

**Item Title:** Proposal to Purchase the Former Crooked Creek Golf Course

**Specific Action Requested:**

**Action 1:**

**That the Board of Commissioners considers acquisition of the former Crooked Creek golf course subject to the following conditions:**

**A. Prior to the County entering into Purchase Contract with either party identified in Option A or Option B below, the following additional purchase conditions must be agreed to in writing, in addition to all purchase conditions laid out in the existing Conservation Fund Bargain Sale Contract:**

- 1. Pending lawsuit must be dismissed with prejudice or finality of appeal with no material effect on the use of the property for any governmental purpose**
- 2. Termination of the restrictive covenants as to this property (golf course)**
- 3. County must be approved as transferee of the conservation easement and receive pre-clearance for any planned development/use of the property by the US Army Corp of Engineers**
- 4. Removal of all encroachments including residential lot encroachments on the golf course, cart path encroachments on residential lots and any others identified by survey**
- 5. Termination of all leaseholds**
- 6. Preliminary approval of any utility connections/extensions or systems from the Town, Aqua NC or the North Carolina Department of Environmental Quality**
- 7. Satisfactory environmental assessments including:
  - i. Bury pits locations are identified and remediated to the satisfaction of a licensed engineer**
  - ii. High Hazard Dam Emergency Action Plan completed and dam must be in compliance****
- 8. Grant of necessary easements including:
  - i. Access easement for the tunnel**
  - ii. Any others general easements required for utilities, roadway improvements, planned construction****
- 9. Rezoning from the Town of Fuquay-Varina if necessary**

**10. The purchase is conditional upon Board of Commissioner appropriation and, if required, Local Government Commission approval of the financing**

**B. Upon successful negotiation of all purchase conditions outlined in Section A, staff will bring back to the Board of Commissioners a written Purchase Agreement for consideration. Additionally staff will identify funding options for the acquisition, development and operation of the property for Board consideration.**

**Action 2:**

**That the Board of Commissioners considers one of the following options with respect to the entity with which the County would enter into a Purchase Agreement.**

**Option A: That the County conditionally accepts the Lease Purchase Agreement with The Conservation Fund, hereinafter referred to as "the Fund", subject to the following terms:**

**A. Prior to the Fund's purchase of site:**

- 1. Wake County review and approve all due diligence information related to the Fund's acquisition of the property.**
- 2. The Fund and the County will negotiate in writing a proposed Lease Purchase Agreement that includes the following essential terms:**
  - a) The Fund will acquire the property for an interim period of 4 years.**
  - b) An outline of all reimbursements of the Fund's costs related to the acquisition of the site.**
  - c) The County's day-to-day stewardship and maintenance responsibilities for the property during the Fund's interim ownership period.**
  - d) The County shall have immediate access to the property upon closing.**
- 3. The financial terms of the Agreement as follows: A purchase price of \$3,950,000 paid over four years commencing at the Fund's closing date, subject to Wake County closing conditions. The tentative payment schedule as follows: \$500,000 on July 10, 2018; \$750,000 on July 10, 2019; \$1,350,000 on July 10, 2020; and \$1,350,000 on July 10, 2021 (dates subject to change based on closing date). Holding costs will be calculated annually on the outstanding lease balance prior to each payment at an interest**

**rate of prime plus ½ percent. County will have the ability to prepay any or all installments prior to July 10, 2020.**

- 4. The Bargain Sale Contract entered into with the Sellers must be amended to include the County purchase conditions set forth in Action 1(A), above.**

**Option B: That the County negotiates a contract directly with CC Partners Inc. and Crooked Creek Golf Land LLC for the acquisition of the former Crooked Creek golf course, to include the County purchase conditions set forth in Action 1(A) above.**

### **Item Summary:**

#### **Background**

The Crooked Creek Golf Course is located off Hilltop Needmore Road, west of 401 and north of Fuquay-Varina within the Crooked Creek Subdivision. The former golf course is 164 acres and closed in 2015 when the owners determined it wasn't profitable and a proposal to build new homes on the property was developed. The golf course property is comprised of 12 separate parcels currently owned by two separate entities, C.C. Partners, Inc. and Crooked Creek Golf Land, LLC.

