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Practice Group(s):

Real Estate

Health Care

Ounce of Prevention or Pound of Cure? – Using Care in Planning and Zoning Matters for the Expansion of Health Care Facilities

By Patrick L. Byker and Graham C. Grady

Our nation's health care providers face daunting challenges today: uncertainty in the implementation of health care reform, the large influx of baby boomers entering their senior years, and disputes involved in the pursuit of Certificates of Need for new facilities, all impact efforts to supply an appropriate level of resources for care. Meanwhile, most local governments regulating health care facility expansion are constrained by flat or declining tax revenues and voters who are not inclined to support increased fees and taxes in these tough economic times. As a consequence of these legitimate but divergent forces, it is not surprising that comparatively little time and attention are given to how local zoning regulations can facilitate, rather than hinder the expansion needs of health care providers.

A Misdiagnosis Can Spring Traps for the Unwary

While the mission of the local hospital clearly is one of the most important and benevolent ones in any community, and major health systems employing thousands of people are important stakeholders in any region's economic development, the local health care system is not entitled to any special benefits when it comes to compliance with zoning regulations. Local governments bear the burden of enforcement of zoning regulations, regardless of the importance of the property involved, and a city or county will enforce its zoning regulations against the local hospital with the same vigor it applies to industrial, commercial or residential developments. Unlike some for-profit businesses that can "vote with their feet" and relocate to other areas if the local atmosphere is not conducive to growth, the health care provider will almost certainly remain in the same municipality for the long haul.

Given these constraints, it behooves the local health system to hire competent counsel in order to be well informed about local regulations before undertaking any expansion involving the development of real estate. Land use counsel can deploy its skill and experience with the rezoning process to make sure procedures are undertaken correctly and to ensure that the permitted uses include not only the currently anticipated uses but also a broad range of potential future uses to avoid having to return for the authority's permission at a later date following a change in use. Subsequent assistance by counsel with the site plan approval process can also be invaluable in ensuring a viable expansion.

An episode involving a hospital expansion in a suburb of a large Midwestern city illustrates the need for hiring competent legal counsel. Instead of hiring an attorney to prepare the zoning application in its entirety, the hospital hired a "design consultant" to oversee most of the planning and zoning work. The design consultant made a crucial mistake when reviewing the survey of the subject property in determining the identity of the property owners entitled to notice under the local zoning ordinance. As a result, the consultant mailed the notification of the zoning application to only half of the people entitled to receive the notice. When the municipal zoning officials discovered this error, the entire process had to be redone, at significant cost in terms of both time and money, and the delay resulted in renewed neighbor review and a demand for different and substantially more expensive parking facilities, which the hospital had to implement.

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Time to Change the Prescription? The Comprehensive Planning Process and the Health Care System's Role in Shaping a Community Vision

An additional way for land use counsel to assist with appropriate health care facilities expansion is through involvement in the comprehensive planning process. In many states, local governments are required to create and adopt a “comprehensive plan,” a document that often contains information on a wide range of topics, including land use planning, housing, public safety, infrastructure and environmental issues. In a nutshell, a comprehensive plan answers the question, “what do we want our community to look like twenty years from now?” It is an undertaking that typically involves a significant amount of citizen input. However, many cities’ comprehensive plans do not even mention health care, let alone recognize how vital health care facilities are to the urban fabric of a municipality and what issues need to be addressed so that health care facilities can be expanded in a prudent manner.

Typically, local governments update their comprehensive plans every five years, and they completely overhaul them every ten to fifteen years. In addition, many cities allow for citizen-initiated updates to various aspects of the comprehensive plan, but there can be significant costs on the private citizen who undertakes such a task. Often, the citizen-input process with the local government that is updating or revising its comprehensive plan is dominated by real estate development interests on the one hand and neighborhood/environmental activists on the other. In general, neither of these two groups is looking out for the interests of local health care providers, even though the local health system often is one of the leading employment generators within the municipality.

Given the burdens imposed on local health care systems by national policies and overarching demographic trends, it is no surprise that health system personnel often neither participate in the comprehensive planning process nor debate the merits of changing the zoning regulations imposed in the vicinity of health facilities. For health system administrators who are considering facilities expansion, it is critical to inquire about the local planning policies and zoning regulations that apply in the vicinity of the contemplated health care facilities. Additionally, there may be joint venture opportunities with private sector developers that can mitigate some costs if such collaboration is contemplated early in the development process.

K&L Gates’ Land Use, Planning and Zoning attorneys have experience in the planning and development process and in working with local government officials and citizens to address the needs of their clients. K&L Gates’ attorneys can work to influence the local government’s comprehensive planning process on behalf of the local health system so that health system administrators are free to focus on caring for patients rather than musing about height limits and setback requirements. Please contact us to discuss what role we can play to address these planning and zoning issues.

Authors:

Patrick L. Byker

patrick.byker@klgates.com

+1.919.466.1264

Graham C. Grady

graham.grady@klgates.com

+1.312.807.4255

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