

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF FACILITY SERVICES
RALEIGH, NORTH CAROLINA

IN RE: REQUEST FOR DECLARATORY)	
RULING BY HOSPICE & PALLIATIVE)	DECLARATORY RULING
CARE CHARLOTTE REGION)	
PROJECT I.D. NO. F-6950-03)	

I, Robert J. Fitzgerald, Director of the Division of Facility Services (the “Agency”) hereby issue this declaratory ruling to Hospice & Palliative Care Charlotte Region (f/k/a NewSouth HealthCare) issue a declaratory ruling pursuant to N.C. Gen. Stat. § 150B-4, 10A NCAC 14A .0103, and the authority granted to me by the Secretary of the Department of Health and Human Services.

By way of background, a certificate of need (“CON”) was issued to NewSouth HealthCare on May 29, 2004, for the development of a freestanding inpatient and residential care hospice facility consisting of eleven hospice inpatient beds and five residential care beds to be located in Mecklenburg County. New South HealthCare changed its name to Hospice & Palliative Care Charlotte Region (hereinafter “Hospice & Palliative Care”) on November 19, 2004.

Hospice & Palliative Care is requesting a declaratory ruling permitting it to relocate its hospice facility from 8310 McAlpine Dr., Charlotte, North Carolina, the location identified on the Certificate of Need (“CON”), to Parcel AS-22, Huntersville Business Park, Mecklenburg County, North Carolina.

This ruling is binding on the Agency and the person requesting it if the material facts stated in the request are accurate and no material facts have been omitted from the request. This ruling applies only to this request. Except as provided by N.C. Gen. Stat. § 150B-4, the Agency

reserves the right to change the conclusions that are contained in this ruling. Wallace C. Hollowell, III, Nelson Mullins Riley & Scarborough, LLP has requested this ruling on behalf of same and has provided the *material* facts set out below.

STATEMENT OF THE FACTS

Hospice & Palliative Care is a not-for-profit corporation, organized and existing under the laws of the State of North Carolina. Hospice & Palliative Care first began providing home hospice services in Mecklenburg County in 1978, under the name Hospice at Charlotte. Following a merger with Hospice of Lincoln County in 1997, Hospice & Palliative Care now serves a total of nine counties, with an average case load of 330 patients.

In July 2002, Hospice & Palliative Care petitioned the State Health Coordinating Council (“SHCC”) for an adjusted need determination for 21 hospice inpatient beds in Mecklenburg County. The SHCC approved the petition with an adjusted need determination for 11 hospice inpatient beds. This need determination was included in the 2003 State Medical Facilities Plan (“SMFP”).

In response to this need determination in the 2003 SMFP, Hospice & Palliative Care filed a CON application proposing to establish a freestanding inpatient and residential care hospice facility with 11 hospice inpatient beds and 5 residential care beds. This project was identified as Project I.D. No. F-6950-03. Hospice & Palliative Care was the only provider who submitted an application to meet this need in Mecklenburg County.

By letter dated April 28, 2004, the CON Section conditionally approved Hospice & Palliative Care’s application. The CON Section issued a CON to Hospice & Palliative Care on May 29, 2004, which permitted Hospice & Palliative Care to construct a hospice inpatient and residential care facility with no more than 11 hospice inpatient beds and 5 hospice residential

care beds in Mecklenburg County. In its application, Hospice & Palliative Care had proposed to develop this facility at 8310 McAlpine Drive in Charlotte. The site at 8310 McAlpine Drive where Hospice & Palliative Care originally intended to develop this facility is part of a larger tract of land owned by a developer. At the time of the CON application, the developer's plans for the surrounding sites were complementary to the environment that Hospice & Palliative Care wished to create for its inpatient/residential care hospice facility. In addition, during preparation of the application, Hospice & Palliative Care was informed that it could develop the facility under the land's current zoning.

In February 2004, Hospice & Palliative Care was notified that the developer intended to seek rezoning for the entire parcel of land and, as part of the rezoning, request a road that would connect the land to a currently existing street which had a traffic light at Monroe Road, which is a busy intersection. The neighborhood developed a formal opposition to the road and rezoning, and the matter developed into a very contentious conflict between developer and neighborhood rights. As a result of the conflict, the rezoning decision was repeatedly postponed through the summer and into the fall of 2004. In addition, the developer introduced a plan which would heavily develop the area surrounding Hospice & Palliative Care's proposed facility, including space for restaurants. As a result of the delay and uncertainty in the rezoning application, the organized neighborhood opposition, and the concern that the facility may be located next to a large chain restaurant with heightened noise and traffic, Hospice & Palliative Care decided not to renew its non-binding contract with the developer and to instead search for a more appropriate site in Mecklenburg County for the facility.

Hospice & Palliative Care has located a much more suitable site for its facility in the Huntersville Business Park in Huntersville, Mecklenburg County. This is the same business park

where the new Presbyterian Hospital Huntersville is located. Medical offices are also opening in this business park, close to the hospital. The park setting is pastoral and will provide a peaceful and serene environment for an inpatient/residential care hospice facility.

Huntersville Business Park offers convenient access to all major interstates, including I-77, I-85, and the I-485 connector (when that is completed), which will make this facility accessible to all residents of Mecklenburg County. In addition, there is bus line service access to the business park. This site also offers improved access to the hospice population served by Hospice & Palliative Care's branch offices, Hospice of Lincoln County and Hospice of Lake Norman. In addition, the site's close proximity to Presbyterian Hospital Huntersville will provide access to acute care services within minutes, should those services be required.

The proposed new site, parcel AS-22 in Huntersville Business Park, is located approximately 22 miles north of the original site proposed by Hospice & Palliative Care.

ANALYSIS

The CON law would require a full review of Hospice & Palliative Care's proposed change of site if that change were to represent a material change in the physical location or scope of the project [N.C. Gen. Stat. § 131E-181(a)]. The relocation of the site for the hospice facility does not constitute a material change in the physical location of the proposed project for the following reasons:

1. The proposed new site is located approximately 22 miles from the initially approved site and within the same county. In addition, the new site has improved access to the hospice population served by Hospice & Palliative Care's branch offices in Lincoln County and

in Lake Norman. The new site is in close proximity to Presbyterian Hospital Huntersville and support services, such as physician offices are opening in the Huntersville Business Park.

2. Hospice & Palliative Care will be developing its project in a manner which is not materially different from the representations made in its application and not inconsistent with any conditions that were placed on its CON. The change of site will not materially impact the approved project's projected costs and charges. Consequently, there would not be any violation of the CON Statute by permitting the change of its proposed site.

CONCLUSION

For all of the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the relocation of the site for Hospice & Palliative Care (Project I.D. No. F-6950-03) will not constitute a material change in the scope or physical location of the hospice facility, will not violate N.C. Gen. Stat. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C. Gen. Stat. § 131E-189(b).

This ruling is not intended, and should not be interpreted, to authorize any increases in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the certificate of need, or any other change in the approved project.

This the ____ day of May, 2005.

Robert J. Fitzgerald, Director
Division of Facility Services