In 2015, a group of Crooked Creek subdivision residents (Friends of Crooked Creek, LLC) who wanted the golf course to remain open sued the golf course owners seeking a declaratory judgment that the golf course property was subject to Declaration of Covenants ("Covenants") that restricted the property to golf related uses and sought injunctive relief to prevent development into residential lots. A Superior Court judge ruled last summer in favor of the golf course owners, but the residents appealed. Oral arguments in that case were heard this past May in the N.C. Court of Appeals and on July 18<sup>th</sup> the Court of Appeals opinion was released in favor of the golf course property owners. On August 22, 2017, the Friends of Crooked Creek, LLC filed a Petition for Discretionary Review with the North Carolina Supreme Court to review the Court of Appeals ruling. The Supreme Court decision is still pending.

The Wake County Public School System (WCPSS) has a contract in place to purchase 21 acres of this land, one of the twelve parcels, for an elementary school (E-44). This acquisition was scheduled to go the Board of Commissioners last September but was placed on hold until the lawsuit is resolved. This acquisition would be a land banking opportunity for the school system since this school is not a project in the current CIP.

A second group of Crooked Creek subdivision residents have recently organized into a group called the South Wake Park Project and have approached the County to request converting the former golf course into a County park.

At the Board of Commissioners Work Session on August 14, 2017, the Board received a presentation from both a South Wake Park Project representative as well as County

staff on the proposal. The presentation included high level estimates for park development, initial equipment, and annual operating costs.

During the Work Session, the Board directed staff to continue working to address various legal and financial and operational questions in preparation for further discussion by the Board at their regularly scheduled September 5, 2017 meeting.

Due to the complicated nature of this proposal it was necessary to delay the further discussion of this item by the Board from the originally planned September 5, 2017 meeting to the November 6, 2017 Board of Commissioners meeting.

### **Changes since the Board of Commissioners August 2017 Work Session**

Since the staff presentation at the August 2017 Board of Commissioners Work Session there is updated information regarding the use of the Triangle Greenways Council Property and the possibility of a Clean Water Management Trust Fund grant.

#### Triangle Greenways Council Property

Originally it was conceived that the Triangle Greenways property located directly north of the former Crooked Creek golf course would be included in the potential assemblage of land for the proposed park. The Triangle Greenways property is approximately 80 acres.

Staff has since discovered that in 1994, as part of the Crooked Creek development the developer obtained wetlands mitigation through The Army Corp of Engineers. Per the wetlands permit, the portion of this property subject to a conservation easement must be maintained in its natural state (filling, excavation, grading, drainage, clearing cutting or cutting of any vegetation or environmental altering activities are not permitted). This means that if the County obtained this property we would be unable to construct any trails or greenways. Since all of the property is in a floodplain, and is already protected, it is likely there is little value in the County obtaining it as part of the potential park.

As a result staff is not recommending that this property be considered part of the proposed project since there is nothing that the County can do with the land and it is already protected. This would reduce the originally conceived park concept from 223 acres to approximately 143 acres.

#### Clean Water Management Trust Fund Grant

A request for funding in the amount of \$502,550 was submitted to the Clean Water Management Trust Fund to assist in the acquisition of the former Crooked Creek golf course. On August 25, 2017 notification was received that the request will not be funded.

## Staff Due Diligence

Staff from Community Services, Facilities Design and Construction (FDC) and the County Attorney's Office has been working diligently to gather information and resolve unanswered questions regarding the property. The County Attorney's Office contracted with outside counsel to conduct a title evaluation. The County also contracted with Dewberry Engineers and Site Collaborative to conduct a facility condition assessments, and The Wooten Company to estimate infrastructure improvements. The Board asked staff to investigate the project and provide further details at a future meeting. The following are the issues investigated by staff for the Boards consideration.

### Legal Analysis

A number of legal concerns have been discovered as part of the due diligence period and title examination. Distinguishable from most acquisition opportunities that are brought before the Board, County staff was not involved in the negotiation of the Contract for Bargain Sale of Real Estate ("Conservation Fund Contract") entered into between The Conservation Fund ("Purchaser") and the golf course property owners, CC Partners, Inc. and Crooked Creek Golf Land, LLC ("Sellers"). Accordingly, there are standard terms and conditions that are not included in the current Conservation Fund Contract. A title search has been completed for the 11 golf course parcels (142.86+/- acres) subject to the Conservation Fund Contract which has revealed additional challenges with the property, including but not limited to: 1) pending litigation that acts as a cloud on title, 2) restrictive covenants encumbering the entire property, 3) a conservation easement encumbering a portion of the property, 4) potential encroachments, 5) access easements that will be needed to maintain the connectivity of the parcels, 6) a leasehold of the maintenance building on the northern parcel that does not expire until May 2018, and 7) a high risk dam located on the property.

