



**CHATHAM COUNTY
BOARD OF COMMISSIONERS
AGENDA ABSTRACT**

ITEM NUMBER:
MEETING DATE:
4-20-09

PART A

Subject:

Request by Dan Sullivan on behalf of Contentnea Creek Development Co. for a revision to the approved preliminary plat for Phase I of **Cooper Country Estates**; a revision to the development schedule for Phase I; and preliminary plat approval for Phases II and III, consisting of 43 lots (total Phases I, II, III) on 130.48 acres, located off SR-1714, Hatley Road, New Hope township.

Action Requested: See Recommendations.

Attachments: See Page #8

Submitted By:

Keith Megginson, Planning Director

Date

County Manager Review:

Charlie Horne, County Manager

Date

This abstract requires review by:

☒ **County Attorney**

Date Reviewed

☒ **Finance Officer**

Date Reviewed

☐ **Budget Officer**

Date Reviewed

PART B

Cooper Country Estates

Introduction / Background / Previous Board Actions:

Zoning: R-2 Water system: Public / County
Watershed: WSIV-PA Sewer System: Private
Within 100 year flood: No

October 16, 2006: Approval by the Board of County Commissioners to rezone 130 acres from RA-5 to RA-90 (now R-2) and for a Conditional Use RA-90 Permit for a 63 lot single family residential subdivision with site plan.

November 19, 2007: Approval by the Board of County Commissioners for subdivision preliminary plat approval for Phase I, consisting of ten (10) lots on 23 acres with revisions to the balance of the master plan (sketch design) and approval of a development schedule as follows:

Phase I - 10 lots - Prel. submitted by Oct 2007 - Complete construction +/- May, 2008
Phase II - 24 lots – Prel. approval by July 2008 – Complete construction +/- Jan, 2009
Phase III -26 lots – Prel. approval by Oct, 2008 – Complete construction +/- May, 2009
During discussion of the Phase I preliminary design request, with the Board of County Commissioners, the developer's attorney stated that the developer had voluntarily agreed to perform an Environmental Impact Assessment on the balance of the property, Phases II and III. This was not made a condition of approval.

May 27, 2008: Request by Karen M. Kemerait, Attorney with Blanchard, Miller, Lewis & Styers, P. A. on behalf of Contentnea Creek Development Co. for an approval of a revision to the existing development schedule for Cooper Subdivision. Ms. Kemerait's request letter stated that "Specifically, Contentnea Creek is considering redesigning the size and layouts of the lots to create a subdivision with larger and fewer lots than had been previously planned." During discussion with the Board, Ms. Kemerait stated that the developer was committed to performing an Environmental Impact Assessment of the property and was concerned about being able to meet the preliminary plat submittal deadlines for Phases II and III due to the amount of time necessary to complete an EIA along with the amount of time needed for review by Chatham County. The developer wanted to have sufficient time to complete this process, work with the recommendations of the ERB and present a preliminary plan to reflect changes based on the EIA.

The Board of Commissioners approved the request as follows:

<u>Phase</u>	<u>Preliminary Plat Submittal</u>	<u>Final Plat Submittal</u>
<i>Phase I</i>	<i>Submitted October, 2007</i>	<i>18 months after preliminary plat approval</i>
<i>Phase II</i>	<i>Submitted by April, 2009</i>	<i>18 months after preliminary plat approval</i>
<i>Phase III</i>	<i>Submitted by April, 2009</i>	<i>18 months after preliminary plat approval</i>

Re: Cooper Country Estates

Introduction / Background / Previous Board Actions – cont.

This agenda includes a request by the developer for an amendment to the conditional use permit for the Cooper Property to revise Condition # 4 and Condition # 10. The Planning Board recommended approval of the zoning request. If the Board of County Commissioners grants approval of the zoning request, then the subdivision request may proceed.

