

**MINUTES**  
**Town of Southern Pines Planning Board Regular Meeting**  
**via virtual meeting**  
**September 17, 2020 at 6:00 PM**

The regular meeting of the Town of Southern Pines Planning Board was held on Thursday, September 17, 2020, at 6:00 PM via video conference.

Board members present: Chairman Gary Carroll, Vice Chairperson Diane Westbrook, Benjamin Greene, Lemuel Dowdy, Kim Wade, Cooper Carter and Andy Bleggi.

Town staff present: B.J. Grieve, Planning Director, Lauren Long, Planner, and Cindy Williams, Secretary to the Planning Board.

Chairman Carroll called the meeting to order at 6:00 PM.

**APPROVAL OF MINUTES:**

Diane Westbrook made a **motion**, which was seconded by Cooper Carter, to approve the Minutes of the June 23, 2020 regular meeting with one noted correction. **The motion carried unanimously.**

Gary Carroll made a **motion**, which was seconded by Lemuel Dowdy, to invoke UDO §2.5.2 and review the agenda item legislatively. **The motion carried unanimously.**

**PUBLIC HEARING:**

**CU-06-20 and S-33-20, Amendment to Conditional Use Permit and Major Subdivision Preliminary Plat CU-03-17 and S-48-17; Applicant: Ravensbrook, LLC by Kevin Lindsay, Agent**

Kevin Lindsay, agent to Mr. Colin Webster on behalf of Ravensbrook, LLC, has submitted an application for an amendment to Conditional Use Permit and Major Subdivision Preliminary Plat CU-03-17 and S-48-17. The proposed amendment requests the elimination of approximately 2,500 linear feet of an approved greenway trail to propose an alternative of 200 +/- linear feet of asphalt trail in conjunction with a proposed access connecting the greenway trail with the internal sidewalks of the Ravensbrook development as well as breaching an existing dam to extend Amelia Drive. The subject parcels are identified as Moore County PIN 857400712351 (PARID 00038374); PIN 857400813158 (PARID 20180418); PIN 857400911242 (PARID 00038372); PIN 857400709399 (PARID 20180419); PIN 857400805229 (PARID 00038373); PIN 857400705182 (PARID 20180420); PIN 857400719663 (PARID 00032317); PIN 857400709863 (PARID 00041610); and PIN 857400815634 (PARID 97000413). The Moore County tax records list the property owner as Ravensbrook, LLC.

Chairman Carroll confirmed that there were no conflicts of interest among the members of the Board with regard to the application.

Lemuel Dowdy made a **motion**, which was seconded by Diane Westbrook, to open the public hearing. **The motion carried unanimously.**

STAFF PRESENTATION – Lauren Long:

Ms. Long addressed the Board and stated that a request to rezone 93.04 acres on Waynor Road from RR (Rural Residential) to RS-3 (Residential Single-Family-3) was approved in 2017. A Conditional Use Permit and Major Subdivision Preliminary Plat were also approved in 2017 for a residential subdivision consisting of 97 lots and approximately 16.39 acres of open space to be developed in five phases. In order to allow for 22,500 sq. ft. lots in an RS-3 zoning district, the project was reviewed and approved pursuant to the “Cluster Subdivision” development pattern found in UDO §6.1.

The applicant requested a minor modification to the phasing plan in 2018 following an initial site plan review during which the Technical Review Committee determined that the approved phasing plan and layout did not meet the design requirements of the Town Fire Marshal and the Town Engineer. The approved amendment resulted in a reduction in the number of phases and a new site layout that complied with utility access and design, as well as the provision for an emergency exit.

Ms. Long stated that the current request was to modify the preliminary plat and the conditions of the 2017 Conditional Use Permit, including the condition that the developer provide a shared use greenway path within a 15-foot easement along the eastern and southeastern boundaries of the Ravensbrook development. The approved location of the greenway path provided approximately 2,700 linear feet of shared use path that would connect to the existing Forest Creek greenway. The applicant has proposed to eliminate the 15 foot easement that would run along the periphery of the development and reduce the length of the shared use path and instead utilize the internal sidewalks of the subdivision in Phase 1 and Phase 2 to provide access to a 200 linear foot path that would connect to the Forest Creek greenway. The proposed elimination of the shared use path would result in a net reduction of just under one acre of usable open space. Overall, the project remains compliant with the minimum open space requirement.

The current request would also result in a modified site layout that would change the phasing plan for development with the extension of Amelia Drive to service Phase 3 as well as reduce the number of lots in Phase 3 and gain the same number of lots in Phase 2. A temporary trail is being proposed that begins at the phase line for Phase 2 with a temporary gravel parking lot to a permanent parking lot that is proposed to be located at the phase line between Phase 2 and Phase 3. The applicant has also requested to breach an existing dam in order to realign Amelia Drive, which would result in a re-delineation of the wetlands.

