



**Chatham County Planning Board
Minutes
September 1, 2020**

The Chatham County Planning Board met in regular session on the above date as a remote meeting due to the current health restrictions for the COVID-19 virus. Members present via GoTo Webinar meeting were as follows:

Present:

George Lucier, Chair
Clyde Frazier
Bill Arthur
Gene Galin
Jon Spoon
Caroline Siverson, Vice-Chair
Jamie Hager
Emily Moose
Franklin Gomez Flores
Allison Weakley

Absent:

Cecil Wilson

Planning Department:

Jason Sullivan, Planning Director, Kimberly Tyson, Subdivision Administrator, Angela Plummer, Zoning Administrator, Hunter Glenn, Planner I, Chance Mullis, Planner I, and Daniel Garrett, Clerk to the Planning Board.

I. CALL TO ORDER:

Chair Lucier called the meeting to order at 6:30 p.m.

II. VIRTUAL MEETING GUIDELINES:

Mr. Sullivan gave an overview of the virtual meeting guidelines provided by PowerPoint.

III. DETERMINATION OF QUORUM:

Chair Lucier stated there is a quorum, 10 members present, Mr. Wilson absent.

IV. APPROVAL OF AGENDA:

Approval of the Agenda - Chair Lucier asked the board members if there were any issues with the Agenda. There were no objections and the agenda was approved.

V. APPROVAL OF THE MINUTES:

Chair Lucier asked for consideration for approval of the August 4, 2020 minutes. There were minor corrections by Board members and the August 4, 2020 minutes were approved. Motion was made by Vice-Chair Siverson to approve; second by Ms. Weakley. Motion passed with a vote of 10-0,

VI. PUBLIC INPUT SESSION:

- Ms. Liz Rolison of 1900 Briar Chapel Parkway stated, my name is Liz Rolison and I've been a resident of Briar Chapel since 2014. I'm here tonight to recommend that Newland's Final Plat for Briar Chapel, Phase 13 Section 3 and Phase 14 be placed on hold until Briar Chapel's WWTP and infrastructure can be upgraded and stabilized and until the capacity of the Briar Chapel WWTP can be expanded to meet NC DEQ regulatory requirements. At the last meeting, I spoke about Old North State's poor track record and increasingly frequent problems with the plant. Here are links to the reports on ONSWC history of NOV's and SSO's in Briar Chapel. Since your last meeting, we had another sewage spill on August 20th at Lift Station E due to a mechanical failure. Their systems did not alert them. A resident who lives next door to the pump station called in the spill at 6pm, Envirolink showed up at 10:10pm. ONSWC self-reported the spill at 800 gallons. This brings us up to 27 sewage spills in the last 4 yrs. NCDEQ issued another NOV for the two previous sewage spills on July 23rd and July 26th 2020 – bringing us up to 15 Notices of Violations. NC

DEQ documented the two most recent sewage spills, bringing the total for sewage spills in Briar Chapel to 79,740 gallons, most of which went into Pokeberry Creek a tributary of the Haw River and Lake Jordan.

Tonight, I want to focus on the capacity problem at the Briar Chapel facility. At our last meeting, Jason Sullivan shared an email he received from Scott Vinson at NCDEQ days before our last meeting – in it, Mr. Vinson said he honestly did not know if the BC WWTP could handle an additional 59 lots. He’s right, he can’t answer that question – because ONSWC has not provided him with information on the increase in the number of homes that now make up Briar Chapel / US Steel. Similarly, the developer (Newland) and ONSWC have not met their obligations in the Compact Community Ordinance in providing you with the wastewater documents that you would need to make this determination. Does Briar Chapel WWTP have sufficient capacity? It’s an important question and I’m going to try to answer it. The NCDEQ permit (WQ0028552 effective 6/15/2020) states the WWTP is permitted for continued operation of a 250,000 gpd reclaimed water generation facility, but it caps them at 216,718 gpd reclaimed water generation.

When NCDEQ first issued the permit for the Briar Chapel facility they required a daily sewage flow rate of 240gpd/home, based on the NC regulation for wastewater design flow rates. On 9/30/2013, NCDEQ issued ONSWC a flow rate reduction to 56gpd per bedroom for Briar Chapel, this is the permitted flowrate of 189gpd/home which Mr. Bowman referred to in his email response to Mr. Sullivan’s request for whether ONSWC has sufficient capacity. This means state regulations and NCDEQ requires ONSWC to maintain a minimum capacity of 189gpd for each home that is connected to the WWTP, regardless of actual flow rates. Based on information provided by Jason Sullivan and Mr. Robinson at the last Planning Board meeting, the number of homes, schools and commercial property approved by Chatham County and connected to the Briar Chapel WWTP totals over 450,000 gpd, significantly exceeding the permitted capacity.

