
Mark Hennessey: We are here today for a meeting of the Continuing Care Retirement Community Council, I'm Mark Hennessey, Chair of the Council. I'd like to call to order the meeting and welcome members, participants and observers. I want to remind folks that this meeting is subject to Open Meetings Law and is broadcast over the Internet. Webcasts are accessed at www.health.ny.gov the Department of Health's website. The on demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days and then a copy will be retained in the department for four months. Here are some ground rules to help make this a successful meeting. This may be the last time I read this section so let's keep this in mind for the next one. Because there is synchronized captioning, it is important that people do not talk over each other. Captioning cannot be done correctly with two people speaking at the same time. If Council members wish to speak, please raise your hand. I'll keep my eye out to see who's ready to talk and we'll call up on you in the order that your hands were raised. A little hand raise not a big you know wave, that would be great. The first time you speak, please state your name and briefly identify yourself as a Council member or a staff person. During public comment period, speakers should state their name and the name of the organization they represent if any. It is important to state your name clearly so the webcasting company will be able to caption and record this meeting appropriately.

I also want to remind people that the microphones in the room are hot, we can't turn them off. So any coughs or shuffling of papers, things like that should be avoided at all costs. I would also ask if you have a cell phone please silence it at this point. It would be helpful if you minimize the potential background noise when people are speaking. As a reminder for people in our audience, there is a form that needs to be filled out upon entering the meeting room which records your attendance in accordance with Executive Law § 166. It's required by the Joint Commission on Public Ethics. The form is also posted at the Department of Health's website which is again www.health.ny.gov. In the future you can fill out the form prior to the Council meetings if you so choose to save a little time. We want to thank you for your cooperation in fulfilling our duties as prescribed by law. Members of the public are only allowed to address the Council if they sign up to speak during the public comment period. Comments will be limited to 3 minutes per speaker. Members of the public are not allowed to hand out materials directly to the Council or question the Council, they can only make public comments to the Council for consideration. So, at this time I'm going to ask staff if there is anyone signed up for public comment. There is not okay so we'll just move into the first agenda item which really is the approval of the transcript from the March 16, 2018 meeting. I know Council member Barnett gave us some corrections. We changed the word candle C A N D L E to K E N D A L. Does anyone else have any additions or changes that would like to be considered? No? Alright at this point I'll make a motion to call a vote on the adoption of the revised transcript. May I have a motion to adopt the transcript from the March 16, 2018 meeting as amended to serve as the minutes for the CCRC Council Meeting? Motion by Mr. Nealon. Um can I have a second? Motion by Ms. Barnett, Councilmember Barnett sorry. Any discussion? Okay now I'll call for a vote on it, all in favor say aye.

(Chorus of ayes) all opposed. The ayes have it, minutes are adopted.

Next item is a discussion of Glen Arden CCRC. I know during the last Council Meeting there was some information that was presented. We also wanted to make sure that we'd have a chance to meet today to allow the Department of Health and the Department of Financial Services to provide a follow up presentation to address some of the issues raised and update on activities that have been taken since the last Council Meeting. Mr. Heeran is going to lead up through a presentation and at the end of that, we'll talk about next steps. So Mike, Mr. Heeran.

Michael Heeran: I just wanted to first before we start off the presentation note that the Department of Health continues to monitor Glen Arden CCRC to make sure that the health and safety of the residents are not in jeopardy and that services are being provided as per the regency agreement and we are at this point not aware of anything that would indicate that services aren't being provided and there's any sort of health and safety risk. So as we discuss this, please keep that in mind. We're talking about mostly a financial matter here.

So, I'm also going to note that we do have members, representatives of Glen Arden on the phone today, the CEO, the CFO and legal counsel as well and before I get into this presentation, I did keep a spot in the presentation for questions so please allow me, unless there's a major question, to go through the slides and will lead to the question section, I would appreciate it.

Mark Hennessey: Could you just identify representatives?

Michael Heeran: Sure. Could members of Glen Arden on the phone please identify themselves for the record?

Debra Zambito: Debra Zambito, CEO.

Scott Piotti: Scott Piotti, Comptroller of Glen Arden.

Eric Bach: And this is Eric Bach, I'm counsel to Glen Arden.

Michael Heeran: Thank you. Okay so we'll start with a recap of what happened at the last meeting.

So there were some issues of concern that were raised during that meeting and at the end of the meeting, I've kind of encapsulated them into three different areas.

The first one was the disclosure of the financial condition of the CCRC prospective and current residents. The other was the ability of Glen Arden to meet current liabilities. And the third was the long-term viability of the CCRC itself. So, I'll go through each of those items and bring you all up-to-date on what's happening.

So, first we'll talk about disclosure of the financial condition. The Council at the last meeting expressed concern that the financial condition of the CCRC was not properly being portrayed to current and prospective residents. And at the meeting, the Department of Health indicated it would issue notice to Glen Arden regarding the need to revise the Initial Disclosure Statement.

So, the Department issued a failure to comply notice to Glen Arden noting that the Initial Disclosure Statement used in marketing did not comply with section 4613 of Public Health Law. And I'm not going to read all that law verbatim but basically, it says that the Disclosure Statement could not contain statements or illustrations that are untrue, deceptive, misleading or omit material facts or other information that's required by law regulations.

The notice required Glen Arden to revise the Initial Disclosure Statement to reflect recent financial information provided to the CCRC Council, Department of Health, and Department of Financial Services. The information that we had provided would deem to be material to prospective residents and their families to make informed decisions about the future housing and care needs. And the revised Initial Disclosure Statements needs to be compliant with the requirements of 4613 which I just read. Their response was that they did revise the Initial Disclosure Statement and submitted to DOH and DFS on April 11, 2018 and we deemed that revised Disclosure Statement was acceptable under Public Health Law 4613 and we approved its use in marketing activities and contracting activities. Of note, I made a copy of this available to all the Council members prior to the meeting so they could review it and it is in front of you as well.

Glen Arden also responded to some of the concerns expressed at that meeting. They conducted two meetings with the representatives groups of the CCRC. They did one on March 23rd with the Resident Council, and they conducted another meeting on March 28th with the Resident Association.

They also took an additional action. Since they're not maintaining sufficient cash reserves, they implemented an addendum to all new residency agreements that provided for an escrow of the entrance fee for the first ninety days of occupancy. This was to assure that money would be available for refund under Public Health Law: During the first ninety days of occupancy, a resident shall receive a refund of not less than the entrance fee and any other pre-payments less the actual cost of services provided and refurbishment. So that's being implemented currently.

So, representatives of Glen Arden at the last meeting indicated that payment of some accounts payable were being delayed due to lack of cash resources because of operational cash deficits being incurred by the CCRC. So there was some concern raised about the ability of the CCRC to meet its liabilities. And the CCRC also had provided, before the meeting, the Department of Health and the Department of Financial Services with a revised actuarial study that demonstrated an approximate total cash shortfall of about \$2 million combined over the two-year period 2018 and 2019.

