that we can give back to operations because right now, the service fees pay for operations for Fox Run, and as we have less to offer from our investments, they have to pay more, so it becomes more and more difficult, and I have the genuine fear that in ten years that we are going to price ourselves outside of the Buffalo market. Right now, we are thriving, but I have to focus on how, what the next step is. It is probably expansion, that is our next move, but Reg 140 is just, it is really damaging. It is difficult. Another example, at this conference I was at last week, it was the Ziegler conference. They are our banker, and they helped with our bond issuance. They have a fund that you can buy into for \$250,000.00, and with that, it is a great investment, and I heard from other providers, they said, well, we are making great money on it, but the best part is we have these presentations every quarter that people come in to talk about what are the trends, what do the baby boomers want to see. It is wildly popular and informative, and you should really join, but we can't because Reg 140 won't allow it because it is a private equity

fund. So we can't take \$250,000.00 and buy into this, make a lot of money on it, and get this great return with networking and with these classes because of Reg 140. Over regulation, I think, and reporting to DOH and DFS can be cumbersome at times. I think they both have our best interest at heart. We refinanced our bonds in 2015. It was advanced refunding, and we had a target date of the lowest interest rate of that summer, and because of the, I will use the word cumbersome again, the approach that we had to take to reach out to so many different people and get their feedback, we missed it by weeks, and that cost us tens of thousands of dollars in payments at that date and future interest payments. All that money can go back into my community, all that money can keep entry fees and service fees at a reasonable level, but we lost it because of the extra steps that we have to go through. So as I was kind of ranting there, I wouldn't even call it a rant, but I forgot about the most important part of our history, so if you don't mind, I am going to step back. So as we have progressed to the point of success, we expanded our health center this past year. It was a two-year project. We added 14,000 square feet to our health center. We added a new wing, and we funded it with cash, so that should go to show to the success of Fox Run. The day we opened our health center in 2008, it was already too old. The model was dated. I don't know what the architects were thinking. It was a central nursing station with three long corridors; very institutional. Today, we added the fourth corridor, you will think that is counterintuitive, but what we did is we wiped out our nursing station, and we created four neighborhoods, so when you get off the elevator, you don't see the hospital feel. You see a warm, central area where people gather, where we have activities, where families meet. You go to the end of the hallway, each one of them has their own dining area, its own server, so instead of a dining room with 60 people, we have a dining room with 12, a dining room with 18. And just on Friday, I was in the one neighborhood, and I saw a gentleman with his daughter eating together at the same table. Next to them were neighbors that that gentleman had when he was independent, and they are having a great conversation back and forth because they all knew each other. They were right next to a fireplace, there is a TV over it. The servery has that half-horseshoe shape where we can make a grill cheese or bake cookies and serve them over the counter. It is really a nice environment. It is something that we had to think about to improve because our current population didn't like the old layout, so we had to keep evolving, and we had the cash to do it. So we were fortunate. I am very proud of that model, this neighborhood concept, and it has been working very well for us, so I kind of jumped around a little bit. So, I think I covered everything I wanted to talk about. I hope I gave you a flavor of who we are. We are a very proud community, and as far as Buffalo goes, it's, you know, we are not New York. We, I think the zip codes Rob and I reach out to, we have a limited pool of folks, but we have two very successful communities, and there is a reason for that, and I think that it can get better, and my hope is that this council can help us with those regulations that LeadingAge is, the reform that LeadingAge is pushing, but there is more to be done, and I agree. So if there are any questions, I would be happy to answer.

Mark Hennessey: Council members?

Mr. Heeran: Just as I said to Mr. Wallace, good for you guys.

Bill Wlodarczyk: Thank you.

Mark Hennessey: Any other council members with questions? I guess, oh, sorry, Councilmember Barnett.

Councilmember Barnett: It is not a question, it is a comment, but I love what you said about the climate. I'm from the CCRC obviously, and

Bill Wlodarczyk: It is the same color, I am with you!

Laughter

Councilmember Barnett: The climate that you brought up first to me is essential, and you obviously do have it because the way that you described it, so I had to compliment you on behalf of your residents really.

Bill Wlodarczyk: Thank you.

Mark Hennessey: You know, the only other thing I would add is, you know, we really appreciate you coming to talk with us here today. You brought up a few things that you think need to be looked at, and we appreciate that. If there are other things, we make the same offer made previously. If there are other things you think need to be addressed or issues that you are facing, you know, please feel free to send us any form of communication you like. Letters are definitely appreciated, emails work too, but no, we want to hear the things that are challenges. I think that some of the things you brought up specifically about staffing, we have heard that in other presentations from healthcare facilities and more generally in the healthcare field, so, you know, anymore granularity about that would be helpful, if you could send it along to us. We would appreciate that.

Bill Wlodarczyk: Will do.

Mark Hennessey: Okay, thank you very much.

Bill Wlodarczyk: Thank you for your time.

Mark Hennessey: So, our colleagues at the Department of Financial Services have prepared a presentation to summarize information from the 2018 CCRC annual statements. Christine Galton and John Powell of DFS are here to walk us through the presentation. Whenever you are ready.