The applicant communicated to staff that they wanted to revise the materials they had submitted with their application. Those revisions were received by staff on Wednesday, September 16,

2020, and consequently staff did not have an opportunity to send the revised materials to local agencies and Town departments to find out if the proposed changes would create any conflicts.

Cooper Carter asked Ms. Long to repeat her last statement regarding updated information.

Ms. Long responded that the applicant had submitted an updated preliminary plat with a new location for the temporary path which she believed was due to a complication with the timeline for breaching of the existing dam. Ms. Long stated that the submitted materials were available for the Board's review.

Chairman Carroll asked if breaching the dam was a new development.

Ms. Long responded that breaching the dam was part of the original application.

#### APPLICANT PRESENTATION – Kevin Lindsay:

Mr. Lindsay addressed the Board and stated that he and Mr. Webster had received positive feedback regarding the proposed modification from the Town Council at a work session and then submitted the formal Conditional Use Permit modification request. He said that Mr. Tom Kilcheski of Forest Creek had contacted him prior to the meeting with questions about what was being proposed and they are good with the project as presented. When Mr. Lindsay and Mr. Webster reviewed the agenda packet they realized that the path would have to be closed while they built the road in Phase 2 so they decided it would be better to have a completely separate temporary path until the road in Phase 2 is open. There will be a five (5) foot wide sidewalk from the fire station to Amelia Drive and then along Amelia Drive to a temporary gravel parking lot for up to five vehicles.

Prior to getting a Certificate of Occupancy for any of the houses in Phase 1, the portion of sidewalk from the fire station and along the front of the first five houses on Amelia Drive would be completed. The next section of sidewalk would be left open. Mr. Webster will finish the houses in that location as quickly as possible so that portion of the sidewalk can be poured. They will complete the road, cross the existing dam, install permanent parking for nine vehicles and the short 200 ft. section of 10 ft. wide asphalt leading to the greenway trail as the Town has requested as part of Phase 2. With regard to the location of the temporary path, a portion of it is already open because it is an old farm road and another portion is also open because that is where the sewer was installed. The only trees they will have to remove are in the section where four undeveloped lots are located.

Mr. Lindsay stated that they wanted to modify the proposal that staff had drafted as part of the staff report. In Phase 1, most of the path will be completed before they get any Certificates of Occupancy. There will be a section of sidewalk in front of four lots that will not be completed initially but there will be very little vehicular traffic at that point. As soon as those houses are ready they will complete that section of sidewalk and the permanent access once Phase 2 is approved by the Town. They propose that the final section of sidewalk in Phase 1 will be completed before any building permits are issued for Phase 2. The remainder of the sidewalk will be completed before the last Certificate of Occupancy is issued in Phase 2. The priority will

be to get those houses to the point in construction that they can install the sidewalk that leads to the path. They will not be able to get any building permits for Phase 2 until the road has been installed and approved by the Town.

Mr. Lindsay stated that the temporary path providing connectivity from the sidewalks in Phase 1 along Amelia Drive will be constructed to the standards and in the general location as set forth in Attachment 11 to provide a usable path in all weather conditions. Staff has recommended that the path be constructed of a thin layer of gravel, a thin layer of stone and an asphalt surface but they do not think that is a good idea. They think that the path will be easier to maintain if they just put down four inches of stone. Mr. Webster will be maintaining the path so if there are any issues with the path he would rather repair a gravel surface than have to deal with a thin layer of asphalt.

Mr. Lindsay requested that the condition be that the entire path be completed to an acceptable standard prior to a Certificate of Occupancy for any home in Phase 1 being issued. He stated that Mr. Webster was just asking to delay installing one section of sidewalk until the homes in that section are at a point in construction that he can install the sidewalk.

Mr. Lindsay stated that they will provide access to the existing greenway trail system from day one. The only issue will be that pedestrians will walk on the road instead of the sidewalk in the area where four houses will be under construction. The temporary path will connect the Phase 1 sidewalk to the Forest Creek greenway trail. The temporary path is being proposed in a location that will make it useable while the infrastructure in Phase 2 is being built and the permanent sidewalk is installed in front of the lots in Phase 1. They recommend removing the restriction on additional homes being built in Phase 1 as this will interfere with the completion of Phase 1 sidewalks. Mr. Webster needs the building permits so he can get those houses to a point where he can install the sidewalks as soon as possible.

Mr. Lindsay stated with regard to staff's condition that the entire path be completed to an acceptable standard prior to approval of a Certificate of Occupancy for any home within Phase 1, a Certificate of Occupancy is not issued for any house without the sidewalk in front of that house being built. The problem is with saying that all of the sidewalks will be built in a particular area before you can get a Certificate of Occupancy on any of the homes in that phase. They do not think the recommended 2" asphalt surface is a good idea and they have proposed an alternative and request that the issuance of any Certificate of Occupancy in Phase 1 not be conditioned upon the completion of the connection to the Forest Creek greenway trail but rather to the installation of the temporary path.