Based on this, the Department of Health and Department of Financial Services required Glen Arden to submit weekly cash flow projection reports that detailed the CCRC's projected week ending cash balances for an upcoming 12-week period. The weekly cash flow projection reports were required to continue detailed revenue and expense lines and include reconciling items to demonstrate how the CCRC would account for any projected cash shortfalls. And the CCRC

was also required to reconcile actual cash outlays to previous weekly cash projections and explain significant variances.

So, they've been submitting those weekly cash projection reports. They submit them on Monday, we just received one yesterday, and we use those reports to work with the staff at Glen Arden to assess the short term cash needs of the CCRC and to assure that operational cash deficits are funded, current expenses are paid, and that includes entrance fee refunds that were due. And we also used it as an opportunity to discuss future liquid cash resources that Elant may have or have coming available that may be available to fund projected operational cash shortfalls should they occur.

So, the latest weekly cash flow projection, this is kind of a synopsis of where we are. We feel that there's operating cash that appears to be adequate through July 2018. That projection includes \$466 thousand in net proceeds received from the sale of a Fishkill property by Elant which is now in the Glen Arden operating account. It reflects an additional \$480 thousand on top of that from the foundation, \$140 thousand was left over from the nursing home sales, \$140 thousand was from a recent donation to the foundation, and \$200 thousand was made available for capital improvement purposes only.

For new entrance fees, as we mentioned, they are now escrowed for the first ninety days but that money will be, entrance fee revenue will be available starting after July 2018 and will be needed to fund operating expenses. There is approximately \$700 thousand of entrance fee refunds due in late fall of 2018.

As for the follow up on the long-term viability of the CCRC – minimum liquid operating reserve requirements is mostly unfunded, approximately \$47 thousand out of the required \$3.6 million is funded. If you disregard new entrance fees and entrance fee refunds due, Glen Arden is running an operational cash deficit of about \$250 thousand per month. And cashflow projections from the 2017 actuarial study show a negative cash flow of about \$2 million for the two-year period 2018 and 2019 and that's a negative \$1.2 million in 2018 and a negative \$0.8 million in 2019 and that includes projected new entrance fees and projected entrance fee refund due.

I'm going to quickly go over what the Public Health Law states about the financial reserves. They're listed up there, I'm not going to read through them verbatim but mostly it defers to DFS's financial reserve requirements in bullet 2 there but there is on Public Health Law a section for the need for them to have reserves and supporting assets to support operations.

I'm going to turn this over to Steve Wiest from DFS to take over.

Steven Wiest: Steven Weiss, New York State Department of Financial Services. The minimum liquid reserve requirements for a CCRC are detailed in insurance regulation 140 specifically section 350.6. So, once a Continuing Care Retirement Community has commenced operations and funds held in escrow are released pursuant to section 4610 of the Public Health Law, the CCRC shall maintain a debt reserve fund as described in paragraph 1 below and an operating reserve fund as described in paragraph 2 of the subdivision.

The CCRC shall maintain liquid assets in the amount of greater than or equal to 35% of the sum of the following amounts. So the projected operating expenses of the community during the next 12 months which shall include such comparable expenses related to providing services to non-residents of the community during the next 12 months:

The projected aggregate of all taxes and insurance expenses that are related to the capital assets of the community and the responsibility of the community and due within the next 12 months, the projected debt interest payments of the community be coming due within the next 12 months excluding debt interest payments included in paragraph 1 of the subdivision, and the projected and/or actual refund expenses of the community becoming due within the next 12 months except where such refund is dependent on the resale of the unit.

With regard to the minimum liquid reserve funding, DFS obtained a commitment from Elant back in 2015. Basically lays out that as the operating reserve fund was deficient, DFS required commitments dated July 2, 2015 from the Board of Elant and the Elant Foundation to fully fund Glen Arden's Operational Reserve Fund at the conclusion of the nursing home asset sale. However despite nursing home assets being sold, the net proceeds realized were not sufficient to fund Glen Arden's Operational Reserve Fund, thus the commitments made to DFS were not fulfilled.

Just going quickly through the minimum liquid reserve requirements, the far left column shows the required reserve debt fund for 2014 through the end of February 2018. so the first column is the required debt reserve fund. The next column is the assets supporting that debt reserve fund. And then the next column shows the adequate/deficiency and as you can see, in February, 2018 there is a deficiency in the debt reserve fund of just over \$14,000. For the required Operating Reserve Fund, the amounts in that fourth column are the required amount the assets supporting that reserve fund are in the next column and then the adequacy/deficiency and actually you can see for all the time periods noted that the Operating Reserve Fund was in a deficient position.

CCRC needs a positive actuarial surplus to be in actuarial balance. If a CCRC is in a current actuarial deficit, it must be able to project a positive surplus within 7 years to have an acceptable correction action plan. At the end of 2014, Glen Arden had a \$10.3 million deficit and the actuarial study showed that it would take 8 years to turn positive. At the end of 2016, the actuarial study showed a \$10.7 million deficit, also 8 years to turn positive, and at the end of 2017, the actuarial study showed a \$13.6 million deficit and now it takes 9 years to turn positive, and part of this was due to the impact of unauthorized discounts that were allowed by the company's management, and other challenges for the CCRC are to fund long-term capital improvement plans with regard to the site of the CCRC.

The long-term financial outlook for Glen Arden – the CCRC will need capital infusions for various purposes. As we discussed, they need to fully fund the minimum liquid operating reserve to avoid future operational cash shortfalls. They will need to make necessary capital improvements to maintain the market appeal of the community. And, the size of the capital infusion must be large enough to produce positive actuarial surplus, currently within the 7-year

time frame required by statute. Also, the CCRC must achieve a stable ILU occupancy of 85% or more and currently the CCRC is looking to offer a Type C, fee-for-service contract which may add to positive income for the CCRC going forward.

Michael Heeran: Thanks Steve. So based on this, the Department had a meeting on April 3, 2018, we had a teleconference with Elant's Board of Directors and representatives of Glen Arden to discuss the concerns over operations at the CCRC. Through the meeting and follow-up conversations, it was determined that a strategic plan would be developed by the Board to restore Glen Arden to financial stability and compliance with the financial reserve requirements under DFS insurance regulations for the CCRC. And this strategic plan would include a timeline with deliverables and milestones to be achieved.

Since the last meeting, and most of this is focused on what actions they've taken since the last meeting, so since the last meeting Glen Arden and Elant have taken certain actions as well. They've committed to sell a 10.4 acre piece of property with the sale proceeds used to help restore financial reserve requirements. This may have been mentioned at the last meeting, but since the last meeting, the property has actually been listed on the market and there are people looking at it. So it is out there being sold.

Elant has identified additional resources available in the future to be used to help restore the financial reserve requirements. This includes a closing on the sale of another Fishkill property and future monies to be realized by Elant. And, again, like Steve said, there is an implementation of a Type C contract offering in the works. They've worked the pricing structure (blank on video) who from my understanding are interested in purchasing the CCRC for the purposes of continuing CCRC operations. And Glen Arden has implemented an austere budget and is trying to identify opportunities for operational efficiencies. And, they've also recently engaged a consultant to assist in the development of a strategic plan and possible sale of the CCRC.

So, a lot of information out there. Take a pause here and see if there's any questions from anybody on the Council. Again, we have representatives from Glen Arden on the phone as well, if you'd like to ask them questions.

