



TOWN OF CARRBORO

NORTH CAROLINA

DELIVERED
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To: David Andrews, Town Manager
Mayor and Board of Aldermen

From: Randy Dodd, Environmental Planner

Thru: Patricia McGuire, Planning Director

Date: January 28, 2016

Subject: SL 2015-246 Restrictions on Town Water Quality Buffers

Background and Summary

The NC General Assembly passed legislation in 2015 limiting local government authority for regulating riparian buffers. State Division of Water Resources (DWR) staff are seeking the Town's response regarding compliance with the legislation. This memo summarizes the legislation, the Town's options for compliance, and recommends that the Board authorize staff to submit evidence supporting buffer provisions that exceed State requirements to the Environmental Management Commission.

Information

The Town has included provisions for regulating riparian buffers in the Land Use Ordinance since 1983 (Article XVI, Part III, available at <http://nc-carrboro.civicplus.com/DocumentCenter/Home/View/698>). In 2009, buffer requirements were updated to comply with State rules for protection and restoration of Jordan Lake (15A NCAC 02B .0267). In 2015, NC General Assembly passed Section 13.1 of SL 2015-246 (An Act to Reform Various Provisions of the Law Related to Local Governments) limiting local government authority to implement buffer provisions that are more restrictive than State provisions. On November 10, 2015, the State Division of Water Resources (DWR) hosted a meeting for local governments that currently implement a state riparian buffer program to provide State staff interpretation of options for local government response to the legislation. Carrboro was invited to participate in the meeting due to the Town's location in the Jordan Lake watershed and responsibility to implement the buffer provisions under the Jordan Lake Rules. In response to a request by DWR staff, Town staff contacted DWR staff on February 1, 2016 to indicate that the Town would provide a formal response after receiving direction from the Board of Aldermen.

Under SL 2015-246, a local government may be able to obtain State approval to implement more restrictive buffer provisions if:

- 1) doing so complies with or implements federal or State law, or is a condition of a State or federal permit, certificate, or other approval.
- 2) the ordinance was enacted prior to August 1, 1997 and allows "small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body under certain circumstances."
- 3) approval for more restrictive requirements is obtained from the Environmental Management Commission (EMC) and based on "scientific studies of the local environmental and physical conditions that support the necessity of the riparian buffer requirement for the protection of water quality, and any other information requested by the Commission." The statute specifically states that "The Commission shall not approve a local government ordinance that establishes a riparian buffer requirement for the protection of water quality

unless the Commission finds that the scientific evidence presented by the local government supports the necessity of the riparian buffer requirement for the protection of water quality.” DWR staff have provided an interpretation that “protection of water quality” means “nutrient removal, pollutant removal, stream bank protection, or protection of an endangered species as required by federal law.”

- If a local government chooses to make the case that this applies, DWR staff has requested that the local government submit an application to DWR by August 15, 2016. The application will be presented to the EMC at their November 2016 meeting.

Two other points are worth specifically highlighting: First, State staff have offered an opinion that the requirements do not restrict a local government from implementing more restrictive buffer requirements in Water Supply Watersheds (i.e., University Lake). Second, a local government may continue to implement an existing ordinance up until January 1, 2017.

Town staff continue to review all three options to substantiate the LUO’s more restrictive buffer requirements. Based on the Town’s extensive, prudent, and iterative efforts over many years to develop buffer regulations and long commitment to surface water protection, staff recommend that the Town seek to maintain the current provisions. If the Town’s pursuit of any of the above alternatives do not result in State approval for the current buffer provisions, revisions to the LUO in accordance with SL 2015-246 would be needed.

Recommendation

It is recommended that the Board authorize staff to pursue approval from the State for the Town to continue to enact, implement, and enforce current LUO buffer provisions by submitting the attached letter and taking appropriate follow up actions.