

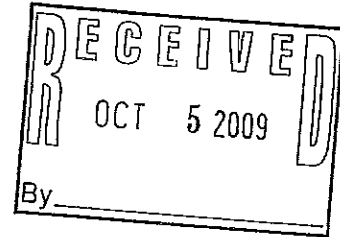


P.O. Box 187 Bynum NC 27228 (919) 542-5790 info@hawriver.org

October 5, 2009

Via Hand Delivery

Yvonne Jones
Interim Clerk to the Board
200 East Main Street
2nd Floor
Durham, NC 27701



Re: Protest Petitions for Zoning Case # Z0900009

Dear Ms. Jones:

Enclosed for filing in the above referenced zoning case, please find the original versions of Haw River Assembly's Protest Petitions and accompanying explanatory letter from the Southern Environmental Law Center.

The Haw River Assembly is submitting these materials in opposition to Zoning Case # Z0900009. Although, on its face, Zoning Case #0900009 purports to have the overall effect of marginally increasing the number acres in the critical area on Jordan Lake, importantly, the proposed changes would result in a reduction of the critical area on the most polluted part of Jordan Lake, the Upper New Hope Creek arm. In addition, the proposed changes will allow higher density development within areas that are currently, and appropriately, protected from such development.

Changing the delineation of the normal pool boundary for the most polluted part of Jordan Lake should only occur if there is complete confidence on the part of Durham County that the new delineation is correct and that it will not cause further impairment to Jordan Lake because of the decision. We do not believe such confidence is warranted. In this instance, rather than relying on a single standardized methodology that is both protective of water quality and gives some predictability to the public, the changes proposed in Zoning Case # Z0900009 combine different methods for determining the critical area boundary and are not protective of water quality. Finally, rather than being part of a comprehensive water supply management plan, these changes are driven by the desires, and the survey, of a single developer. The processes for establishing normal pool elevation on a creek flowing into a lake are quite complicated and should not be based on a survey method that offers the least protection, particularly, where a drinking water supply is involved. Further, we believe a change in the boundary around Jordan

Lake should only be made if it is clearly in the best interest of the community at large, not for the benefit of an individual or development company.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elaine Chiosso', written in a cursive style.

Elaine Chiosso,
Executive Director &
HAW RIVERKEEPER®

Enclosures

cc: Steve Medlin, Durham City/County Planning

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450

200 WEST FRANKLIN STREET, SUITE 330
CHAPEL HILL, NC 27516-2559

Facsimile 919-929-9421

October 5, 2009

Steve Medlin, Director
Durham City/County Planning
101 City Hall Plaza
Durham, NC 27701

Re: Protest Petitions for Zoning Case #Z0900009

Dear Mr. Medlin:

Please find attached protest petitions signed by property owners opposed to the adoption of rezoning application Z0900009, currently scheduled for hearing before the Durham County Board of Commissioners on October 12, 2009. Haw River Assembly, working in concert with property owners within and adjacent to land proposed for rezoning under application Z0900009, has compiled the attached petitions and submits them for the purpose of ensuring that the proposed rezoning is not adopted unless three-fourths of the Durham County Board of Commissioners vote in favor, as provided by S.L. 2003-83 and UDO 3.5.13.

As you know, a protest petition against a zoning map change is valid if it includes signatures of landowners comprising "(20%) or more of the area . . . immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots." S.L. 2003-83. Haw River Assembly has collected protest signatures from landowners sufficient to constitute a valid protest petition for either of two distinct sides of the proposed rezoning.

First, it bears emphasis that the attached signatures comprise far more than 20% of the 100-foot buffer adjacent to the proposed 751 Assemblage project of Southern Durham Development Inc. A 100-foot buffer on the east side of the 751 Assemblage (PIN 0717-04-33-5784), excluding the right of way for highway 751, encompasses 14.5 acres. The attached petitions include signatures of landowners collectively owning 4.0 acres, or 27%, of that 100-foot buffer. Nonetheless, the Planning Department has been clear, upon inquiry, that the protest petition burden for zoning application Z0900009 must be calculated based on all the parcels in the rezoning, not a segment of those parcels.

