



November 28, 2023

To: Members of the Planning Advisory Board
City of Naples
Naples, Florida
c/o Erica Martin, Planning Director via email emartin@naplesgov.com

Re: Naples Community Hospital Inc.
Rezone Petition 23-R3; Conditional Use 23-CU7; SDP Petition 23-SP10

We are legal counsel to Naples Community Hospital, Inc. The purpose of this memo is to address requests that the Planning Advisory Board made to Naples Community Hospital, Inc. ("NCH") at the end of the November 8, 2023 hearing which was continued to December 13, 2023. The requests are of a legal nature.

Consistency of the Proposed Rezone with the City Charter

The staff memo to the PAB dated October 16, 2023 in this matter explains the underpinnings that allow the NCH property to be rezoned as public service, and if so, for height to be approved by the City Council based on its determination of justification. Such height may be in excess not only of the 30 ft. limit in the Public Service District, but as well the 42 ft height limit in the City Charter. That basis is Ordinance 2022-14933 adopted by the City Council in October 2022 resulting in two code sections of the Naples Code - Sections 58-833 and 58-842. The staff memo also states that the applicable standards have been met.

A statement was made by one of the public speakers at the end of the public comments, that despite that Ordinance and those code sections Council could not approve a height in excess of the Charter height of 42 ft. The speaker was not correct.

The City Charter contains the following text:

"Sec. 14.1. - [Maximum building height in commercial zoning districts.]

*All commercial zoning districts in the City of Naples shall be limited to three floors and building heights of 42 feet to the peak of the roof, measured from the first floor, FEMA elevation. Commercial zoning districts shall include **Highway Commercial, C1 retail shopping, C1A commercial core, C2 general commercial, C2A waterfront commercial, C3 heavy commercial, C4 airport commercial, Industrial, Medical, Office, Planned Development, Downtown, and any future commercial zoning districts that Naples may create.** (Emphasis Added)(Ref. of 2-1-2000)*

As is evident from a plain reading the text, the districts that are governed by the 42 ft. height limit do not include the Public Service District, which was a then well-established category in the Naples Code at the time the Charter provision was enacted in 2000. As such, the Public Service District and any improvements constructed on property so zoned are not governed by the Charter height limit. The public speaker failed to inform you of that important fact in his presentation.

The public speaker also made the statement that it was his belief that a hospital was a commercial use regardless. The public speaker was also not correct about that.

As a legislative matter, when the City Council approved Ordinance 2022-14933 in October 2022, it made the specific determination that a “community hospital” was not a commercial use. That is embodied in Section 58-842 of the City Code which reads as follows:

- *Sec. 58-842. - Regulations pertaining to community hospitals*

*A community hospital in a public service district is not a commercial use or activity as defined in section 44-8, or that would be subject to or governed by section 14.1 of the City of Naples Charter and/or subsection 56-39(d) or other applicable sections of the Naples Code of Ordinances which regulate commercial uses (emphasis added) . It is accordingly stipulated that, notwithstanding anything to the contrary contained in the foregoing district regulations, if city council approves a community hospital as a conditional use in a public service district, city council shall have final review and approval authority for site plans and amendments to site plans within such Public Service District. As part of its review and approval of such site plans and amendments to site plans, city council shall establish the development standards including, but not limited to, maximum height limitations, provided that they do not adversely affect public health, safety or welfare and city council has determined specifically that exceeding the height limit is appropriate for the principal building or structures to properly achieve their intended purpose of serving the community and providing a significant benefit and will be compatible with adjacent buildings. For approved community hospital conditional uses, such standards may supersede the standards otherwise provided in these district regulations or elsewhere in the Land Development Code.
(Ord. No. 22-14933, § 1, 9-21-2022)*

In enacting Ordinance No.22-14933 the Council acted based on legal advice by its City Attorney. A memo from the City Attorney to the Council dated October 20, 2021 provides the basis for that advice. As such the determination by the City Council that a community hospital is

not a commercial use is supported by solid legal authority as was explained by its City Attorney in the October 20, 2021 memo.

Potential Use of the Naples Community Hospital Property for Parking Vehicles For Visitors of Two Buildings Located on the North Side of 4th Avenue North that are Owned by NCH, but are Leased to Third Party Medical Practice Groups that are For-Profit Entities

In the meeting on November 8, 2023, it was noted that NCH has had a long standing, city approved, arrangement permitting the tenant users of the buildings owned by NCH located on the north side of 4th Avenue North to park up to vehicles in the main parking lot on the NCH property. Because those tenants are for-profit-medical practices, the question was raised by staff whether that use would be somehow contradictory to use of the property as a community hospital if so zoned Public Service for that purpose. It should be noted that in the letter from NCH to the PAB transmitting this memo NCH has advised that it plans to discontinue allowing the tenant users of such property to make use of parking in the main parking lot. So while the question now seems moot the following explanation and analysis is provided to explain why such use would not be contrary to use as a community hospital in accord with Section 58-842.

Section 58-833 of the Naples Code defines a community hospital in the following manner:

“(2) Community hospital is defined as any establishment that:

- a. Offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease, or pregnancy; and*

- b. Regularly makes available at least clinical laboratory services, diagnostic X-ray services, and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent, except that a critical access hospital, as defined in under F.S. § 408.07(14), shall not be required to make available treatment facilities for surgery, obstetrical care, or similar services as long as it maintains its critical access hospital designation and shall be required to make such facilities available only if it ceases to be designated as a critical access hospital. However, as stated in F.S. ch. 395, its provisions do not apply to any institution conducted by or for the adherents of any well-recognized church or religious denomination that depends exclusively upon prayer or spiritual means to heal, care for, or treat any person; and*

Members of the Planning Advisory Board
City of Naples
Naples, Florida
Page 4

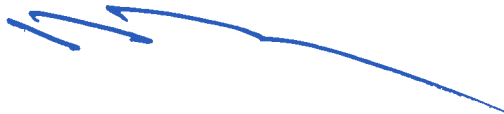
c. Licensed under F.S. ch. 395, and which is locally governed, independent, and established as a not for profit public charity under applicable provisions of the Internal Revenue Code: (i) in order to serve the community and fulfill the needs of the community with specialized services; and (ii) enabling it to receive tax deductible philanthropic support from community members for capital improvements and operations.

Based on the criteria above, NCH readily qualifies and meets the criteria as a community hospital as defined. On its behalf, as counsel, we have previously submitted by letter dated November 2, 2023, all of the documentation necessary to establish that it meets the criteria in Section 58-833 sub items a., b., and c.

There is nothing in the criteria that would preclude other ancillary uses of the property, including NCH from allowing a neighboring medical service practice to make use of a fairly minimum number of parking spaces on its property for which it is our understanding NCH imposes no charge and receives no compensation.

Nothing about that possible activity would in any way undercut or undermine the ability of NCH to remain as a not-for-profit corporation in the State of Florida, as a 501(c)3 qualified public charity, or to maintain a license as a hospital in the State of Florida.

Very truly yours,



Richard C. Grant

RCG/tf

cc: Ralf Brooks, Esq., City Attorney