

## **..TITLE**

Vote on a request to approve by Kirk Metty for subdivision **First Plat** review and approval of **Chestnut Creek**, consisting of 14 lots on 49.15 acres, located corner of Jones Ferry Road, SR-1540, parcel #1439.

## **..ABSTRACT**

### **Action Requested:**

Vote on a request to approve by Kirk Metty for subdivision **First Plat** review and approval of **Chestnut Creek**, consisting of 14 lots on 49.15 acres, located corner of Jones Ferry Road, SR-1540, parcel #1439.

### **Introduction & Background:**

**Zoning:** R-1

**Water System:** Private Water

**Sewer System:** Private on-site and off-site

**Subject to 100 year flood:** No special flood hazard area within the development.

**General Information:** The subdivision process is a four (4) step process: Concept Plan, First Plat, Construction Plan, and Final Plat. The applicant has completed the community meeting and the Concept Plan review. The minimum lot size requirement for the project is 1.5 acres of useable area. The Planning Board has two (2) meetings in which to act on the proposal.

### **Discussion & Analysis:**

The request is for First Plat review and recommendation of Chestnut Creek Subdivision, consisting of 14 lots on 49.15 acres, located off Jones Ferry Road, S.R. 1540. A vicinity map showing the property location, attachment # 2, is included in the agenda packet. Per the Subdivision Regulations, Section 5.2C(4), a Public Hearing shall be held at the first Planning Board meeting to receive comments on the proposed subdivision. Item (b) states that following the Public Hearing, the Planning Board shall review the proposal, staff recommendation, and public comments and indicate their recommendation for approval, disapproval or approval subject to modifications. As stated above, the Planning Board has two (2) meeting to act on the proposal.

**Roadways:** Chestnut Creek Way and Meandering Way Court are proposed to be built with a 20-foot-wide travel way and a 60-foot-wide public right-of-way and is to be state maintained. Walnut Branch Road is an existing gravel road that will have to be improved to a county standard road with an 18' wide travelway on the portions within parcel 1439 and follow the road standards in Section 7.2D (1-4).

**Historical:** The applicant contacted North Carolina Department of Natural and Cultural Resources letter dated November 7, 2019 stated, "no historic resources". The applicant contacted Bev Wiggins, Chatham County Historical Association. Ms. Wiggins

corresponded by email dated January 30, 2020 and stated if any gravesite are discovered to please contact her. See attachment #3.

**Schools:** Notification of the proposed development was provided to the Chatham County School System. Chris Blice, Chatham County Schools Assistant Superintendent for Operations corresponded by email dated February 5, 2020. See attachment # 4.

**Timbering:** The developer, in 2019 by email correspondence, provided information that the project was timbered in 2016. Per the subdivision regulations, Section 1.14 G “property for which First Plat approval is sought was timbered in violation of development regulations, and the timber harvest results in the removal of all or substantially all of the trees that were protected under County regulations governing development of that tract, the County may withhold approval for up to three (3) years after the completion of the timber harvest.” Watershed Protection staff determined that substantially all of the timber had been removed from several riparian buffers that apply to development so the three-year development approval withholding applied to the property. The three withholding time period has since expired. Due to the County’s cyber incident in October 2020, the email correspondence cannot be provided.

**General Environmental Documentation:** The developer submitted the General Environmental Documentation and a letter dated April 5, 2019 from North Carolina Department of Natural and Cultural Resources Natural Heritage Program to Chatham County Land & Water Resources Division for review. See attachments 5 & 6. The letter states “A query of the NCNHP database, indicates that there are records for rare species, important natural communities, natural areas, and/or conservation/managed areas within the proposed project boundary.’ The report findings included Dry Oak-Hickory Forest, Terrells Mountain, Erynnis martials (mottled duskywing), Somatochlora georgiana (coppery emerald), and Piedmont Monadnock Forest.

Rachael Thorn, Watershed Protection Director, reviewed the information submitted. Ms. Thorn letter dated February 21, 2020 comments included recent logging activities impacted the riparian buffer, the NCNHP indicated an ‘Element Occurrence’ was documented within the project area but the developer’s application indicates no impacts.

**Community Meeting:** A community meeting was held on April 29, 2019 at Cedar Grove United Methodist Church, 2729 Jones Ferry Road, Pittsboro. Approximately twenty-two people attended the meeting. Items/issues discussed included the number of septic lots on the southwest corner; concerns about effluent from drain fields and disturbance of the creek; whether the septic drain fields were going to affect existing wells; disturbance of the creek; will the creek be restored; how many creek crossings were proposed for the septic systems; creek flooding, the timeframe from the property being timbered until development; the requirement from Chatham County about

environmental impacts; will there be high-speed internet or cable; would larger lots be considered; has a traffic count been completed, is a turn lane needed; will there be connectivity to Morgan Ridge; will there be open space for children to play; and whether there will there be a homeowners association.