As identified by the Context Map for application Z0900009 circulated by Planning Department staff to the Durham Planning Commission in August, the collection of rezoned parcels around the edge of the critical area boundary form a convex arc around Jordan Lake. As directed by the Unified Development Ordinance, we have divided the critical area zoning change into four distinct sides for purposes of calculating protest petition requirements. The north side extends from the northwest corner of parcel 0707-01-37-3459 to the northeast corner of parcel 0717-01-08-8006, defining the northern edge of the rezoned area. The west side extends from the northwest corner of parcel 0707-01-37-3459 to the southwest corner of parcel 9797-01-90-5232, defining the western edge of the rezoned area. The east side extends from the northeast corner of parcel 0717-01-08-8006 to the southeast corner of 0717-04-50-6793. The south side extends along the inside of the arc defined by the rezoned parcels and includes the inside boundary, facing Jordan Lake, of all parcels in the area. Because road frontage is not confined to any single side of

the proposed rezoning we have applied the approach of S.L. 2003-83 and UDO 3.5.13 to road frontage adjoining any property and calculated the 100-foot buffer as extending from the street frontage of lots on the opposite side of the street.

The signatures in the attached petitions meet and exceed the protest petition requirements for both the east and west sides of the proposed rezoning. A 100-foot buffer on the east side of the rezoned area, excluding the right of way for highway 751 and other roads, encompasses 31.4 acres. The attached petitions include signatures of landowners collectively owning 7.2 acres, or 23%, of that 100-foot buffer. A 100-foot buffer on the west side of the rezoned area, excluding the right of way for Farrington Mill Road and other roads, encompasses 27.5 acres. The attached petitions include signatures of landowners collectively owning 17.2 acres, or 63%, of that 100-foot buffer. Accordingly, the attached petitions constitute a valid protest petition for both the east and the west sides of the proposed rezoning.

While we interpret the statute and the UDO to mean that Haw River Assembly has obtained a valid protest petition based on the totals outlined above, it is worth noting that the attached petitions establish a valid protest petition even under other, more burdensome interpretations of the ordinance. For example, if the zoning changes associated with the Jordan Lake protected area boundary are factored into these totals, the attached petitions still are more than sufficient. In particular, if a quadrangle is drawn around the proposed rezoning so that the northern edge of the rezoning extends out an additional 4 miles to wrap around the proposed changes to the protected area boundary in the Research Triangle Park, the attached petitions still are valid for the west side of the rezoning, and should remain valid for the east side as well. Even if the buffer surrounding the west side of the protected area (30.5 acres) is added to the buffer surrounding the west side of the proposed critical area changes (27.5), the attached petitions are sufficient to constitute a valid protest petition for the west side of the rezoning (with 17.2, or 30% of that combined buffer signed on to the petition). Finally, even if the west side of the rezoning is calculated by combining the buffer on the outer west side of the critical area changes, the west side of the protected area changes, and the west facing boundaries of properties rezoned on the east side of the critical area changes, the protest petition is valid with 17.2 acres (20%) of the resulting 84.0 acres of total buffer represented by the signatures on these petitions.

Thank you for your consideration of these protest petitions. Please contact me if I can be of any assistance.

Sincerely,

A handwritten signature in cursive script that reads "DJ Gerken".