Issues for Further Discussion and Analysis:

The subdivision request currently before the Board is a two-fold request. Part # 1 is a request for a revision to the approved preliminary plat for Phase I, consisting of 10 lots and a revision to the development schedule for Phase I. See Attachment # 8 for the original lot design of Phase I. On behalf of Contentnea Creek Development Co., Burdette Land Consulting, Inc, performed an Environmental Impact Assessment for the entire 130 acres of the Cooper property (originally only Phases II and III were volunteered to be assessed). The EIA was then used as a design tool to redesign the entire subdivision, including Phase I, to lessen impacts to the property, i.e. reduction of lots from 63 to 43; and elimination of five (5) stream crossings. Jennifer Burdette, Environmental Specialist, Burdette Land Consulting, Inc. has prepared an Environmental Assessment Modifications Summary to address the changes made to the original development plan based on the EIA. The Environmental Review Board has reviewed the EIA and made recommendations. The developer is in the process of responding to the recommendations, but has already incorporated changes into the overall plan based on the EIA. Per John Harris, Engineer, the developer had to delay meeting with the ERB after receiving the initial recommendations in order to determine the presence of the 4-toed salamander, which can only be done during certain months of the year. Jennifer Burdette has now completed this review. John Harris, engineer, is also in the process of submitting the stormwater management plan back to the ERB. You may view a copy of the EIA and the ERB initial comments at www.chathamnc.org/publicworks , Division of Environmental Resources, Environmental Assessment Reports, Cooper. The current development schedule for Phase I required the final plat to be submitted in April, 2009. As stated, the developer has changed the Phase I lot design (Phase I now consists of 16 lots) and roadway design to accommodate recommendations made in the EIA and now requests an approval of this redesign along with an eighteen (18) month extension of preliminary plat approval to allow the final plat to be submitted eighteen (18) months from preliminary approval of the revised plat.

Part # 2 of the request is for preliminary plat approval for Phase II, consisting of 13 lots and Phase III, consisting of 14 lots. The preliminary plat for these phases has also been revised from the original sketch design, based on the EIA recommendations. A part of the zoning request is a request for a revision to Condition # 10 of the CUP to allow for revisions to the original master plan. A major change is the elimination of crossings of Parker's Creek except for one shared driveway for access to two lots; thereby reducing the impacts on Parker's Creek.

Re: Cooper Country Estates

Issues for Further Discussion and Analysis – cont.

Jennifer Burdette has visited the site several times and has performed a stream and wetland delineation. All water features have been buffered per the revised Watershed Protection Ordinance. Note 26 on the plat states “Riparian buffers are measured from the top of stream bank and in the perpendicular upstream direction.” Per the engineer, all lots affected by riparian buffers have a minimum of 40,000 square feet of useable area.

Lots are to be accessed internally by a public, state maintained roadway. A portion of the road, Newcastle Court, is being extended to provide an interconnecting roadway between Cooper Country Estates and Parker Springs Subdivision. The zoning conditional use permit, condition # 5 states “The state maintained portion of Hatley Road is to be extended to the corner of Michael Davidson’s southwestern property corner.” The developer has also volunteered to upgrade the remaining portion of private road from that point, eastward, to connect to Windfall Creek.

NCDOT has approved the internal road plans and the plans for the upgrade of the balance of Hatley Road. See Note # 21 on the preliminary plat. Sheet # 2 of the preliminary plat shows the Hatley Road design.

The development is to be served by county water. The water line is to be extended from Windfall Creek westward along Hatley Road to Cooper Country Estates. A utility easement will be provided to Parker’s Springs to allow the water line to extend into Parker’s Springs and then tie into the existing water line in Monterrane Subdivision. The extension of water lines from Windfall Creek will eventually provide a loop line to existing Monterrane Subdivision and allow for increased water pressure within the Monterrane Subdivision.

Per the developer, Contentnea Creek has legal rights to upgrade the private portion of Hatley Road and install the public water lines byway of an Easement Document recorded in Deed Book 532, Page 456.

The applicant has provided the necessary agency reviews as required by the Chatham County Subdivision Regulations for a preliminary plat submittal as follows:

NCDOT	Road Plan Approval Phases I, II, III	December 17, 2008
NCDOT	Road Plan approval Hatley Road Extension	March 26, 2009
NCDOT	Commercial Driveway Permit	October 1, 2007
NCDOT	Encroachment Agreement (1850’ of 8” DIP Water Main on SR-1714)	May 15, 2008

Re: Cooper Country Estates

Issues for Further Discussion and Analysis – cont.

