

## **MEMORANDUM**

TO: Roger L. Stancil, Town Manager

FROM: Lance Norris, Public Works Director  
J. B. Culpepper, Planning Director  
Sue Burke, P.E., Stormwater Management Engineer

SUBJECT: Public Hearing: Land Use Management Ordinance Text Amendment – Jordan Watershed Riparian Buffer Protection

DATE: February 15, 2010

### **PURPOSE**

The purpose of this public hearing is to receive public comments about the proposed Land Use Management Ordinance text amendment that would incorporate the minimum requirements of the Jordan Nutrient Strategy Rule (15A North Carolina Administrative Code 02B.0267, as amended by Session Law 2009-484) for riparian buffer protection.

### **BACKGROUND**

The North Carolina Jordan Lake Nutrient Management Strategy is a set of rules developed to reduce the nutrient over-enrichment in Jordan Lake. These rules target sources of nutrients such as agriculture, stormwater from new and existing development, fertilizer applicators, and wastewater treatment plants, as well as provide increased protection of riparian buffers along intermittent and perennial streams.

All of Chapel Hill and its planning jurisdiction areas are upstream of the Upper New Hope Arm of the Jordan Lake. The Town is required to develop, modify, and implement the necessary ordinances and strategies for the new and existing development stormwater regulations, the riparian buffer protection regulations, and the fertilizer management regulations. A discussion of the rules and their impacts on the Town of Chapel Hill was provided to the Council at its November 23, 2009 meeting.

### **DISCUSSION**

The Town's Land Use Management Ordinance (LUMO) contains provisions for riparian buffer protection and water quality management. The riparian buffer requirements are contained in the LUMO's Resource Conservation District (RCD) provisions. Compliance with the RCD requirements would meet some of the Jordan Lake rule criteria. However, revisions to the LUMO (e.g., revisions to permitted uses, prescribed construction techniques and limitations, grandfathering, variance approval by the State) are needed to demonstrate full compliance with the new Jordan Rules.

We are proposing the minimum text amendments to the LUMO, based on the model ordinance approved by the State, necessary to demonstrate compliance with the Jordan Rule for Existing Riparian Buffer Protection. Local governments must submit their local riparian buffer programs to the North Carolina Division of Water Quality (DWQ) by March 10, 2010 for review, with subsequent approval by the North Carolina Environmental Management Commission (EMC). The local program must consist of draft ordinances, policies, and procedures for protecting the

riparian buffer, determining variances, record keeping, and enforcement. Upon approval by the EMC, the Town will have two months to enact the ordinance and begin implementing its riparian buffer protection program.

The riparian buffer protection program must provide minimum 50-foot wide buffers along intermittent and perennial streams, lakes, ponds, and reservoirs. The water features subject to the buffer requirements must appear on the most recent soil survey maps prepared by the U.S. Natural Resources Conservation Service; the 1:24,000 scale quadrangle topographic maps prepared by the U.S. Geologic Survey (USGS), or a Town prepared map approved by the North Carolina Information Coordinating Council and the EMC.

The Rules require that within the 50-foot buffer, there are two zones. Zone One extends from the top of bank and extends landward 30 feet and must remain in an undisturbed, vegetated condition. Permitted activities in this zone are limited. Zone Two is the remaining 20 feet landward of Zone One. Zone Two is a stable, vegetated area that is to remain undisturbed unless the activity is expressly permitted under the rule. Grading and revegetating in Zone Two is permitted provided that Zone One is not adversely impacted. The State rule includes a table of uses that are designated as exempt, allowable, or allowable with mitigation. The Town may grant minor variances, i.e., activities that will impact only Zone Two, but major variances (activities that would impact any portion of Zone One) must be submitted to the EMC for approval.