**Technical Review Committee:** The TRC met virtually on January 13, 2021 to review the First Plat submittal. The applicant/developer Kirk Metty was present. Items discussed included public right-of-way width for the public roads (Chestnut Creek Way and Meandering Way Court) and the county standard road (Walnut Branch Road), performance guarantee, contacting the Historical Association if any buildings were discovered that were 50 plus years or older were present and if there are any graves, and multiple stream crossings for the septic and limiting the number of crossings. Watershed Protection Department were unable to attend the meeting, but comments were received via email dated January 13, 2021 and the comments were forward to Mr. Metty on January 14, 2021. The comments included four consecutive stream crossings did not meet the minimization requirements set by No Practical Alternatives under the Jordan buffer rules, stormwater BMPs needs to be designed outside of the riparian buffer, it was recommended that the stream crossings for the off-site septic for lots 8 and 9 utilize the impact of the existing culvert, it was also recommended that the off-site septic for lot 10 go around the northern end of the riparian buffer to reduce impacts, the crossings must meet the requirements in the “Septic Utility Crossings” of the Jordan buffer rules, access to Open Space B is restricted by the 100’ stream buffer, and Walnut Branch Road is required to be upgraded to 60’ wide right-of-way with 18’ wide travel way resulting in parallel impacts to the stream buffer on the southern portion of the property and would require mitigation.

**Septic:** A soils report and map, attachment #8, was submitted to Thomas Boyce, Chatham County Environmental Health, LSS, REHS, Chatham County Environmental Health, for review. Mr. Boyce stated that the report and map were adequate but had questions about the off-site septic areas and the access.

**Water:** Individual private well water will serve the lots within this development.

**Road Name:** The road name Chestnut Creek Way and Meandering Way Court has been approved by Chatham County Emergency Operations Office as acceptable for submittal to the Board of Commissioners for approval.

**Water Features:** Sean Clark of Sage Ecological Services (Sage), submitted the Riparian Buffer Review Application along with a riparian buffer map, dated July 18, 2019, to Drew Blake, Senior Watershed Specialist for review. Ms. Jean Gibby of the US Army Corps of Engineers, Mr. Blake and Mr. Clark completed an on-site riparian buffer review on July 10, 2019 to verify the consultant’s findings. Mr. Blake revisited the site

October 28, 2019, Mr. Blake issued a confirmation letter of his findings. The October 28, 2019 confirmation letter stated two (2) ephemeral streams, four (4) intermittent streams, three (3) perennial streams, and twelve (12) wetlands were identified. The two (2) ephemeral streams require a 30-ft buffer, the four (4) intermittent streams require 50-ft buffers, the three (3) perennial streams require 100-ft buffer, and the twelve (12) wetlands require 50-ft buffers from all sides landward.

**Stormwater and Erosion Control:** Two stormwater devices are proposed and will be placed by Lots 6 & 7 and Lot 14 in the subdivision. As part of the stormwater permitting process additional information will be provided to the Watershed Protection Department. A Stormwater Permit and Sedimentation & Erosion Control Permit will be obtained from the Chatham County Watershed Protection Department prior to Construction Plan submittal. No land disturbing activity can commence on the property prior to obtaining Construction Plan approval.

**Site Visit:** Site visits were scheduled for January 22, 2021 for Planning Department staff, Watershed Protection Department staff and various Board members to attend. Kirk Metty was present to walk the property with staff and Board members and discuss the project. Areas viewed were wetlands, perennial streams, intermittent streams, and ephemeral streams. Pictures of the site visit can be viewed on the Planning Department webpage at [www.chathamnc.org/planning](http://www.chathamnc.org/planning), Rezoning and Subdivision Cases, 2021.



## **Planning Meeting February 2, 2021:**

The Planning Board reviewed this item during their February 2<sup>nd</sup> remote meeting and several adjacent property owners spoke about concerns with the proposed project. Mr. Jack Fowle stated he enjoys the dark nights and request no street lights or pole lights in individuals' yards, concerns with the impact on groundwater, impact on the traffic, and request utility lines be buried. Mr. Stewart Byan's concerns included stormwater runoff, an unnamed tributary that flows under Walnut Branch Road in recent years has topped the banks due to the timbering on the property, and there will be 5 individual septic crossings next to his property and he hopes the crossings can be consolidated. Mr. Carl Bose's concerns were lighting pollution, dogs entering his property since he owns horses, hopes for a barrier or fence to avoid trespassing of people and pets, and hopes the development is low impact. Ms. Chris Liolia's concerns included stormwater issues, septic pumped across the creeks, water quality of the streams that flows through her property and the ability to get in and out of her property, who will maintain the stormwater devices and the septic lines.

Board members questions included a stormwater pond located partially in a stream buffer, septic drain area near Earle's property and their well, individual stream crossings for each septic on Lots 3-10, where will the upgrading of the road end, can the multiple stream crossing be reduced, how will the equipment to install or repair the septic areas access the septic fields across the streams, lighting, impacts on the groundwater, tree removal, any plans to restore the impacted buffer areas during timbering, and will directional boring be an option.