Female: Okay, we will just give Mike a second to get the PowerPoint set up.

Mark Hennessey: Sure.

Christine Galton: Good afternoon, everybody. My name is Christine Galton, and I work for the Department of Financial Services. I am going to walk you through a few slides that represent the year-end financial results and occupancy levels for the New York State CCRC's. So the first

slide I will take you through is the Independent-Living Unit occupancy for the CCRC's. You will note that for six of the eleven CCRC's, they have strong and stable occupancy, well above the 90 percent level, and I believe Mr. Wallace mentioned twelve CCRC's. I think he is counting the Fountain Gate Gardens CCRC that is not yet operational, so that is why our slides only have eleven CCRC's.

Mark Hennessey: Actually, he is counting the fee for service.

Christine Galton: Oh, the fee for service?

Mark Hennessey: Which you guys don't have here.

Christine Galton: Okay, so that's the discrepancy. Generally 95 percent occupancy is what one would like to see at a CCRC, so basically, that is the goal we are looking for. It is not set forth in regulation or anything, but that is what we are looking for. Five of the eleven CCRC's are reporting occupancy less than ideal, and I will take them in order. So first we have Canterbury Woods, at year end 2018, they were at 88.9 percent, but as Mr. Wallace just mentioned, they are, well actually I think the main campus is at 98 percent. When you factor in the Gates Circle community, it is a little less, and that is primarily the driver of that lower occupancy rate at the end of 2018. The next one on the slide is Glen Arden, which is suffering from a very low occupancy level, in the mid-sixty percent range, and more recently, I believe the August independent-living unit occupancy rate was at 62 percent. Next, we have the two Kendals, Kendal at Ithaca and Kendal on Hudson. Their occupancy has been slightly less than ideal, in the high 80 percent range over the years, but both have shown slight improvements in 2018, so that is a good sign. The Knolls at year end 2018 was reporting 80 percent independent-living unit occupancy. However, as of recent reporting in August, it is up to 87 percent, so they are progressing favorably in 2019, so that is a good sign. The next slide is just a graphical presentation of the occupancy level information, so if there are no questions on occupancy, I will move on to the next slide. Next, we will take a look at some of the financial metrics for the CCRC's; first, the days cash on hand. Six of the eleven CCRC's have relatively high days cash on hand at year end 2018. Defining as relatively high would be Peconic Landing's 376 or higher. There is a lower threshold that we would generally look for, but that was the separation that I am defining as high. As you see, Glen Arden has an extremely low number of days cash on hand. It was six at year end, and we are monitoring the Glen Arden operating cash forecast on a weekly basis, both DFS and DOH. Amsterdam at Harborside and Woodland Pond; both communities suffered from less than ideal independent-living unit occupancy when they first opened during the real estate downturn at the time. They have since reached full and stable occupancy. Each of their days cash on hand has improved somewhat over the last three years, but it is still relatively low. Also, Amsterdam at Harborside unfortunately experienced some high, higher-than-expected refund activity in 2018, and thus their days cash on hand dipped at year end 2018. And you will see later in our presentation where we talk about Amsterdam at Harborside where we are working with them on a plan of correction for the minimum liquid reserves. Either slide, it doesn't matter. The Knolls; they have begun to build up more days cash on hand, and they have shown a meaningful improvement in 2018. It was 52 at the end of 2017, and it was up to 134 at the end of 2018. And Summit at Brighton has shown a relatively large

increase in 2016. We will just point that out. That was due to one-time event, where there was a forgiveness of debt. There was a debt adjustment that reduced the operating expenses for the community, so that number is slightly skewed, so the 2017 and 2018 results are more in line with what was previously recorded for them, and 2018 obviously has shown an improvement over 2017. If there are no questions on this slide, we will jump to the next one, and we will talk about the key financial metrics that we looked at for the CCRC's. And these are the metrics that are specifically set forth in regulation 140, with the exception of columns in the yellow font, yellow highlighting. Columns three and four are not in the regulation, so to speak. So in the first column, we have the required debt reserve, which is essentially meant to be a liquid reserve to cover the next twelve months of debt for the community. As you see, all of the eleven CCRC's are meeting the debt reserve requirements. In the next column, we have the minimum liquid operating reserve, and that is essentially meant to be a liquid reserve to cover 35 percent of the next twelve months operating expenses. We note that Amsterdam at Harborside is not meeting the minimum liquid reserve requirement currently. We are working with them. They have submitted a plan of correction, and we are reviewing that now. And obviously, Glen Arden has not been meeting the minimum liquid reserve requirements for many years. The one exception I will point out in this slide is the Knolls for the minimum liquid operating reserve. They are in compliance, but it is a lessor threshold, and that was part of the takeover from the Westchester Meadows. And as far as the actuarial studies, we have three communities that are, well two communities that do not have an acceptable, are not meeting the actuarial surplus requirement, and that is Amsterdam at Harborside and Glen Arden. We are working with Amsterdam at Harborside for a plan of correction, and we expect to be receiving additional information on that soon. Glen Arden; we have not had an acceptable plan of correction for many years, and we have been continuing to work with them. I will just point out that at the Summit at Brighton; they have submitted an actuarial report for 2017; however, we have an unresolved legal issue that we are working through with the way the Summit at Brighton community was set up from the get go. They are actually separate legal operating entities; the CCRC and the assisted living and memory-care units, the Wolk, which I will refer to as Wolk. The reporting that is provided to DFS, as well as the actuarial study is a combined CCRC and the Wolk facility, so we have been pursuing options in terms of either try to get the entities to merge, so that we have one legal entity or to separate out, so we are in discussions with Summit at Brighton, as well as with the Department of Health to resolve this issue. From the DFS standpoint, one legal entity seems to be the most, at least the preferred path. Absent that legal issue, what has been submitted would have been acceptable. If they were separate, we would have to get a new actuarial study, so that is why that one is highlighted in red. So does the council have any questions regarding the key metrics that have been presented?