Generally, where the RCD and Jordan buffer protection regulations overlap, both must be complied with. In some aspects, the two sets of regulations conflict. After this set of minimum necessary regulations are adopted in the short timeline prescribed by the State, we recommend that the conflicts between the Resource Conservation District regulations and the Jordan Watershed Riparian Buffer Protection rules be addressed through a second text amendment to be reviewed in the coming months.

The proposed text amendments were presented to the Planning Board for its recommendation the meeting on January 19, 2010 (please see Attachment 2). Staff held a Public Information Meeting on January 20, 2010.

### **PROPOSED LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENT**

The proposed text amendment would add a new section, 5.18, to the Land Use Management Ordinance.

### **ZONING AMENDMENT**

Article 4.4 of the Land Use Management Ordinance establishes the intent of Zoning Amendments (including both atlas and text amendments to the Ordinance) by stating that, "In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town it is intended that this chapter shall not be amended except:

- a) to correct a manifest error in the chapter; or
- b) because of changed or changing conditions in a particular area or in the jurisdiction generally; or
- c) to achieve the purposes of the Comprehensive Plan."

Article 4.4 further indicates:

It is further intended that, if amended, this chapter be amended only as reasonably necessary to the promotion of the public health, safety, or general welfare, and in conformance with the Comprehensive Plan.

**A) An amendment to the Land Use Management Ordinance (text amendment) is necessary to correct a manifest error in the chapter.**

*Staff Comment:* We believe the information in the record to date can be summarized as follows:

- Argument in Support: we believe that the correction of a manifest error in the chapter is necessary because the Town's regulations no longer meet the requirements of State law.
- Argument in Opposition: To date no arguments in opposition have been submitted.

**B) An amendment to the Land Use Management Ordinance (text amendment) is necessary because of changed or changing conditions in a particular area or in the jurisdiction generally.**

*Staff Comment:* We believe the information in the record thus far can be summarized as follows:

- Argument in Support: We believe the amendment is necessary due to changed conditions caused by the adoption of regulations by the State of North Carolina.
- Argument in Opposition: To date no arguments in opposition have been submitted.

**C) An amendment to the Land Use Management Ordinance (text amendment) is justified to achieve the purposes of the Comprehensive Plan.**

*Staff Comment:* We believe the information in the record thus far can be summarized as follows:

- Argument in Support: We believe the enactment of this proposed change will help implement multiple aspects of the Comprehensive Plan, including "to protect the natural setting of Chapel Hill."
- Argument in Opposition: To date no arguments in opposition have been submitted.

### NEXT STEPS

The Council will receive comments tonight and continue the public hearing until September 20, 2010. No later than March 10, 2010, Town staff must submit the draft ordinance; policies and procedures for protecting the riparian buffer and determining variances; and plans for record keeping and enforcement to the DWQ for its review. DWQ staff must provide recommendations for approval of or required changes to the local riparian buffer protection programs to the EMC by September 10, 2010. Upon approval by the EMC, the Town will have two months to enact the ordinance and begin implementing its riparian buffer protection program. The implementation schedule is provided as Attachment 3.

### RECOMMENDATIONS

Planning Board Recommendation: The Planning Board reviewed the proposed text amendment on January 19, 2010 and recommended that the Council accept the proposed text amendments as

written and direct staff, as soon as is reasonably practical, to prepare a map using the best available stream data for submittal to the EMC.

Staff Preliminary Recommendation: That the Council open the public hearing to receive comment on the proposal to amend the Land Use Management Ordinance provisions to incorporate the minimum requirements of the Jordan Nutrient Strategy Rule (15A NCAC 02B.0267, as amended by SL 2009-484) for existing riparian buffer protection, and continue the public hearing until September 20, 2010.

Further, that the Council adopt the attached resolution approving the submittal of the draft ordinance to the DWQ as part of the Town's riparian buffer protection program for review and approval by the State.

### **ATTACHMENTS**

1. Draft Riparian Buffer Ordinance (p. 6).
2. Planning Board Recommendation (p. 36).
3. Implementation Schedule (p. 37).