



**CHATHAM COUNTY
BOARD OF COMMISSIONERS
AGENDA ABSTRACT**

ITEM NUMBER:
MEETING DATE:
8-17-09

PART A

Subject:

Request by Arcadia Consulting Engineers on behalf of HPB Properties, LLC for subdivision preliminary plat approval of “**Legend Oaks, Phase III**” consisting of 56 lots on 99.23 acres, located off 15-501 N., Williams Township; and a request to extend the final plat submittal deadline an additional 12 months, from 18 to 30 months.

Action Requested: See Recommendations.

Attachments:

The following is included in this packet and may be viewed on the Planning Department webpage at www.chathamnc.org, Zoning and Subdivision Cases, 2009, Legend Oaks, Phase III

1. Major Subdivision Application.
2. Development schedule with phasing map.
3. Letter from H. Brantley Powell, dated June 23, 2009
4. Consent Judgment and Settlement Agreement, dated December 20, 2007.
5. Letter from Trenton D. Stewart, PE, Arcadia Consulting Engineers, PLLC, dated July 23, 2009, regarding buffers.
6. Preliminary plat titled “Legend Oaks Subdivision, Phase III”, prepared by Arcadia Consulting Engineering, dated 2/9/09.

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: Legend Oaks, Phase III

Introduction / Background / Previous Board Actions:

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|----------------------------------|---------------------|---------------|---------|
| Zoning District: | R-1 | Water Source: | County |
| Watershed District: | WSIV-Protected Area | Septic: | Private |
| Within the 100 year Flood plain: | No | | |

Actions to date:

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|------------------|--|
| April 18, 2005: | Board of County Commissioner sketch design approval of Bland Tract consisting of 60 lots. |
| April 17, 2006: | Board of County Commissioner preliminary design approval of Legend Oaks formally Bland Tract) consisting of 63 lots. |
| April 17, 2007: | Board of County Commissioner final plat approval of Legend Oaks, Phase I, consisting of 31 lots. |
| June 18, 2007: | Board of County Commissioner denial of a request for sketch plan approval of Legend Oaks, Phase III, consisting of 71 lots on 124 acres. |
| August 20, 2007: | Board of County Commissioner final plat approval of Legend Oaks, Phase II, consisting of 27 lots. |

Issues for Further Discussion and Analysis: The developer is requesting preliminary plat approval of Legend Oaks, Phase III, consisting of 56 lots on 99.23 acres and accessed by an extension of Legend Oaks Drive off U. S. 15-501. Legend Oaks Drive was approved by the Board of County Commissioners as a proposed public roadway during the review and approval of Phases I and II. As stated above, on June 18, 2007 the Board of County Commissioners denied a request for sketch plan approval of Phase III, which at the time consisted of 71 lots on 124 acres. Access at that time was to be provided by Legend Oaks Drive and a second, new proposed access off Lystra Road. The reasons stated for denial in the County Commissioners' minutes of June 18, 2007 were "1) the secondary entrance puts additional traffic on Lystra Road; 2) there are two crossings of Cub Creek by the road in the three phases of the development; 3) there may be other streams on the property that warrant buffering; and; 4) the soils are not suitable for the number and arrangement of lots proposed." A law suit was filed by the developer against the County due to the denial. An agreement was reached by both parties on December 20, 2007. See attachment #4, A Consent Judgment and Settlement Agreement. Item # 5 of the Consent Judgment states "*The County and HBP agree that the Sketch Plan attached hereto and incorporated into this Consent Judgment and Settlement Agreement as EXHIBIT A shall constitute the Approved Sketch Design for purposes of the County's Subdivision Ordinance and shall guide development of the Legend Oaks-Phase III development.*"

Per the Consent Judgment, the subdivision review and watershed review are to be based on regulations and ordinances in effect as of April 30, 2007. See item # 10 of the Consent Judgment.

Re: Legend Oaks, Phase III

Issues for Further Discussion and Analysis – cont.

Phase III is now proposed to have 56 lots, with one access, and has added additional buffers per the agreement. The preliminary plat shows the additional riparian buffers as agreed upon in the Consent Judgment, item # 6. Attachment # 5, included with this packet, explains the additional buffers. The sketch design plan designed the lots to go to the edge of the original 50 foot riparian buffer along Cub Creek; therefore that portion of the buffer is not included in the lots. The revised preliminary plan now shows a 100 foot wide per side riparian buffer along Cub Creek. The additional riparian buffer provided for each lot is included in the lot area but are not deducted from the useable lot area per the Consent Judgment. Subterranean utilities, including but not limited to septic facilities, are allowed in the additional buffers. Above ground structures are not allowed in the riparian buffers. See items 7 and 8 of the Consent Judgment. Fred Royal, Chatham County Environmental Resource Director, visited the property with the soil scientist on October 29, 2007 and has also reviewed the preliminary plat regarding stream buffers. Mr. Royal has found the buffers to be satisfactory.