ONSWC is responsible for ensuring compliance with their permit and should have submitted a permit modification to expand the capacity of the WWTP and spray irrigation system to ensure they do not exceed capacity. ONSWC has not filed a permit modification for these capacity upgrades or the dire repairs that Mr. McDonald has referred to. ONSWC is well over capacity based on their NCDEQ permit. As such, they are not in compliance with the Compact Community Ordinance which requires the wastewater system to comply with all applicable regulations. Therefore, we ask that you put all additional development that will be utilizing the Briar Chapel WWTP on hold until ONSWC can bring the plant into compliance with their permit. Thank you for giving me a chance to speak with you this evening.

- Mr. Tony Little of 219 Dark Forest Drive stated, my name is Tony Little. I live at 219 Dark Forest Drive in Briar Chapel. Thank you for allowing my input to this process. The document I provided is a result of an 8-month long investigation of possible illegal discharges by Old North State Water Company (ONSWC) of wastewater effluent into the environment. The document shows ONSWC generated 7.8 million gallons more effluent than they had storage capacity to contain during the period Nov. 22, 2019 through April 30, 2020. During this same time period, ONSWC reported no irrigation of reclaimed water to the permitted spray fields in Briar Chapel.

All data points in the document are hyperlinked to allow direct reference to each source used. The first table shows the remaining storage capacity on November 21, 2019 of the only 2 Briar Chapel ponds used for effluent storage prior to spray irrigation. Data for the Central Pond is reported monthly by ONSWC. Data for the Western Pond is from a date-marked photo, and a storage capacity table provided by ONSWC in their May 11, 2020 application to NCDEQ to begin using the Western Pond for effluent storage. This report is based on ONSWC fully utilizing the Western Pond for effluent storage during the entire period from November 22, 2019 through April 30, 2020. “Freeboard” measurement is the remaining storage level in feet before a storage pond has reached its maximum legally-allowable capacity. The second table shows the effluent generated and the Spray Irrigation applied by ONSWC from November 22, 2019 through April 30, 2020. All of this data comes from monthly reports by ONSWC to NCDEQ. The third table shows the

difference between effluent generated and storage capacity, resulting in a potential 7.8 million gallon discharge to the environment.

There are two major issues in this report of apparent permit violations by ONSWC: First – 7.8 million gallons of effluent is missing and unreported. Second – ONSWC has stated they have never used the Western Pond for effluent storage, and their May 11, 2020 application to NCDEQ was a permit modification request to begin using the Western Pond. Either ONSWC has used the Western Pond for effluent storage without a permit to authorize using it, or, ONSWC has not used the Western Pond for effluent storage, and the missing effluent above is now increased by 18,463,736 gallons for a total of 26,298,941 gallons missing. Mr. Little thanked the Planning Board.

- All the tables and links Mr. Little refers to has been posted on the Chatham County Planning website under this item in the public input link.
- Chair Lucier asked where Mr. Little received the flow data. Mr. Little stated they are the reports that are submitted monthly by Old North State to the NCDEQ.
- Mr. Rusty Field stated to the Planning Board, my name is Rusty Field and I have been a resident of Briar Chapel since February, 2014. I want to provide additional information in opposition to the approval of Newland's Final Plat for Briar Chapel, Phase 13 Section 3, and Phase 14. Both of these areas will connect to the Briar Chapel wastewater plant through the troubled Lift Station A which has experienced two recent raw sewage spills. A lift station is a facility that pumps wastewater under pressure through a force main pipe to the treatment plant. Force Main A, which connects Lift Station A to the plant, has had a series of ruptures that have poured raw sewage into the community. John McDonald, Owner of Integra Water and Old North State Water Company, said in his July 26, 2020 email "It is becoming clearer that the Briar Chapel water reclamation system is in dire need of upgrades to handle the increased size of the community." Nowhere is this more evident than at Lift Station and Force Main A. Mr. McDonald has already replaced a 1000-foot section of "defective pipe" and says he plans to replace another portion that connects the new section to Lift Station A. I had a conversation this week with an individual very knowledgeable about the Briar Chapel wastewater plant and collection system. This person informed me that the wet well at Lift Station A was not adequate to handle the volume of wastewater it transfers to the plant. This lack of surge capacity could be a contributing factor for the spills. Two other Briar Chapel Lift Stations, Lift Station B and Lift Station C, send their wastewater through Lift Station A for transfer to the plant. Lift Station B will serve Newland's BC Phase 13 Section 3 and Lift Station C will take Phase 14's wastewater. In addition, Lift Station A receives wastewater from gravity lines that serve a significant portion of the Briar Chapel Community.