Chatham County Soil Erosion and Sedimentation Control	Letter of Approval/Erosion Letter of Approval/Erosion (Hatley Road Design)	December 22, 2008 May 1, 2008
NCDENR	Authorization to Construct (Cooper S/D, Phase 1) (Hatley Road Extension)	October 5, 2007
NCDENR	Water Main Extension (Cooper, Phase 1) (Hatley Road Extension)	October 8, 2007
NCDENR	Authorization to Construct (Chatham County Water System) (Internal water System)	February 23, 2009
NCDENR	Water Main Extension	February 24, 2009
NCDWQ	401 Water Quality Certificate	December 31, 2008
U.S. Army Corps of Engineers	404 Stream Crossing Permit	March 19, 2009

Copies of these permits can be viewed on the Planning Department web site.

The Chatham County Emergency Operations Office has approved the road names *Cooper Country Lane, Billowing Way, Restless Wind Way, Mariah Lane, and Newcastle Court*.

Each lot will have an individual wastewater treatment system. Several of the systems are designated to be off-site systems with access by a utility easement.

During the 2006 zoning approval change from RA-5 to RA-90 with a CUP for a 63 lot single family subdivision with site plan, there were 17 conditions of approval. As stated earlier, the Board is concurrently reviewing a revision to said permit to revise condition #'s 4 and 10. See attachment # 3 for zoning conditions. The balance of the conditions has been or will be met as follows:

1. The 75 foot wide "undisturbed buffer" has been shown on the preliminary plat and will be shown on the final plat.
2. A one hundred (100) foot wide undisturbed buffer along both side of Parker's Creek along with a conservation easement has been shown on the preliminary plat and will be shown on the final plat. The conservation easement is to be deeded to the homeowners association. Additionally, the developer is buffering

Re: Cooper Country Estates

Issues for Further Discussion and Analysis – cont.

all ephemeral channels and wetlands, per the revised Watershed Protection Ordinance. An e-mail from Jennifer Burdette, Environmental Specialist, dated April 9, 2009 states “Conservation areas shall be maintained in their natural state in perpetuity as described in the Declaration of Covenants, Conditions, Easements and Restrictions for Cooper Subdivision to comply with the mitigation conditions of a Clean Water Act authorization issued by the United States of America, US Army Corps of Engineers, Wilmington District, Action IF SAW 200703088, and therefore may be enforced by the United States of America.” A copy of the e-mail and a map are attached. A draft of the Restrictive Covenants may be viewed at www.chathamnc.org/planning, Applications and Checklists, 2009, Cooper. Fred Royal has visited the site and stated that the developer was buffering more than required by ordinance.

3. Permits for the extension of the water line from Windfall Creek along Hatley Road to the Cooper Property have been obtained. A utility easement to the Parker’s Springs property has been provided.
4. An interconnecting proposed, public state maintained roadway has been shown on the preliminary plat to the property to the west, Parker Springs. The applicant has asked for a revision to condition 4 to eliminate the requirement to provide a dedication of ROW to the Corn and Davidson properties from the north side of Parker’s Creek.
5. NCDOT road plan permits have been received.
6. This condition will be met.
7. This condition will be met.
8. Per the engineer, the impervious surface area for the project is less than 10%. No storm water control measures are required. See note 20 on the plat. Per the Stormwater Ordinance adopted December 8, 2008, Item B, Exemptions to Applicability (5) “Any project for which the County has issued one or more of the following valid certificates or approvals prior to the effective date of this Ordinance:.....{d} Sketch, Preliminary or Final Subdivision Plat. Fred Royal will review the stormwater calculations prepared by the engineer
9. This condition has been met.
10. This condition is in the process of being revised.
- 11—17, These conditions have been or will be met.

Staff thinks that the request for revisions to the Phase I site plan and development schedule are reasonable along with an approval to the preliminary plats for Phases II and III.