DJ Gerken,
Senior Attorney

Protest Petition Signatures			
PIN	ID	Owner	Address
0717-01-35-8197	150659	Corbell Kristen Anne	104 Student Pl
0717-01-35-8177	150660	Doggett Kimberly T	102 Student Pl
0717-01-35-7393	150662	Johnson Marsha Brooks	103 Student Pl
0717-03-44-1810	150621	Schwarz Bertha S	422 Intern Way
0707-03-14-1669	143107	Quinn Louis A Quinn Andrea P	8409 Farrington Mill Rd
0707-01-37-5557	143118	Jones James N	7809 Farrington Mill Rd
0707-03-04-6580	143109	Nunn James S Jr Nunn Addie	8421 Farrington Mill Rd
0707-03-14-1191	143228	Napoli Milagros Napolis J M	7206 Kepley Rd
0717-03-44-0952	150639	Marchesini Claude M Marchesini Judy Marchesini Kathryn	104 Higher Learning Dr
0717-03-35-9055	150641	Murphy Sandra J	101 Higher Learning Dr
0707-01-25-7674	143101	Davis Reuben Davis Latanya	7105 Kepley Rd
0717-03-43-9605	143311	Bailes Harold R Bailes Judith B	9415 Nc 751 Hwy
9797-01-93-4634	143153	Kendrick Estates Investment Corp	8422 Farrington Mill Rd
0707-01-37-0578	143078	Kendrick Estates Investment Corp	7820 Farrington Mill Rd
0717-03-45-0271	150691	Chancellors Ridge Homeowners Association Inc	100 Student Pl
0717-01-26-5673	143318	Harris Paul Nunnally	8808 Nc 751 Hwy
0717-01-35-9066	150642	Jones Heather Love	103 Higher Learning Dr
0717-03-44-2624	150611	Barrow David Harold Barrow Perlita Lynn	421 Intern Way
0717-03-44-0941	150640	Nieves Migdalia	102 Higher Learning Dr Durham, Nc

Buffer Calculation For West Side of Critical Area Zoning Changes

Parcel ID	PIN	Square Feet within 100 ft buffer	Acres within 100 ft buffer	Percent Total Area	Owner	Site Address
143078	0707-01-37-0578	17536.669	0.403	1.46%	Kendrick Estates Investment	7820 Farrington Mill Rd
143107	0707-03-14-1669	24771.447	0.569	2.07%	Quinn Louis A	8409 Farrington Mill Rd
143108	0707-03-04-9602	17055.234	0.392	1.42%	Graves Jonathan R	8415 Farrington Mill Rd
143109	0707-03-04-6580	71334.649	1.638	5.96%	Nunn James S Jr	8421 Farrington Mill Rd
143130	0707-01-26-2894	36653.504	0.841	3.06%	Parker Floyd L	8020 Farrington Mill Rd
143153	9797-03-94-2043	219147.215	5.031	18.30%	Kendrick Estates Investment	8422 Farrington Mill Rd
143153	9797-03-94-2043	414942.389	9.526	34.65%	Kendrick Estates Investment	8422 Farrington Mill Rd
143127	0707-01-16-9645	10960.882	0.252	0.92%	Hallelujah Properties Llc	8118 Farrington Mill Rd
143077	0707-01-27-6489	56304.092	1.293	4.70%	Montclair Llc	8002 Farrington Mill Rd
143155	9797-02-90-3010	46972.527	1.078	3.92%	United States Of America	8504 Farrington Mill Rd
143155	9797-02-90-3010	93477.224	2.146	7.81%	United States Of America	8504 Farrington Mill Rd
143155	9797-02-90-3010	34.967	0.001	0.00%	United States Of America	8504 Farrington Mill Rd
143158	9797-02-70-0334	11696.492	0.269	0.98%	United States Of America	8552 Farrington Mill Rd
143159	9796-02-69-6692	13583.563	0.312	1.13%	United States Of America	8562 Farrington Mill Rd
143118	0707-01-37-5557	905.855	0.021	0.08%	Jones James N	7809 Farrington Mill Rd
143119	0707-01-37-1120	21579.892	0.495	1.80%	Jones Belinda L	7905 Farrington Mill Rd
143122	0707-01-37-2330	19723.364	0.453	1.65%	Jones Christine	7817 Farrington Mill Rd
143159	9796-02-69-6692	106380.036	2.442	8.88%	United States Of America	8562 Farrington Mill Rd
208903	9796-01-89-4365	14371.681	0.330	1.20%	United States Of America	0 Farrington Mill Rd
		Total Buffer	27.49	100%		
		Total signers	17.19	63%		

