

**BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION**

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|---|---|---------------------------|
| In Re: |) | |
| |) | |
| ESTHER W. FRYE , a citizen of Moore |) | |
| County, and MOORE COUNTY |) | |
| WILDLIFE AND CONSERVATION |) | PROPOSED |
| CLUB, INC. a North Carolina non-profit |) | DECLARATORY RULING |
| corporation, |) | |
| |) | |
| Petitioners. |) | |
| |) | |

Under the provisions of N.C. Gen. Stat. § 150B-4, the Environmental Management Commission issues the following Declaratory Ruling:

1. Petitioners have standing to bring forward their petition for a declaratory ruling because they are aggrieved parties within the ambit of N.C. Gen. Stat. § 150B-4.
2. McDeed’s Creek and Mill Creek were designated HQW in 2002. *See* 15A NCAC 2B.0311(m). HQW designation limits development projects within one mile of said creeks and within said creeks’ watersheds to a “built-upon area” of 12% (or 24% built-upon if control systems controlling the first inch of rain-fall are used) of a given development’s land area. 15A NCAC 2H.1006.
3. Southern Pines agreed (during the process in which DWQ reached the decision to designate Mill and McDeed’s Creeks HQW) to limit its high density allocation to 5% of its acreage in water supply watersheds in return for the ability to allow development to densities higher than 12% impervious surface on land within the watersheds of and within 1 mile of McDeed’s and Mill Creeks, through the use of Southern Pines’ high density allocation. *See* 15A NCAC §§ 2B.0311(m) and 2B.0215.
4. In 2007 the Division of Water Quality (“DWQ”) responded to an earlier petition for declaratory ruling regarding McDeeds Creek and Mill Creek with the attached “Responses and Ruling Recommendations”.
5. Southern Pines originally had 643.08 acres of high density allocation, and today 149.9 acres of its high density allocation remain.
6. Currently Southern Pines has a conditional use permit application for a 46.12 acre cluster development known as “Tyler’s Ridge” under consideration, which, if permitted by Southern Pines, would be an eight lot subdivision of apartments (lots 1-2), single family homes (lots 3-5) and commercial (lots 6-8), none of which could receive a permit as a “stand alone” project in this area of Southern Pines, which is zoned PD (“planned development”).

7. Tyler's Ridge is a cluster development under 15A NCAC 2B.0202(16) ("mixed use development shall be considered as cluster development"), its overall density must meet the density requirements of 15A NCAC 2B.0215(3)(b)(i)(A) – i.e., 24% built-upon. 15A NCAC 2B.0215(3)(b)(i)(D)(I).
8. Tyler's Ridge as proposed would have an overall density of 33.95% impervious surface.
9. DENR employees have taken inconsistent and conflicting positions as to whether the entire acreage for the Tyler's Ridge project should be subtracted from Southern Pines' high density allocation.
10. To summarize DENR's contradictory positions for the 46.12 acre Tyler's Ridge project, DENR employees have taken both the position that this cluster development will require 46.12 acres of Southern Pines' 5/70 allocation and the contradictory position that Tyler's Ridge will need only 11 acres of SOUTHERN PINES's 5/70 allocation. The position that Southern Pines needs to allot only 11 acres appears to the approximately 11 acre commercial portion of the Tyler's Ridge project, thus treating it as a project separate from the remainder of the Tyler's Ridge project, contravenes 15A NCAC 2B.0215(3)(b)(i)(D)(I) ("overall density of the project meets associated density... requirements of this Rule") (*emphasis supplied*).

WHEREFORE the Environmental Management Commission rules as follows:

1. The development project known as Tyler's Ridge in Southern Pines, North Carolina is a cluster development.
2. Tyler's Ridge lies in the Mill Creek/McDeeds Creek High Quality Water Management Zone.
3. The overall density of Tyler's Ridge exceeds 24% BUA.
4. Tyler's Ridge, as designed and permitted, cannot be built without the use of 46.12 acres of Southern Pines' 5/70 allocation.

This the ____ day of September, 2011.