Mr. Lindsay stated that they basically agree with the staff's findings of fact and feel that they are complying with those findings except for the portion that states "The Planning Board does not find that the proposed modification to the location of the greenway and proposed use of the subdivision's internal sidewalks meets the condition agreed to by the applicant to provide a recreational greenway as a condition of CU-03-17 for the proposed use of the land. The Planning Board does not find that the provision of sidewalks in a subdivision meets the same recreational use as that of a greenway trail as commonly defined." Mr. Lindsay recommended substituting the following language: "The Planning Board finds that the proposed modified

greenway access path along the proposed sidewalk, street and public parking provides adequate infrastructure for the neighborhood and other residents to access the existing greenway system. The Planning Board also recommends the proposed 4” thick aggregate surface for the temporary portion of the path to be constructed at this time.”

Mr. Lindsay stated that they recognize that a sidewalk and street do not serve the same function as a greenway trail, but they believe the most important issue is having access to the existing greenway system. In this particular case, the street and sidewalk, along with the short greenway access trail, provide better recreational access than the originally proposed plan, which they believe is the true goal of the Town. The original half-mile trail from the fire station to the existing trail could not be easily accessed by most residents of the neighborhood and it is unlikely that it would be extended as NC Hwy 22 and Waynor Road belong to NCDOT. Therefore, using the neighborhood’s existing streets and sidewalks along with a short greenway path to access the existing 4.5 mile Nicks Creek and Forest Creek trails and the Town’s entire greenway system meets the Town’s goal for providing quality access to the recreational greenways in an efficient manner. The Town’s Comprehensive Long Range Plan adopted in 2016 states: *Providing new facilities to accommodate the Town’s growth. While the addition of public park land may be necessary in some neighborhoods, the Town should explore opportunities to meet those needs through the provision of private parks and recreational facilities that serve those neighborhood needs with minimal increases in operational costs.* The original path that they were supposed to install would have had them putting in a 10 ft. asphalt path within 2.5 feet of the property line, which has existing trees on the other side of it. There would have been numerous trees within 2.5 feet of the proposed trail which they thought would have been a maintenance nightmare and eventually the entire trail would probably have to be torn up and repaved. They think this is a much better way of doing this. The revised access is located near the clubhouse and pool and the bulk of open space in the neighborhood. Instead of the Town having to maintain half a mile of asphalt with trees a short distance away they would have a much shorter path to maintain and it can be constructed around trees or any trees that might impact the path in the future could be removed. In addition, the proposed revision greatly reduces the amount of trees that would have had to be removed for the original path. It also eliminates a safety concern for the residents that would have the 10 ft. wide public access path in their backyard.

Lemuel Dowdy asked Mr. Lindsay if they were replacing a 10 ft. wide path with one that would include 5 ft. wide sidewalks.

Mr. Lindsay responded that they do not look at this as a replacement of that path. In order to get to the proposed path someone would have had to drive to the fire station. Now someone from outside or inside the neighborhood can drive down Amelia Drive to either the temporary parking area or the permanent parking area in Phase 2 and access the path from there. The temporary path will be a 6 ft. wide gravel path and the permanent path will be a 10 ft. wide asphalt path as the Town has requested. They are going to collocate the path next to the clubhouse, pool and open space. They do not view the road and the sidewalk as replacing the 10 ft. pathway that was originally proposed. There really was not much access to that path for the residents of the neighborhood.

Mr. Dowdy stated that pedestrians will be walking down a 5 ft. sidewalk from Waynor Road to the path so it will not be a 10 ft. path that is envisioned for a greenway.

Mr. Lindsay responded that this would not be a greenway path.

Mr. Dowdy said there are obviously some uses for a 10 ft. wide path that are not possible on a path that is half that width.

Mr. Lindsay confirmed.

Colin Webster stated that this path was supposed to be a shared access, according to the Conditional Use Permit, for the residents of Ravensbrook and others to access the greenway trails through the Ravensbrook subdivision. Upon review, they concluded that it did not really provide appropriate access for the residents of Ravensbrook and a 10 ft. wide asphalt path would require clearing trees on either side so it would not be damaged by tree roots in the future. Over 600 trees would be lost in order to install that path and they felt that would alter the character of the subdivision and also raise security concerns because in some cases the path would have run approximately 20 ft. away from the back porch of some of the homes. They do not think that was the original intent which was to get access through the Ravensbrook subdivision to the Forest Creek walking trail and they think what they are proposing is an improvement over the original path. Access can be obtained from a 20 ft. wide street if you choose to drive down it and park at one of the parking lots close to the trail or if you park at the fire station you can walk down the sidewalk system and gain access that way.

Cooper Carter asked if it was their contention that a greenway trail is a public safety concern because he would think residents would want to have access to a greenway trail.

Mr. Webster responded that he thought there was an issue of proximity. The possibility of being able to drive a truck within 20 ft. of someone's back deck at any time of the day is a security concern. There is a fence that runs along the back of Forest Creek abutting the Forest Creek greenway and that is there for security reasons.