Old North State Water Company is exceeding its permitted capacity at Lift Station A as per their March 7, 2018 Permit No. WQCS00372 for the operation and maintenance of the Briar Chapel wastewater collection system. The wastewater collection system is a complex system of gravity sewer pipes, force mains, duplex and simplex pump stations, and all associated piping, valves and appurtenances required to deliver wastewater to the wastewater processing plant. ONSWC apparently did not understand that both Lift Stations B and C connect directly to Lift Station A for final transfer of wastewater to the plant when they applied for this permit. The last page of the wastewater collection permit includes a table that lists permitted capacities for all the lift (pump) stations. Lift Station A is Permitted at 256 gpm, Lift Station B at 210 gpm and Lift Station C at 180 gpm. Pump Station A should have been permitted at a minimum of 466 gpm, assuming that Lift Station C was included with Lift Station A's gravity fed volumes to arrive at the 256 gpm number. We are asking the Chatham County Planning Board to deny this permit or table it indefinitely until Lift Station A's actual volumes can be permitted, Mr. McDonald's Force Main A replacements are complete and Lift Station A's surge deficiencies are corrected. Mr. Field thanked the Planning Board.

- Ms. Diane Crompton of 387 Tobacco Farm Way stated to the Planning board, thank you for the opportunity to speak this evening. My name is Diane Crompton. I have been a resident of Briar Chapel since 2016 and am a member of the StopChathamNorth task force. I am speaking with you tonight about the continuing nuisance odor conditions in the Briar Chapel Community. These conditions seem abstract, but they are very real to our residents. These significant nuisance conditions impact the quality of life for many members of our community; and have been acknowledged by Michael Myers and John McDonald in testimony to the North Carolina Utilities Commission. These nuisance conditions were also recognized and documented by Newland in their amended asset purchase agreement with ONSWC. A copy of the StopChathamNorth Complaint Log has been provided to you, which documents odor complaints and other concerns. As noted in this log, since January 2020, SCN has documented over 260 resident complaints that include odor, sewage spills and irrigation issues.

Anytime we receive a resident complaint we verify that it has been reported to Envirolink and more recently, Integra. Also provided is a copy of a letter from Senator Valerie Foushee dated May 12, 2020 which she wrote on behalf of the Briar Chapel residents after a visit to our community on February 2, 2020. Senator Foushee states: "My meeting included a visit to the community and a tour around the wastewater treatment plant. As we approached the neighborhood next to the plant and the Sportsplex, I immediately noticed a noxious odor. We were travelling in a car with the windows up and yet this odor was so significant that it permeated the entire interior of the vehicle. I was shocked to see the extreme proximity of homes to the wastewater treatment plant and very concerned that residents have to live day after day in these conditions." In addition, a copy of John McDonald's testimony and Michael Myer's testimony before the North Carolina Utilities Commission on May 1, 2020 has been provided to you. In that testimony both individuals acknowledge that we have an odor issue in Briar Chapel with Mr. McDonald stating: "...Chatham North has obtained an engineering and cost estimate proposal for constructing a commercial greenhouse-type enclosure that will contain odors from the reclaimed water treatment plant."