Upon review of the title materials and the Conservation Fund Contract, a number of additional purchase conditions are recommended (see above, *Specific Action Requested, Action 1, part A*) if the County acquires the property. These conditions should be included in an amended Conservation Fund Contract or in a renegotiated contract between the Sellers and the County. Many of the recommended County purchase conditions are standard conditions that are in all Wake County purchase agreements. Other conditions are unique to this acquisition opportunity. Assuming the current cloud on title and litigation is finalized with no impact on the County's proposed use of the property, it is anticipated that the most challenging condition to purchase will be termination of the restrictive covenants.

The restrictive covenants ("Crooked Creek Covenants") encumbering the property are problematic for a number of reasons. As with any real property subject to restrictive covenants, the risk for potential disputes and litigation over covenant interpretation is highly probable when there is a conversion of use. Heightened analysis has been required because the County has never purchased property within a residential subdivision that is encumbered by covenants of which any one of the 280 lot owners could enforce. These covenants "run with the land," precluding a contractual waiver by the current Lot owners that would eliminate the risk associated with the covenants. While the Crooked Creek Covenant use restrictions are largely applicable to "Lots"

(residential s/f Lots), there are three general use restrictions that apply to the property, namely: 1) a prohibition on animals and livestock, 2) a prohibition on boat storage, and 3) a prohibition for on-street parking. However, the Crooked Creek covenants could be amended in the future and the County has no control over future amendments because the golf course property owners do not possess voting rights. The covenants do exempt the golf course parcels from annual assessments or liens imposed by the homeowner's association, so long as the golf course is not converted to residential lots. The assessment provisions also provides that common area or "any portion of the Property" can be dedicated or conveyed to a governmental entity free and clear of the covenants, but this exclusion is not explicitly stated for the golf course property. Even with this clause, it is unlikely title will be insured to exclude the covenants absent a judicial determination or a valid covenant amendment effectuated by the Lot owners exempting the golf course parcels from the covenants.

The current proposal before the County is to enter into a lease purchase agreement with the Conservation Fund; the lease commencement date would be the date of their closing. Per the current Conservation Fund Contract, the closing date is currently set for December 7, 2017. The ability to meet this deadline with a renegotiated purchase contract and satisfaction of all County purchase conditions is not feasible. There could be additional purchase conditions recommended by the County Attorney's office based on due diligence items that have not been completed and the financing structure for this acquisition, i.e. Local Government Commission approval.

There is one alternative acquisition option that has not been fully endorsed or proposed, but it is worth mentioning. In lieu of a purchase contract agreement or bargain sale, the property could be acquired by the County pursuant to condemnation authority under GS 40A-3 for certain statutorily prescribed public purposes. However, there are delays, limitations and additional expenses associated with this alternate approach.

### Environmental Site Assessment

In February 2017, GeoTechnologies prepared a Phase I Environmental Site Assessment (ESA) for The Conservation Fund. The intent of a Phase I ESA is to assess the property based on current and historical conditions in an effort to identify recognized environmental conditions (RECs) which may necessitate further investigations. Typically, soil boring and/or chemical analyses are not performed during a Phase I ESA. GeoTechnologies found no RECs but noted the possibility of the following: 1) the potential of unreported spills at/near petroleum above ground storage tanks and 2) potential presence of persistent or non-biodegradable pesticides, herbicides, and/or fertilizers. The Phase I ESA also recommended analyzing potable water sourced from a well near the clubhouse.

In August 2017, Waters Edge Environmental prepared a "limited" Phase II ESA for The Conservation Fund that involved collecting soil samples near former petroleum above ground storage tanks, pesticide storage areas, and golf fairways and greens. An analysis of certain chemicals and metals concluded that the site does not "pose adverse risks for future unrestricted use." A water sample was not collected due to a power disconnect at the well near the clubhouse. Waters Edge states there is not a "great

need” to sample the water since soil samples did not exceed state standards for recreational uses.

There are bury pits located on the property. The exact location of the bury pits will need to be identified and remediated to the satisfaction of a licensed engineer.