Mr. Carter asked if one of the purposes of the original concept was to provide first responders with access to the trail network. He stated that he had conducted some research about why you would not just have a hard packed trail similar to Reservoir Park and his understanding was that it is because concrete or some other hard surface would require less maintenance.

Mr. Webster responded that they took pictures of what happens when there are trees in proximity to an asphalt trail. The asphalt breaks up very quickly so the maintenance cost actually increases over time. It was never the intent for the path to provide access to the fire station. You get better access within 200 feet of the walking trail through the 20 ft. wide street as opposed to 6,000 ft. of walking trail. First responders would have much better and faster access to the trail with what they are proposing.

Mr. Lindsay stated that the Town does not need another half mile of trail to maintain. The only people who would use it would be those who parked at the fire station. Now, instead of parking at the fire station people can park 200 ft. away from the existing greenway path.

Mr. Carter asked if there would still be downsides if they installed a hard packed surface instead of an asphalt path.

Mr. Webster responded that a very wide swath would have to be cut to ensure that the root system would not affect the trail. The root system would affect the trail whether it was gravel or gravel covered with asphalt. The only difference is that the asphalt will be more expensive to maintain and the roots will create a greater tripping hazard. He walked down the greenway trail and asked everyone who was walking, jogging or riding a bike on the asphalt if they would rather have a gravel or an asphalt path and a majority preferred a gravel path. A few said if they were running a race they would rather have an asphalt path because they could run faster but it would be much harder on their knees and joints than a gravel path. There are a number of considerations to take into account which is why they think that the asphalt path is just not the right way to go. They estimated that approximately 600 trees would have to be removed to install the path in its original location and no trees will have to be removed to install the path in the proposed location. They would much rather keep the trees and maintain the character of the neighborhood if possible.

Mr. Lindsay stated that they can provide access to the greenway system for first responders and residents through a short section of path with parking and avoid long-term maintenance issues. Also, the previously proposed path has some very steep sections and they would have had to provide areas for people to stop and rest. He thinks the current proposal will be beneficial to the residents of the neighborhood and to Southern Pines with regard to maintenance costs.

Mr. Webster stated that they want to install the portion of sidewalk that connects the fire station as a single pour because the aggregate can be different and create different textures and finishes if it is poured at different times. That is why they are trying to pour the sidewalk along the front of several houses at one time. They can do that from Lot 25 to Lot 21 because those homes are under construction. They do not have to wait for homes to be completed. They just have to make sure that anything heavy that needs to reach the construction site has been delivered before they install the sidewalk to avoid the risk of damaging the concrete. The damaged concrete would have to be torn out and taken to the landfill, the new concrete would not be the same color or texture as the concrete that is removed, and it would add unnecessary costs. They could also complete the sidewalk for Lots 47, 41 and 40 because they can access those lots from the side. They intend to install that section of sidewalk by about December of this year. Then they expect to put in the section in front of Lots 17, 18, 19 and 20 prior to April 30, 2021, which is when they expect to have those houses at a point in construction that they can install the sidewalks. There is a Subdivision Improvement Agreement that shows that these improvements have been bonded so should they not fulfill their promises they have set aside the funds for the Town to complete the improvements on their behalf. They do not want to do that and they think they can do a better job so they want to do it themselves and intend to complete all of the sidewalks in the first phase prior to April 30<sup>th</sup>. However, they do recognize the Town staff's logic that there should be continuous access to the walking trail as soon as possible.

The original Conditional Use Permit stated that they were going to install the access to the walking trail before the first Certificates of Occupancy would be issued. Because of the time that it takes to go through the approval process, the Town Council agreed at the recent work session to give them a little bit of leeway to allow them to present their proposal to the Planning Board and then go back to the Town Council for further review so they are proposing to put a temporary parking lot at the bottom of Lot 41 and then the access path through the woods. They are putting it in there for two reasons – one is while they build the road in Phase 2 there will be obstructions. People will not be able to use the road when there is heavy equipment on it and they will not be able to cross the dam while it is being breached. They thought that did not meet the spirit of what they agreed to do so they are proposing to put a temporary path in a different location while they extend Amelia Drive over the dam and into the last section. The temporary path will remain until such time as they complete the sidewalk along Amelia Drive. They have gone one step further and will build those lots out first before they do anything else in Phase 2 to ensure that they get the permanent sidewalk in as quickly as possible.

Mr. Lindsay stated that Amelia Drive will have to be constructed before they can get a building permit in Phase 2. The only thing that will not be constructed prior to getting a building permit will be the sidewalk in front of six houses.

Mr. Webster stated that they would agree that no Certificate of Occupancy would be requested on the first 5 or 6 lots so no one could occupy that section until such time as the sidewalk has been installed. Once that section of sidewalk is installed it will be complete from Waynor Road all the way to the permanent parking spaces and the last 200 ft. of access to the greenway trail.

Mr. Dowdy asked how long they expect the approval process for breaching the dam to take, allowing them to complete Amelia Drive.