As Vice President and Secretary of Chatham North, and sole member of Integra Water, LLC (majority ownership interest in Chatham North), John McDonald is aware of the nuisance conditions that continue to impact the health and well-being of Briar Chapel residents. He has identified the appropriate corrective action. He is well aware that this is a violation of ordinances and regulations. This corrective action needs to be executed before any additional homes are built in the Briar Chapel Community. Included are key parts of the asset purchase agreement between Newland and Old North State Water Company, dated April 30, 2015. In this agreement Newland acknowledges the need for odor control. The agreement states: SECOND AMENDMENT, of the ASSET PURCHASE AGREEMENT by BRIAR CHAPEL UTILITIES, LLC, NNP-BRIAR CHAPEL, LLC and OLD NORTH STATE WATER COMPANY, LLC. for the Purchase, Installation, Conveyance, and Operation of the WASTEWATER UTILITY SYSTEM providing wastewater utility service to BRIAR CHAPEL DEVELOPMENT AND THE EXTENDED SERVICE AREA Chatham County, North Carolina dated April 30, 2015. Specifically, Section 4.2 (c): "Buyer has implemented an Odor Control Management Plan, attached hereto as Exhibit "C" and incorporated herein by reference that establishes criteria and a response plan for control of odors in the Wastewater Utility System in the event that odors become an issue. In the event that the criteria established in Section 4.1 of the Odor Control Management Plan are exceeded, Developer and Buyer agree that the following shall occur: For a period of five years from the effective date of this Second Amendment to APA, Developer reserves the right to design and construct improvements to the Wastewater Utility System for odor control measures in accordance with the Odor Control Management Plan that will achieve odor control results that are equivalent to or better than odor control results that are achieved by enclosure of the bar screen and covering of the equalization basin ("Odor Control Improvements"). Buyer shall have the right to review and approve the plans for the Odor Control Improvements, which approval shall not be unreasonably withheld.

The Parties acknowledge and agree that Buyer has the right to withhold approval for any plans that might result in a violation of federal, state or local laws or regulations. Developer shall obtain all necessary approvals and permits for the Odor Control Improvements, and such permits shall be in the name of Buyer.

Upon installation of the Odor Control Improvements, they shall be conveyed to Buyer, accepted by Buyer, and operated and maintained by Buyer in accordance with Paragraph 6.2 (b) of the APA. Developer and Buyer agree that payment for the cost of the Odor Control Improvements shall be as follows: 1. Developer shall advance payment for the costs for the Odor Control Improvements. 2. In Buyer's initial application for a rate increase, Buyer shall request that the cost of the Odor Control Improvements be included in the rate base for the Wastewater Utility System, and Buyer shall make reasonable efforts to ensure the inclusion of the cost in the rate base. The Parties acknowledge that the Commission might include the entire cost, a portion of the cost, or no portion of the cost of the Odor Control Improvements in the rate base. “

In summary: Newland anticipated odor issues. They reserved the right to take action to control odor. They still built homes within several hundred yards of the plant (the plant is only 330 feet from the pool area of the neighborhood clubhouse). This extreme proximity makes it obvious that there would be odor issues for these residents. Newland agreed to pay for odor control issues with ONSWC then requesting a rate increase. In other words, Newland built in an area that they knew would be subject to odor issues and they want the residents to pay for fixing this problem! Today, the Briar Chapel community continues to have odor issues. We are still experiencing massive sewage spills and have oversaturation and reclaimed water running into storm drains and streams. ONSWC has violated their permits and ordinances with impunity. Newland should not be allowed to exacerbate the impacts upon our community by continuing to increase the amount of sewage they add to a flawed system. For all of these reasons, we recommend that Newland's Final Plat for Briar Chapel, Phase 13 Section 3, and Phase 14 be placed on hold until the Briar Chapel's WWTP is fully compliant with the Chatham County Community Ordinances and the North Carolina DEQ Permit (#WQ-0028552) to ensure the health, safety and welfare of the Briar Chapel Community. I appreciate your time this evening and consideration of this information.

- Ms. Donna Sukkar of 489 Cliffdale Road stated to the Planning Board, thank you for providing the opportunity to speak this evening. My name is Donna Sukkar. I am a resident of Briar Chapel and a member of the StopChathamNorth Group. I'm here tonight to recommend that Newland's Final Plat for Briar Chapel, Phase 13 Section 3, and Phase 14 not be approved until the Briar Chapel's WWTP is fully compliant with the Chatham County Compact Community Ordinances and the North Carolina Department of Environmental Quality (DEQ) Regulations. You have heard from four Briar Chapel residents already this evening. Liz Rolison provided data that confirms that the Briar Chapel Wastewater Plant is currently over capacity -- both spray irrigation and plant capacity -- as much as 240,000 GPD. That is more than the total amount the plant is currently approved to process. In Section 7.2 of the Chatham County Compact Community Ordinances it states, "Location, Ownership, and Sizing of Wastewater Facilities and Spray Fields Compact communities shall be served by wastewater collection, treatment, distribution and storage systems that are adequate to serve the reasonable needs of the community and service area (as defined by the North Carolina Utilities Commission) and comply with all applicable regulations."

