

## **..TITLE**

Vote on a request to approve Cathleen Rubens to repeal Section 3.4.2 of the Chatham County –Town of Cary Joint Land Use Plan. The section establishes a 400 foot undisturbed buffer adjacent to Corps of Engineers property when public utilities are utilized for a development in the portion of the plan area south of Lewter Shop Road and Marthas Chapel Road.

## **..ABSTRACT**

### **Action Requested:**

A request by Cathleen Rubens to repeal Section 3.4.2 of the Chatham County –Town of Cary Joint Land Use Plan. The section establishes a 400 foot undisturbed buffer adjacent to Corps of Engineers property when public utilities are utilized for a development in the portion of the plan area south of Lewter Shop Road and Marthas Chapel Road.

### **Introduction & Background:**

#### Plan History:

The Chatham-Cary Joint Land Use Plan (JLUP) was adopted by the Chatham County Board of Commissioners and Town of Cary Board in June, 2012. It was made effective July 1, 2012. The Plan is an official policy document adopted by the Chatham County Board of Commissioners and Cary Town Council meant to guide future land use, public infrastructure improvements and development in the Plan Area. The County and Town also approved an interlocal agreement regarding the plan, which can be viewed on the following website - <http://www.chathamnc.org/index.aspx?page=441> . Section 5d of the agreement outlines the process for citizen initiated plan amendments. The process requires that applications be submitted to both jurisdictions for consideration and that the County has to make a recommendation prior to the Town taking final action. Approval by both jurisdictions is required for an amendment to be incorporated into the plan.

A public hearing was held on March 21, 2016 on the application to repeal section 3.4.2 of the JLUP. Staff provided an overview of the joint plan and five people provided comments. The Town of Cary will hold a public hearing on this request on April 28, 2016. The Planning Board reviewed the request during their May 3, 2016 meeting.

#### Text of the Section 3.4.2:

"Water Quality Buffers Adjacent to Corps Land. Special buffers should be provided adjacent to U.S. Army Corps of Engineers property associated with the Jordan Lake Reservoir, for the portion of the plan area located south of Lewter Shop Road and Marthas Chapel Road. Any future development in this portion of the plan area that is served by public utilities should provide a 400 ft. undisturbed buffer adjacent to Corps

property in order to provide additional watershed protection in the White Oak Creek drainage basin."

### **Discussion & Analysis:**

In 2009, the Chatham-Cary Joint Issues Committee (CCJIC) resumed discussion of the joint plan. An updated plan option was prepared that included a recommendation for a land use designation of 1 dwelling unit per 5 acres for all areas within 1 mile of the normal pool elevation of Jordan Lake or ¼ mile of Corps of Engineers property, whichever was greater (see attachment 2 - Joint Plan Map #5). In 2010, one of the property owners adjacent to Corps property surrounding Rocky Ford Branch, a tributary to White Oak Creek, voiced concern about the designation of 1du/5 acre within ¼ mile of Corps property. The owner suggested using a topographic elevation of 255' as the boundary since there was a significant elevation change from that line to Rocky Ford Branch (see attachment 3 – slides from Feb. 16, 2011 CCJIC meeting). After several additional iterations, the joint plan map was revised to shift the rural buffer boundary and Low Density Residential designation (1du/acre) to the 1 mile boundary from the normal pool elevation of Jordan Lake, which eliminated the additional ¼ mile boundary from Corps property. To compensate for this the revision on the map, Section 3.4.2 was drafted to create a 400' buffer adjacent to Corps property where public utilities were provided. At this time Section 4.1, The Rural Buffer Boundary, was worded as follows "Areas west of the rural buffer boundary should not be eligible to receive public water or sewer, regardless of provider [emphasis added]". When both sections were activated, the 400' buffer would have only applied to areas within the Low Density Residential designation, east of the rural buffer boundary, and only impacted a small number of properties, including the applicant's.

By May 2012 several revisions were made to the joint plan document including a revision to section 4.1, The Rural Buffer Boundary, to delete public water from the section. This allowed for public water to be provided anywhere within the joint plan area by either jurisdiction. A consequence of the revision is that, when coupled with Section 3.4.2, the 400' buffer was expanded to include all properties adjacent to Corps property south of Lewter Shop Road and Marthas Chapel Road (see attachment 4: Maps).

During the public hearing, four people spoke in support of the text amendment and comments included the following: that the 400' buffer was in addition to Corps property, which was an established buffer adjacent to Jordan Lake; that the buffer diminishes property values; the buffer covers up to 80% of some properties; that pump stations and private septic systems are allowed in this same area; that it limits future development potential; and that the buffer is not applied uniformly in the joint plan area. One person commented that development in this part of Cary results in the removal of the majority of the vegetation adjacent to Corps property, citing recent construction on Pittard Sears

Road, which warrants further discussion of what is an effective buffer. The application also included a petition signed by six people in support of deletion of section 3.4.2.

It does appear that the revisions to the joint plan between 2010 and 2012, specifically sections 3.4.2 and 4.1, expanded the applicable area of the 400' buffer when public utilities area provided. This does warrant further discussion about the distinction between areas north and south Lewter Shop Road and Marthas Chapel Road. The 400' buffer does not apply to areas located north of these roads which could receive public utilities.

### **Continuation from the April 5, 2016 Planning Board Meeting**

During the April 5<sup>th</sup> Planning Board meeting there was a request for additional information regarding 1) density transfers allowed by the Town of Cary and 2) steep slopes and streams in the joint plan area. The Town of Cary Planning Department was contacted and attachment #5 is provided with an explanation of the Town's density calculation methods. One of the Planning Board members indicated they could provide additional information about steep slopes and streams. There is also data available on the county GIS website – [www.chathamgis.com](http://www.chathamgis.com) under the "Environmental Review Data" folder for steep slopes and drainage networks. This information is best viewed in the gis system.

### **May 3, 2016 Planning Board Meeting**

The Planning Board resumed discussion of this item during their May 3, 2016 meeting and comments included the following: steep slopes are a concern in this area and development is adjacent to Jordan Lake; current county regulations allow 1.5 acre lot sizes; consideration of the buffers applicability during full flood elevation of Jordan Lake; concern that residents in the joint plan area are not aware of this buffer when utilities are provided; and concern regarding what the buffer is a protection because streams do not necessarily cross through the buffer. The Planning Board by a 5-3 vote recommends approval of the joint plan amendment.

### **Recommendation:**

The Planning Board by a vote of 5-3 recommends approval of the joint plan amendment to repeal section 3.4.2 of the Chatham County –Town of Cary Joint Land Use Plan.