Mr. Lindsay responded that the wetlands consultant thought they could get that approval within a couple of months. The Army Corps of Engineers looks favorably upon breaching dams. They generally do not have an issue with breaching a dam as opposed to building a dam. The reason they really need to do this is because there are trees on the sides that are much too large to pass a safety inspection and would have to be removed with large equipment and then backfilled. The current dam has about an 8 inch pipe for its barrel and riser so it does not handle much flow and in any significant rain event water flows over an earthen spillway so they would have an earthen spillway with maybe a foot of water going over it during a rain event which is not a particularly safe environment for the neighborhood. There is no way to really tell how the dam was built. It has existed for a long time but the spillway is not providing much in the way of flood control because there is not much storage in the dam where the water is and going over the spillway. It was a farm pond and may have had some recreational benefits when there was a mobile home park on the property but they do not think the POA is going to want to assume ownership and maintenance responsibility and will likely see it is as a liability instead of an asset. It is also pretty shallow. There are a lot of aquatic weeds on about half of the dam which is an indication that it is fairly shallow in that area. The POA would be forced to breach the dam if they did not want to maintain it in the future.

Mr. Webster stated that they had planned to use the pond as an amenity and locate the pool and clubhouse next to it but everyone they had spoken had viewed it as a risk so they decided that it was in the best interest of the community to breach the dam. By redirecting the road they would not have to cross the wetlands, which makes good environmental sense.

Mr. Lindsay stated that the original plan called for the road crossing a large section of wetlands.

Cooper Carter asked how long they expect the temporary path to be in place.

Mr. Webster responded that it could take six to nine months to obtain all of the approvals, approximately six months to make the necessary improvements, and then another 2 to 3 months to get the houses to the point in construction that they can install the sidewalks, so the honest answer is somewhere between 1.5 and 2 years.

Mr. Lindsay stated that the temporary path will be a very nice path. It will look nice and Mr. Webster will maintain it.

Mr. B.J. Grieve stated that another issue the applicant will need to deal with is the floodplain through this area. The elimination of the pond and the removal of the dam will alter the studied floodplain and as a result a FEMA map revision will be required and that will take some time.

Chairman Carroll asked if the Town would accept the path with the materials the applicant was proposing.

Mr. Grieve responded that the comment regarding the cross-section was a recommendation from the Town's Recreation and Parks Director if a temporary trail is going to be used while awaiting the installation of sidewalks. The temporary path would not be something for the Town to accept.

Chairman Carroll asked if the stone material is going to be permanent.

Mr. Webster responded that the 200 ft. section would be part of the permanent path and would be asphalted as required by the Town.

Chairman Carroll stated that the trade-off is that they are changing the character of the nature path to a street-side sidewalk. It is inherent with its own dangers but it has its positives as well. This is not an easy decision.

Diane Westbrook asked Mr. Webster if he would be maintaining the temporary parking lot and asked him to explain why the sidewalk could not be poured along one section of houses.

Mr. Webster responded that the first and only equipment or materials of any weight that need to be delivered to those homes are sheetrock and siding. The other four homes have not been started and they want to be able to get the heavy materials delivered before the sidewalk is installed to avoid the risk of damaging the sidewalks by driving heavy equipment and materials over them.

Ms. Westbrook stated that she did not understand why the homes on the four center lots had not been started.

Mr. Lindsay responded that Lots 40 and 41 are part of Phase 2.

Ms. Westbrook expressed concern about inherent safety issues with using streets and sidewalks for those who park at the fire station, especially with heavy construction equipment in that area.

Mr. Lindsay responded that is why they would recommend that people who do not live in the neighborhood park in the parking lot within the development instead of in the fire station parking lot. They are providing the same access to the overall trail system, just from a different starting point.

Mr. Webster responded that with the previously approved path, a resident of Ravensbrook would have to access the path from the fire station and this is supposed to be an amenity for the residents of Ravensbrook.

Mr. Carter asked if there will be any other sidewalks within the development other than along Amelia Drive.

Mr. Lindsay responded that all of the streets will have a sidewalk on one side with the exception of the cul-de-sacs.

Ms. Westbrook said there basically will not be a need or desire for people to park at the fire station but rather to park in the parking lot within the community.

Mr. Lindsay said there will be a total of 18 parking spaces a short distance away from the existing trail when the development is complete.

Ms. Westbrook asked if there will be access from the fire station other than by walking down the street and sidewalks.

Mr. Lindsay responded no.

Chairman Carroll asked what will happen if they do not get permission to drain the pond.

Mr. Lindsay responded that if they do not get permission to drain the pond they will probably have to change the phasing a little bit and not complete that phase next.

Mr. Webster said there is nothing out there that says they cannot drain the pond. They may not be allowed to breach the dam but they can certainly drain the pond without asking for permission. If they are not allowed to breach the dam they will simply extend the walking trail over the dam rather than build a road across it.

Chairman Carroll asked Mr. Grieve and Ms. Long if there were any warning signs that the Board had missed.