Council Member Kaplan: Wayne Kaplan, Council member. According to what we just saw, it seems like the cashflow is adequate through July which is coming up in 2 months and mostly because the sale of properties, the sale of a nursing home, cash infusions, gifts, what happens after that when there's no more gifts and no more sales and no more one-offs?

Michael Heeran: I'll deal with it first and then I'll kick it over to a representative of Glen Arden on the phone. So, in a previous slide I did mention that we've been working with them with Elant to identify long-term resources. I think first and foremost, the challenge is to reduce the operational cash deficits so there is no longer the need to fund those deficits from the parent. That's been historically the case here. Over time, Elant has been funding cash shortfalls at Glen Arden, that's been going on for quite some time and they've not been able to be stable as a stand-alone organization. So that's the first most challenge. But we've been working with them to

identify additional cash resources. I outlined some there that would become available to Elant. There's some already becoming available in the fall and I can let them speak to the timeline in discussing what would be available to fund any cash shortfalls should they occur. Debra do you want to address that question? Did you hear the question?

Debra Zambito: I did not hear it clearly.

Mark Hennessey: The question that was raised, you have approximately sufficient funding up until July of this year, what happens after that point?

Debra Zambito: We expect that we will have closed on the Burgess land scale which will be an additional \$800,000. We also expect that we will be closing on the Brandywine Transaction which would be an additional \$750,000. In the interim between now and when the cash infusions are likely to occur, we have made a concerted effort to continue to close the gap by reducing expenses where we can without impeding in anyway, you know, upsetting the integrity of the care that we provide, certainly in the healthcare center. Some of the savings or improvements which obviously come from staffing. And other expenses. The additional, there are no other funds that we, you know, other than working on the Type C also in an effort to improve occupancy which will assist in closing the operational gap that we experience every month. So it's a very I guess multiple pronged approach. We work on it every day, that's the short-term plan to get us month to month.

Mark Hennessey: Okay. I think there was a follow up question from Council member Kaplan.

Council Member Kaplan: Once the sale of the properties, seem like a short-term band-aid approach to help the cashflow reserves, once those occur and over, if you're going to save money by cutting staff won't that certainly impair the services that you're offering which will necessarily impair the marketing, the new units to potential residents? It sounds like it's a band-aid approach rather than a long-term plan.

Debra Zambito: Well the intent is to and what we're currently doing is you know we have a ban on overtime, no overtime allowed only as necessary in the healthcare center, obviously when it involves care for residents. But other than that, you know, its no overtime. We are a union environment and so that overtime is extremely costly and you know it's a matter of managing the day to day staff and staffing levels. There's no reason for overtime not at 65% occupancy in the ILU. There shouldn't be a minute of overtime.

Council Member Kaplan: But in the real world we know that there's call-offs, no shows, no calls, and all of a sudden there's overtime. No matter how much you have a policy that says no overtime in the real world, I know in my business also, it doesn't work. We can say no overtime all we want and we still get it.

Debra Zambito: Sometimes it doesn't work, you're correct.

Mark Hennessey: Oh sorry go ahead Debra.

Debra Zambito: And another question, I didn't hear the beginning of the last question with regards to the sale of the property. Did it start that way? I was not...

Mark Hennessey: I think the statement was something to the effect that after the sale of the property which would create a series of one time infusions, what's the, where are we going after that and then I would suggest and I don't want to mischaracterize but its seeming to suggest that saving money by clipping staff we would like to hear how you were going to do that and you talked about overtime and so, am I mischaracterizing anything? Okay.

Eric Bach: Debra if I could cut in here this is Eric Bach again, Counsel for Glen Arden and Elant. I think we're completing or mixing two issues. There is the short-term fixes operationally in the austerity plan that may marginally improve the situation, but there are long-term plans in the works also that might be presented and I believe are on the fly. So while there are these short-term fixes and as folks say cash infusions to get us down the road a little bit, in the interim there are professional advisory firms being engaged to assist Glen Arden in developing a long-term plan. So we have a timeline or horizon where there's sufficient cash anticipated to fund our operations, and in that period, either to with the assistance of professional advisors assess the feasibility and the structure and operations at Glen Arden and concurrently parallel track to pursue the sale of Glen Arden. So there's a company now performing a feasibility study and there's a second company that's engaged to assist us and again in formulating a long-term plan. So the folks at Glen Arden hear the concerns of the Council in terms of what you've been doing in terms of infusing cash without altering operations is not a long-term solution. That's heard loud and clear and we've been working diligently with DOH to again formulate a long-term plan.

Mark Hennessey: Council Member Sheehan had a question.

Council Member Sheehan: I'm Jim Sheehan the Attorney General's Office. What are the options for this Council or for DFS or DOH in placing current management?

Mark Hennessey: I was actually hoping Council Member Sheehan that we could have a discussion about the options after we go through the process of asking questions of these representatives. So could we just hold that for the time being? Is that okay?

Council Member Sheehan: Okay.

Mark Hennessey: Council Member Davis.

Council Member Davis: Council Member Jim Davis. Just a few questions. The revision of the Disclosure Statement which obviously has to be done, is that inhibiting your sales having the kind of cautious language that's now included in the disclosure statement?

Debra Zambito: This is Debra Zambito, I'm happy to answer that question. No it has not. We have not found thus far that it has changed anybody's position on their desire for interest in moving into Glen Arden.

Council Member Davis: Good. You mentioned, Debra that the land sale was \$800,000. I was looking at some of your minutes from your Resident Council meeting and in that meeting you identify something between 4 and \$20 million. Can you tell us what happened there?

Debra Zambito: So the information I think that was you're talking about the Lifestyles property?

Council Member Davis: I believe so yes.

Debra Zambito: That has, that is for sale and it is currently on the market. It's 10.4 acres that Mike Heeran had presented in one of the slides and that is currently on the market for \$15 million. And...

Mike Heeran: There's three pieces of property that we mentioned and I tried to make clear the slides on clarifying. There was a piece of property that was sold and the money was transferred. It's another Fishkill property that that money was brought into the books already. There's a second property in Fishkill that they're trying to close on that, that money will be available. And then there's a third piece of property which Debra referred to as the Lifestyle property that's the 10.4 acre property that's on the market as she stated for \$15 million. So that's a substantial piece of property. That piece of property actually is adjacent to the CCRC.

Council Member Davis: That was originally going to be the Lifestyle Land property? Is that the same property?

Debra Zambito: Correct. That is the Lifestyle Land property on the southwest corner.

Council Member Davis: So recognizing that the sale of property doesn't always happen quickly or when you want it, I guess my concern is that the sale of the properties are going to be used for the short-term fix, do you really anticipate the timing of these sales to be able to help you?

Debra Zambito: Only the timing of the Burgess which is Fishkill parcel and Brandywine which is the other infusion of cash in the near term are I am able to put that timeline on and say that will help in the interim. The Lifestyles, the sale of the Lifestyle 10.4 acre I have no good idea or timeline as to when that would occur. So far we have had a lot of folks that have expressed an interest, looked at it but have not gone further than that thus far.

Council Member Davis: So are you comfortable that the sale of the properties you just mentioned will happen in a timely enough manner to keep your operations going on the short-term?