The high hazard dam that is located on the property will need an approved Emergency Action Plan from the North Carolina Division of Energy, Mineral and Land Resources and the dam must be in compliance with the North Carolina Dam Safety Law of 1967.

### Boundary Encroachments

A recorded boundary survey (Book of Maps 2017 page 402 through 416) identifies a number of possible boundary encroachments. Examples include existing cart paths partially or entirely encroaching on private residential lots and privately owned outbuildings (e.g. sheds) or play structures on golf course property. Encroachments potentially expose residential lot owners and the County to liability risks. For example, if a potential park user is injured on a residential lot, the private owner could be held liable. As such, the removal of all encroachments is recommended for inclusion as a closing condition.

### Appraisal

The County contracted with B. Carter Kennemur, CCIM to conduct an appraisal of the property. This appraisal occurred from October 3rd through 28th, 2017. The appraised value of the property was determined to be \$4,045,000. This is \$95,000 more than The Conservation Fund’s purchase price of \$3,950,000.

### Facility Assessments

To better understand the existing conditions of the infrastructure at the former Crooked Creek golf course the County contracted with two firms to conduct a facility condition assessment.

Dewberry Engineers Inc. completed a comprehensive evaluation of the condition and remaining useful life of the five structures that are located on the property. These structures are the clubhouse, golf cart building, maintenance building, north bathroom building, and south bathroom building. The Dewberry executive summary is attached as part of this agenda item.

Their assessment and associated cost projections of necessary repairs do not include costs that may be associated with the following additional studies needed that were beyond the scope of their project:

- Accessibility compliance to access the 2<sup>nd</sup> floor of the golf clubhouse
- Required accessible egress from covered veranda at clubhouse via ramp
- Accessibility compliance of restrooms and locker rooms in golf clubhouse
- Investigation if live load capacity of golf clubhouse is sufficient for planned occupancy

A second firm, Site Collaborative, accessed the outdoor spaces of the property. This included cart paths/trails, infrastructures and site amenities. Site Collaborative evaluated the existing conditions focusing on two key factors: operational conditions/quality of materials and the code-required accessibility. The following regulations were used for evaluating accessibility:

- North Carolina Building Code – 2012
- Americans with Disabilities Act Guidelines – 1991 and 2010 (Outdoor Recreation Areas)
- US Forest Service Outdoor Recreation Accessibility Guidelines

The Site Collaborative report is attached as part of this agenda item.

The Dewberry and Site Collaborative facility assessments serve as a guide for County staff to coordinate and schedule necessary repairs. Staff uses their professional judgment to add or remove costs based on broader facility plan, i.e. adding security systems or delaying interior repairs until a determination is made on the facility's long term viability. Using estimates from Dewberry and Site Collaborative, as well as County staff, the estimated cost for necessary repairs is \$804,737 in FY18 and \$1,518,924 in FY19.

### Water and Sewer

If the County purchases the property for development, water connections may be required by the Town of Fuquay-Varina. County staff consulted with engineering firm The Wooten Company (Wooten), to investigate potential water and sewer requirements and to provide cost estimates if required.

According to Wooten, Wake County will need to extend a 12 inch water line along Hilltop Needmore Road starting at an existing water line near Lake Wheeler Road and connect to the water utility. The water line extension will include a stub for the future school site at a cost of \$625,301.

Aqua NC, a private firm, currently provides sewer service for the property with the exception of one septic tank serving the southern restroom building. Aqua NC agreed to continue providing existing sewer service to the property. As such, no sewer extension or new connections are needed.

### Transportation Improvements

The Town of Fuquay-Varina adopted a 2035 Community Transportation Plan that calls for the widening of Hilltop Needmore Road from a 70 foot right-of-way to a 110 foot right-of-way with a four-lane divided roadway with sidewalks. Assuming the use of the property intensifies and is treated as a redevelopment, Wake County will be responsible for the dedicating half of the required right-of-way and constructing the road widening on portions of the property fronting Hilltop Needmore Road. The roadway improvements include constructing a new two lane street section, installation of curb/gutter and stormwater drainage, a ten (10) foot asphalt trail serving pedestrians and bicyclists, and half of the landscaped median. Other requirements include extensive earthwork,



relocating utility poles, and replacing the underground pedestrian tunnel. The estimated cost of these improvements (escalated to year of construction) is \$3,024,084 in FY19.

