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Vote on a request by Lewis Metty Development, Inc. for subdivision Revised Preliminary Plat and Final Plat review and approval of Cedar Mountain, Phase 3B, consisting of 3 lots on 6.099 acres, located off Jones Ferry Road, S. R. 1540 and Cedar Grove/Cedar Mountain Road, Baldwin Township, parcel #1721.

..ABSTRACT

Action Requested:

request by Lewis Metty Development, Inc. for subdivision Revised Preliminary Plat and Final Plat review and approval of Cedar Mountain, Phase 3B, consisting of 3 lots on 6.099 acres, located off Jones Ferry Road, S. R. 1540 and Cedar Grove/Cedar Mountain Road, Baldwin Township, parcel #1721.

Introduction & Background:

Zoning: R-1

Watershed: WSIV-PA / JLBA

Water Source: private on-site wells

Septic: private on-site and off-site septic systems and repair areas

Roadways: public, NCDOT state maintained roads.

Cedar Mountain, Phase 3 is reviewed under the pre-2008 Subdivision Regulations and the riparian buffer requirements of the 1994 Watershed Protection Ordinance. The project, consisting of 65 lots, received sketch design approval from the Board of County Commissioners on July 17, 2006. To date, 50 lots have received final plat approval including Phase 3A, consisting of 16 lots which received final plat approval by the Board of Commissioners on 2/20/17.

There were two conditions of sketch design approval:

1. The emergency access easement be widened to a minimum of 50 feet and be labeled as "50 foot wide dedication of public right-of-way and emergency vehicle access".
2. The emergency vehicle access shall be constructed to a minimum standard of a 16 foot wide, all weather travel surface. A note shall be placed on the preliminary and final plat detailing the standards to which said access is constructed and future upkeep and maintenance responsibilities.

The preliminary plat submitted in 2007 included the required 50 foot wide dedication of public right-of-way and emergency vehicle access. The Preliminary Plat was approved by the Board of County Commissioners in 2007 for 65 lots.

In 2016, in preparation for a final plat submittal for Cedar Mountain, Phase 3A, the developer constructed the emergency vehicle access as required by the sketch design approval in 2006. At the time of preliminary plat review and approval in 2007, only streams shown on the USGS maps were required to have an undisturbed buffer. During construction of the roadway, and based on the Jordan Lake Buffer rules that came into effect in 2008 after the preliminary plat approval, it was discovered that there

was an additional stream feature located within proposed Lots 29, 30 & 31 that was not shown on the USGS maps. Lots 29, 30, & 31, were removed from the Revised Preliminary/Final Plat for Cedar Mountain Phase 3A along with the emergency vehicle access road due to the discovery of the additional feature.

County staff visited the site due to the NRCS Soil Survey indicating the possible presence of a stream. The presence of the stream was verified and potential wetlands were identified during the site visit. The developer hired a private consulting firm, Agri-Waste Technology to perform an on-site riparian buffer review on the remaining portion of Cedar Mountain, Phase 3 consisting of 55.020 acres since the entire balance of the property is within the Jordan Lake Watershed Area. The AWT report stated that there were 2 ephemeral features, 1 intermittent stream, and 1 forested wetland. The report was submitted to Drew Blake, Chatham County Watershed Specialist. Mr. Blake re-visited the site to verify the features identified in the AWT report. See attachment # 2. Neither the 1994 Chatham County Watershed Protection Ordinance nor the Jordan Lake Buffer Rules apply to ephemerals or wetlands; therefore, no buffer was required on either feature. The wetlands; however, are located within the required 50 foot riparian buffer along the intermittent stream identified on the NRCS maps. The AWT report can be viewed on the Planning Department webpage, Rezoning and Subdivision Cases, 2017. Per attachment # 2, a buffer authorization form from Chatham County for the emergency access roadway to cross the intermittent stream was not required due to the limited amount of disturbance (less than 40' linear feet) and the activity was considered 'exempt'. Per a memorandum from Julie Davidson, AWT, to the developer dated February 7, 2017, "it has been determined that the impacts made to the surface water identified by Chatham County and AWT as an intermittent stream with an emergency access road does not need a Section 401/404 Nationwide Permit (NWP) from the US Army Corps of Engineers and The Department of Environmental Quality." AWT also submitted a letter to NCDWR, dated February 27, 2017, stating no permits were required. See the AWT report on the Planning Department webpage.

Although Lots 29, 30, & 31 were removed from the Phase 3A revised preliminary and final plat; several adjacent property owners were present at the meetings to express their concerns regarding the emergency access roadway being built along the rear of their properties creating concerns regarding loss of privacy, safety, and access to the public.

Based on concerns expressed by the adjacent property owners during the Cedar Mountain, Phase 3A December, 2016 and the January, 2017 Planning Board meetings, the developer then requested a revision to the original sketch plan Condition # 1 which read "The emergency vehicle access easement be widened to a minimum of 50 feet and be labeled as "50 foot wide dedication of public right-of-way and emergency vehicle access". The developer requested the condition be changed to read "A 30 foot wide private emergency vehicle access and utility easement be constructed at the end of the Eagles Crest cul-de-sac to the common boundary line of parcel #75530." The reasons stated were:

1. *To address the safety and privacy concerns expressed by the adjacent property owners.* If the width of the right-of-way is reduced to 30 feet and the status is

changed from 'public' to 'private', this would restrict use of the emergency vehicle access road by the general public. The revised sketch design map shows the entire length of the roadway being within the boundary of Lot 30. There is a note on the revised sketch plan stating that responsibility of the future maintenance & upkeep of the roadway will be the owners of Lot 30. The developer is also discussing with his attorney the possibility of forming a homeowners association to consist of the remaining unsold lot owners and have the HOA be responsible for the future maintenance and upkeep of the emergency vehicle access road. This decision will be made prior to final plat submittal for Lots 29, 30, and 31.

