



**CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA**



**Plan Amendment Report**

**Meeting Date: October 12, 2009**

*This item was continued by the Durham County Board of Commissioner at its meeting on September 14, 2009. The staff report is unchanged from that meeting.*

<b>Reference Name</b>	Jordan Lake Critical Area (A0900004)	<b>Jurisdiction</b>	County
<b>Request</b>	<b>Proposed Land Use Designation</b>	Rural Density Residential (0.5 DU/Ac. or Less) in the Rural Tier, Very Low Density Residential (2 DU/Ac. or Less) in the Suburban Tier, and Urban Growth Area change	
	<b>Existing Land Use Designation</b>	Rural Density Residential (0.5 DU/Ac. or Less) in the Rural Tier, Very Low Density Residential (2 DU/Ac. or Less) in the Suburban Tier, and Urban Growth Area change	
<b>Site Characteristics</b>	<b>Tier</b>	Rural and Suburban	
	<b>Site Acreage</b>	Proposed addition to UGA and addition to Suburban Tier: 253.87 acres; Proposed deletion from UGA and addition to Rural Tier: 288.25 acres; Change from Rural Density Residential (0.5 DU/Ac. or Less) to Very Low Density Residential (2 DU/Ac. or Less): 234.37 acres; and Change from Very Low Density Residential (2 DU/Ac.) to Rural Density Residential (0.5 DU/Ac. or Less): 38.67 acres.	
	<b>Existing Use</b>	Vacant, Agriculture, Single-Family Residential	
<b>Applicant</b>	Durham County	<b>Submittal Date</b>	May 15, 2009
<b>Location</b>	Approximately one-mile arc around the boundary of Jordan Lake in Durham County		
<b>PIN(s)</b>	See Attachment 1, List of Parcels		
<b>Recommendations</b>	<b>Staff</b>	Approval, based on the request being justified and meeting the four criteria for plan amendments	
	<b>Planning Commission</b>	Denial, August 11, 2009, 12-0, based on concerns about different survey methodologies for determining the normal pool; the need for a comprehensive, independent survey; and potential impacts on water quality.	

## **A. Summary**

The proposed plan amendment would:

1. Adjust the UGA boundary to mirror the proposed new location of the Jordan Lake Watershed Protection Critical Area;
2. Adjust the Suburban Tier boundary to mirror the proposed location of the UGA; and
3. Apply a future land use designation of Very Low Density Residential (2 DU/Ac. or Less) to the parcels that are proposed to be added to the UGA and Suburban Tier. Apply a future land use designation of Rural Density Residential (0.5 DU/Ac. or Less) to the parcels that are proposed to be removed from the UGA and added to the Rural Tier.

## **B. Site History**

The *NC 54/I-40 Corridor Study* was adopted by the County Board of Commissioners in 2001 and the City Council in 2002. It designated the majority of the site Rural Density Residential.

In 2005, the owners of several parcels of land in southwest Durham provided the former Planning Director with a privately funded survey of the boundary of a small segment of the northeast part of Jordan Lake. They requested an interpretation about the official location of the Lake and the associated one-mile Critical Area boundary. The Planning Director determined that the survey represented better information about the location of the Lake and used it to administratively determine, under UDO Section 4.11.3 Rules for Interpretation of Overlay Boundaries, what he considered to be the proper location of the one-mile Critical Area. The survey depicted a smaller Lake boundary in Durham County, and therefore, smaller one-mile Critical Area.

Later, Durham County received notice from the NC Division of Water Quality (DWQ) that the County acted outside its authority when it adjusted the normal pool location and the watershed boundaries. The Durham County Board of Commissioners on November 10, 2008 voted 3-2, to direct the Planning Director to submit a request to seek DWQ approval of the revision or the location of the Jordan Lake boundary, as well as the associated Critical and Protected Area boundaries. In November 2008, the Planning Director did so, and in February 2009, DWQ advised Durham that DWQ had accepted the survey as better information about the location of the Lake. DWQ also accepted the proposed revisions to the Critical and Protected Area boundaries around Jordan Lake, if Durham chooses to adopt them. On April 13, 2009, the Durham County Board of Commissioners voted 3-2, to direct the Planning Director to initiate the plan amendment and rezoning.

## **C. Proposed Amendment Justification**

The Applicant's Justification Statement contains the following statement:

“...(n)ow that the new survey information has been accepted by DWQ, this plan amendment, and the associated rezoning are necessary to bring Durham's regulations into compliance with the intent of the UDO and *Durham Comprehensive Plan*.”

The Applicant's Justification Statement indicates, "NC DWQ's approval of the survey of the normal pool of Jordan Lake submitted by Durham County represents a compelling reason to change the Future Land Use Map." The applicant's full justification statement is attached.

**Staff Conclusion.** UDO Sec. 4.1.2B identifies the Rural Tier as the area that lies outside the UGA and largely within watershed critical areas. UDO Sec. 4.11.2A identifies the location of the Jordan Lake Critical Area as one mile from the 216-foot mean sea level (MSL) normal pool. For these reasons, the request is justified based on changed conditions.

## **D. Criteria for Plan Amendment**

The Unified Development Ordinance (UDO) contains criteria for the Planning Commission to use in considering proposals to amend the *Durham Comprehensive Plan*. (See Section 3.4.7, Criteria for Planning Commission Recommendations).

- A. Whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and program of any adopted plans;
- B. Whether the proposed change would be compatible with the existing land use pattern and designated future land uses;
- C. Whether the proposed change would create substantial adverse impact in the adjacent area or in the City or County in general; and
- D. Whether the subject parcel is of adequate shape and size to accommodate the proposed change.

The proposed plan amendment has been evaluated against these criteria.