Karen Kemerait, attorney for the developer, addressed the Planning Board and explained the request. She stated that the developer had the EIA prepared to include the entire property and had made many positive changes to the design including reduction of lots from the original 63 to 43, elimination of five (5) stream crossings including the proposed roadway crossing of Parker’s Creek, voluntarily implemented the new buffer rules on ephemerals and wetlands found on the property, and reduced impervious surface coverage.

Cooper Country Estates

Issues for Further Discussion and Analysis – cont.

Several of the Planning Board members had questions regarding the Significant Natural Heritage Area and why the developer had not adhered to the recommendations received from Jacquelyn Wallace, Urban Wildlife Biologist, NC Wildlife Resources Commission, in 2007 during review of the Phase One preliminary plat. Ms. Wallace states in the memorandum that “Phases II and III of this subdivision will overlap a state designated Significant Natural Heritage Area, the Big Woods Road upland Forest.” A copy of the memorandum is included in this packet.

Jennifer Burdette, Environmental Specialist with Burdette Land Consulting, Inc. addressed these questions on behalf of the developer. Ms. Burdette stated that since the recommendations had been made in 2007, that the developer had the EIA prepared and peer reviewed by the ERB and by Robert J. Goldstein and Associates, Inc. Comments received from Robert J. Goldstein and Associates included “We agree with the consultants on several issues, including stream calls and the integrity of local portions of the Big Woods SNHA.....Lots on the north west, north, northeast, and east have all been recently impacted by logging. The Cooper Subdivision property is largely isolated from the SNHA.” Additional comments under Peer Review Comments: Site Visit include “Virtually all adjacent lots are impacted by forest clearing, including those northwest, north northeast, and east. This property has been virtually isolated from the Big Woods SNHA by adjacent uses.” Ms. Burdette stated that based on the review comments from the ERB, design changes as stated by Ms. Kemerait, and recent logging of the adjacent properties, it was her opinion that the SNHA had been properly addressed. A copy of the EIA and the peer review comments can be found at www.chathamnc.org/publicworks , Division of Environmental Resources.

Recommendation: The Planning Department and Planning Board

[by vote of 7-0] recommend granting approval of the following:

1. approval of the road names *Cooper Country Lane, Billowing Way, Restless Wind Way, Mariah Lane, and Newcastle Court* and,
2. a revision to the previously approved preliminary plat for Phase I of Cooper Country Estates, and
3. a revision to the development schedule for Phase I to allow the final plat submittal for Phase I to be 18 months from preliminary plat approval; and
4. preliminary plat approval for Phases II and III, consisting of 43 lots (total Phases I, II, III) on 130.48 acres,

Re: “Cooper Country Estates”

ATTACHMENTS:

The following may be viewed on the Planning Department website at www.chathamnc.org/planning , Rezoning & Subdivision Cases, 2009.

1. Major Subdivision Application.
2. Letter of explanation, dated March 13, 2009, from Karen M. Kemerait, Attorney-at-Law, Blanchard, Miller, Lewis & Styers, P. A.
3. Copy of zoning approval letter and conditions of zoning approval, dated October 17, 2006.
4. Preliminary soil/site evaluation, prepared by Jason Hall, Soil Scientist, Central Carolina Soil Consulting, PLLC.
5. E-mail from Linda Johnson, adjacent property owner, dated October 29, 2007.
6. Letter dated November 1, 2007 from Jonna L. Birtcher.
7. Memorandum from Jacquelyn Wallace, Urban Wildlife Resources Commission, dated October 23, 2007.
8. Copy of map showing Phase 1 lot design, dated 10/11/07
9. Environmental Assessment Modifications Summary, dated March 20, 2009, prepared by Jennifer Burdette, Environmental Specialist, Burdette Land Consulting, Inc.
10. E-mail and map from Jennifer Burdette, dated April 9, 2009.
11. Preliminary plat titled “Cooper Country Estates”, prepared by John W. Harris, P. E., Consulting Engineers, Inc, dated 3/13/09, revised 3/18/09.