Debra Zambito: I do. I think both of those transactions will occur in the next 6 months.

Mark Hennessey: When you say both I want to just clarify. You're saying Burgess and Brandywine correct?

Debra Zambito: Correct. And what I've also actually inquired and I think we may have, this question may have come up at the last meeting about leveraging in the interim the Lifestyle's property to see if I can you know get some cash out of it in the interim and I've attempted to do that. There's not many banks that do asset based lending and so I got turned down initially and so I'm looking now into some asset based lenders out of New York City to see if there's a possibility to leverage the Lifestyles property until we can get to a sale.

Council Member Davis: But the two properties that you just mentioned you believe will be sold in 6 months which could easily become 8 months or 12 months selling property. You don't need that money before then?

Debra Zambito: The Burgess is almost certainly. I'm confident in that. That transaction will occur more likely with 3 months than 6 months.

Council Member Davis: But if it does take 6 months...

Debra Zambito: I actually we have it on the cashflow for late June at this point.

Council Member Davis: And if it does take 6 months you have enough confidence that you can continue operations without those sales occurring for 6 months. I guess Debra what I'm trying...

Debra Zambito: I do.

Council Member Davis: What I'm struggling with a little bit...

Debra Zambito: I think we can meet our, you know current obligations. It will be tough but you know um its going to have to come from operation.

Michael Heeran: Debra this is Mike Heeran.

Debra Zambito: Operate and then, ye

Michael Heeran: Isn't there also I have heard mention there I believe was some Universal settlement monies becoming available in the fall.

Debra Zambito: I think that's about \$365,000 if I'm not mistaken and that we expect that will become available in August.

Michael Heeran: And there may be some additional monies currently held in escrow being released in the fall as well from the 2017 settlement payments is that still true?

Debra Zambito: From the you're talking about the Medicaid liability and recruitment?

Michael Heeran: Yes, I am.

Debra Zambito: Yes. Yeah that would be an additional and we probably I think that's more along September or October. My understanding is when that, that will become available to us once it is recouped.

Council Member Davis: Have you been getting Universal settlement money? Have you been getting Universal settlement payments over the last few years?

Michael Heeran: That's all Elant's. Elant's Universal settlement.

Council Member Davis: So that's the 2018 Universal settlement for all of Elant's entities?

Michael Heeran: Well what's available to them.

Council Member Davis: And they're definitely keeping them? Its not going to the owner, the current owner? It's a big problem with sales. Its definitely your money it doesn't go to the owner of the new facilities, the new owner of the facilities?

Debra Zambito: No, that was parsed out that was parsed out of the ACA.

Council Member Davis: Okay good.

Debra Zambito: They're not entitled to any of those funds.

Council Member Sheehan: Just looking at your filings with the Charities Bureau, I note that the last filing that the public site shows is for 2015/2014. I don't see anything for 2016 and your 2017 is not yet due. Is PKF O'Connor Davies still your auditor?

Debra Zambito: No.

Council Member Sheehan: Why not.

Debra Zambito: No, they are not. I think its Logan Trouper this year.

Council Member Sheehan: Logan Trouper is your new auditor? Did I hear that correctly?

Debra Zambito: Yes.

Council Member Sheehan: And with respect to your 2016 financials have you filed them with the Charities Bureau?

Debra Zambito: I believe so yes.

Council Member Sheehan: Did PKF O'Connor Davies do your 2016 audit?

Debra Zambito: No.

Council Member Sheehan: Logan Trouper did?

Debra Zambito: No, Logan Trouper did it. Yes, no wait a minute I'm sorry I'm confusing, I'm so sorry, 2016 was done by O'Connor Davies yes. The 2017 audit for Glen Arden was completed for Glen Arden through Logan Trouper.

Council Member Sheehan: And did they give you an unqualified opinion in the 2017 audit?

Debra Zambito: We have a modified opinion.

Council Member Sheehan: And modified because...

Debra Zambito: Glen Arden yes because of _____.

Council Member Sheehan: Right. Was there a going concern exception for the 2016 audit?

Debra Zambito: I'm sorry, would you repeat that?

Mark Hennessey: Is there a going concern exception for the 2016 audit?

Debra Zambito: There was also, it was also a modified opinion, yes. Going concerned language and _____ as well. So I think Mike didn't you, you received a copy of the audit report?

Michael Heeran: Yes.

Council Member Sheehan: Which one 2017 or...

Michael Heeran: 2017. Its actually in the packet it was actually in there. So Debra they have a copy of it here.

Council Member Sheehan: Just give us a moment please.

Michael Heeran: They're looking through it.

Mark Hennessey: While Council Member Sheehan is going through that are there any other questions from the Council? Council Member Davis.

Council Member Davis: Thank you, Council Member Davis. Just tell us a little bit more about prospective buyers for the CCRC and who have you engaged to be your I'll call business consultant on a future plan?

Mark Hennessey: And can I just clarify that question a little bit further? Mr. Bach mentioned that there were two different consultants so could we get the answer to that question for both consultants if you don't mind?

Debra Zambito: Sure, I'm not...

Eric Bach: And Debra, this is Eric. Just to clarify my comments on that, we've engaged and Debra can speak to Glen Arden's arrangement with Dixson Hughes. My reference to the other consultant was not retained by us but I was stating there was a feasibility study being performed that's SK Advisors that was retained by one of the prospective purchasers. My point in stating that was only that in the relatively short-term, we will have additional information, Glen Arden will have additional information as to how to adjust this long-term plan.

Council Member Davis: So you haven't engaged a firm specifically to come up with what I'll call a long-term business plan which can look at positioning, whether you have the right licensure, are you marketing the community properly, you haven't engaged somebody for that purpose?

Debra Zambito: I did recently engage and I don't have it actually I haven't signed off on it yet, but they've given me preliminary proposals from Dixson Hughes to yes, develop a strategic plan to include repositioning, to include marketing, to include operational strategies, what we need to do to get where we become stable. So its not just its not just the marketing piece. Its not just the repositioning piece they're replacing, its everything. So unlike you know the proposal from Graystone last year or at the end of last year was you know \$55,000 to assist in repositioning, repricing the marketing piece and helping assisting with getting a Type C approved. And this is for the same amount of money a much more comprehensive \$55,000 for a much more comprehensive plan to include not only marketing, repricing, repositioning, but also operational, goal setting and timelines and you know that would be the practical approach.

Mark Hennessey: Council Member Davis you had another question or?

Council Member Davis: No, that's it.

Council Member Kaplan: I just have a clarifying question. When you're talking about the consultants in marketing, you're talking about marketing for potential new residents as opposed to selling the entire property, campus business?

Debra Zambito: So they're going to look at current marketing and really more repositioning. So, the task is are we able to stand alone? If so, what does that mean from a pricing perspective, from a marketing perspective, from an operational perspective? What does that mean and then what do we need to implement such a plan? And also looking at it as what do we need to do to become sustainable while we look for a buyer?

Council Member Kaplan: While you look for a buyer.

Debra Zambito: Right now we have an interested party that we are courting I guess at this point, we've exchanged confidentiality agreements and we've exchanged information, marketing information, pricing information based. They sent their folks in to look at the facility, they've

toured. So at this point that is the only suitor we have at the moment in terms of actually selling the CCRC _____.

