

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, March 23, 2009

3:30 P.M. Special Session

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman Michael D. Page, Vice-Chairman Ellen W. Reckhow, and Commissioners Becky M. Heron, Brenda A. Howerton, and Joe Bowser.

Absent: None

Presider: Chairman Page

Jordan Lake Boundary Watershed Boundary Line Amendments

Steven L. Medlin, AICP, City-County Planning Director, gave the following presentation on the issue surrounding the Jordan Lake Watershed Boundary:

- Background
 - Durham enforces current water supply watershed protection overlays since early 1990s
 - 1-mile Critical Area
 - 5-Mile Protected Area
 - Measured from normal pool
 - Jordan Lake: 216 foot elevation, MSL
 - Original normal pool location based on USGS 7.5 minute quadrangle maps
 - Hand drawn maps
 - Best available information in early 1990s
- The Request
 - Property owners request interpretation
 - Believed County inaccurately depicts normal pool location
 - Provided land survey
 - Requested interpretation per UDO Section 4.11.3
- UDO Section 4.11.3 Rules for Interpretation of Overlay Boundaries
 - A. Upon request by a property owner whose property is divided by an Overlay boundary, the Planning Director, or designee, shall be authorized to determine administratively the exact boundary of the Watershed Overlay.
 - B. The Planning Director, or designee, shall interpolate the general boundary as shown on the Watershed Overlays Parcels Map, but may vary it to exclude lots of one-half acre or less in a proposed subdivision. In addition, the

Planning Director, or designee, may use identifiable physical features, such as roads, streams or easements, as boundaries if they approximately coincide with the interpolated general Overlay boundary. All such changes shall be shown on the Development Tier Map, the Official Zoning Map, and the Watershed Overlays Parcels Map, which shall be maintained by the Planning Department.

- UDO Section 4.1.3 Official Zoning Map
 - The Planning Director, or designee, shall revise the Official Zoning Map when amendments are passed by the governing body in accordance with Sec. 3.5, Zoning Map Change. The Planning Director, or designee, shall correct errors in the map as they are discovered.
- The Interpretation, 2006
 - Planning Director: better information about normal pool location
 - Amends 1-mile Critical Area boundary
 - Amends UGA location
 - Amends Development Tier
 - Amends the land use designation of the Future Land Use Map
- Planning Director Actions, 2006
 - Issued an official interpretation memo
 - Ordered that the Zoning Atlas, FLUM, Watershed, and Development Tier maps be changed to reflect the revised boundaries
- Legal Opinions, 2008
 - Planning Director's interpretation invalid
 - Did not secure approval of EMC/DWQ per NCAC
 - Did not have authority to amend zoning boundary without State mandated process
 - Did not have authority to amend UGA boundary or make modifications to Comprehensive Plan FLUM
- Survey, 2008
 - Board of Commissioners directed staff to send request, including private survey, to DWQ on November 10, 2008
 - Staff sent survey package with background on November 13, 2008 supplemented by additional information at DWQ request on December 17, 2008.
- Board of Commissioners' Action
 - Commissioner Cheek moved, seconded by Vice-Chairman Page, that the Durham City-County Planning Director be directed to submit revisions to the location of the Jordan Reservoir normal pool and associated one-half mile and one-mile watershed protection overlay boundaries, as outlined in the memorandum dated January 6, 2006 to Jeff Hunter from Frank Duke to the Division of Water Quality, for approval by the NC Environmental Management Commission, with the materials to be submitted to include, among other things, a letter requesting approval, the survey performed by Puckett and Associates dated April 22, 2005, the map showing the current

watershed boundaries, a map showing the prior watershed boundaries, a copy of the January 6, 2006 memorandum, and any other materials as may be requested by the Division of Water Quality or the Environmental Management Commission.

- Reservoir Survey
 - Board asked that staff issue a RFQ for professional services to survey entire reservoir within Durham County
 - RFQ issued
 - Staff evaluated and identified preferred surveying firm and prepared a contract
 - Agenda item prepared for Board consideration on November 24, 2008
 - No action taken
- Staff Recommends Survey
 - Original mapping based on best available information
 - Improved technology
 - New survey would be:
 - More accurate
 - Objective
 - Comprehensive, including entire lake in Durham County
 - Coordinated with other jurisdictions
- DWQ Response
 - DWQ accepted and approved the surveys as better information than currently reflected on County mapping on February 4, 2009
 - Updated mapping as well as natural processes could account for apparent differences in the location of the normal pool
- DWQ Recommendation
 - To continue to seek a regional and systematic approach to making future revisions to watershed boundaries
 - While this revision was unique and technical in nature, they recognize that watershed boundary issues may arise in other areas of Jordan Lake
- Board of Commissioners, 2008
 - Directed staff to initiate zoning map and comprehensive plan changes to amend watershed protection area boundaries, based on DWQ determination
- Legal Opinions, 2009
 - DWQ approval of survey:
 - Allows Durham to change watershed overlay zoning boundaries
 - Does not require change
 - Zoning and Plan amendment changes must follow procedures established in Statutes and UDO
 - Once officially adopted, must provide DWQ a digital shape file and hard copy of the County's final map
- Mapping
 - Smaller Reservoir
 - New 1-Mile Critical Area
 - Encompasses smaller area

- New 5-Mile Protected Area
 - Encompasses larger area because of better mapping accuracy
- Summary of Future Directions
 - Planning Staff
 - County-initiated watershed overlay zoning change per UDO
 - County-initiated Comprehensive Plan amendment per UDO: Neighborhood meeting on April 9, 2009, Jordan High School, 7:00 p.m.
 - Similar zoning and Comprehensive Plan changes within the City jurisdiction
 - Coordinating inter-jurisdictional discussion of watershed issues

Mr. Medlin and County Attorney Chuck Kitchen addressed questions and concerns posed by the Commissioners regarding the following:

- Zoning ordinance amendments
 - Floodplains vs. watershed boundaries
- Legal actions surrounding watershed regulations
 - Original map vs. new map
- New 5-Mile Protected Area
- Suggestion—Performing an independent survey of the entire Durham County boundary
 - Cost
- UDO Section 4.1.3(b) interpretation
 - Proper authority
- Current survey
 - Measurements
 - Maps
- Jordan Lake water quality
- Proposed Board actions
 - Perform independent survey;
 - Correct maps and consider public comment during a rezoning request; or
 - Proceed with further discussion
- Recommendations
 - Place a public hearing on the April 13 Regular Session agenda
 - Seek a review of the County Attorney's opinion from the Institute of Government and/or the Attorney General's office
 - Seek peer reviews from Planning departments in neighboring counties
- Assembly of a peer review team
 - Planning Directors
 - Mecklenburg, New Hanover, Buncombe, Cumberland, and Vance Counties
 - 1 County Attorney

The Board reached a consensus to hold a public hearing and discuss the progression/changes to the map at the April 13 Regular Session, conduct a peer review session, and verify with the survey company to confirm the same price is valid.

Directive

Staff to update the RFQ to determine today's cost for an independent survey.

Closed Session

Commissioner Howerton moved, seconded by Commissioner Heron, to adjourn to closed session to discuss matters pursuant to G. S. 143-318.11(a)(3).

The motion carried unanimously.

Respectfully submitted,

Yvonne R. Jones
Deputy Clerk to the Board