

89 Crooked Creek Lane
Durham, North Carolina 27713

November 26, 2008

Ms. Julie Ventaloro
Water Supply Watershed Protection Program Coordinator
N.C. Division of Water Quality
512 N. Salisbury Street
Raleigh, North Carolina 27604

Re: Review of Durham County's Critical Area Watershed Boundary Revision

Dear Julie,

My name is Neal Hunter, the landowner who made the original request to Durham County in 2005. I appreciate your willingness to work with my brother Jeff over the past six months.

It is my understanding that the Durham Board of County Commissioners recently authorized the submittal of materials to DWQ requesting approval of the County's critical area watershed boundary revision, based upon a more accurate survey establishing the normal pool elevation of Jordan Lake on the eastern side of the lake in southern Durham County. The County's action in this matter, together with its specific findings and legal authority under its Unified Development Ordinance (UDO) for this revision, all are set forth in the County's January 6, 2006 memo entitled "Jordan Reservoir Watershed Overlay Interpretation," which I believe was included with the County's request to DWQ.

We appreciate your willingness to discuss this matter and DWQ's role in this process with us over the past six months as it has helped our understanding of the facts. Since this revision affects land I and others own, I want to provide you and DWQ with the following information and clarifications that I hope will assist with your review and consideration of the County's 2006 action. (Please note that most of this information has been provided to DENR recently.).

It is easy to misinterpret the 2006 action (as well as the County's recent submittal) as including changes to both the County's CA and PA because the "Jordan Reservoir Watershed Overlay Interpretation" map includes the 1/2, 1 and 5 mile arcs based on the original and current NPE boundaries. The reality is that the County's 2006 action only involved a boundary change of their one mile CA.

Frankly, under these circumstances, I don't understand why a submittal to DWQ was necessary since the State's critical area interests were protected by Durham County's larger 1 mile critical area (this was exactly DWQ's position with Ellerbee Creek). The regulation requiring approval

by DWQ for watershed boundary movement was established to protect the State's critical area (CA) and protected area (PA) interests. These interests were not impacted by the less than ½ mile relocation of Durham's 1 mile CA boundary; the PA boundary did not change with the January 2006 action by the County since no landowner in that area requested a change. Let me repeat, the 5 mile PA was not changed in the January 6, 2006 action. The zoning atlas maps, each numbered 0717, showing the before and after changes accurately reflect the January 2006 action.

In fact, the January 6, 2006 action impacted only 14 parcels, 11 of which I owned or had under contract at the time. The remaining parcels were bounded by the line created by the January 2006 action and therefore, intuitively included in the County's memo. This is a simple matter of the County following its own ordinances approved by the elected governmental bodies.

The facts are very clear in this case and I summarize them as follows:

1. Durham County's 2006 Action Only Involved Boundary Change Within County's 1-Mile Critical Area. The January 6, 2006 action by Durham County only involves changes to fourteen (14) parcels of land located within the County's 1-mile critical area watershed overlay for Jordan Lake (known in Durham County as the F/J-A watershed overlay). The County's January 6, 2006 action did not change the boundary line for the County's 5-mile protected area for the Jordan Lake watershed (known in Durham County as the F/J-B watershed overlay). A careful reading of the County's January 6, 2006 memo clearly shows the scope of the County's action and its limited impact on the County's 1-mile critical area watershed overlay (F/J-A) boundary.
2. Durham County's Critical Area for the Jordan Lake Watershed Exceeds the State's Defined ½ Mile Minimum Critical Area. The State defines its minimum critical area as extending ½ mile from the normal pool elevation. State law allows local governments to extend the critical area as needed. 15A N.C.A.C. 2B .0202(20). Durham County's critical area for the Jordan Lake watershed extends 1 mile from the Jordan Lake normal pool elevation. Durham UDO Section 4.11.3. Since the County's critical area is 1 mile and the requested change in the County's critical area watershed boundary (F/J-A) is less than ½ mile, there was no change to the State's mandated minimum ½ mile critical area boundary. All of the fourteen (14) parcels of land affected by the County's January 6, 2006 action were located outside the State's ½ mile critical area boundary before the County's action was taken and remained so after the 2006 revision.
3. DWQ Should Apply the Law Consistent with Its Decision in Durham County Ellerbee Creek Watershed Boundary Matter. The facts presented in the County's 2006 CA adjustment are very similar to those DWQ reviewed in the Ellerbee Creek watershed boundary matter several years ago. In Ellerbee Creek, DWQ reviewed Durham County's proposed revision to the Falls Lake critical area boundary that arose out of more accurate survey information about the normal pool elevation of Falls Lake on the Ellerbee Creek tributary. DENR's March 16, 2001 letter (from Elizabeth Kountis of DWQ) to Durham County, stated that "Thus, as the state only requires ½ mile coverage for a CA [critical area], your [Durham's] proposed new CA is still larger than the State's existing CA.

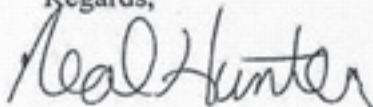
Therefore, you can make your proposed change in your CA without a reclassification or even changing your ordinance language; you would simply need to change your watershed map to reflect your new normal pool elevation." The acreage of the parcels of land affected by Durham County's 2006 CA Adjustment is less than the acreage involved in the Ellerbee Creek matter. DWQ did not take the Ellerbee Creek matter to the Environmental Management Commission for approval. DWQ should apply the law in the same manner and to the same extent in the present case as it did in Ellerbee Creek.

4. No Legal Requirement for U.S. Army Corps of Engineers Approval of the Jordan Lake Normal Pool Elevation Surveys. There is no law, statute, regulation, ordinance or policy requiring federal approval of changes to the normal pool elevation (NPE) of North Carolina's water supply lakes. In fact, the Army Corps of Engineers ACOE has recently stated that "Determination of the extent of the critical watershed boundary, identification of standards for determining elevations used to determine the boundary, and the enforcement of regulations relative to the boundary are the responsibility of the State and local governments." (See e-mail from ACOE Operations Manager, Craig Shoe, dated August 26, 2008). The ACOE has reviewed both of the surveys depicting the NPE of Jordan Lake in the vicinity of New Hope Creek. The ACOE has stated that the two surveys appear to very closely reflect the same elevation location and the ACOE sees no reason to contradict the accuracy of the surveys. (See e-mail from Craig Shoe dated October 23, 2008).

5. No Surface Water Reclassification Triggered by County's January 6, 2006 Action. According to DWQ's Schedule of Classifications, DWQ's primary surface water classification of New Hope Creek south of Stage Coach Road in the vicinity of the parcels of land affected by the County's January 6, 2006 action is WS-IV with a supplemental classification as Nutrient Sensitive Waters (NSW) until it reaches the State's ½ mile minimum critical area boundary. Within the State's ½ mile minimum critical area, the DWQ surface water classification is WS-IV, NSW, CA. The State's ½ mile critical area boundary and the County's 5-mile protected area boundary were not affected by the County's January 6, 2006 action. Since there has been no reduction in the State's ½ mile critical area of coverage or the County's 5 mile protected area, no surface water reclassification is required in connection with DWQ's review and approval of the County's January 6, 2006 action. Please see DWQ's response quoted in #3 above as the surface water classification of Ellerbee Creek just before and upon entering the critical area is identical to that of New Hope Creek (WSIV, NSW and WSIV, NSW, CA respectively).

Please let me know if you have any questions, comments or need additional information. Thanks again for your time and attention.

Regards,



Neal Hunter