Tony Little provided data that confirms that the Briar Chapel Wastewater Plant does not have adequate capacity for the storage of reclaimed water. Even IF ONSWC can get the Western Pond permitted, which I remind you, is currently not permitted or approved by DEQ, there is still not adequate storage capacity to support the existing homes. In Section 7.2 of the Chatham County Compact Community Ordinances it states, "Location, Ownership, and Sizing of Wastewater Facilities and Spray Fields Compact communities shall be served by wastewater collection, treatment, distribution and storage systems that are adequate to serve the reasonable needs of the community and service area (as defined by the North Carolina Utilities Commission) and comply with all applicable regulations."

Rusty Field provided information that confirms that the Briar Chapel Wastewater Collection System is failing. However, the most convincing argument of plant failures and lack of capacity are documented by the plant owner Mr. John McDonald in his email to the residents of Briar Chapel dated July 27, 2020 in which he states: "It is becoming clearer and clearer that the Briar Chapel water reclamation system is in dire need of upgrades to handle the increased size of the community. With so many residents spending so

much time at home over this unforeseen pandemic, its usage has increased and unforeseen stresses have exacerbated weak points in the system.” While I agree with Mr. McDonald that the Briar Chapel Plant is in dire need of repairs, I don’t agree that the pandemic has anything to do with the failures. What he fails to note is that while more residents may be spending time at home, all of the commercial development that is using the Briar Chapel plant has been shut down – restaurants, schools, and the university.

Diane Crompton has testified before you tonight to share information regarding nuisance odor conditions in Briar Chapel; odor conditions that are having a major impact on the quality of life for our residents. Can you even imagine what it is like to live in a home day in and day out that is constantly subjected to sewer odors? In accordance with the Chatham County Compact Community Ordinances, Section 7.2 states “Provisions shall be made for odor control that eliminates to the maximum extent possible adverse impacts to the compact community’s residents and neighbors.” In accordance with the North Carolina Environmental Management Commission, Department of Environment and Natural Resources Wastewater Permit No. WQ0028552, Page 3, Section II. PERFORMANCE STANDARDS, 1., states: “...In the event the facilities fail to perform satisfactorily, including the creation of nuisance conditions due to improper operation and maintenance....the Permittee shall take immediate corrective actions including Division required actions, such as construction of additional or replacement wastewater treatment, disposal or utilization facilities.”

These are long-standing, well documented, violations of both county ordinances and state regulations. Mr. McDonald and Mr. Myers have acknowledged the problem and identified the necessary corrective action (enclosing the plant). Why hasn’t this been done? Ordinance and Regulations without enforcement and accountability puts residents at risk. It is time to progress beyond phone calls, emails, letters, meetings and minimal fines and take whatever action is necessary to remediate these conditions before allowing any further development in our community. On behalf of the members of StopChathamNorth and the residents of Briar Chapel, we thank you for your support and for your time this evening.

- Mr. Don Medlin of 242 Half Dollar Road stated, good evening Board members. I am Don Medlin residing at 242 Half Dollar Road. My family has owned the land adjacent to Briar Chapel Phase 12 for longer than the 89 years my mother has lived on the land. I am here to outline why the plat for Briar Chapel Phase 13 should not be approved this evening and needs additional review. With Phase 12 approval, contiguous landowners were made aware that the 100 feet perimeter buffer is to be used for bike trails. Bike trails are harmful to the natural protected area the buffers were intended to represent. I always envisioned the perimeter buffer as an unspoiled area that is intended to remain completely natural and unused for any activity to distance the unrelated properties and protect property values on both sides of a neutral zone. Building bike trails in the perimeter buffer is like installing a city park next to my private property. All citizens will be invited to use the trail and jeopardize the security of my property and my neighbors. We constantly have trespassers on our private property and document vandalism to rail fencing, no trespassing signs and rock fences. With bike trails in place, the trespassing will grow and damage all property values. I believe part of the Board’s purpose is to help protect all property values when the Board is presented with transparent and fully disclosed presentations regarding parcel intended use and design. Newland needs to disclose land use in the buffer perimeter. I have taken the time to attend this meeting and rally contiguous landowners to speak about this issue. Gary Oakley has contacted you. I also want to remind the Board that the legacy developer was asked to vacate at least six home lots to protect the contiguous property owner Wilfred Raymond and others. Today, the vacated lots are unused neutral land with plantings. I would also like to recognize that Doug Roberts has reported property damage and initiated a request to privatize a portion of Half Dollar Road. Phase 12 construction should also be designated for a healthy separate discussion. Regarding solutions, I will invest in the time to meet further. We legally and safely hunt, fire guns, and use loud farm equipment on this county farmland. The Briar Chapel Phase 13 final plat cannot be approved because a complete presentation has not been made to this Board and the public. Thank you and may I answer any questions?

