

**NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION  
RALEIGH, NORTH CAROLINA**

<b>IN RE: REQUEST FOR DECLARATORY</b>	)	
<b>RULING BY SENIOR HOUSING</b>	)	
<b>RESOURCES, LLC and ST. ANDREWS</b>	)	<b>DECLARATORY RULING</b>
<b>CENTER</b>	)	
<b>Project I.D. No. F-7636-06</b>	)	

I, Jeff Horton, as Acting Director of the Division of Health Service Regulation, North Carolina Department of Health and Human Services (“Department” or “Agency”), do hereby issue this Declaratory Ruling pursuant to North Carolina General Statute § 150B-4 and 10A NCAC 14A .0103 under the authority granted me by the Secretary of the Department of Health and Human Services.

Senior Housing Resources, LLC and St. Andrews Center (collectively “St. Andrews”) have requested a declaratory ruling allowing for a change in the site for Project I.D. No. F-7636-06 on the grounds that the change does not constitute a material change in physical location or a failure to materially comply with the representations made by St. Andrews in its Certificate of Need (“CON”) application for its project. N.C.G.S. §§ 131E-181(a) and (b). This ruling will be binding upon the Department and the entity requesting it, as long as the material facts stated herein are accurate. This ruling pertains only to the matters referenced herein. Except as provided by N.C.G.S. § 150B-4, the Department expressly reserves the right to make a prospective change in the interpretation of the statutes and regulations at issue in this Declaratory Ruling. R.E. Underwood of Senior Housing Resources has requested this ruling on behalf of St. Andrews and has provided the material facts upon which this ruling is based.

## **STATEMENT OF THE FACTS**

Effective 8 November 2007, the CON Section issued a CON to St. Andrews to construct an 81 bed adult care home replacement facility to be located near the corner of Poplar Tent Road and George Lyles Boulevard in Concord, North Carolina (the “Original Site”). St. Andrews represents that the Original Site is no longer available for the development of the proposed facility. St. Andrews has identified a suitable alternate site 300 yards from the Original Site (the “Proposed Site”).

St. Andrews states that the Proposed Site is located in Afton Village, a Planned Unit Development Community in Concord. St. Andrews represents that the Proposed Site has all required utilities in place and is only slightly higher in price than the Original Site. St. Andrews further represents the new site is consistent with all conditions imposed on its CON.

## **ANALYSIS**

The CON law would require a full review of St. Andrews’ proposed change of site if that change were to represent a material change in the physical location or scope of the project. N.C.G.S. § 131E-181(a). The proposed change of the site for St. Andrews’ project does not constitute a material change in the physical location because of the close proximity of the Proposed Site to the Original Site. The change will not affect the scope of services offered or the costs and charges to the public. In addition, there is no proposed change in the person named in the application such that a violation of N.C.G.S. § 131E-181(a) would result.

N.C.G.S. § 131E-189(b) allows the Agency to withdraw St. Andrews’ CON if St. Andrews 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. St. Andrews will not be developing its project in a manner that is materially different from the representations made in its

application, nor will it be developing its project in a manner that is inconsistent with any of the conditions that were placed on its CON.

### **CONCLUSION**

For all the foregoing reasons, assuming the statements of fact in the request to be true, I conclude that the substitution of the Proposed Site for the Original Site for St. Andrews' adult care home facility (Project I.D. No. F-7636-06) will not constitute a material change in the physical location or scope of the project, will not violate N.C.G.S. § 131E-181, and will not constitute a failure to satisfy a condition of the CON in violation of N.C.G.S. § 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 as stated on the face of the CON, 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 February, 2009.

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Jeff Horton, Acting Director  
Division of Health Service Regulation  
N.C. Department of Health and Human Services

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Declaratory Ruling has been served upon the nonagency party by certified mail, return receipt requested, by depositing the copy in an official depository of the United States Postal Service in first-class, postage pre-paid envelope addressed as follows:

**CERTIFIED MAIL**

R.E. Underwood  
Senior Housing Resources, LLC  
246 Cabarrus Avenue West  
P.O. Box 143  
Concord, NC 28025

This the \_\_\_\_\_ day of February, 2009.

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Jesse B. Goodman  
Acting Chief Operating Officer