



## Chatham County Planning Board Agenda Notes

Date: June 7, 2011

Agenda Item: VII. 2. Attachment #: 3

☐ Subdivision

☒ Conditional Use Permit

☐ Rezoning Request

☐ Other:

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<b>Subject:</b>	Request by Mark Moldenhauer for a Conditional Use Permit [CUP] on Parcel No. 67592, located at 1971 Lystra Rd., on approximately 1 acre of a 5.032 acre tract, for a mulching operation.
<b>Action Requested:</b>	See Recommendations
<b>Attachments:</b>	1. Application packet – provided prior to the May 16, 2011 public hearing.

### **Introduction & Background**

A quasi-judicial public hearing was held on May 16, 2011. Tim Smith with Phillip Post & Associates and Mark Moldenhauer presented the request and were available to answer any questions or concerns. One citizen also spoke in favor of the request.

A conditional use permit request is required to meet five findings when recommending an approval for the request. Each finding with Planning staff recommendations is noted below.

### **Discussion & Analysis**

**FINDING #1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.** It is planning staff opinion this finding has been met. A mulching operation is permitted as a conditional use in a light industrial zoning district.

**FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare.** It is planning staff opinion this finding may be met. Mr. Moldenhauer has been in business in Chatham County for over 20 years. He owns and operates a landscaping and grading business. He has had a previous land clearing landfill which has since been reclaimed and wishes to continue to utilize the property for his business and to provide a “green” operation by recycling land clearing debris which will then be used on his job sites. This will not be a retail/wholesale business open to the public but an area for him to make and maintain a product he

will use for his business.

There is one other recycling, mulching operation in the county located in Moncure at McGill Environmental. This operation uses other types of materials to generate mulch. This facility will fill a need for building contractors, landscape contractors, etc. to have a source of disposal for land clearing debris. This property is in close proximity to several approved developments in the county that are in different stages of construction. The site is limited in size by the NCDENR Solid Waste Division to no more than 2 acres in land area and no more than 6,000 cubic yards of land clearing material. There can be no heat generated through composting piles or the state will require him to obtain a different permit to operate a solid waste facility. This would also cause a revision to an approved conditional use permit before the operations could continue.

The proposed use would create two (2) jobs as a result of operating and managing the facility. Mr. Moldenhauer has approximately 13 employees that work off site at the various locations where Mr. Moldenhauer has contracts. There are no public improvements needed.

**FINDING #3 – The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community.** It is planning staff opinion this finding may be met. Traffic generation for use of this site will be limited. The proposed use will be open three (3) days per week (M, W, F) with an estimated 5-10 trips/day. Mr. Moldenhauer will be applying for a commercial driveway permit with NCDOT upon approval of the permit.

Although there are substantial vegetative buffers in place at this time, Mr. Moldenhauer is proposing to add more vegetation along the southern and eastern boundaries. The operation will be for day use only and there will be no lighting associated with the project.

Noise generated from the site will consist of vehicles such as dump trucks with backup beepers, heavy equipment to move debris during the filling of the pit area that is not part of this application, and the grinding machine. Information on the decibel levels produced from the machine is provided in the application. The state required the applicant to grind the product he had on site already based on a violation notice he received before he obtained their notification permit. During that time the county did not receive any noise complaints from the operation of the grinder.

There will be one 24 square foot sign, already in place from when the original landfill was in operation.

**FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan.** As noted in the conditional use light industrial rezoning application notes, it is planning staff opinion this finding may be met. One of the Plan's objectives is for balanced growth with different types of development guided to suitable locations while maintaining the rural character and quality of life of the county. This property is screened with existing vegetation from the state maintained road as well as occupied residential dwellings. Other than the existing sign, the operation is not visible. The property has vegetative, natural buffers on three of the four sides to adjacent property and the

state roadway. Mr. Moldenhauer has proposed minimal days and hours of operation in consideration of traffic and noise that may be generated from the site to continue to preserve rural character.

The property is located within the WS IV-PA for Jordan Lake and allows up to 36% impervious surface. Fred Royal, Environmental Resources Director, has made a site inspection and determined an intermittent stream is located on the adjacent property but touches this property in one area. Per the report, the mulching operation will be outside any protected areas and there is no delineated floodplain areas noted.

**FINDING #5 – Adequate utilities, access roads, storm drainage, recreations, open space, and other necessary facilities have been or are being provided consistent with the county’s plans, policies, and regulations.** Currently there is no water or wastewater being provided or supplied to the property. The property is recorded as a non-building lot and buildings are not allowed to be constructed on-site. At a pre-application meeting with staff it was determined by building inspections and environmental health that a restroom would not need to be constructed provided the facility was operated as “temporary” meaning it would not be open more than 180 days per calendar year. It was determined there could be a handicap accessible portable sanitation unit placed on the property.

There is currently access to the public road (Lystra Road) by a 12 – 18 foot wide gravel drive. NCDOT will decide whether an improvement to the access point will be required.

The existing storm water measures that were installed during the time of violation for an illegal mining operation will be required to be upgraded to meet the current regulations. A BMP device will be installed to capture the runoff from the proposed permit area.

### **Recommendation**

It is planning staff opinion that all five (5) findings may be made and therefore the application approved. There may be conditions recommended by staff that should be reviewed at this time as well. The Planning Board has up to three meetings to make a recommendation to the Board of Commissioners.

### **Site Specific Conditions**

1. The mulching operation shall not be in operation more than 180 days per calendar year. A log of daily operations shall be maintained and made available to county staff upon request to determine compliance with the 180 day operation limit..
2. The mulching operation shall not be open to the public as a retail/wholesale operation.
3. There shall be no operation of the grinding machine after 7pm Monday through Saturday and no operations on Sunday.

**Standard Site Conditions**

4. Signage, parking, and lighting shall conform to the Chatham County Zoning Ordinance.
5. The application and approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place.
6. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Storm water Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the initiation of the mulching operation.

**Standard Administrative Conditions:**

7. 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.
8. Fees - Applicant and/or landowner 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, and building inspection, established from time to time.
9. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
10. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
11. 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.