Buffer Calculation For East Side of Critical Area Zoning Changes

Parcel ID	PIN	Square Feet Within 100 Ft Buffer	Acres Within 100 Ft Buffer	Percent Total Area	Owner	Site Address
143341	0717-01-27-2464	58394.829	1.341	4.27%	United States Of America	8588 Nc 751 Hwy
143342	0717-01-27-4644	10245.879	0.235	0.75%	United States Of America	8562 Nc 751 Hwy
143345	0717-01-28-2025	67478.305	1.549	4.94%	United States Of America	3801 Stagecoach Rd
143318	0717-01-26-5673	141100.862	3.239	10.32%	Harris Paul Nunnally	8808 Nc 751 Hwy
143312	0717-04-33-5784	320288.998	7.353	23.43%	Southern Durham Development	9310 Nc 751 Hwy
143315	0717-01-35-5902.SPL	57705.470	1.325	4.22%	United States Of America	8851 Nc 751 Hwy
150739	0717-04-51-5855	65346.132	1.500	4.78%	Seven Five One Investments Llc	9704 Nc 751 Hwy
150741	0717-04-51-8386	74218.380	1.704	5.43%	United States Of America	9762 Nc 751 Hwy
150747	0717-04-60-2474	53624.686	1.231	3.92%	John E Booth Farms Llc	9916 Nc 751 Hwy
150750	0717-04-61-2150	20514.322	0.471	1.50%	United States Of America	9824 Nc 751 Hwy
143379	0717-01-37-2100	38801.085	0.891	2.84%	United States Of America	8711 Nc 751 Hwy
150749	0717-04-81-0412	27711.944	0.636	2.03%	Jordan At Southpointe Llc	9903 Fayetteville Rd
143340	0717-01-27-6355	41444.339	0.951	3.03%	United States Of America	8702 Nc 751 Hwy
143346	0717-01-28-3437	7600.634	0.174	0.56%	751 Llc	8512 Nc 751 Hwy
208894	0717-04-50-8254	1217.831	0.028	0.09%	Four Seasons Lawn & Garden	9197 Nc 751 Hwy
150748	0717-04-60-3756	38347.339	0.880	2.81%	Blalock Thomas Lyon Iii	9902 Nc 751 Hwy
143311	0717-03-43-9605	46332.597	1.064	3.39%	Bailes Harold R	9415 Nc 751 Hwy
150612	0717-03-44-2644	2149.609	0.049	0.16%	Woodall Charles Ashley	419 Intern Way
150621	0717-03-44-1810	2648.551	0.061	0.19%	Schwarz Bertha S	422 Intern Way
150622	0717-03-	2410.170	0.055	0.18%	Crowl Cindy	420 Intern Way

	44-1831					
150639	0717-03-44-0952	2244.536	0.052	0.16%	Marchesini Claude M	104 Higher Learning Dr
150640	0717-03-44-0941	2255.998	0.052	0.17%	Nieves Migdalia	102 Higher Learning Dr
150641	0717-03-35-9055	2360.717	0.054	0.17%	Murphy Sandra J	101 Higher Learning Dr
150642	0717-01-35-9066	2216.885	0.051	0.16%	Jones Heather Love	103 Higher Learning Dr
150659	0717-01-35-8197	2511.719	0.058	0.18%	Corbell Kristen Anne	104 Student Pl
150691	0717-03-45-0282	15911.961	0.365	1.16%	Chancellors Ridge Homeowners	100 Student Pl
150660	0717-01-35-8177	3050.191	0.070	0.22%	Doggett Kimberly T	102 Student Pl
150661	0717-01-35-7373	2431.577	0.056	0.18%	Taft Todd D	101 Student Pl
150662	0717-01-35-7393	2566.316	0.059	0.19%	Johnson Marsha Brooks	103 Student Pl
150691	0717-03-45-0282	88633.763	2.035	6.48%	Chancellors Ridge Homeowners	100 Student Pl
150611	0717-03-44-2624	2502.373	0.057	0.18%	Barrow David Harold	421 Intern Way
143323	0717-03-44-3385	30670.320	0.704	2.24%	Eagle Spur Investments Inc	9303 Nc 751 Hwy
150700	0717-04-44-8663	741.599	0.017	0.05%	Turner Mary Craig	8404 Fayetteville Rd
150703	0717-04-72-4975	81337.581	1.867	5.95%	Craig Mildred M	362 Scott King Rd
150706	0717-04-44-8024	49955.470	1.147	3.65%	Turner Mary C	8613 Fayetteville Rd
		Total Buffer	31.381	100%		
		Total Signers	7.216	23%		

