

Via Electronic Mail

June 7, 2021

Hon. Sharon Ashe-Nadrowski, Council President, and Hon. Members of the City Council
City of Bayonne
630 Avenue C
Bayonne, New Jersey 07002

Re: Bayonne Medical Center

Dear Council President Ashe-Nadrowski and Honorable Members of the City Council:

I write on behalf of Hudson Regional Hospital (“HRH”) by way of follow-up to the discussion before the City Council at the public meeting held on May 12, 2021, wherein the governing body discussed, received public comment upon, and ultimately tabled two ordinances relating to the taking of the Bayonne Medical Center by way of eminent domain. In anticipation of this matter coming back before the Council at its upcoming June 9 public meeting, I write to put further definition to HRH’s proposal to preserve the Bayonne Medical Center property for hospital-only use without the need for eminent domain or any expenditure of public monies.

To this extent, and as further explained below, I am enclosing a proposed Court Order that, entered, would form a binding and judicially-enforceable commitment by HRH to dedicate the property to hospital-only use in exchange for the City suspending its quest to use eminent domain. Further, in the exceedingly unlikely event that if HRH ever abandons the hospital use in the future, today we will proactively grant the City an enforceable right of first-refusal to purchase the property at fair market value. If the parties cannot agree upon a sale price through negotiation, then HRH would agree to the eminent domain process at that time. All the City needs to do is instruct its counsel to sign the Consent Order to start this process.

We are taking this conciliatory step because, as the Council may recall, prior to the May 12 meeting, we submitted two letters and made arguments at the meeting that eminent domain was a needless expenditure of public funds because HRH – through its real estate holding company, 29 E 29 Street Holdings, LLC – was prepared, in its capacity as the current property owner, to dedicate the property to hospital-only use. The administration had proffered the use of eminent domain as the “only” means to ensure that Bayonne Medical Center remains in operation. This rationale for eminent domain did not withstand scrutiny then, and it certainly does not have any merit given the binding commitment that HRH is now putting on the table.

This solution protects the public interest while avoiding the need for any public funding whatsoever. The material features of the Consent Order are as follows:

- HRH will dismiss with prejudice its legal challenge to the hospital-only zoning and will agree that the land should be zoned for hospital-only use.
- HRH will commit to the indefinite operation of the Bayonne Medical Center property as an acute care hospital.
- For so long as HRH ensures the continued operation of the site as a hospital, the City and its agents will suspend any efforts at eminent domain and will defer any further consideration of the proposed ordinances.
- If HRH ever intends to cease operation of Bayonne Medical Center, it will provide advance written notice to the City and a right of first refusal to purchase the property at fair market value.
- If the parties are unable to agree upon a purchase price, then HRH would not contest an eminent domain proceeding and any judicial proceeding to take the property would be for the sole purpose of fixing a determination of a fair purchase price.
- City leaders will not pick sides in HRH's ongoing lease dispute with CarePoint and will support HRH's certificate of need application to operate the hospital.
- The proposed Order will be binding and fully enforceable in the Law Division of the Superior Court, Hudson County, which will retain jurisdiction to enforce its terms and conditions.

HRH believes that this extraordinary step demonstrates, beyond any reasonable dispute, that it is willing to put its money where its mouth is, and lay out in writing its commitment to the people of the City of Bayonne. In short, HRH is prepared to bear all of the risk in implementing its business plans, at no cost or expense to the City whatsoever, and will still leave to the City the option to purchase the property without a contested legal action if our efforts to acquire and operate the hospital are not successful. There is no need for the City of Bayonne, or the Hudson County Improvement Authority to incur public debt to accomplish their stated objectives.

Furthermore, the suggestion that the cost to acquire the real estate will not approach the \$95M proposed bonding cap is wrong. We believe that the value of the property is well north of \$100M, will involve years of litigation that we believe will result in dismissal of any eminent domain action, and will leave the City no closer to actually acquiring title to the land. By contrast, to resolve this matter today, the City need only instruct its legal counsel to sign, and return the enclosed form of Court Order.

This proposal, in all respects, solves all of the legitimate public policy concerns set forth at the May 12 Council meeting. If, after hearing this, there are still individuals who continue to support eminent domain and the plans of BMC Hospital, LLC/Surgicore, one has to ask this – whose interests are they serving, theirs or the people of the City of Bayonne?

Respectfully submitted,

**DECOTIIS, FITZPATRICK,
COLE & GIBLIN, LLP**

By: /s Thomas A. Abbate

Encl.

cc: Hon. Judith Persichilli, Commissioner, New Jersey Dept. of Health
Nicholas Bennett Executive Secretary, Local Finance Board
Hon. Thomas A. DeGise, Hudson County Executive
Norman M. Guerra, Executive Director, Hudson County Improvement Authority
Joseph DeMarco, Esq., City of Bayonne Redevelopment Counsel