Mr. Grieve responded that the applicant had stated several times prior to and during the hearing that building a road and installing a sidewalk next to it prior to the construction of homes is challenging because destroying the sidewalk is almost inevitable and staff's position has been that it really is not. That has been a big disagreement but that is not abnormal and it is okay to have differences of opinion on that but staff's position has largely been that if they do not want to build a shared use path then a sidewalk needs to be built and in a way that staff can verify and sign off on and release the collateral being held through the Subdivision Improvement Agreement all at once.

It is a reasonable request that they need a little more time so if they are to build the sidewalk in Phase 1, let's have a hook to get that done. And then if they are going to build a sidewalk in Phase 2 it is a good point that they cannot build it all at once from Waynor Road all the way through because the engineering plans for Phase 2 are not even complete so a lot of details regarding that road are not available so staff proposed a condition that the second part of the concrete trail be called stage 2 and set a timeframe for getting that done, but staff's prospective is to get it all done at once and the applicant's prospective is tied more to ensuring that the sidewalk is not installed until after the homes are built and also trying to work with the continuance pour concept instead of pouring individual sections of concrete. That is a valid perspective but staff views it from a different lens because anyone who has worked on this type of project knows that developers come and go, projects stop for long periods of time and you want to take all of that into consideration. Therefore, staff really does feel that given the totality of the circumstances and from their perspective they still feel comfortable with the staff recommended conditions as drafted. In fairness to the applicant, the Board should look at the date staff gave in condition #2, which was the date of the hearing, but they understand that given a variety of circumstances that is just a "flag in the sand."

Given everything that the Board has heard from the applicant and the Board's discussion about what they think is best in terms of their recommendation, the applicant has proposed language that includes tying things to a Certificate of Occupancy and staff does acknowledge that the 2017 Conditional Use Permit tied things to a Certificate of Occupancy. Since that time, staff has learned that tying requirements to a Certificate of Occupancy is harder than tying them to a building permit, both with legal defensibility of the distinctions between GS 160A-417 v. 160A-423, as well as functional challenges. If someone comes in with a building permit application and we are verifying compliance with zoning prior to issuing the building permit we have both a very defensible hook to say something does or does not comply with zoning and also there is not a house sitting there ready to go. When a condition is tied to a CO and we have to tell the purchasers that they cannot move in until conditions are met that is not very practical. Therefore, you will notice that staff's conditions tie things to building permits as best they can and he would caution the Board to be conscience of that if they want to go with any of the language proposed by the applicant or in talking about anything that has been presented during the hearing.

Andy Bleggi joined the meeting.

Chairman Carroll stated that the developer had indicated that there is a section of sidewalk that the Town would like to see completed and the applicant's position is that he would prefer to wait to install that section of sidewalk until that section of houses are basically constructed and no heavy equipment needs to be moved across the sidewalk. Chairman Carroll asked Mr. Bleggi how real that is in his mind or if they install the sidewalk and still construct the houses at a later date.

Mr. Bleggi responded that he thought the sidewalks should not be installed in sections when they apply for the building permits but he does agree they have to be in at the front end and not wait for the Certificate of Occupancy.

Chairman Carroll asked Mr. Webster if his understanding was correct in that Mr. Webster wanted to install the sidewalks at the back end.

Mr. Webster responded that they want to install the sidewalks as soon as they do not have to drive heavy equipment over them, which is typically when the houses are halfway through construction.

Chairman Carroll said they would already have the building permit.

Mr. Webster responded yes and said he recognized Mr. Grieve's comment that it is hard to enforce and that is why they offered that it be at Certificate of Occupancy. Mr. Webster asked the Board to please bear in mind that they have bonded this and while he respects Mr. Grieve's experience with zombie developments this is not going to be one of them. They have never had a zombie development but no one really knows.

Mr. Bleggi said his position would be that they either bond the sidewalks or be required to install them within so many days of the date the permit is issued.

Mr. Lindsay said there is an existing 22 ft. wide road – Amelia Drive – in Phase 2. He walks in his neighborhood of Pine Grove Village every day with no sidewalks and it is really not that bad. Everything in the area shown in blue on the plan will be constructed before the first house is occupied. The section shown in pink will be installed as soon as Mr. Webster can get those houses to a point where he is comfortable installing the sidewalks and driveways. The risk is someone walking in the street. There will not be a lot of traffic there and as it was pointed out, there will be construction occurring in that area. Again, there is a road for people to walk on so there is a pretty low risk of things not occurring in a timely manner. From day 1 all of the area shown in blue will be completed and there will only be one section where people would have to walk on the street.

Mr. Bleggi said as a developer he personally likes to install the sidewalk at the very end because it makes a statement that the building is finished. The sidewalk will get damaged a lot if it is put in up front so as long as it is bonded he feels pretty comfortable with that.

Mr. Carter stated that almost three years ago the Planning Board approved the Conditional Use Permit for this development and one of the conditions was the shared use path. At that time, the

applicant agreed with that installation. He asked if what had changed in the three years was that he is a different applicant asking that the condition be reconsidered.