- Mr. Douglas Roberts of 650 Half Dollar Road stated he agrees with Mr. Medlin about the security issues on Half Dollar Road and it needs to be addressed. Mr. Roberts also mentioned the detonations of the rock 80 yards away from his property. There is a person using seismic equipment and is going into the perimeter and it is only for the benefit of the person doing the detonation and not representing anything to protect the home owners. The seismic activity needs to be stopped. Mr. Roberts stated he would like for this to work out for everybody, the privacy for the established residents and security for everyone in Phase 12 as well as Phase 13. After everything that has been addressed tonight, there is no way that anyone should be presenting material right now to approve this phase with all of the wastewater issues, it is pure incompetency. Phase 13 does not need to be approved tonight and that is obvious, but we want to participate in this process to make everything better for everyone involved. Mr. Roberts thanked the Planning Board.
- Mr. Gary Oakley of 855 Polks Landing Road stated, my name is Gary Oakley. I am the POA for my mother, Marjorie Oakley, who owns property (Parcel 73218) with one of the longest borders with Briar Chapel. My family has lived on Polk's Landing Road for about 55 years and my parents inherited this property from Mariell ("Merle") Dollar around 40 years ago. I live in "Mr. Merle's" old house which my father and I added onto and remodeled extensively. Mr. Merle's father lived in a very old house that once existed at the end of Half Dollar Road. I have walked the property being developed since I was a boy. Mr. Dollar conducted my first tour of the lovely hills that were once on the site. It included numerous stately oaks and sizable weathered granite outcroppings that had the makings of a fine park had the developers chosen to incorporate them in the plans. I have included a few photos taken 2 years ago, shortly before the site developers began denuding it. Only a trace of the natural beauty remains and it is an interest in the preservation of this trace that compels me to write to you.

The plat for Briar Chapel Phase 13 Section 3, excerpted in Diagram 1 on page 2 of this document, has a 100 ft perimeter buffer indicated where it borders the parcels owned by Nelson Goines, Jeffrey/Terri Maynor, and Marjorie Oakley. As the POA for Marjorie Oakley, I can attest that she understands a buffer to be a natural, undisturbed area of trees and/or other vegetation intended to separate and obstruct the view of the site (Phase 13, Section 3) from her abutting property. She would also expect a riparian buffer to protection to the water quality in the streams it surrounds. Neither she nor I, as her POA, would have imagined a buffer to include an active trail, especially one used by bike riders. How does the presence of any type of trail buffer these aforementioned property owners from the impact of this site?

Even at this late state in the development of Phase 13, Section 3 the abutters would not know about these proposed trails if it were not for a neighbor on the other side of the site, Don Medlin. He gained access to maps on the Briar Chapel Community Association (BCCA) website that show both the existing and proposed trails. In fact, some of the trails are "proposed" in name only because they are already being worn by premature users. Surely these trails will invite incursions onto our properties. In fact, it is already happening! Individuals have crossed over Majorie Oakley's property to access Polk's Landing Road, they have walked around the Maynor's house and out their driveway, and bikers even constructed a crude jump ramp on an old trail in woods below the field behind my house on mom's property. I understand Mr. Medlin and Mr. Roberts of Half Dollar Road have had similar experiences.

I have included on the following pages some photos I took on Sunday, August 30, 2020 to illustrate concerns expressed by us Briar Chapel neighbors. Please examine them carefully, put yourself in our shoes, and extrapolate into the future. We can already see damage is occurring and the trails are still only proposals. Imagine the foot traffic if these proposals are approved. Can you understand our concerns? It is our hope these proposed trails will not be approved by the Chatham County Planning Board and that the BCCA and site developers will be instructed to forego trails in these areas, leaving them true buffers. Furthermore, we request that the BCCA and site developers be directed to place signage and, if need be, physical barriers to direct hikers and bikers away from any further use of the trail that begun to form. The BCCA should find alternative plans. Mr. Oakley thanked the Board.

