

## BOARD OF ALDERMEN

ITEM NO.: A(2)

### AGENDA ITEM ABSTRACT

MEETING DATE: MARCH 25, 2008

**TITLE: Public Hearing: Draft Ordinance to Revise Water Quality Buffer Provisions in Carrboro Land Use Ordinance**

<b>DEPARTMENT:</b> PLANNING	<b>PUBLIC HEARING:</b> YES __X__ No ____
<b>ATTACHMENTS:</b> A. Resolutions finding consistency B. Draft ordinance C. Current ordinance D. Staff memo E. Recommendations and comments F. Staff response to NTA comments	<b>FOR INFORMATION CONTACT:</b> RANDY DODD, 918-7326 PATRICIA MCGUIRE, 918-7327

### PURPOSE

Comprehensive revisions of the Town's stream buffer provisions have been prepared by staff to enhance water quality protection, establish consistency across the different areas of the Town's planning jurisdiction, clarify the purpose and requirements to all affected and interested parties, and consider new rules for Jordan Lake. The Board of Aldermen must receive public comment before taking action on changes to the Land Use Ordinance.

### INFORMATION

Staff previously reported (October 14 and November 25, 2008) to the Board of Aldermen the following key conclusions from a review of current buffer provisions. Staff has recommended that:

- a. an opportunity exists to more clearly separate and define provisions specific to water quality and non-water quality goals. Pursuing this course should aid in the ability to articulate the provisions to all interested parties. Current provisions have been motivated to achieve water quality protection and other environmental and land use goals, such as flood and open space protection.
- b. the widths and stream definitions for the different hydro-jurisdictional areas be reconsidered to provide improved consistency and clarity;
- c. "the state of the art" in water quality buffer be incorporated to better address considerations such as diffuse flow, zonation, comprehensive consideration of allowable activities in the buffer, and mitigation provisions;
- d. technical implementation challenges such as mapping and measuring the slope based buffer width distances be considered;
- e. the update consider new rules for Jordan Lake.
- f. the update acknowledge the Town's commitment to removing Bolin Creek from the State's impaired streams list.

Given these findings and motivations, staff has in particular been: updating the Town's geographic (GIS) representation of surface waters; reviewing buffer provisions in draft Jordan Lake rules; and developing staff consensus on recommended changes to the ordinance through a series of meetings.

In response to review comments, a staff memo detailing the ordinance, presenting the results of an analysis of changes to land area regulated as water quality buffers, and describing the affect of the proposed changes on existing development has been prepared for the Board's consideration (*Attachment D*). The draft and current ordinances are also attached (*Attachments B and C*). The current ordinance is structured for three hydrojurisdictional areas: Sections 15-265 (watershed), 15-268 (area outside of watershed), and 15-269 (Northern Transition Area).

The draft ordinance was referred to a number of advisory boards and agencies for review and/or recommendations. Staff presented draft land use ordinance changes to the Board of Aldermen on October 14th, and to advisory boards on November 6<sup>th</sup> as part of a comprehensive review of the existing buffer requirements. Staff has also presented the changes to the Recreation and Parks Commission and the Greenways Commission, and sought review from others as presented below.

Board/Agency	Status of review/comment
<i>Required by LUO/JPA/GS</i>	
<b>Planning Board</b>	(Presented 11/6)
<b>Orange County</b>	(Comments received)
<b>North Carolina Environmental Management Commission (Division of Water Quality)</b>	(Staff comments received- formal review/approval following adoption by Board of Aldermen)
<i>Town board or local agency to which the ordinance was also referred</i>	
<b>Transportation Advisory Board</b>	(Presented 11/6)
<b>Environmental Advisory Board</b>	(Comments received )
<b>Economic Sustainability Commission</b>	(Presented 11/6)
<b>Recreation and Parks Commission</b>	(Presented 11/3)
<b>Northern Transition Area Advisory Committee</b>	(Presented 11/6, 12/15)
<b>Greenways Commission</b>	(Presented 11/17)
<b>Duke Power, Public Service of NC</b>	(Presented 11/17)
<b>OWASA</b>	(Comments received)

The draft ordinance involves changes to the buffers within the University Lake water supply watershed; therefore approval by the North Carolina Environmental Management Commission (EMC) is required before the changes can become effective. Staff has received comments on a draft copy of the ordinance from the staff of the EMC. Following action by the Board of Aldermen, a copy of the adopted ordinance will also be forwarded for formal review and approval. The effective date of the ordinance's adoption will coincide with the EMC approval. Copies of comments and recommendations are attached (*Attachment E*). Staff response to NTA comments received (subsequent to the 11/25 BOA meeting) are provided in attachment F.

In response to external review and as part of continued staff review, staff has modified the draft ordinance subsequent to presentation to the Board of Aldermen on 11/25/2008 as summarized below.

1. 15-270.1 Definitions: deleted entries for DBH, forest plantation, full pond elevation
2. 15-270.5(c) table of exempt and allowable activities
  - a. Clarified the applicability to public utilities for expansions and extensions.
  - b. New and altered drainage ditches: mitigation required for all new drainage ditches; editorial change clarifying use provisions.
  - c. Stream bank stabilization edited to clarify requirements for different types of stabilization.
  - d. Changed the entry for stream relocation from “Exempt” to “Allowable”.
  - e. Simplified the entry for water dependent structures, and reworded the definition in 15-270.1 for water dependent structures.
  - f. Changed the entry for historic or cultural sites from “Allowable” to “Exempt”.
  - g. Grading (in Zone 2): changed from exempt to allowable.
  - h. Forest harvesting: added a reference to Section 15-319.1, where limited regulatory authority of the Town in relation to forestry is specified
  - i. Deleted recreational and accessory structures reference.
  - j. Reduced width of aerial electric utility perpendicular buffer crossing threshold from 150 feet to 100 feet.
  - k. Revised requirements for other than perpendicular utility line buffer crossings to clarify distances from surface waters and required BMPs.
3. 15-270.5(h) Provision added exempting detached single family residences not currently located in buffers, but located in proposed ephemeral buffers from ordinance provisions
4. Clarified mitigation options for public utilities in Section 15-270.7
5. Deleted Section 15-270.8 relating to forestry management
6. Added Section 15-270.8 relating to permits and enforcement of buffer requirements providing the zoning administrator the ability to determine if a buffer disturbance permit is warranted in the absence of a development permit for activities identified in the Table of Exempt and Allowable Activities.
7. Section 3 and 6: Modified Subsections 15-92(i) and (j) and repealed sections 15-184(g) and (h) regarding major variances, imperviousness, and buffer crossings as required by the NC Environmental Management Commission.
8. Section 4 and 5: Modified Subsection 15-198 (b) (4, 5) by rewording provisions for primary and secondary constraints
9. Included language to provide flexibility in ordinance compliance for applications received prior to the effective date of the ordinance
10. Updated the definition of water dependent structures

### **FISCAL AND STAFF IMPACT**

There is no anticipated fiscal impact associated with adopting the ordinance. Assuming adoption, the Environmental Planner position would have primary responsibility for education and outreach. All staff involved in LUO and implementation would be involved in implementing the ordinance provisions.

### **RECOMMENDATION**

The staff recommends that the Board of Aldermen adopt the resolution (*Attachment A-1*) finding consistency and the draft ordinance revising water quality provisions (*Attachment B*).