Mr. Webster responded that two things have changed. When you go through the Conditional Use Permit process, a lot of the engineering has not been completed so there is an awful lot to learn when you get into the details. Lot size and location and road size and location are all things that change so he does not think anyone anticipated that the path would be within 20 to 25 feet of some of those homes at that time. He also does not think anyone really thought about the environmental impact of running the path through the forest. At that point in time it was just on paper and no one had really thought about those implications. Thirdly, he did not think that real consideration was given to the interests of the residents of the subdivision. He has been a participant in this project from the very beginning but he was silent until he took a more active role in it, precisely for issues like this that weren't particularly well conceived at the time this was originally submitted.

Mr. Tom Kilcheski, President of the Forest Creek POA, addressed the Board and stated that he had spent some time reviewing what was available on the website. He was a little alarmed at first when he read that several linear feet of greenway trail was going to be obliterated until Mr. Lindsay assured him that nothing at all was going to happen to the Forest Creek greenway and explained that the width of the trail would not be impacted and, in fact, there would be 20 additional feet added to it on the side going toward Ravensbrook. Moreover, he said he could see from the presentation that Phase 4 will be when the actual connection from Ravensbrook to the second of three impact gates that enter Forest Creek will occur and he had some conversation with Fire Chief Cameron about that so they will be monitoring that as the subdivision goes through its various phases. With the reassurance that Mr. Lindsay has given him and anticipation of improving the emergency access through the development he had nothing more to add other than that he was more comfortable with what had been noted.

Tom Lily, a resident of Forest Creek, stated that he and his wife are frequent users of the greenway trail and it is a tremendous resource for walking, jogging, biking and just general enjoyment of the environment so it is a very important resource for the community. He asked how many parking spaces will be in the temporary lot, the permanent lot and at the fire station.

Mr. Lindsay responded that they propose five (5) parking spaces in the temporary lot and nine (9) spaces – one handicap and 8 other spaces - in each of the two permanent lots for a total of 18 space. He stated that there is ample parking at the fire station but he did not know the exact number of spaces or if any are designated for the path.

Mr. Lily asked if those parking spaces would be for members of the general public and not just for the residents of the Ravensbrook community.

Mr. Lindsay confirmed.

Mr. Lily asked if the public would still be able to use the fire station parking lot and then bicycle through the Ravensbrook neighborhood to access the trail if the proposed changes are approved, and if that is something that the Ravensbrook neighborhood is ready to accept.

Mr. Webster responded yes. The intention is to dedicate the Ravensbrook roads to the Town of Southern Pines so they will be public roads and anyone who chooses to use them may do so.

Mr. Lily recommended keeping the proposal as originally approved with parking at the fire station and the trail going around the side of Ravensbrook instead of through it and to add some form of access with either a sidewalk to the fire station or some other access for the Ravensbrook residents to have safe access to the greenway.

Mr. Dowdy asked what kind of signage will be posted on Waynor Road informing citizens that access to the greenway is available.

Mr. Lindsay responding that they do propose some type of wayfinding sign that meets Town standards.

Lemuel Dowdy made a **motion**, which was seconded by Kim Wade, to close the public hearing. **The motion carried unanimously.**

Board discussion ensued.

Lemuel Dowdy made a **motion**, which was seconded by Diane Westbrook, to reopen the public hearing. **The motion carried unanimously.**

Mr. Grieve asked Mr. Webster if he saw a way that his proposed condition #2 might be an amenable hook to make sure that the remaining sidewalks in Phase 2 are completed by a certain point since an SIA for Phase 2 had not yet been submitted. Mr. Grieve said presumably there will be an SIA for Phase 2 when they submit the final plat because if the sidewalks are not going to be done at that time and lots cannot be conveyed until the final plat is approved.

Mr. Webster responded that he would approach Phase 2 in exactly the same way he would approach Phase 1. The reason why they put the SIA in place was because they were having difficulty getting comfortable with putting in the sidewalks and trees and the final landscaping while there was still a risk. He would apply whatever works again in Phase 2. They have to get approval for the improvements in Phase 2 and they will start off by grading for the roads and then install the water and sewer and the roads but they are going to hold off putting in the sidewalks and trees. That is what they are doing in Phase 1 and he would propose doing exactly the same for Phase 2 by putting another SIA and bond in place.

Mr. Grieve requested a five minute recess.

The public hearing reconvened.

Mr. Grieve stated that one of the concerns raised earlier was that the applicant would not know the exact route of the path prior to doing the engineering plans for Phase 2 and that makes sense. Attempting to take everything they have learned and heard and setting aside all of staff's

conditions and the applicant's revised conditions, Mr. Grieve offered the following conditions of approval of the proposed revisions:

1. Finish the sidewalks in Phase 1 per the approved SIA by May 21, 2021.
2. The temporary trail and the 200 feet of asphalt be installed and an SIA for the permanent sidewalks will be submitted prior to approval of the final plat for Phase 2.
3. The permanent sidewalks in Phase 2 be completed per the SIA that is referenced in condition #2.

