



Agenda Abstract

Department: Planning

Authorizing Signature: _____

Submitting Official: Jason Sullivan, Planning Director

Meeting Date:	October 15, 2012
Subject:	Request by IS Development Company, LLC for a revision to an existing conditional use permit for Cole Place on parcel #65804 to remove and transfer 3.22 acres from the existing CUP to an adjacent parcel and transfer the remainder of the residual property subject to the existing CUP to the Townhomes at Cole Place Owners Association, Inc.
Action Requested:	See Recommendations
Attachments: (List Individually)	Application packet distributed prior to August 20, 2012 public hearing.

Introduction & Background:	<p>(Planning Board meeting discussion can be viewed below in “Bold”)</p> <p>A quasi-judicial public hearing was held on August 20, 2012 and planning staff presented the application. Also present were the president of the Cole Place Townhomes Homeowner’s Association (HOA), David Holdaway, who voiced some concerns as well as the applicant/landowner, Greg Isenhour, who also spoke. No one else spoke on the issue.</p> <p>Cole Place Development was approved April 1984. Since then, there have been several amendments and revisions to the CUP. The townhomes were approved for development in August 2003. When the project was completed, the residual lands were not transferred to the HOA but were retained by the developer/landowner, Mr. Isenhour. Mr. Isenhour currently has an interest in developing a parcel of land on US 15-501 N, which has a general use B-1 Business zoning. However, as standards have changed and policies and ordinances have been updated, that parcel does not have enough area to develop a small business and allow for the amount of</p>
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	<p>pervious surface needed.</p> <p>This request is to remove some of the residual lands from the Cole Place development that will later be recombined with a portion of an adjacent tract, which will then be added to the parcel on US 15-501 N. That recombination will come after an approval is granted.</p>
Discussion & Analysis:	<p>Generally, in order for a matter to be considered for approval, there are five findings that must be addressed and proof given that each one can be supported. They are:</p> <ul style="list-style-type: none"> • 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. • FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare. • 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. • FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan. • FINDING #5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the county's plans, policies, and regulations. <p>Due to the nature of this application, it is planning staff's opinion Findings 1, 4, and 5 remain valid as currently approved with no changes taking place.</p> <p>It is planning staff's opinion Finding #2 continues to be met with this request. In order for a currently vacant tract of land to be developed, there must be enough land to comply with the watershed protection regulations for impervious surface. The addition of the 3.22 acres from this tract would provide the potential for this site to be developed and lend to the economic growth of the county.</p> <p>It is planning staff's opinion Finding #3 continues to be met with this</p>

request. By removing 3.22 acres from the Cole Place tract, an additional parcel of land will have more flexibility to be developed and the required open space for the impervious surface for Cole Place will remain sufficient and in compliance with regulations.

During the public hearing, Mr. Holdaway voiced concerns over items, in his opinion, needed to be addressed. The concerns were the playground area, some fencing, and concrete needed to be removed from the property. He also stated the southern border of the property across from the mobile home park needs repairs and there are pine trees falling that need to be removed. Mr. Holdaway also wanted to know what the tax liability for the HOA would be.

Mr. Isenhour responded there are approximately 7 to 7 ½ acres currently under his ownership of which only the 3.22 will remain under his name. The remainder will be offered over to the HOA. Commissioner Kost asked Mr. Isenhour about the concerns raised by Mr. Holdaway to which he responded he will address the tree issue, but wasn't sure the wooden fence is on this property. He also stated he inherited the playground when he started developing the property and it was his understanding it was to be cleaned up then. Planning staff advised the Board these are issues to be worked out between the landowner and the HOA and the county would not be involved in these matters.

Based on the information submitted, testimony provided, and the notes from planning staff, the five (5) findings may be made. All conditions approved on this project shall continue and be allowed to proceed as stated in those approvals.

The Planning Board met at their regularly scheduled meeting on September 11, 2012. Mr. David Holdaway, president of the Cole Place Homeowner's Association, was present as well as the applicant. Due to the quasi-judicial nature of this request, Mr. Holdaway asked to speak in the public input session since he could not speak on the CUP for Cole Place.

Mr. Holdaway stated he felt the issues he raised at the public hearing needed to be addressed by the applicant but understood



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from staff it would be a private, civil matter between the HOA and Mr. Isenhour. He was here to ask what the processes are for revisions to conditional use permits, making sure all previous conditions are met, reviews are done, and any issues are addressed before approving revisions. He asked about easement for utilities, roads, stormwater, etc. His concerns were noted and addressed by staff.

The Planning Board had questions regarding why the open space was not turned over to the HOA when the development was completed. They noted that they thought statutes covering covenants requires a developer to turn over open space once the project is 100% complete. Mr. Isenhour stated he was aware. However, the applicant stated there was still land available that he had development rights for and had hoped to expand but the economy fell and he couldn't move forward.

The Planning Board asked if all the legal easements were in place for access to the wastewater treatment plant which is located on an adjacent tract. Should this approval be granted, it will create a separation between the WWTP (owned and maintained by Aqua NC) property and the Cole Place open space. Staff stated a deeded utility easement across Mr. Isenhour's land, which will be recombined to an adjacent tract later, may be needed to retain access to the plant.

The Planning Board asked if all previous conditions had been met on the original CUP. Staff stated it was discovered during this application process that the condition that the applicant provide certification that the stormwater pond was installed to meet the 2 yr/24 hour storm event was not submitted. The Planning Board asked that an additional condition be placed on this approval that would require the documentation be provided from an engineer to validate the system was installed per the requirement in Condition No. 3 of the 12-18-2006 approval.

Budgetary Impact:



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Recommendation:

It is the Planning Department and Planning Board opinion (by vote of 7-2) that the five findings may be made and recommend approval of the request as submitted with the following condition:

1. Owner/Applicant shall provide documentation from an engineer to validate that the stormwater system was installed per the requirement in condition #3 of the 12-18-2006 conditional use permit .