**Durham City and County
Official Zoning Map Change
Protest Petition**

NOTE:

- This protest petition form must be used to qualify a rezoning protest under NC General Statute 160A-385 and 386 for the City, and similar special legislation for the County.
- It must be filed with the City Clerk or County Clerk at least four workdays prior to the date established for the governing body's public hearing on the proposed zoning map change, to allow sufficient time to determine the sufficiency of the petition. (This excludes Saturdays, Sundays and holidays taken by either jurisdiction, and typically means the protest petition must be filed with the appropriate Clerk by close of work on Monday of week 1 before hearing on Monday of week 2.)
- Initial zoning of newly annexed land cannot be protested.

Zoning districts applicable to individual properties may be proposed for amendment by the filing of a zoning map change request. Similarly, significant amendment of development plans approved as part of a zoning map change may also be proposed. In accordance with state statutes and/or special legislation, when a valid protest petition against such a change is filed, such change shall not become effective except by favorable vote of three-fourths of all members of the governing body. (At present, this means 4 of 5 County Commissioners, or 6 of 7 Council Members.)

For the City Council, the petition must meet the substantive requirements of GS 160A-385(2), and in particular must be signed by the owners of either:

- 20% or more of the area included in the proposed change OR
- 5% of the area of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. In evaluating the sufficiency of a protest under this provision:
 - (1) A discrete or separate area shall be calculated for any noncontiguous part of an area proposed for zoning map change that is physically separated from other areas proposed for change by property (not including right of way) that is not part of the requested zoning map change;
 - (2) A street right of way shall not be considered in computing the 100 foot buffer area as long as the street right of way is 100 feet wide or less.
 - (3) When less than an entire parcel of land is being rezoned, the 100 foot buffer shall be measured from the property line of the entire parcel.

RECEIVED
OCT 05 2009
BY: *Yvonne Jones*

For the Board of Commissioners, a protest petition is valid if it is signed

- by the owners of 20% or more of the area of the lots included in the proposed change, OR
- by owners of 20% or more of the area of lots immediately adjacent either in the rear or on either side of the proposed change, extending 100' therefrom, OR
- by owners of 20% or more of the area of lots directly opposite of the proposed change extending 100' from the street frontage of the opposite lots.

The petition must be signed by all persons having an ownership interest in the property, as represented by the signatures on the property deed – i.e., both spouses, the managing partner of a partnership, etc.

Removal of signatures from this petition after it is filed requires a notarized statement signed by all owners of a property as indicated on the protest petition.

Zoning map change case protested by the attached petition: Z0900009, County of Durham
(Case #, Applicant)

Filed by: Haw River Assembly (Elaine Chiosso) 919-542-5790
(Name) (Phone)

P.O. Box 187 Bynum, NC 27228
(Address)

Date: October 5, 2009 Zoning Case#: Z0900009

We, the undersigned property owners, hereby **protest** the proposed zoning map change from current F/J-A or F/J-B zone(s) to revised F/J-A or F/J-B based on revised critical area boundary zone(s) or proposed change in Development Plan for the rezoning case identified above, applicant name County of Durham, and proposed for public hearing before the City Council/Board of County Commissioners on October 12, 2009 (date).

Signature of Property Owner	Street Address of Owner	Property Identification Number (PIN)	Date of Signature
Kristen...	104 Student Place	0717-01-35-8197	9/26/09
Kym Doughty	102 Student Place	0-717-01-35-8177	9/26/09
Mary Jo...	103 Student Place	0-717-01-35-7393	9/26/09
Dr. J. L. ...	422 Intern Way	0-717-03-44-1310	9/26/09
710-... Rd	0-717-...
Kathy Cain	7105 Kasper Rd	0-717-01-25-7674	9/26/09
Robert ...	7105 Kasper Rd	0-717-01-25-7674	9/30/09
Andrew Turner	8419 Farmington Mill	0-707-03-14-1669	9/26/09
Sharon G. ...	8409 Farmington Mill	0-707-03-14-1669	9/27/09
Gene H. Jones	7889 Ferrisburg Way	0-707-01-37-5559	9/26/09