Mark Hennessey: Council Member Nealon did you have a question?

Council Member Nealon: Couple of quick questions, thank you. Debra is it 2009 when Glen Arden originally opened or was it a little earlier than that?

Debra Zambito: Glen Arden's opening was in the 90s, the late 90s.

Council Member Nealon: I'm sorry the CCRC?

Debra Zambito: Yes, sir. Yes.

Council Member Nealon: And...

Debra Zambito: In 2004 and 5 was when they introduced the enriched housing. They converted some ILU apartments.

Council Member Nealon: And financial performance was significantly impacted as a result of the real estate market crash of the late 2000s correct?

Debra Zambito: In 2008 yeah. So in 2009, so 2009 is when the operating reserves were used completely and then it never, never funded since then again up to where they should have been. So in 2009 they utilized the operating reserve to obviously fund operations and then continued to draw from the Elant system to support operations for every year since then.

Council Member Nealon: I'm a little confused on IL occupancy because in reading the minutes of one of your meetings, I may have misheard what you said earlier. What is your IL occupancy currently?

Debra Zambito: Our ILU occupancy today is 65%.

Council Member Nealon: 65?

Debra Zambito: 65 yes we have 96 units occupied of 148.

Council Member Nealon: Thank you and one last question which goes back to a question that Mr. Davis had earlier, we know that you had a net positive increase in ILUs of 11 during 17, and so in the first four months of this year where is that number? Because I know part of that increase in 17 was the result of marketing at a price below what had been allowed by DOH and DFS.

Debra Zambito: So I have had 6 sales since the beginning, since January 1, 2018. And I have had I'm sorry.

Council Member Nealon: No, go ahead.

Debra Zambito: I have had 6 sales and I have had 8 folks permanently placed and I have had 2 deaths. So we started the year with 101, I've had 8 permanently placed, I've had two deaths and I have had one move out to the VA hospital. And so and then 6 sales, so that brings us to our 96.

Council Member Nealon: Okay thank you.

Mark Hennessey: Council Member Sheehan.

Council Member Sheehan: The decision to replace Logan Trouper, to replace PKF O'Connor Davies with Logan Trouper did PKF O'Connor Davies decline or refuse to continue as your auditor?

Debra Zambito: No, they didn't decline they had, we used them at Glen Arden and then we used them for 2016 and then we had used them for we had thought about or we asked them to do the pension audit and they wouldn't at the last minute, after we had sent down information, they had at the last minute said they were not (blank on video no sound) there were liabilities that had gone with the facilities and they were not getting paid from the now new owners. And so they would not, they didn't want to do our work anymore. They had gotten paid on all the Glen Arden stuff of course, but they did not get paid on the other things from the other stuff.

Council Member Sheehan: And in 2016 or 2017 did you get a management letter either from PKF O'Connor Davies or Logan Trouper?

Debra Zambito: O'Connor Davies never gave us a management letter, they gave us a, they would do a slide presentation in place of that management letter. So we have that and in for the 2017 yes, Logan Trouper did present us with a management letter.

Council Member Sheehan: And was that letter given to the Department of Health? Was that letter given to the Department of Health or DFS?

Debra Zambito: I don't know. I don't know.

Stephen Wiest: DFS does not recall receiving it.

Michael Heeran: Nor does DOH we got the check but I don't recall.

Council Member Sheehan: Thank you.

Mark Hennessey: Other questions from Council Members? Okay it doesn't look like we have any. I think we've received a lot of information through both the presentation and also the question and answer. I would move that, I would make a motion that we move to Executive

Session to seek the advice of Counsel as to legal options. May I have a second? Second by Council Member Sheehan. All in favor?

(Chorus of ayes). Any opposed? We are now in Executive Session. I'd ask anyone who's not a Council member or people who were invited to the Executive Session to please leave the room.

Okay so we're back in regular session. Mr. Heeran do you want to present some additional information?

Michael Heeran: Sure. So the Department and Health and Department of Financial Services has prepared a little dialogue for next steps and then I'll go through that.

So first of all, we tried to define what the objectives were plan of correction would need to be put in place. Really the focus of the main objective of what we need to see at Glen Arden is they need to reduce and eventually eliminate operational cash deficits at the CCRC with the aim of generating cash surpluses that can be used with additional cash provided by Elant to meet the financial reserve requirements for the CCRC and obtain an actuarial balance within the required timeframes.

Male: Just a point of order, should the Glen Arden folks be asked to rejoin us?

Mark Hennessey: I think we're just going to move on.

Michael Heeran: There's just a few slides.

Mark Hennessey: These are the objectives for, our objectives not theirs.

Michael Heeran: The CCRC must become self sufficient and a stand alone model. And then the secondary objective is to be sure there's adequate cash available to meet the expense obligations of a CCRC should cash shortfalls occur.

Some of the challenges we need to consider in a plan of correction is the timeliness of available cash to cover operational cash shortfalls. Elant has, as you've heard, they have to convert some non-liquid assets or wait for future cash resources to come available so timing becomes an issue. There needs to be a realistic and effective plan of correction that includes obtaining (blank on video no sound) some of those things having a significant timeline. And there always is a risk for continued operational cash shortfalls to erode cash resources that need to be used for funding and restoring the operational reserve and funding to meet the capital improvements of the CCRC.

The need for results, we really need results here at that time and what actions can be taken to ensure that a corrective action plan is developed, implemented and achieves the desired results? What is the timeline for the results to be achieved? Really we're talking about a two year timeframe here before the actuary study shows them being in to generating its own cash surplus, see if they can achieve that or even a sale would take that long as well. How will progress be

monitored? We will need to monitor the progress of a corrective action plan to make sure it's being achieved. And what should occur if results are not being achieved?

So with that I think we're going to start talking about possible actions but the Department did have a recommendation that they would like the Council to consider. Given the lack of an acceptable corrective action plan and based on the continued deficit funding of the operational reserve, DOH and DFS have determined that action by the CCRC Council in this matter is really necessary. The Council has the authority under Public Health Law 46022H that the Council can revoke, suspend or limit or annul the certificate of authority under conditions set forth in section 4615 of Public Health Law and that includes when such action is being taken at the specific request of a participating agency. So, the agencies are requesting under 4615.3 of Public Health Law the Department of Health and Department of Financial Services are requesting that the Council commence a hearing seeking to limit Glen Arden's certificate of authority until Glen Arden satisfies conditions imposed by the Department of Health and the Department of Financial Services. I'll distribution those conditions right now so we can review them. Take a minute, I'll go over them. The Department seeks to impose on the certificate of authority. So I'll give everybody a minute to get up to speed. It should be on the page its got a flip side but it should be on the page that says conditions to be satisfied.

So, in order for Glen Arden's continued operating within offering new contracts and entering into residency agreements the Department seeks to limit the certificate of authority by adding conditions as follows:

To fully fund the Operating Reserve fund over a period agreed to by DOH and DFS in an escrowed account with a third party financial institution licensed by New York State. This requirement was estimated at approximately \$3.6 million at the end of February 2018 and DOH and DFS approval would be required to access the escrowed funds.