“Orphan road” are roads in Wake County’s jurisdiction that were designed, built and recorded as public roads but were never taken into the NCDOT Maintained Highway System. While many of the roads in the Crooked Creek subdivision are part of the NCDOT Maintained Highway System, there is approximately 1.5 miles considered to be orphan roads. Approximately .22 miles of Brushy Meadows Drive is considered to be an orphan road that may be used by the public to access portions of the property. It’s unclear what, if any, responsibility the County would have for the cost to make repairs to this section of road to have it become part of the NCDOT Maintained Highway System.

Staff does not have an exact cost for making the necessary repairs to Brushy Meadows Drive. In February 2017, the Crooked Creek Homeowner’s Association contracted with The Wooten Company to estimate the cost of road improvements for orphan roads in the subdivision. Using the cost estimates developed for the HOA, staff is estimating the potential cost of repairing Brushy Meadows Drive to a condition acceptable to the state at approximately \$100,000.

#### Master Planning and Park Development

Assuming the property is purchased and intended to be a County Park, the County will begin developing a Park Master Plan and an Americans with Disabilities (ADA) Transition Plan. A Park Master Plan will be a nine month process that seeks public input on recreational facilities and amenities are suitable for the property. A master plan would include associated cost for additional facilities and will be presented to the Board of Commissioners when complete. The estimated cost of a park master plan on this property is \$75,000.

An ADA Transition Plan will assess potential deficiencies or barriers to people with disabilities based on the property’s intended use and public programming. The plan identifies additional projects that reduce barriers or remove obstacles. The estimated cost of an ADA Transition Plan is \$25,000 and does not include the potential cost of further repair, rehabilitation, or addition of auxiliary aids and services.

Based on facilities identified in a Parks Master Plan, staff assumes a base construction cost of \$7.0 million to address projects identified during the master planning process. Depending on the facilities and programs selected for the County park, operating/development impacts are expected.

#### Non-Park Use Option

At the Board of Commissioners Work Session the possibility that some of the property could be used by the County for a purpose that is not park related but still beneficial to the community as a whole was discussed. The options for using the property range from affordable housing to non-profit use.

At this meeting staff is not requesting that the Board of Commissioners make a decision on whether or not to use any of the property for any use other than as a park. If the

County proceeds with acquiring the property then this issue would be brought back to the Board at a future meeting for discussion.

Total Projected Costs

Based on the feedback from consultants, the following table summarizes the current projected costs of purchasing the former Crooked Creek Golf Course and converting its use to a County park prior to final purchase terms, detailed engineering, and project bidding.

	Total	FY18	FY19	FY20	FY21	FY22
<b>Land Purchase</b>	\$4,476,026	\$22,650	\$620,575	\$915,476	\$1,485,792	\$1,431,533
<b>Facility Repairs</b>	\$2,403,173	\$804,737	\$1,518,924	---	---	\$79,512
<b>Required Infrastructure</b>						
<i>Master Planning</i>	\$100,000	\$100,000	---	---	---	---
<i>Roadways &amp; Utilities</i>	\$7,093,817	\$4,620	\$3,649,385	\$3,439,812	---	---
<i>Park Development</i>	\$7,000,000	---	---	\$7,000,000	---	---
<b>Operating</b>						
<i>Staffing &amp; Operating</i>	\$1,854,445	\$146,623	\$407,825	\$420,293	\$433,186	\$446,518
<i>Start-up Equipment</i>	\$201,637	\$201,637	---	---	---	---
<i>Development Impacts</i>	\$305,400	---	---	---	\$150,000	\$155,400
<b>Total</b>	<b>\$23,434,498</b>	<b>\$1,280,267</b>	<b>\$6,196,709</b>	<b>\$11,775,581</b>	<b>\$2,068,978</b>	<b>\$2,112,963</b>

**Open Space and Parks Advisory Committee**

At the June 19, 2017 and August 28, 2017 Open Space and Parks Advisory Committee (OSAPAC) received presentations from the South Wake Park Project group and County staff on the proposal to convert the former golf course into a park.

The OSAPAC members unanimously voted to:

Support the proposed acquisition with the caveats that: this project does not supplant established park priorities; there is a development and maintenance budget to support the future park; and the County would reconsider if there are environmental matters that exceed County comfort.

**Attachments:**

1. Presentation
2. Dewberry Engineers Facility Assessment – Executive Summary
3. Site Collaborative Facility Assessment Report