

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

IN RE: REQUEST FOR DECLARATORY)
RULING BY HOSPICE OF GASTON COUNTY,) DECLARATORY RULING
INC. d/b/a GASTON HOSPICE HOUSE)
Project I.D. No. F-6812-03)

I, Robert J. Fitzgerald, Director of the Division of Facility Services (the “Agency”) hereby issue this declaratory ruling to Hospice of Gaston County, Inc. d/b/a Gaston Hospice House (“Gaston Hospice”), 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 Gaston Hospice on December 2, 2003, for the construction of a hospice inpatient and residential care facility consisting of six hospice inpatient beds and six hospice residential care beds to be located at 2300-H Aberdeen Boulevard, Gastonia, in Gaston County.

Gaston Hospice is requesting a declaratory ruling permitting it to relocate its hospice facility from the approved site to an alternate site off of Gaston Way in Dallas, North Carolina, near the center of Gaston County.

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. Leona T. Bucci, Executive Director of Hospice of Gaston County, Inc. has requested this ruling on behalf of Gaston Hospice and has provided the *material* facts set out below.

STATEMENT OF THE FACTS

Gaston Hospice, a not-for-profit corporation, organized and existing under the laws of the State of North Carolina, was awarded a CON to construct a facility with six inpatient beds and six hospice residential care beds in Gaston County, as set forth in Project I.D. No. F-6812-03.

The approved site for the inpatient/residential hospice facility is 2300-H Aberdeen Boulevard, in Gastonia (“Original Site”). Gaston Hospice, however, determined that a more suitable site for its facility would be off of Gaston Way in Dallas, near the center of Gaston County (“New Site”). The relocation will provide better patient access and a better patient environment. Additionally, the relocation will allow Gaston Hospice to: own 21 acres of property, which will permit future expansion to provide pastoral care outdoors; eliminate the institutional, acute care environment associated with locating the hospice facility next to Gaston Memorial Hospital; and allow for Gaston Hospice to develop its own palliative environment.

The relocation to the New Site will add \$250,000 to the total cost of the project, which constitutes only a 12% increase from the original approved amount. The additional \$250,000 will be paid through Gaston Hospice’s endowment fund. If the facility cannot be completed under the 15% cost-overrun threshold (thus constituting a material change in the project under N.C. Gen. Stat. § 131E- 176(16)e.), Gaston Hospice will file a new CON application pursuant to N.C. Gen. Stat. § 131E-178.

ANALYSIS

The CON law would require a full review of Gaston Hospice’s proposed change of site if that change were to represent a material change in the physical location of the project according to N.C. Gen. Stat. § 131E-181(a). The relocation of the site for the hospice facility from Gastonia

to Dallas does not constitute a material change in the physical location nor in the scope of the proposed project for the following reasons:

1. The proposed New Site is located only eight miles from the initially approved site and, is within the same county. The New Site will also allow for better patient access and better patient environment.
2. The change in location is the only proposed change in the project, and therefore does not constitute a material change in either the scope of the project or in the person named in the application. There would be no violation of N.C. Gen. Stat. § 131E-181(a).

N.C. Gen. Stat. § 131E-189(b) allows the Agency to withdraw Gaston Hospice's CON if Gaston Hospice either fails to develop the service in a manner consistent with the representations made in the application or with any conditions that were placed on the CON. The relocation of the Hospice would not violate this statute for the following reasons:

1. Gaston Hospice will not be developing its project in a manner that is materially different from the representations made in its application and will not be inconsistent with any of the conditions that were placed on its CON.
2. The development of the project at the New Site is in close proximity to the Original Site and would not constitute a failure to satisfy a condition of the CON because none of the conditions on the CON refer to or relate to the project 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 Gaston Hospice (Project I.D. No. F-6812-03) will not violate N.C. Gen. Stat. § 131E-181, because it will not constitute a material change in the

physical location of the hospice facility, 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 increase in the approved capital expenditure for this project, a change in the approved timetable, a change in the conditions placed on the CON, or any other change in the approved project.

This the _____ day of June, 2005.

Robert J. Fitzgerald, Director
Division of Facility Services