



# CHATHAM COUNTY BOARD OF COMMISSIONERS AGENDA ABSTRACT

ITEM NUMBER:  
MEETING DATE:  
4-20-09

## PART A

**Subject:**

Request for Amendment to Conditional Use Permit for Cooper Subdivision: Approval of a request by Contentnea Creek Development Company for an amendment to the conditional use permit for Cooper Subdivision on a revision to Condition No. 4 to remove a road crossing over Parkers Creek and Condition No. 10 revising the overall site plan on property located at 739 Hatley Road, Parcel Numbers 17357; 82822; and 82823, on approximately 130 acres, New Hope Township.

**Action Requested:** See Recommendations.

**Attachments:**

***The following was submitted prior to the March 16, 2009 Public Hearing and may be viewed on the website noted below:***

1. Application packet

***The following may be viewed on the Planning Department website at [www.chathamnc.org](http://www.chathamnc.org) under Rezoning & Subdivision Cases, 2009:***

2. Original conditions of the conditional use permit
3. Preliminary plat approval Phase Two
4. Revision to Development Schedule 5/19/2008

**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**

**Re: Contentnea Creek Development Co.**

**Introduction / Background / Previous Board Actions:**

***(Planning Board comments may be viewed in the bold, italicized wording)***

A quasi-judicial public hearing was held on this request on March 16, 2009. No one spoke in opposition of the conditional use permit revision request. Karen Kemerait, attorney, presented the request. The developer, Jonna Birtcher was also available. Mr. Reginald Wright, owner of Lot 4 on Creekstone Drive, Parcel No. 79891, spoke in favor of the changes.

***The Planning Board met at their regularly scheduled meeting on April 7, 2009. A unanimous vote of 7-0 was made for approval of the request as stated below with the revised wording to conditions 4 and 10. Karen Kemerait spoke stating this new design was a “more environmentally sensitive” plan with a now total lot reduction of 20 lots instead of the 17 mentioned in the application. The total number of lots will now be 43.***

***There were concerns made regarding the Inventory of Natural Areas and Wildlife Habitats to which Jennifer Burdette with Burdette Land Consulting, Inc. responded. She stated that in the Environmental Assessment (EA) process, this area was reviewed again and there were no significant changes to the natural heritage area. There has been extensive logging of properties to the north, east, and west of the heritage site leaving little of the original area as shown on current maps. She stated the Environmental Review Board (ERB), along with Chris Hopper, Biologist for Robert J Goldstein & Assoc., conducted a peer review and felt the buffers in place along the creeks and streams in that area were sufficient to protect the wildlife and plant life that is located there. There will also be private covenants entered into that will restrict any uses or destruction of those buffers to further protect those issues. There was a question of how much of a lot would be allowed to be cleared, especially close to these water sources. Ms. Burdette stated the private covenants would only allow for a 30 foot radius, if needed, to be cleared for the proposed home site. Some Planning Board members suggested that a representative of the ERB or Environmental Resources Director be required to attend their meetings when there are possible issues regarding matters such as this.***

***There was a question regarding the culvert that will be installed for the shared driveway between lots 27 and 28. John Harris with John W. Harris, PE, Consulting Engineer, for the project stated they will be using a 36 inch culvert in lieu of the 15 inch minimum requirement so that they can actually bury the pipe to allow for better flow in case of flooding from Parker’s Creek. The question was also raised whether or not lots 27 and 28 could be eliminated all together. Mr. Harris stated those two lots would more than likely not be prime sellable lots and therefore would remain in reserve until such time build out had been accomplished and there is a need for them or they could be combined with the adjacent properties.***

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***No further discussion was made.***

The conditional use permit was originally approved October 16, 2006. It was to allow for 63 single family subdivision lots. Approved conditions are as follows:

1. A seventy-five (75) foot “undisturbed” buffer, with the exception of the removal of existing vegetation needed for utility easements, road interconnections, or necessary septic fields with acceptable soils, shall be maintained around the entire perimeter of the development. Should there be areas of little or no vegetation to act as an adequate buffer, the owner/developer shall install such vegetation at the next optimal planting season and shall be complete before the first certificate of occupancy is approved.
2. A one hundred (100) foot undisturbed buffer shall be maintained by conservation easement on each side of Parker’s Creek at all times, except as required for access of public dedicated right of way and utility crossings.
3. The owner/developer shall provide extension and installation of the Chatham County Water System to this property and provide easement access to adjacent properties for future connection to the water system.
4. Public rights-of-way shall be established and dedicated by the time of final plat approval for future public street access and utility connections to adjacent property to the west, currently owned by either Chatham Land & Timber and to the north, currently owned by Philip W. Corn. The applicant has the option to extend right-of-way and utility connections to the eastern property currently owned by Michael Davidson from the north side of Parker’s Creek. Only one (1) stream/creek crossing across Parker’s Creek shall be permitted for road access. Authorization from the Corps of Engineers shall be required and a copy given to the Planning Department for all stream/creek crossing.
5. The state maintained portion of Hatley Road is to be extended to the corner of Michael Davidson’s southwestern property corner. This will eliminate the need for a second creek crossing, thus reducing unnecessary pollutants into or near the stream.
6. All lighting shall meet the requirements of the Chatham County “Draft” Lighting Ordinance. A lighting plan shall be submitted and approved by this office prior to the issuance of the first building permit.
7. Signage shall comply with the Chatham County Zoning Ordinance specifications. Signage is allowed at the entrance of the development on Hatley Road.
8. Permanent storm water control measures shall be designed and installed to detain the two (2) year twenty-four (24) hour storm if the total impervious surface area for the project including roads exceeds ten percent (10%).
9. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Erosion Control etc.) shall be obtained and copies submitted to the Planning Department prior to issuance of the first building permit.

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10. Site Plan. The site shall be developed substantially in accordance with the plans submitted as part of the application.

11. Erosion Control. If applicable, an erosion and sedimentation control plan shall be approved by the Chatham County Soil Erosion and Sedimentation Control Office and submitted to the Planning Department prior to the issuance of a Zoning Determination Permit.

12. Silt Control. The applicant shall take appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.

13. Appeal. The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County's actions or procedures in considering and acting upon this application.

14. Fees. Applicant shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, building inspection, recreation and educational impact fees established from time to time.

15. Continued Validity. The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.

16. Non-Severability. If any of the above conditions is held to be invalid, this approval in its entirety shall be void.

17. Non-Waiver. Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

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**Issues for Further Discussion and Analysis:**

At the time the project received preliminary plat approval for Phase 1, the developer agreed to have an Environmental Impact Analysis (EIA) completed, which was not a requirement at the time of their approval.

As a result of the EIA, the developer wishes to redesign the site plan to substantially reduce the number of possible impacts to natural resources. In doing so, they have reduced the total number of lots by twenty (20) and redesigned the road layout so that five (5) stream crossings are illuminated. There will no longer be a crossing over Parker's Creek. This allows for a shared driveway between two (2) lots and no longer supplies access to the Corn property to the north because access was granted through a roadway plan for the proposed Parker Springs subdivision. Until which time the Parker Springs subdivision is built, Mr. Corn has access to his property via a pre-1975 road bed.

The developer and applicant have had correspondence with Fred Royal, Environmental Resources Director and Chris Hopper, Biologist for Robert J Goldstein & Associates Inc. supporting the changes to the site. This correspondence can be viewed under Exhibit 1 of the application materials.

As a result of the proposed changes, the overall average lot size will increase to three (3) acres instead of two (2) acres and the impervious surface coverage will be reduced to 8% per Ms. Kemerait. The project will still be served by the county water system. The roadway design changes and lot configuration changes will be discussed during the preliminary plat request for Phases Two and Three.

It is the recommendation of the Planning staff and the Planning Board that this request be approved. There is a decrease in creek/stream crossings which will better protect those water resources and ecosystems. The reduction in the number of lots allows for larger size lots to be created which in turns reduces the amount of impervious surface.

**Recommendation:** It is the recommendation of the Planning staff and Planning Board [by vote of 7-0] that this revision request be approved. The proposed wording to condition # 4 and # 10 are shown below as follows:

4. Public rights-of-way shall be established and dedicated by the time of final plat approval for future public street access and utility connections to adjacent property to the west currently owned by Chatham Land & Timber.

10. Site Plan. The site shall be developed substantially in accordance with the plans revised and dated 3/18/09.