- The photos Mr. Oakley spoke about are posted on the Planning Board website with this item under public input.
- Ms. Brandi Wilson of 130 Half Dollar Road stated, my name is Teressa (Brandi) Wilson. I am writing on behalf of my parents, Richard and Margaret Wilson - as well as on behalf of the rest of my family. Part of our land (parcel # 62256 on Half Dollar Rd.), borders Briar Chapel, Phase 12. I just became aware, a few days ago, that the Briar Chapel website currently shows and advertises proposed bike trails located in the 100' perimeter buffer that borders our property. I am also aware that the BC website shows proposed bike/walking trails inside the 100' perimeter buffer of Phase 13, which is before you for approval tonight. I have scoured your website for any information discussing installing bike trails in the 100' perimeter buffer and I have found none. The maps/plats submitted for approval are clear that the 100' perimeter buffer will remain in place- no bike trails are proposed on the submitted maps, but it is crystal clear on their website. What is going on here?

I am stating my absolute objection to the approval tonight of Briar Chapel Phase 13, by the planning board. More time needs to be spent for the public and the planning board to learn of Briar Chapel's true intent. Every person in my family is very angry that we were not notified, as adjoining land owners, that Briar Chapel was planning to alter the use of the 100' perimeter buffer in Phase 12 and I request and strongly urge that you revisit and amend Phase 12. In reviewing some of your previous planning board minutes as shown on the county website, I found a good amount of discussion pertaining to perimeter buffers from Phase 6, of which I want to point out a few things... there are more. Section 9.2 perimeter buffer. Perimeter buffers shall be utilized to minimize impacts of each compact community on adjacent properties along the entire perimeter of the compact community.

In the 2004 original application materials submitted by Briar Chapel regarding design guidelines/buffers, Briar Chapel stated "stream buffers, perimeter buffers, and view-shed buffers are to consist of PRESERVED existing vegetation. Buffers may be selectively cleared and thinned of dead, leaning, and diseased trees, as well as undesirable brush and vines. Where perimeter and view-shed buffers do not contain adequate plant materials, buffers are to be re-vegetated, primarily with native species." The recent 2012 CUP revisions did not change this language. A perimeter buffer as defined in the Compact Community Ordinance is "Land that either obscures or significantly softens the external view of the compact community from adjacent properties." Perimeter buffers are required to be 100 feet wide as stated in the CCO section 9.2 "To the extent practical, existing native forest vegetation shall be utilized for the perimeter buffer... Vegetative plantings in the buffer shall produce the effect of a natural forested area using native species. The planting does not have to be opaque, but should function to significantly soften the visual impact of buildings, both initially and in the longer-term. The visual buffering provided by vegetative plantings shall be effective in all seasons."

In the last few years, since residents started moving into Briar Chapel, we have had numerous walkers, bikers, hikers, all of whom are trespassing on our private property. They have little to no regard for the fact that property lines EXIST and that they have crossed them. In their mind, they are out on an adventure and boy, do they act entitled. They have no clue that my family has been the caretakers and custodians of this land for almost 100 years. WE are the ones who have kept it pristine and unpolluted. That is not by accident, it is by design. If Briar Chapel puts in bike trails, exactly who is liable for damage to our property? Exactly who is liable for injuries and accidents, who is liable for cleaning up litter? Who is liable for any vandalism and theft of even things like firewood or vegetation on our property? How will it be made clear to the public that they cannot continue "exploring" off the trail? These are problems that have occurred specifically since Briar Chapel has come. Sometimes we shoot guns and have target practice on our land. Even innocent trespassing is not safe on our land.

Briar Chapel is not adhering to their very own original material submitted regarding perimeter buffers. The public has put their trust in you. The public has not had input and therefore you must not approve phase 13, and any future phases that are not maintaining the 100 foot perimeter buffer and replanting vegetation. And, you must amend phase 12. I am attaching a screenshot of the Briar Chapel proposed trails. Thank you for your thorough consideration.