Mr. Webster said he thought the original spirit of this was that there would be continuous access to the greenway as part of the completion of Phase 1.

Mr. Grieve responded that hopefully there are enough hooks that there will be a way to walk from Waynor Road to the greenway path and there will be an area to park and an asphalt path to get from the parking lot to the trail and if someone wants to get there from the fire station they can walk on the road or on the sidewalks and there are hooks to make sure that if any of these things do not happen it will be because Phase 2 just does not happen which again, they understand is a risk and a possibility but presumably if the applicant wants to continue to sell lots and build houses then the development will keep moving forward.

Mr. Webster stated that he was fine with what Mr. Grieve had stated.

Ms. Westbrook said she thought they would want the temporary trail to the greenway path in prior to having all of the infrastructure in place. She would think that as soon as the sidewalks are installed on Amelia Drive you would want to have access to the temporary trail in advance of the rest of the road being constructed.

Chairman Carroll said as far as the temporary trail is concerned he may have misconstrued the Board's concerns. He knew that Cooper Carter had wanted to make sure that there was a continuous way to get to the greenway path.

Mr. Lindsay proposed the date of April 30<sup>th</sup>, which is when the SIA expires, as the date by which the temporary path has to be completed.

Mr. Webster said they are talking about a modification to the Conditional Use Permit and they could put wording in there that there is going to be a continuous path from Waynor Road to the greenway trail at all times as part of the Conditional Use Permit .

Mr. Grieve asked if instead of the conditions listed previously, the following conditions be applied if they are consistent with the Board's intent:

1. The sidewalks in Phase 1 be completed per the Subdivision Improvement Agreement and construction of the temporary trail be completed as of April 30, 2021.

2. The 200 ft. of asphalt path will be completed and a Subdivision Improvement Agreement for the permanent sidewalk be submitted prior to submitting the final plat for Phase 2.

Ms. Westbrook asked if the temporary parking lot could be included with the temporary path.

Andy Bleggi asked Mr. Webster if he wanted the flexibility to change the location of the temporary trail to the location of the permanent trail so he does not have to create two areas.

Mr. Webster responded that he thought that was implied. As soon as they complete the permanent sidewalks for Lots 49 through 54 which abut Amelia Road they will abandon the temporary trail.

Mr. Bleggi asked if they would want to put the temporary trail where the permanent trail is going to be so they do not have to grade twice.

Mr. Webster responded that they do not know where the permanent path will be and changes in grade will alter the location plus they hope they are going to breach the dam and if they located the temporary path there that would result in an interruption in access so that is why they put the temporary trail somewhere else. Mr. Webster said that would have been preferable but they concluded that it did not meet the intent of providing continuous access at all times from Waynor Road to the walking trail.

Lemuel Dowdy made a **motion**, which was seconded by Benjamin Greene, to close the public hearing. **The motion carried unanimously.**

#### **PLANNING BOARD ACTION:**

Lemuel Dowdy made a **motion**, which was seconded by Cooper Carter, to adopt Attachment "A" of the staff report as their findings of fact regarding proposed Conditional Use Permit CU-06-20. **The motion carried unanimously.**

Lemuel Dowdy made a **motion**, which was seconded by Kim Wade, to recommend to the Town Council approval of Conditional Use Permit CU-06-20 with the following conditions as read by staff:

1. that the developer finish the sidewalks in Phase 1 per the existing SIA and complete the temporary trail and temporary parking lot to access the existing Forest Creek greenway prior to the same deadline as established in the SIA;
2. that the 200 ft. asphalt trail and parking lot be installed and an SIA submitted for permanent sidewalks and any other infrastructure prior to approval of the final plat for Phase 2;
3. that the permanent sidewalks and any other infrastructure in Phase 2 be completed per the Phase 2 SIA; and

4. that the standard for the temporary trail be the gravel walking trail cross-section submitted by Kevin Lindsay at the Planning Board meeting on September 17, 2020.

**The motion carried unanimously.**

Lemuel Dowdy made a **motion**, which was seconded by Diane Westbrook, to adopt Attachment “B” of the staff report as their findings of fact regarding Preliminary Plat S-33-20. **The motion carried unanimously.**

Lemuel Dowdy made a **motion**, which was seconded by Diane Westbrook, to recommend to the Town Council approval of Preliminary Plat S-33-20. **The motion carried unanimously.**  
**NEW BUSINESS:**

Mr. Grieve stated that there are several applications on the October agenda.

Discussion ensued regarding whether to resume holding the meetings in person.

**OLD BUSINESS:**

None

Kim Wade made a **motion**, which was seconded by Lemuel Dowdy, to adjourn the meeting. **The motion carried unanimously.**

The meeting adjourned at 9:35 PM.

Respectfully submitted:

Cindy Williams  
Secretary to the Planning Board