Mark Hennessey: Council members, anybody? No? Alright, well thank you very much.

Christine Galton: Thank you.

Mark Hennessey: The last agenda item is a discussion on the need to schedule meetings for 2020. This is the last scheduled meeting for 2019, so happy new year, because I won't see you all until then. And we need to set dates for 2020 as soon as possible, so Mr. Heeran, do you want to lead a short discussion on scheduling council meetings for 2020?

Mr. Heeran: I will keep this short, and Mark can help me out with this. So traditionally, we have done two standing meetings; one in the first half of the year and one in the second, and I believe that is probably what we want to do again, and then we fill in with ad hoc meeting as needed. Obviously, if there are certain regulatory requirements that get triggered for the council to meet, the law says you have to meet as necessary, we will call an ad hoc meeting, but I think this, and I can get feedback from council members, has worked well. We know for staff here and for one of the council members that the months of January through early April are tough. For us, it is budget season, and for somebody else, they get to go hang out in a lovely place south of here. So we probably will look at an April/May date and then a September/October date. And before I do that, we are down to seven members, so hopefully by the second meeting, my fingers are crossed, we can get some more members. We have some packets in to appoint some new members. That probably will not happen or may; it may happen either by the first meeting or hopefully, definitely the second meeting. So hopefully, that can be reached out to in the next couple of weeks, get some possible dates going, the sooner we get this down the better because we do really need 100 percent participation. I don't like to go into a meeting like today with just quorum. It is a lot of pressure on everybody, things happen, sometimes people can't make it, and if we don't have a quorum, I can't run the meeting; I have to cancel the meeting, and that is problematic for people as well who travel here, so again, I will come out with dates in those two time ranges. If there are any conflicts that you all have in April/May or September/October, blocks of time that are bad, let me know. First of all, do Thursdays work well for everybody? Is this day okay?

Mark Hennessey: I think probably we could try to, I mean, Thursdays are fine, but I think less give people an opportunity to throw out some dates, and we will get some feedback from folks and whether that works for them, and if Monday works this week and Thursday doesn't.

Mr. Heeran: But if there are specific days that don't work for you, again, since we need 100 percent, if there is just a day that is bad because you have a staff meeting or something; just let me know, and we will work from that. And I know people like this room, so we will try to do that, but if not, it will be downtown. Anybody have any questions/concerns about scheduling before I go out? Cause I just don't want to bombard you with anything else.

Jim Davis: Not about scheduling things specifically, but do you anticipate any other need for the council to meet in light of

Mr. Heeran: So things that would trigger, which obviously if there is something with the Glen Arden situation that we felt needed immediate attention, we would call that. The biggest thing brewing right now is the Summit at Brighton's care-at-home application. Obviously, we weren't ready to come to the council today. There is a lot of energy being expended on the other issue. If the review gets done and signed off on, then we have 60 days to bring it to the council, so that would be an example of, if that happened, and it didn't fit within the regular schedule; we may have to call a council meeting. But other than that, you know, unless it is something that the council, only the council has the authority to act on, we would have to call a council meeting. That is one of the things I do know.

Jim Davis: For the fourth hearing for Glen Arden that you referred to; who is involved with that?

Mr. Heeran: I believe Mark left on us, but I don't, that should not be on us.

Mark Hennessey: And administrative hearings; there is no need for the council to convene for that.

Mr. Heeran: I believe it is an ALJ, yeah.

Mark Hennessey: Alright, so with that, I believe that concludes our business for today. Can I have a motion to adjourn? Councilmember Davis. Second by Councilmember Barnett. Sorry, I am just looking this way, I apologize. Any discussion? Like you are done, we are ready? Okay? All in favor say aye.

All: Aye.

Mark Hennessey: Any opposed? No? Notice of the next scheduled meeting will be provided to members, and notice to the public on the Department of Health website, which I think I plugged plenty of times today, but I will do it one more time, www.health.ny.gov. I will advise members, as we talked about, if there is a need for a meeting sometime between what we had proposed, and thanks so much for your time, especially to folks who came here from further away. We appreciate you taking the time to come and spend some time with us. And thank you all.