Another condition, for the development of a strategic plan or corrective action plan within 60 days approved by DOH and DFS to reduce and eventually eliminate the operational cash deficits at Glen Arden. The plan must include a timeline with deliverables to be met and milestones to be achieved.

And third, the retention of an independent qualified organization within 60 days approved by DOH and DFS to monitor Glen Arden's progress and performance against strategic plan and/or corrective action plan with regular reports being provided to DOH/DFS and the Council on the progress being made and necessary adjustments to the plan should substantial progress not occur.

On the flip side, I have also included some recommendations to give to the CCRC to help them meet those conditions. A lot of this has already been discussed with the CCRC in an ongoing measure but we recommend that Glen Arden continue to engage in solicit input from the New York State and national CCRC industry and to facilitate the input we strongly recommend they explore the following strategies which is to continue to solicit best practices from other CCRC's, the potential to assemble a panel of New York State CCRC industry experts to provide input and feedback on strategies being considered and actions being taken, regularly attend in person or by telephone leading agency New York CCRC cabinet meetings, and to review educational sessions

being offered at leading agency New York's CCRC summer summit in Endwell, New York which is about 2 hours away from Glen Arden to determine if educational opportunities exist that may benefit people in Glen Arden's staff.

Mark Hennessey: At this point I would ask that we would move to Executive Session to seek the advice of Council as to legal options. I will make that motion. Do I have a second? Seconded by Council Member Barnett. Any discussion? All in favor?

(Chorus of ayes) any opposed? The ayes have it. We are now in Executive Session.

Back in regular session.

Michael Heeran: Discuss what we discussed.

Mark Hennessey: Would that be part of the discussion?

Michael Heeran: Just before we go to discussion I just wanted to restate what we asked before we went into session.

Mark Hennessey: Okay go for it.

Michael Heeran: Okay. So I just want to clarify what the Department is asking for in its request. So, pursuant to Public Health Law 4615 the Department of Health, the Department of Financial Services is requesting CCRC Council to commence a hearing seeking to limit the certificate of authority of Glen Arden so that it satisfies contingents imposed by the Department of Health and the Department of Financial Services. These conditions will be placed on their certificate of authority. They must meet them in order to continue marketing to new residents and entering into new residency agreements. And they are as follows:

To fully fund the operating reserve fund over a period of time agreed to by the DOH and DFS in an escrowed account with a third party financial institution licensed in New York State and this requirement is currently estimated at approximately \$3.6 million. DOH and DFS approval would be required to access to the escrowed funds.

The second condition is the development of a strategic plan or corrective action plan within 60 days approved by DOH and DFS to reduce and eventually eliminate the operational cash deficits at Glen Arden. The plan must include a timeline with deliverables to be met and milestones to be achieved.

And the third is the retention of a qualified organization within 60 days approved by DOH and DFS to monitor Glen Arden's progress and performance against a strategic plan and corrective action plan with regular reports must be provided to DOH, DFS and the CCRC Council on the progress being made and necessary adjustments to the plan should substantial progress not occur. Thank you.

Council Member Sheehan: Is there a text that you can pass around to us with...

Michael Heeran: the conditions? I did.

Mark Hennessey: So additional discussion on the topic that Mr. Heeran just brought up. Council Member Davis.

Council Member Davis: Do you feel Mike that (can't hear not speaking into mic).

Michael Heeran: That is a recent development. I have not seen the scope of work although I have seen the contract. I believe the intent is to lean towards this. We've had discussions with Glen Arden and Elant Board of the need to do these things. This should not be news to them. And I believe that was a step intended to start to address that but again, I have not seen the scope of that contract, that's a recent development.

Tracy Raleigh: This is Tracy Raleigh, we'd have the ability to impact that scope if we found it to be inadequate and, as well as the firm.

Council Member Davis: (can't hear not using mic) we should have this discussion...

Michael Heeran: Well I think that's the reason for these conditions is to take more control.

Tracy Raleigh: Yeah and it may be best to get more than one option.

Council Member Davis: We had this discussion with her in the fall and she was concerned about the _____ fee then _____ (not using mic).

Michael Heeran: Again, the Department recognizes that frustration of the Council and part of the reasons behind these conditions is to put them on the certificate of authority to require that these be met and achieved in order to continue marketing and selling new units to prospective residents instead of the option of waiting.

Mark Hennessey: Council Member Kaplan.

Council Member Kaplan: With regard to the first bullet, wholly fund the operating reserve of \$3.6 million. How and what is their collateral?

Michael Heeran: So they have monies Elant does coming to them starting in the fall.

Council Member Kaplan: Sale of the property.

Michael Heeran: Sale of the property, sale of the Lifestyles property is a significant piece of property that should yield a significant portion of revenue.

Tracy Raleigh: Right but the shorter term sales that you've heard you know there was the second Fishkill property, there's Universal settlement monies coming to Elant, the concept is to have these flow into an account that's subject to Department of Health oversight.

Michael Heeran: As it stands now, money has been coming in, Elant's been subsidizing Glen Arden, we've had very little control over what they pay. Its coming in but this would require it to go into an escrow account where we have to approve withdraw instead of it going straight into the bank account of Glen Arden.

Council Member Kaplan: I understand that. I think my problem is with the bigger picture, the \$30,000 _____. Once the sale of these properties and the Universal settlement once all this stuff is done maybe in a year from now, maybe, we're talking about selling properties is a whole different subject. She said 6 months, I don't think so. But anyway once all these sales and settlements are done, that may keep them going for another year or whatever time period is, then what? I mean I don't see a plan to change the modes of operation, except saying please give us these monies from the sales of properties which is a one time thing.

Tracy Raleigh: We agree, the department agrees and that's the nature of bullet 3 which is we have been operating in the absence of the strategic plan and that's a, I use the word restructuring broadly but that is a restructuring plan that considers all options including sales. And that's what we've been lacking and that's what we, you know, why we are here recommending that the Council take an action to limit the certificate of authority until these conditions are met, one of which is a plan.

Council Member Kaplan: And limiting the certificate of authority does that mean that they cannot take in any new residents?

Tracy Raleigh: That does not and maybe we can go through the procedures. There's a process in place before a certificate of authority is actually limited and that involves, maybe Eric can help that. There is a hearing, an administrative hearing is required and there is a timeframe associated with that.

Council Member Kaplan: Forgetting about procedure, what are we limiting?

Tracy Raleigh: The ultimate action would, Mike could help me, would be to not be allowed to market or sale to income and residents.

Michael Heeran: They could not sell or enter into new residency agreements unless they were meeting these conditions that are put on this certificate of authority. So unless they're meeting these conditions, they would not be allowed to enter into new contracts or marketing.

Council Member Kaplan: I'm just thinking outside the box for second, let's assume, go to the hearing whatever these processes are, go to hearing, limit the certificate saying you can't enter into new admission agreements taking new residents unless you meet these conditions, by not

meeting the conditions you say, okay you can't take in new residents. Spiraling going downhill, downhill, you know.