Mr. Kirk Metty, developer, was present and explained that Mr. Drew Blake, Chatham County Senior Watershed Specialist, requested a certified letter stating no buffers will be impacted with the construction of the sedimentation ponds and a letter was provided. Mr. Metty and Mr. Blake agreed that the septic lines crossing the streams are to run parallel along the lot lines of Lots 3 and 4, Lots 5 and 6, Lot 7 individually, Lots 8 and 9 and Lot 10 will run in an easement around the riparian buffer. The upgrade of the road will be from Jones Ferry to beginning of Lot 14 and will no encroach on the riparian buffer. Temporary crossing will be in place to get to the septic field areas and Mr. Metty commented that he would like to install all the septic fields at the same time to minimize the stream crossing. The homeowners will be responsible for access if there is a repair needed in the future and this can be completed by a temporary crossing. No street lighting is proposed for this project and no exterior lighting on the homes, and no pole lighting on individual lots. Mr. Metty stated, as to impacts to the groundwater he does not know what is happening 200' – 500' below the surface, he lives several miles away and has not had any issues with his well. The goal will be to minimize any tree removal,

the logged areas will be home site locations, the largest impact will be for the septic areas. Mr. Metty explained he will restore the riparian buffer when the culvert is removed, but beyond that he is not aware of any other restoration. Mr. Metty is looking at the option of directional bore but does not want to be limited.

Since the February 2, 2021, meeting Mr. Metty provided a revised plat, provided responses to Mr. Blake's TRC comments, and provided proposed pump septic routing (attachments 15-17). It is to be noted, per Mr. Metty email dated February 17, 2021, the proposed pump septic routing will not be recorded, it is to show the routing of the septic lines to the board.

### **Planning Board Discussion:**

The Planning Board met virtually February 2, 2021 and on March 2, 2021. At the March 2, 2021 meeting Mr. Stewart Bryan, adjacent property owner, had concerns with drainage, believed a stream was identified incorrectly, and location of the stormwater BMP in Open Space B is about 50' from the intersection of two tributaries that cross Walnut Branch. Board members discussed off-site septic, and the project is in a conservation area per the Land Use Comprehensive Plan. Mr. Kirk Metty, Developer, was present. Mr. Metty explained he responded to the comments from February 2, 2021 meeting about consolidating the single septic crossings on Lots 3-7 to reduce impacts on the stream and buffers and responded to Mr. Drew Blake's TRC comments as requested by the Board. Mr. Metty addressed Mr. Bryan's concerns, the proposed project of 49 acres were evaluated by Chatham County Watershed Protection Department, an Environmental Engineer, and US Army Corps of Engineers the stormwater BMPs are placed to capture runoff and are placed in low spots.

The Board thanked Mr. Metty for responding to their request from February 2, 2021 meeting. The Board expressed that the wetlands and streams that cross the property, in conjunction with the drainage issues, make the property unsuitable for the proposed number of lots. Lots 2, 12, 13, and 14, out of the 14 lots proposed, have septic areas that do not cross the streams and the other ten lots have off-site septic. The proposed project is in a conservation area per the Land Use Comprehensive Plan and the Board would like to see a conservation subdivision with environmental protection on the property. The board was not in favor of the proposed project. The Board of Commissioners have 65 days from submittal date to them to approve, approve with modifications, or disapprove the First Plat application. Pursuant to Section 5.2C(5)(b), if the Board of Commissioners approve with modifications or disapprove must include specific reasons for the action to include in the minutes of the meeting.

### **How does this relate to the Comprehensive Plan:**

Plan Chatham was adopted by the Board of Commissioners in November 2017 and is a comprehensive plan that provides strategic direction to address the most pressing needs in the county. These properties are in an area of the county identified as Conservation on the Future Land Use and Conservation Plan Map. The description for conservation includes single family detached lots, attached units with overall very low density, open spaces with passive recreation areas, greenway trails, and variety of

valuable natural resource areas. Conservation subdivisions are encouraged to protect nature resources while not disrupting agricultural practices.

Although the proposed subdivision is not a conservation design (Land Use Policy Strategy 5.2) it meets the adopted riparian buffer and stormwater control standards of the county. The developer also contacted the NC Natural Heritage Program to review their database for any rare species, important natural communities, natural areas, or conservation/managed areas within the project boundary and some rare species were identified in their records. It should be noted that Plan Chatham is not intended to be used as a regulatory tool but is a policy document. When reviewing subdivision applications, the boards can use the plan as a tool to identify future regulatory changes.

**Recommendation:**

The Planning Board voted to deny the First Plat application by a vote 7-3 and the Planning Department recommends granting approval of the road names **Chestnut Creek Way** and **Meandering Way Court** and granting approval of subdivision First Plat for **Chestnut Creek Subdivision** with the following conditions:

1. Approval of the First Plat shall be valid for a period of twelve (12) months following the date of approval by the Board of Commissioners and the Construction Plan approval shall be valid for a period of twenty-four (24) months from the date of approval by the Technical Review Committee or Board of Commissioners.
2. Final Plat shall provide location of mail kiosk.
3. Final Plat shall provide a note no ingress/egress for Lots 7-9 from Walnut Branch Road.
4. A copy of the road maintenance agreement for Walnut Branch Road shall be provided to planning staff prior to final plat approval.