COUNTY OF WAKE

ENVIRONMENTAL MANAGEMENT COMMISSION

)
In Re REQUEST FOR DECLARATORY)
RULING by ESTHER W. FRYE AND)
MOORE COUNTY WILDLIFE AND)
CONSERVATION CLUB, INC.	j
, , , , , , , , , , , , , , , , , , , ,	ì
	,

MOTION FOR A CONTINUANCE

The Department of Environment and Natural Resources ("DENR"), Division of Water Quality ("DWQ"), hereby respectfully submits this Motion for a Continuance to the Environmental Management Commission ("Commission").

- 1. Esther Frye and the Moore County Wildlife and Conservation Club, Inc. ("Requesting Parties") submitted a Petition for Declaratory Ruling ("Petition") to the Commission on or around July 25, 2011.
- 2. On August 9, 2011, the Town of Southern Pines ("Town"), which contains the Tyler's Ridge development upon which the Petition was based, submitted to the Commission a motion to intervene. By Order dated August 10, 2011, the Town's motion was granted.
- 3. On August 15, 2011, the Requesting Parties withdrew their Petition.
- 4. On August 25, 2011 a revised Petition for Declaratory Ruling ("Revised Petition") was submitted electronically by the Requesting Parties. The exhibits to the Revised Petition included several exhibits that were not included in the original Petition, including a CD that the Revised Petition states is an "Audio CD of CUP permit vote." This CD has not yet been provided to DWQ or the Town. The content of the Revised Petition was

- amended from the original Petition as well, although the basic premise of the request appears to remain the same.
- 5. Due to the withdrawal of the original Petition and filing of the Revised Petition, the Town again moved to intervene in the matter on or around August 25, 2011.
- 6. DWQ staff has been working to obtain the minutes from key meetings of the Commission that may shed light on the interpretation of the rules at issue. However, this information has taken time to locate and some of the information appears to be stored on microfilm with the State Records Center. Additional time is needed to review those materials recently located and to review the material on microfilm. Additional time may also be required to obtain copies of the material on microfilm if it is relevant.
- 7. Additional time would allow DWQ and the Town to fully review the Revised Petition and conduct additional research into the administrative history of the provisions at issue, likely resulting in more complete responses to the Revised Petition for the Commission's consideration.
- 8. DWQ represents to the Commission that this motion is made in good faith, out of necessity, for legitimate purposes, and not solely for delay.

WHEREFORE DWQ, with the support of the Town, respectfully requests that the Commission consider only the issue of whether to grant or deny the Revised Petition on September 8, 2011, and continue the hearing on the merits of this Revised Petition to a later date. Counsel for DWQ and the Town are available on September 29, September 30, and October 19, 2011.

Respectfully submitted this the 25th day of August, 2011.

ROY COOPER

Attorney General

Ву:

Brenda E. Menard

Assistant Attorney General

N. C. State Bar No.: 35445

N.C. Department of Justice Environmental Division

Post Office Box 629

Raleigh, NC 27602-0629

(919) 716-6600

(919) 716-6766 (Fax)

bmenard@ncdoj.gov

FOR THE DIVISION OF WATER QUALITY

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing JOINT MOTION TO CONTINUE was served on the following by depositing a copy in the United States Mail, first class, postage prepaid, addressed as follows, with a courtesy copy by electronic mail:

Marsh Smith, Esquire
Law Office of Marsh Smith, P.A.
P.O. Box 1075
Southern Pines, NC 28388-1075
marsh@marshsmithlaw.com
Attorney for Esther Frye and the Moore County Wildlife and Conservation Club, Inc.

Craig Bromby, Esquire
Hunton & Williams LLP
P.O. Box 109
Raleigh, NC 27602
cbromby@hunton.com
Attorney for the Town of Southern Pines

Ms. Lois Thomas
Division of Water Quality
Clerk to the Environmental Management Commission
Archdale Building, 9th. Floor
512 N. Salisbury Street
Raleigh, N.C. 27604
lois.thomas@ncdenr.gov

This the 25th day of August, 2011.

Brenda E. Menard

Assistant Attorney General