Michael Heeran: We're aware of that but realistically we're on a two year timeframe here. Elant is an organization that's been subsidizing the CCRC for numerous years. Elant is an organization that decides the CCRC doesn't really exist anymore and will not, there's going to be a limited pool of money, not to get all Ross Perot pie chart but there really is limited funds here and Elant is not going to have anymore funds coming in, its going to come in over the next year. And once those funds are gone, they're gone and in that 2 year timeframe, as I stated in the slide earlier, they really need to focus on becoming self-sufficient as a stand alone model because after that if that cash is gone, there's nothing to subsidize operational cash reserve. So while we know that would be an escalation of the process, sitting here and watching 2 years go by and watching that money go towards operational reserve deficits and not correcting that problem is not an option either. So, that's where we are.

Mark Hennessey: And I think there's enough flexibility within the language of the conditions to be satisfied that DFS and DOH could work together to make that period of time an appropriate period of time to come into compliance. And specifically structured that way right?

Michael Heeran: Yes, the intent was not to leave here today with them to be told you can't enter into any new residency agreements.

Council Member Davis: To your point, they put together some kind of a business plan is now being required here. There's also sixteen and a half million dollars of debt outstanding that puts them in a position as to restructure that debt and save some money there but until they do that, the lenders aren't going to give up anything. So I think this is a precursor to other good things that can happen as well. I'm going to keep focusing on this 60 day review by an outside organization which really should have started a long time ago to really get a handle. This firm may say, you can't, we just don't think this is possible. I their market it could be anything. But this is critical to beginning of what do you do next and how do you save the situation? So this really has to happen. And I'm not sure, to be honest Dickson Hughes for this purpose would not be my first choice. I see the Moore's actuaries and those kind of guys as opposed to, that's just my opinion. So we just have to make sure that plan meets acceptance by you guys.

Council Member Sheehan: I'd like to suggest an additional condition in addition to the three that you have here. I think the disclosure statement as currently drafted, especially after the Loeb and Troper's audit report isn't adequate to clearly advise to potential buyers of the risk that they're taking. So I would suggest, actually I would move that the conditions to be satisfied include disclosure of the current audit report dated April 30, 2018 from Loeb and Troper together with any management letters which have been issued by Loeb and Troper to the organization. To be distributed to everyone who is considering purchasing.

Council Member Kaplan: And I hope on the second bullet to develop a strategic plan to reduce and limit the operational cash deficit more than saying no more overtime, that's not going to work.

Mark Hennessey: I just want to make a point here. So there is a motion placed on the table. And that motion if I'm characterizing it properly I think is to modify the conditions to be satisfied.

Council Member Sheehan: Correct.

Mark Hennessey: Okay and can I get a second to that motion? We're going to have discussion literally after we...

Male: (can't hear)

Mark Hennessey: Yeah, so we have a second from Mr. Kaplan or Council Member Kaplan. Now we can have discussion on that motion.

Council Member Davis: When I read the change in the disclosure statement I had a comfort level that that's what you guys want to have it in as it relates to their requirements and to me as long as there is the audit report going with it, that's sufficient. I was satisfied with the language that they put. Just my thoughts. I'm not sure though, Tracy what makes you feel comfortable that the audit report goes with that disclosure statement?

Tracy Raleigh: It's part of the requirements.

Council Member Davis: I wonder if they're actually handing out the audit report with the disclosure statement.

Tracy Raleigh: In terms of us monitoring that we can...

Steve Wiest: We can have perspective residents actually sign an attestation of sorts to make sure that they receive those documents.

Council Member Davis: If they did that I'm okay with the disclosure statement the way its currently written as long as we know they're getting the audit and financials.

Mark Hennessey: Mike.

Council Member Sheehan: My concern here is that just as a lay person reading your disclosure statements or at least their disclosure statement that you approved, enhanced to me does not mean that within a year this organization is going to go bust which is essentially what this qualified opinion means. And I want much stronger language in the disclosure statement. Because will they give me audit, maybe on a different issue but their advisers might, and the management letter which we haven't seen, that also we need to make sure they see. The purpose of having an audited financials is so people can see what's going on. They're brand new they just came out 2 weeks ago, I feel responsible that we give a fair disclosure to potential buyers of these properties even though they can have a financial impact on the organization.

Michael Heeran: The management statement question that you must mentioned was the 2017?

Council Member Sheehan: Well the management letter apparently said 2017 on it.

Michael Heeran: I will note that as part of the Type C submission, they have to provide a disclosure statement anyway to include that so we are actively in the process of reviewing and recognizing this will be revised regardless. So contain recommendations.

Council Member Sheehan: But I would like to make sure that in your conditions it says you have to do this. So if in fact they don't do it...

Mark Hennessey: Okay so, go ahead Council Member Barnett. Let me just ask a question before you say anything? Is your question about the motion that was made previously or something else?

Council Member Barnett: Actually I'm not sure.

Mark Hennessey: Okay well let's go for it and we'll see where...

Council Member Barnett: It just that I do feel absolutely the management disclosure in this most recent audit must be given to people who are potential residents of this, really that's the only fair thing to do.

Mark Hennessey: Yep okay. So the motion was for the modification of the disclosure statement.

Council Member Sheehan: Modification of the conditions to be satisfied to include.

Mark Hennessey: Conditions to be satisfied to include, sorry, the disclosure statement additions right? And then there was some discussion within this discussion of the management letter but that would be a separate.

Council Member Sheehan: My thought was they would get the audit report, the draftable language I guess would go to the DOH to do that but they would get the disclosure statement with the audit report with the management letters, the current management letters.

Tracy Raleigh: This s Tracy Raleigh so the condition that I'm hearing Council Member Sheehan proposed is that we require Glen Arden with its disclosure statement to ensure that its giving the residents the audited financial statements and a copy of the accompanying management letter issued by the auditor.

Council Member Sheehan: Correct. They use the term residents, I'm not sure, we're talking about potential resident's right?

Tracy Raleigh: Potential right.

Council Member Davis: Mike when you revise the disclosure statement do existing residents get them as well? Is that required?

Michael Heeran: It's not required.

Council Member Davis: Cause they would have an old disclosure statement.

Michael Heeran: But we've strongly encouraged them to share.

Council Member Davis: Because someone living there may think its not too safe there anymore and might want to leave.

Michael Heeran: You've seen the discussion that they've had in response to that with the current residents, it was distributed to you.

Council Member Davis: It sounded more optimistic than I think the situation is.

Mark Hennessey: Okay so Council Member Sheehan I'm going to ask you to withdraw your earlier motion and we will and then after that we will substitute your substitute motion which we sort of developed through the discussion.

Council Member Sheehan: I'm kerfuffled here. What is?

Mark Hennessey: So we started off our sort of deliberations on the motion that you had put in front and then we had second by, I think Mr. Kaplan right. As we had the discussion, that motion was modified and so we need to remove your previous motion and then we will restart the total motion.

Council Member Sheehan: I so withdraw the previous motion.

Mark Hennessey: Do we need a second to? I will second that removal of the motion. All in favor?

(Chorus of ayes) oh I'm sorry do we need a discussion first? We're good. Okay all in favor?

(Chorus of ayes) all opposed, none. Okay the motion is withdrawn. Okay. Now Council Member Sheehan.

