

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

IN RE: REQUEST FOR)	
DECLARATORY RULING BY HARNETT)	
HEALTH SYSTEM, INC., COUNTY OF)	DECLARATORY RULING
HARNETT, AND WAKEMED)	
PROJECT ID # M-7351-05)	

I, Robert J. Fitzgerald, Director of the Division of Health Service Regulation (the “Department”), hereby issue this declaratory ruling to Harnett Health System, Inc. (“HHS”), County of Harnett (“County”), and WakeMed (collectively “Petitioners”) pursuant to N.C.G.S. § 150B-4, 10A NCAC 14A.0103, and the authority delegated to me by the Secretary of the North Carolina Department of Health and Human Services. Petitioners have filed a Declaratory Ruling Request (the “Request”) asking the Department to issue a ruling allowing them to build a new hospital at a location different than the site identified in their application for a Certificate of Need (“CON”). For the reasons given below, I conclude that the Request should be granted.

This ruling is binding on the Department and the persons requesting it if the material facts stated in the Request are accurate and no material facts have been omitted from the request. The ruling applies only to this request. Except as provided by N.C.G.S. § 150B-4, the Department reserves the right to change the conclusions which are contained in this ruling. William R. Shenton of Poyner & Spruill LLC has requested this ruling on behalf of Petitioners and has provided the statement of facts upon which this ruling is based. The material facts as provided by counsel for Petitioners are set out below.

STATEMENT OF THE FACTS

Petitioners applied for and received a CON to develop and operate a 50-bed acute care hospital, to be known as Harnett Health – Central Campus (the “New Hospital”), Project # M-

7351-05, in Lillington, Harnett County. Petitioners proposed that HHS develop and operate the New Hospital, with WakeMed to manage it. The original site identified in the CON application (the “Original Site”) was to be donated by the County to HHS. Petitioners now have identified a different site (the “Proposed Site”) located across Highway 401 from the Harnett County Governmental Complex. The Proposed Site is within a larger tract that Harnett County intends to acquire. The County then would donate the Proposed Site for the New Hospital.

Petitioners describe their proposal and the rationale for it as follows. The County had obtained an option on the Original Site, which was a tract of land consisting of 22 acres. The value of the Original Site was identified in Petitioners’ CON application as \$487,960. The Proposed Site is a parcel, up to 21 acres, that is part of a larger tract of land owned by an organization known as Harnett Forward Together Committee (“HFTC”), a nonprofit organization that was formed to encourage economic development in Harnett County. Petitioners state that the larger tract of 130.3 acres (the “HFTC Property”) is a focal point of Harnett County’s efforts to attract high-technology industries. They argue that having the New Hospital on part of the HFTC Property will contribute to this effort.

The HFTC Property was appraised in June 2006 at a value of \$6 million. By dividing that value by the size of the tract, Petitioners calculate the average per-acre value to be \$46,048. They state that the size of the Proposed Site will be no greater than 21 acres, and that after final planning, a smaller site may be possible. They multiply the HFTC Property average per-acre value by 21 to estimate that the land cost of the New Hospital at the Proposed Site will be \$967,008. Petitioners argue that this figure is probably overstated because the methodology for computing it does not take into account the possibility that the value per acre of the Proposed Site is less than the average value per acre of the whole HFTC Property (since the Proposed Site

does not front the highway). Using these calculations, the Petitioners conclude that the difference in land cost between the Proposed Site and the Original Site is \$469,048, which is approximately one percent of the original capital expenditure of \$46,060,919 that was projected in their CON application. The approved total capital expenditure for the project, as shown on the face of the CON, is \$50,601,576 because the proposed capital expenditure was adjusted for inflation as required by N.C.G.S. § 131E-181(c).

Petitioners represent that there will be no change in the ownership or control of the New Hospital, that development of the New Hospital on the Proposed Site will not involve the development or operation of any additional services that were not included in the CON application for the New Hospital, and that the change in sites will not result in increases in charges for services at the New Hospital.

ANALYSIS

The CON law would require a full review of Petitioners' 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 Petitioners' project from the Original Site to the Proposed Site does not constitute a material change in the physical location or the scope of the project because the Proposed Site is in close proximity to the Original Site, and the increase in land value for the Proposed Site is approximately one percent of the original projected capital expenditure for the New Hospital. The change in sites will not affect the scope of services offered or the charges to the public for the provision of services at the New Hospital. In addition, there is no proposed change in the person named in the application that would violate N.C.G.S. § 131E-181(a).

N.C.G.S. § 131E-189(b) allows the Agency to withdraw Petitioners' CON if Petitioners fail 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. Petitioners will not be developing their project in a manner that is materially different from the representations made in their application, nor will they be developing the 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 subject to the conditions set out herein, the substitution of the Proposed Site for the Original Site of Petitioner's project 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 the ____ day of July, 2007.

Robert J. Fitzgerald, 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 a first class, postage prepaid envelope addressed as follows:

CERTIFIED MAIL

William R. Shenton
Poyner & Spruill LLP
3600 Glenwood Avenue
P.O. Box 10096
Raleigh, NC 27605-0096

With a courtesy copy to:

Joy H. Thomas
Law Office of Joy Thomas
514 Daniels St., # 182
Raleigh, NC 27605
Counsel for Good Hope Health System, LLC

C. Winston Gilchrist
Morgan, Reeves & Gilchrist
P.O. Box 1057
Lillington, NC 27546
Counsel for Town of Lillington

This the 13th day of July, 2007.

Jeff Horton
Chief Operating Officer