### **1. Plan Consistency**

*Durham Comprehensive Plan* Land Use Policy 2.3.1e, Urban Growth Area, identifies the UGA as the boundary between the Suburban and Rural Tier.

*Durham Comprehensive Plan* Land Use Policy 2.3.6a, Updates, indicates that the Future Land Use Map should be updated over time to reflect the best available information.

*Durham Comprehensive Plan* Water and Wastewater Policy 9.1.4b, Watershed Critical Areas and Land Use, indicates that the City-County Planning Department shall use the Unified Development Ordinance to maintain zoning that permits only low-density land uses in the Watershed Critical Areas, the most sensitive land near water supply reservoirs. The Very Low Density Residential (2 DU/Ac. or Less) designation is the lowest density category of residential that is recommended for the Suburban Tier in Table 2-1 of the *Durham Comprehensive Plan*.

The Unified Development Ordinance Sec. 3.4.8 identifies the following criteria for modification of the Tier boundary.

1. The site is contiguous to the proposed Tier;

2. The site is not in the drainage basin for Lake Michie or Little River or in the one-mile critical area around Jordan or Falls Reservoirs;
3. The extension does not violate any agreements with neighboring jurisdictions; and
4. If the proposal is to expand the Suburban Tier, extending utilities to serve the site is determined to be technically feasible by the Public Works Director or designee and will not result inordinate cost to the City.

The proposed plan amendment would adjust the Tier boundary to reflect a more accurate location based on a revised Critical Area. The Tier boundary will be at the new one mile Critical Area and therefore will not be in the Critical Area. There are no agreements with neighboring jurisdictions associated with establishment of the Critical Area and by reference the Tier boundary. The City Public Works Director has determined that the area can be serviced with utilities and there are no technical or financial reasons that would prohibit extension. For all of these reasons, the proposed site meets each of the four criteria for modification of the Tier boundary.

**Staff Conclusion:** The proposed plan amendment is consistent with the intent, goals, objectives, policies, guiding principles and programs of adopted plans and, therefore, meets criterion 3.4.7.A.

## 2. Compatibility

The area exhibits primarily rural characteristics, due in part to the large amount of floodplain forest in the area. The west side of the lake has farmland, as well as single-family residences. The east side of the lake, within the Critical Area, is largely undeveloped. The majority of the land to the north is floodplain owned by the Army Corps of Engineers. The area is designated for low density residential uses and recreation and open space.

<b>Area Land Uses and Designations</b>		
	<b>Existing Uses</b>	<b>Land Use Designations</b>
<b>North</b>	Vacant, Agriculture, Single-Family Residential	Recreation/Open Space, Very Low Density Residential (2 DU/Ac. or Less), and Low Density Residential (4 DU/Ac. or Less)
<b>East</b>	Vacant, Single-Family Residential	Recreation/Open Space, Very Low Density Residential (2 DU/Ac. or Less), and Low Density Residential (4 DU/Ac. or Less)
<b>South</b>	Vacant, Agriculture, Single-Family Residential	Recreation/Open Space, Rural Density Residential (0.5 DU/Ac. or Less)

West	Vacant, Jordan Lake	Recreation/Open Space, Rural Density Residential (0.5 DU/Ac. or Less)
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**Staff Conclusion.** The request would establish a Very Low Density Residential (2 DU/Ac. or Less) designation on the parcels that would move into the Urban Growth Area and Suburban Tier. Most of the surrounding sites are in use as single-family residences. The proposed plan amendment is compatible with the existing land use pattern and designated future land uses in the area and, therefore, meets criterion 3.4.7.B.

### 3. Adverse Impacts

All of the FEMA floodplain in the area is owned by the US Army Corps of Engineers. There are a number of small farm ponds in the area. Most of the area is designated for single-family residential uses; these features should not prevent development. There is no reason to believe that this condition would preclude the site from being developed consistent with Unified Development Ordinance standards.

**Staff Conclusion:** The proposed change represents an attempt to move the UGA and the Suburban Tier based on better knowledge of the location of the Lake’s eastern boundary. This is consistent with avoiding adverse impacts in this area. The proposed plan amendment would not create substantial adverse impact in the adjacent area or in the City or County in general and, therefore, meets criterion 3.4.7.C.

### 4. Adequate Shape and Size

The area being proposed for change of designation is approximately 273 acres.

**Staff Conclusion:** The shape is appropriate to support development consistent with ordinance requirements. The site is of adequate shape and size to accommodate the use pursuant to the proposed change and, therefore, meets criterion 3.4.7.D.

## E. Notification

Staff certifies that notification, including newspaper advertisements and letters to property owners within 1000 feet of the site, has been carried out in accordance with Section 3.2.5 of the UDO. The following neighborhood organizations were mailed notices:

- Northeast Creek StreamWatch
- Partners Against Crime - District 4
- Friends of Durham
- Inter-Neighborhood Council
- Fairfield Community Awareness Committee
- Town of Chapel Hill
- Jordan Lake Resource Management

## **F. Recommendation**

Staff recommends approval, based on the request being justified and meeting the four criteria for plan amendments.

The Planning Commission recommended denial, 12-0, August 11, 2009, based on concerns about different survey methodologies for determining the normal pool, the need for a comprehensive, independent survey, and potential impacts on water quality.

## **G. Staff Contact**

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## **H. Attachments**

Attachment 1, List of Parcels

Attachment 2, Applicant's Justification

Attachment 3, Map, UGA/Tier Boundaries

Attachment 4, Map, Future Land Use Changes for Eastern Properties

Attachment 5, Map, Future Land Use Changes for Northern Properties

Attachment 6, Map, Future Land Use Changes for Western Properties

Attachment 7, Aerial Photograph

Attachment 8, Planning Commission Written Comments

Attachment 9, Resolution