



August 22, 2014

Watauga County Manager
Watauga County Board of Commissioners

By Email

Re: No-Rise Certification and Floodplain Development Permit for the Town of Boone's Proposed Raw Water Intake on the South Fork of the New River in Todd, N.C.

Commissioners David Blust, Billy Kennedy, Nathan Miller, John Welch and Perry Yates:

On August 18, 2014 a presentation was held at the Riverside Restaurant in Todd, N.C. where it was revealed, by New River Advocates, Inc., that Watauga Planning & Inspections issued a Floodplain Development Permit to the Town of Boone on October 23, 2013 for the construction of Boone's Raw Water Intake project on the South Fork of the New River. New River Advocates, Inc., as many others, thought that the intake project was on hold pending a reapplication for a CLOMR from the Town of Boone. However, we discovered the Town of Boone, based on advice from Joe Furman, got W.K. Dickson to issue a No-Rise Certification which was accepted and approved by Joe Furman. The sequence of events is provided below.

2012 CLOMR (CONDITIONAL LETTER OF MAP REVISION) HISTORY

What is a CLOMR?

A Conditional Letter of Map Revision (CLOMR) is FEMA's **comment** on a proposed project that **would**, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

In January 2012, W.K. Dickson, engineers for the Town of Boone, submitted an application, for a Conditional Letter of Map Revision (CLOMR) to the local branch of FEMA (NC Emergency Management Division of the NC Department of Public Safety). FEMA terminated the application after Ashe County Commissioners refused to sign off on the required CLOMR Form MT-2 which would represent the Ashe County Commissioners' agreement to the adverse effects the construction would cause to Ashe County property owners, expanded floodway, increased base flood level and changes to flood hazard areas. Ashe County sent a **refusal** letter on September 24, 2012 to FEMA. FEMA terminated the Town of Boone's application because a signed MT-2 form from Ashe County was a regulatory requirement. The CLOMR application contained flood maps showing the expansion of floodways, changes in base flood levels, etc. (i.e. **a change in the flood map due to construction of the project**.) Watauga County Planning & Inspections signed Form MT-2 for Watauga County. Joe Furman said that *he did not get approval of the Watauga County Commissioners because this is not something that requires their approval.*

2013 NO-RISE CERTIFICATION HISTORY

What is a No-Rise Certification?

It is an engineer's certification stating the proposed development will not impact the pre-project base flood elevations, regulatory floodway elevations, or regulatory floodway widths. The certification should be obtained from the permittee and be signed and sealed by a professional engineer in accordance with State Licensing Board specifications. The engineering or "No-Rise / No-Impact" certification must be supported by technical data. The supporting technical data should be based upon the standard step-backwater hydraulic model utilized to develop the regulatory floodway shown on the community's effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM) and the results tabulated in the community's Flood Insurance Study (FIS).

The Town of Boone, found an ally in the Watauga County Planning & Inspections office with Joe Furman. During a public records investigation conducted by New River Advocates on August 14, 2014, Joe Furman stated that the Town of Boone got a No-Rise Certificate; “*something he has said they should have done in the beginning*”.

After failing to get a CLOMR from FEMA, W.K. Dickson sent a FEMA No-Rise Certification Report to Joe Furman on October 10, 2013. No-Rise Certifications are **not** reviewed by FEMA unless the local government makes such a request and pays the required fee. It is the responsibility of the local government (Watauga County in this case) to review and approve the certification.

The No-Rise Certification Report included the same flood maps submitted with the CLOMR and constructions plans for the proposed access road. Enclosed with the report was a cover letter dated October 10, 2013 from W.K. Dickson, claiming that FEMA had reviewed the CLOMR (an application showing a change in the flood map) and would have approved the application except that Ashe County’s signature was missing (apparently a minor insignificant detail to W.K. Dickson and the Town of Boone). This letter also claimed that the reason for the changes in the map were not due the project; they were caused by errors in FEMA’s models.

Joe Furman accepted the No-Rise Certification Report and issued a Floodplain Development Permit on October 23, 2013. And, when Joe was asked the following, here are his responses:

You told me that the Town of Boone had gotten a no-rise certificate. When I called FEMA they said, they don’t review the no-rise certifications? Answer: *That is correct.*

They said you review and approve the application? Answer: *That is correct.*

Did you get the Watauga County Commissioner’s approval before accepting this certification and issuing the permit? Answer: *No, that is not something that needs their approval.*

Did you review this report? Answer: *No, I am not an engineer. We would have had to hire an engineer and we have never done that, at least while I have been here. If it has an engineers’ seal on it, I accept it. I don’t understand those numbers.*

Did Ashe County get a no-rise certification? Answer: *I don’t know. I assume they did. I think they are trying to keep the construction of the project in Watauga County. I don’t know about Ashe County.*

Can I get a copy of the data on the enclosed disk? Answer: *I think this includes hydrologic numbers that you will not understand. I know I wouldn’t.* (Then he puts the disk in his computer and can’t open the files because they require a proprietary program to read the files, a program that he doesn’t have. Obviously, he hadn’t attempted to see what was on the disk.) How can they build a raised road from one end of the farm to the other, in a flood plain, and not have increased flooding? Answer: *They are not going to construct a raised road. They are going to dig down and fill in to the current grade.* (Actually, the drawings included in the report show an elevated road, 5’ to 10’. We do not think Joe Furman even opened the notebook.)

New River Advocates contacted FEMA. **FEMA said that you don’t apply for a No-Rise after you apply for a CLOMR.** FEMA said that applying for a CLOMR is for a revision in the flood map as result of changes in the floodplain due to the construction of the project. FEMA said that there may be circumstances where you file a No-Rise, have it denied and then have to file a CLOMR or file a No-Rise for review by FEMA; but, that is treated the same as a CLOMR. When we told FEMA that the letter included with the No-Rise said the changes were due to errors in FEMA modeling, **FEMA said it sounds like someone is working around the system and genuinely wished us luck.**

It costs \$4,400 to have FEMA review the No-Rise Certification. We recommend that Watauga County have the No-Rise Certification reviewed by FEMA. All the plans, maps and letters included in the No-Rise Certification are located on our website (and may also be found in Joe Furman’s office). We also recommend that Watauga County seek input from Watauga County’s Emergency Management Coordinator. Ashe County’s Emergency Management Coordinator, Patti Gamble, reviewed the CLOMR application and recommended that Ashe County not sign form MT-2 due the adverse effects the proposed project would have on Ashe County property owners. Please refer to the copy of the letter we sent to Ashe County Commissioners on August 20, 2014. (Copy sent to Watauga County Commissioners on August 21, 2014.)

We invite you to learn more about our organization. Please visit our website at www.newriveradvocates.org.

Respectfully submitted via email,

Deborah Greene,
Board of Directors
New River Advocates, Inc.

Cc: Ashe County Manager, Sam Yearick