The developer has provided a voluntary Cultural Resource Reconnaissance of the subject property which discusses the Durham-Edwards Cemetery, two stone walls, the Riggsbee Cemetery, various rock piles, and an old house site and road trace. The Durham Edwards Cemetery has not been found to date to be located on the subject property. The Riggsbee Cemetery is located on the subject property and consists of approximately 79 gravesites. The preliminary plat shows the cemetery lot adjacent to Lot # 32. Per the engineer, the cemetery lot will be part of the common, open space and will be maintained by the homeowners association. The Cultural Resource Report and comments from Bev Wiggins, Chatham County Historical Association can be viewed on the Planning Department website. The developer also sent the report to Delores Hall, Deputy State Archaeologist – Land, Office of State Archaeology for review. She agreed with comments made by Ms. Wiggins and appreciated the effort made by the developer in providing the report. Per Trent Stewart, engineer, the old house site appears to be located on the 25 acre tract retained by the original land owner, and not on the subject property.

Other agency permits have been received as follows:

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| *NCDOT | Road plan approval | June 1, 2009 |
| Chatham County | Erosion Control Plan | June 11, 2009 |
| Soil Erosion and Sedimentation Control | | |
| NCDENR | Water Main Extension | May 28, 2009 |
| US Department of the Army | 404 Permit Stream Crossing Permit | May 21, 2009 |
| NCDENR Div. of Water Quality | Water Quality Certification | May 15, 2009 |

Re: Legend Oaks, Phase III

Issues for Further Discussion and Analysis – cont.

A copy of the above listed permits can be found on the Planning Division webpage.

*No commercial driveway permit is required for this project. Per an e-mail from Justin Bullock, NCDOT, the existing turn lane on US15-501, constructed by the developer, has 100 feet of storage and is sufficient to handle the additional 56 lots. The preliminary plat shows 'Public Drainage Easements' in various places within Phase III. In discussion with NCDOT, staff has been told that NCDOT does not want the 'public drainage easements' to extend beyond approximately 20 feet from the roadway. Staff recommends the final plat be revised to show the drainage easements labeled as 'private' outside the area designated acceptable by NCDOT.

The Chatham County Emergency Operations Office has approved the road names 'Victory Park Drive', 'Carter Walk Way', 'Flanders Street', 'Laurel Grove Court', and 'Triton Walk Way'.

Thomas Boyce, Chatham County Soil Specialist and Soil Scientist, has reviewed the soil scientist report prepared by Central Carolina Soil Consulting, PLLC, dated February 13, 2007. Mr. Boyce stated in an e-mail "The soils report, soils map, and layout information for Legend Oaks, Ph III appear to be more than adequate for this preliminary request." A copy of the soils report can be found on the Planning Division web page.

The developer has submitted a development schedule request, attachment # 2, to allow an additional 12 months beyond the normal 18 months allowed by the Subdivision Regulations. Developments having more than 50 lots may request a development schedule. A phasing map is included showing three (3) phases. Per the developer, the three phases will all be submitted for final plat review within the 30 month time frame.

Staff informed the Planning Board that Senate Bill 831, AKA the Permit Extension Act of 2009, had been ratified by the NC Senate, and presented to Governor Perdue for signing but as of the date of the Planning Board meeting, had not been signed. It is staff's interpretation that if the Bill is signed it would extend the final plat submittal deadline to July 1, 2012 (18 months from January 1, 2011) If the development schedule is also approved, it is staff's opinion that the Bill may extend the final plat submittal deadline to July 1, 2013.

Eric Braun, attorney for the developer, addressed the Planning Board regarding the request. Mr. Braun stated that the preliminary plat was prepared according to the Consent Judgment and that Trenton Stewart, P. E. Arcadia Consulting Engineers, was also present to answer questions that the Board may have.

Re: Legend Oaks, Phase III

Issues for Further Discussion and Analysis – cont.

Discussion by the Planning Board followed. Concern was expressed regarding steep slopes on the property and the need to review a topo map. Mr. Braun reminded the Board that the preliminary plat was prepared in accordance with the Consent Judgment and that Exhibit A referenced in the judgment and attached, included the topography information.

The Board also discussed the extension request and, if approved, questioned whether or not this would constitute a change to the Consent Judgment requiring an approval by the court. Mr. Braun stated that it would, and that it should be a simple legal matter to accomplish if the development schedule request for a 12 month extension is approved by the Board of County Commissioners. He stated that his client is willing to reimburse the County for any legal expense incurred to effectuate the extension request.

Recommendation: The Planning Department and Planning Board recommend [by a vote of 8-1] granting approval of the road names 'Victory Park Drive', 'Carter Walk Way', 'Flanders Street', 'Laurel Grove Court', and 'Triton Walk Way'; and granting approval of the preliminary plat with the one condition listed below.

1. The final plat shall be revised to show the drainage easements labeled as 'private' outside the area designated acceptable by NCDOT.

The Planning Department and Planning Board recommend approval of the [by a vote of 7 -2] request for a development schedule extension of 12 months (for a total of 30 months) and approval of the modification to the Consent Judgment.