2. *To reduce the environmental impact of the stream crossing.* Reducing the width of the right-of-way and changing from public to private will require less piping of the stream and lessen the environmental impact.

The Board of County Commissioners approved the sketch plan revision request on 3/20/2017.

Discussion & Analysis:

The issue before the Board consist of two requests.

Revised Preliminary Plat: A revised preliminary plat review is required due to:

1. The addition of the intermittent stream and associated riparian buffers shown on the NRCS maps;
2. The emergency vehicle access roadway constructed across the intermittent stream;
3. The March 20, 2017 approved sketch plan revision regarding the emergency vehicle access.

As stated above, the property is in the Jordan Lake Buffer Area and streams shown on the NRCS map are required to be buffered. There is a stream on-site that was not shown on the USGS maps and not required to be reviewed and buffered during the preliminary plat review and approval in 2007. The stream, the 50 foot wide riparian buffer, and the wetland location as verified by AWT and Chatham County are shown on the Cedar Mountain, Phase 3B Revised Preliminary and Final Plat. Based on the 2015 State Legislative House Bill 44, the area within the riparian buffer, not including the stream feature or wetland, can be included in the calculation of the useable lot area. The area within the riparian buffer must be undisturbed with no septic systems/repair areas or building development located within the buffer. Staff has verified with the county attorney's office the applicability of HB 44 to the project, and specifically the buffers associated with this particular water feature. The net total acreage for each lot stated on the maps submitted for review includes the riparian buffer area as shown.

A condition of the Phase 3A Final Plat approval stated *"The developer shall install a locked gate across the emergency access roadway at the common boundary of the Cedar Mountain Subdivision and parcel #75530 and provide emergency personnel*

with a key, and that appropriate signage be installed at each end of the access road to indicate that use of the road is for emergency personnel only, and that the developer be encouraged to plant suitable plantings to create a privacy barrier along the length of the access road.” The developer has stated that he is working with the North Chatham Fire Department to determine the best location for the gate to allow an emergency vehicle to access the roadway due to the size of the vehicles and turning radius required and to obtain a Knox box to allow access by emergency personnel; and that he expects to have the gate and signage installed prior to the July 17, 2017 Commissioners meeting. Staff recommends that if the subdivision request is approved, a condition be placed on the Phase 3B final plat stating that the final plat cannot be recorded until the gate and signage are installed and verified. The Revised Preliminary Plat / Final Plat for Phase 3B states in Note 11 under Survey Notes “The maintenance of the 30 foot wide private emergency driveway vehicle access and utility easement is the sole responsibility of the owners of Lot 30”. Condition 1 as revised in 2017 and Condition 2 as required by the 2006 Sketch Design approval have been met.

Final Plat: The submittal includes a request for Final Plat approval of Lots 29, 30, & 31. There are no public improvements that require a financial guarantee for completion. A septic permit has been issued by Thomas Boyce, Chatham County Soil Specialist and Lead Soil Scientist for Lots 29, 30, & 31.

The Planning Board met on June 6, 2017 to review the request. The developer, Chuck Lewis was present to answer questions. Questions from the Board included

--has the signage been installed at the beginning of the emergency vehicle access road off the end of Eagles Crest cul-de-sac and has the gate and signage been installed at the end of the emergency vehicle access road adjacent to parcel #75530; septic locations for Lots 29, 30, & 31; ephemeral stream locations; and maintenance responsibility of the emergency vehicle access road.

Mr. Lewis stated that currently the original chain has been put back up at the end of the emergency vehicle access road and that ‘no-trespassing’ signs have been posted at both ends of the road; that a metal (cattle type) gate will be installed as soon as Chief Mark Riggsbee with North Chatham Fire Department verifies the necessary location; that he anticipates that the gate will be installed prior to the Board of Commissioners’ meeting; that different signage would be installed stating the road was private and for emergency vehicles only; that a Knox box has been ordered; that once the gate and signage installation has been completed he will provide proof to the Planning Department; that Lots 29 and 30 have on-site septic systems and Lot 31 has an off-site septic system; that the ephemeral stream(s) are located in the next section of Phase 3; that Lot 30 will not be solely responsible for maintenance of the emergency vehicle access road; and that Note 11, shown on the final plat, will be revised on the mylar to state that the maintenance responsibility will be as required in a road maintenance agreement and will be a shared responsibility of the Phase 3 lot owners.

Recommendation:

The Planning Board (by unanimous vote – 9 members present) and Planning Department recommend granting Revised Preliminary Plat and Final Plat approval of Cedar Mountain, Phase 3B, Lots 29, 30, and 31 with the following conditions:

1. Prior to final plat recordation, the developer shall install a locked gate across the emergency access roadway at the common boundary of the Cedar Mountain Subdivision and parcel #75530 and provide emergency personnel with a key, and that appropriate signage be installed at each end of the access road to indicate that use of the road is for emergency personnel only. Evidence of the gate and signage installation shall be provided to the Planning Department staff prior to recordation of the final plat.
2. The certificate Approval of Minor Subdivision shall be removed from the final plat.
3. Note 11 on the mylar shall be revised to state that the maintenance responsibility of the emergency vehicle access road will be as required in the recorded road maintenance agreement and will be a shared responsibility of the Phase 3 lot owners.