Council Member Sheehan: I would like to I'm trying to make sure I have the language squared here right, add as a condition to be satisfied in the determination which the Department of Health has recommended under 4615 language which will require as a condition of the operating certificate that this organization provide to every potential buyer who gets the disclosure statement in addition to the 2017 audit report from Loeb and Troper and any management letters which were given by Loeb and Troper to the organization.

Mark Hennessey: And may I have a second? Council Member Barnett.

Council Member Barnett: I second.

Mark Hennessey: Okay any discussion? Okay all in favor of the motion say aye.

(Chorus of ayes) any opposed? No, none opposed, the motion is adopted. At this point, I would move that we go forward with the Department's request to commence a hearing in accordance with New York Public Health Law section 4615 sub 3. So may I have a second on that. I make the motion that we move forward with the Department's request to commence a hearing in accordance with New York Public Health Law section 4615 sub 3. May I have a second? Council Member Barnett second. Any discussion?

Council Member Sheehan: And I'm still a little bit unclear on the 4615 says the Council may revoke, suspend or limit, section 3 of K says, any state agency may request the, us to do that. But what we have to do is we have to revoke, suspend right upon approval. I'm trying not to over word this but it seems to me that do we need to review the proof ourselves in order to revoke, suspend, limit or annul? What we have now is a power point with fairly general stuff from materials that were put together. Do we need administrative record to do that?

Mark Hennessey: The motion that is in front of us right now is commencing here. I get your question about whether we need to see the evidence. I understand this hearing would actually be reviewed by an administrative law judge who would be the one receiving the evidence to make determination.

Council Member Sheehan: That's the determination about whether the Council's decision is supported by evidence and so far the evidence has gone to DOH and to DFS it has not gone in detail to the Council. And again, I don't know the answer to this question, I just want to make sure if we do this we have the right...

Mark Hennessey: I would say, sorry do you want to...

Tracy Raleigh: I'm sorry, this is Tracy Raleigh just a question, is there specific information that you would find more satisfactory other than what was presented? That's asked in a way for us to help you.

Council Member Sheehan: I'm trying to put my work aside although I represent the Attorney General's Council, in my experience in administrative hearings, the entity which has the authority the statute proposes, it says we think this is the appropriate result. The administrative hearing officer then determines whether records sufficiently support the remedy the department or the Council decided upon. So a concern I have is do we have a sufficient record as a Council to make that determination which is required under 4615? And I guess if Council says, "Yes, we do" then I'm going with going ahead.

Mark Hennessey: Okay. I would seek at this point to convene Executive Session to seek the advice of Counsel. I make a motion to move to Executive Session to seek the advice of Counsel. Moved by Council Member Davis and seconded by Council Member Stubblebine. Any discussion? All in favor say aye.

(Chorus of ayes) all opposed. We are in Executive Session.

So there was a previous motion which had gotten support a second and we're now in discussion status of that motion. So I would ask for any discussion by the Council members.

Council Member Stubblebine: Council Member Stubblebine, question on the conditions to be satisfied, I know that the department will be reviewing a strategic plan and a corrective action plan, is the Council going to be weighing in on any of the details of these things regarding timing of reporting and other things like that? What's our role in that?

Michael Heeran: So currently we hold biweekly meetings required biweekly meetings with Glen Arden staff which are held every other Friday, coming up this Friday. And we also get the weekly cashflow reports. So we would probably fold that reporting process in as well as right now they're being pretty much required to report at every CCRC Council meeting and I would expect that to continue as well. Presentations to be made on that report. So they have to report regularly. We continue with the biweekly meetings with Glen Arden and get that as part of the report and that have report issued at every Council meeting as well.

Tracy Raleigh: This is Tracy Raleigh, our conditions recommended included a strategic plan within 60 days and a retention of a qualified firm to make recommendations within 60 days. If Council members have input or different thoughts on that planning we welcome them. We think these actions need to be taken rather quickly.

Council Member Kaplan: A question on that, one of the slides before said they only had a cashflow through July, that's 60 days.

Michael Heeran: Well they've established with us they report 12 weeks out so we've only looked through July. We believe they will have cash subsequent to that but we only require them to do weekly cashflow analysis through July. The further you get out with cashflow the more squishy its going to get so we believe that to demonstrate and they've reconciled with us that they will have adequate cash and cash resources to go through July 2018. Above and beyond that, again we believe they have resources becoming available. We believe that they're going to line up but we don't have a detailed cashflow report per se to demonstrate that. Its not that we're saying they won't have cash.

Council Member Kaplan: Would it make sense to add another condition as Council Member Davis suggested before that they should refinance their debt at a better rate if they can or is that something for the consultants to come up with?

Tracy Raleigh: This is Tracy Raleigh again, I believe that would fall under bullet 3 but, we would expect it to.

Council Member Davis: I think you need that plan to be able to restructure. Somebody's going to want to know how do we know you're going to fix this? And I think the other caution here is she talked about repositioning, licensure, none of these things are going to happen quickly. The biggest bang we can get for your buck here is it going to be in the marketing, on the website, enough mailings, do they have enough staff? That has more immediate impact but the longer term, these are going to be longer term recommendations, they aren't going to have an immediate impact on what they're doing and we need to understand that. So I'm glad its 60 days but I wouldn't go any further than that.

Council Member Kaplan: And the sale of the properties she is talking about in 6 months, it may happen, it may not happen. There may not be buyers. There may be hazardous materials, they have to do a phase 1, a phase 2. Their legal stuff that has to go on so 60 days is pretty optimistic.

Council Member Stubblebine: And I assume that the marketing plan will be kind of a 2-pronged approach that will make it something that's more attractive to potential buyers if they're interested in selling and want to attract potential occupants? Are they going to be pursuing both tracks or are they throwing their other they hat just one in the ring?

Michael Heeran: Right now the plan that they have right now is a dual path. So its our understanding they're moving to solicit interest and my understanding is they're just trying to solicit interest to keep it going as a CCRC no other options are explored. So they're putting it out there for potential purchase as an ongoing CCRC on one path, and then again, to try to do something to turn operations around and keep it viable should it not be sold. So they are pursuing both. It's always been our understanding.

Mark Hennessey: We are in the discussion phase of the motion that was previously made. So I just want to see if there's still additional discussion by Council members on the motion. It doesn't look like there's any additional discussion. All in favor of the motion say aye.

(Chorus of ayes) all opposed. The motion carries. As Chair I'll call the date and time for the hearing to be set and the Commissioner of Health will, in accordance with the Public Health Law provide notice to the representatives at Glen Arden CCRC of the charges and the time and date of that hearing. So that's our final bit of business for today. Can I have a motion to adjourn? Moved by Council Member Sheehan. Can I have a second? Council Member Davis. Can I have a vote on the motion to adjourn? All in favor say aye.

(Chorus of ayes) any opposed? Meeting is adjourned. The next meeting of the Council will be June 14, 2018 in the OGS meeting rooms on the concourse of the Empire State Plaza in Albany. If an Ad hoc meeting is held prior to that date the notice will be posted to the Department of Health Public Meetings website and e-mail sent out to people signed up for LISTSERV. If you need instructions to sign up for LISTSERV please see staff after the meeting or e-mail CCRC@health.ny.gov. Thank you very much for your time.