

## NC 20 and The Neuse and Tar Pamlico Buffer Rules

Background: On July 1<sup>st</sup> of 1997 the North Carolina Department of Environment and Natural Resources adopted a set of temporary Buffer Rules in the Neuse River Basin which required a 50 foot setback from water and, or, Coastal Vegetation. These rules were later adopted as permanent rules on August 1, 2000, and similar rules were adopted in the Tar-Pamlico River Basin on January 1, 2000. While these rules impacted more than two dozen counties in both river basins, their effect was most severe in the five coastal counties of Craven, Carteret, Pamlico, Beaufort, and Hyde due to the fact that only these counties included areas of coastal vegetation. At no time during the development of the Neuse and Tar Pamlico Buffer Rules were public hearings held in any of the coastal counties and the general public was virtually unaware of the existence of the Buffer Rules. On three separate occasions from 2000 to 2010 the Pamlico County Commissioners adopted resolutions in opposition to the Buffer Rules due to the hardship it imposed on owners of lots created prior to the adoption of the Buffer Rules who could no longer use their lots for their intended purpose, since the Buffer Rules did not exempt lots created prior to the adoption of the Buffer Rules. In an attempt to address the hardship imposed on owners of pre-existing lots the Department of Environment and Natural Resources made a Variance process available for owners of old platted lots where by a property owner could apply for a Variance to regain a partial use of his property. The Division of Water Quality's guidance was that once a Variance was issued to a property owner, that property owner could use the terms of the variance to build his structure or transfer ownership of his property to a new owner along with his variance and the new owner could build the structure described in the variance or one of lesser impact. Variances were designed to have a five year life at which time they would expire unless re-applied for or utilized.

Events of 2010: During April of 2010 an owner of a lot in the Brown's Creek Subdivision in Pamlico County contacted a local Realtor and requested that his lot be listed for sale. The lot was created by a developer back in 1993 and the owner purchased it in 1997, but was not aware of the Neuse River Buffer Rules. The Realtor explained that the lot in question was severely impacted by the Buffer Rules and suggested that the lot would be much more marketable if the owner applied for and received a Variance. The property owner agreed and a Variance was sought and granted at a cost to the owner of about \$2000. During the Variance application process, the Realtor was informed by DWQ staff in late July of 2000 that, due to a recent re-interpretation of the Buffer Rules, a Variance was no longer considered to be transferable to a new owner. This was the first time this interpretation had been communicated and would be a severe blow to owners of lots with Variances who had hoped to sell their lots with the Variance in place. On August 3, 2000, a note appeared on the DWQ web site stating that Variances issued to the Buffer Rules were no longer to be considered transferable. This was the first public notice of this new interpretation.

This "new interpretation" created many problems for property owners, some of whom had obtained variances in the past and had in good faith sold their property along with their Variance to a new owner. If this "new interpretation" were to stand, the only option for a lot owner with a Variance to sell his lot would be for him to build a home he did not want on his lot in an attempt to sell it to a new owner. What would happen to new property owners of old lots with Variances was still unclear.

As the impacts of the "new interpretation" became known and understood, NC 20 became interested and concerned about addressing this problem. If the "new interpretation" were allowed to stand, property owners would suffer loss of value, lending institutions would be at risk for loans held on devalued property, developers with unsold inventories would be in jeopardy on their financing, and

North Carolina would develop a reputation for retroactive environmental takings that could act to depress the real estate market further and dampen economic activity in general.

NC 20 called a widely publicized meeting at the Convention Center in New Bern on September 1, 2010, to inform the public about the problems related to the DWQ's "new interpretation" regarding Variances. On August 30<sup>th</sup>, a few days prior to NC 20's scheduled meeting, DWQ posted a revised public notice on their web site which stated that Variance run with the land and can be transferred with ownership and that Variances, once issued, will not expire. The previous posting of August 3, 2010, stating otherwise was deleted from their web site.

The September 1<sup>st</sup> NC 20 Meeting took place and there were about 100 people in attendance, including elected officials such as State Representatives and State Senators, county commissioners from several coastal counties, representatives from the Division of Water Quality, concerned property owners and members of the general public. No other organization is in place to focus attention on issues that impact the 20 coastal counties that need to be addressed.