- Mr. Ash Harrison stated to the Planning Board, my name is Ash Harrison, and I am here on behalf of the Richard and Margaret Wilson family. I have been working with them on their real estate for the last 3 years. I am very familiar with the parcels just north of the Briar Chapel subdivision. Having reviewed the official documents for phases 12B and 13, I cannot find anywhere on the drawings where the walking and bicycle trails are shown. It is immediately obvious that there is no way to put them in without using the Perimeter Buffer. Per Chatham County documentation on Briar Chapel (reference <https://www.chathamnc.org/home/showdocument?id=33443>) you must notify all parties affected if you are going to amend the Perimeter buffer and give them a chance to respond and/or speak. That has not been done. We just recently found out about the plan to use these buffers and are now here to discuss why you need to reopen and change your plans. Furthermore, I am disturbed, to put it lightly, that you have chosen to omit from all of your incredibly detailed drawings having chosen the Perimeter buffer as the location for many, if not the majority of, your bikeways and paths. That, coupled with not notifying the people affected brings into question the credibility and honesty of the organization. We are here to discuss making amendments and guidelines to your proposed trails for all phases where the trails are not yet installed and complete. Mr. Harrison thanked the Board.

VII. SUBDIVISION:

1. A request by Tanya Matzen, Vice President, on behalf of NNP Briar Chapel, LLC for subdivision Final Plat review and approval of Briar Chapel, Phase 13 Section 3, consisting of 59 lots on 18.66 acres, located off Great Ridge Parkway, SR-1692, Baldwin Township, parcels #2617.

Mr. Sullivan stated the request is for Final Plat approval of Briar Chapel, Phase 13 Section 3 consisting of 59 lots on 18.66 acres with a financial guarantee for the completion of required infrastructure. Phase 13 Section 3 received preliminary plat review and approval by the Board of County Commissioners on March 18, 2019 for 59 lots. The submittal includes a request for a financial guarantee for completion of the required infrastructure. Under the pre-2008 Subdivision Regulations, a project must have a minimum of 40% of the infrastructure completed prior to submittal of a final plat and the roads must be accessible to emergency vehicles. A cost estimate letter, dated July 10, 2020, has been provided by Chris Seamster, PLA, McKim & Creed, Inc. stating that the required infrastructure is 42% complete. The cost letter may be updated prior to plat recordation if additional work has been completed. Staff recommends granting the request for a financial guarantee. Staff also recommends that the final plat not be recorded until the engineer has certified that the roadway providing access to the parcels are accessible to emergency vehicles and recommends that the final plat not be recorded until the county attorney has reviewed and approved the form of the contract and financial guarantee.

Per the approved preliminary plat, roadways are proposed to be public and state maintained. Phase 13 Section 3 is located off Great Ridge Parkway. There are no private alleyways, no additional parking, and one public road (Monteith Drive). Phase 13 Section 3 has one common area, Common Area #97. As shown on the plat, Common Area #97 has 28.729 acres. There is a 100' perimeter buffer provided along Nelson Goines (parcel 64529, 64534, 64535, 64536), Jeffrey & Terri Maynor (parcel 62262 & 62259 and Marjorie Oakley (parcel 73218) properties. Riparian buffer widths of 50 feet per side (100' total) and 100 feet per side (200' total) measured from top of bank landward have been shown on the plat. There are two stormwater feature in Phase 13 Section 3. The final plat information includes the approximate storm water BMP location using top of bank of the existing features and has been reviewed and approved by Watershed Protection staff. The required

stormwater note regarding the Operations and Maintenance Agreement and the maintenance responsibility of the stormwater features is included on the final plat.

Mr. Sullivan also stated the following conditions were added to the preliminary plat approval for this phase –
“1. The final plat shall include the approximate location of the BMP using top of bank of existing feature (no pipes or risers); the BMP maintenance easement be labeled and shown as ‘private’ with a minimum of 10 feet clearance; and the location of the access to the stormwater easement from the public right-of-way.”

2. “A note shall be placed on the final plat stating the maintenance responsibility of the stormwater features.”
The BMP, access to the BMP and a note stating the maintenance responsibility of the stormwater feature is shown on final plat. The Technical Review Committee met on July 15, 2020, to review the request. There were no staff concerns.

August 4, 2020 Planning Board Meeting: The Planning Board met virtually August 4, 2020 to review the request. Chris Seamster, P.E., Nick Robinson, Attorney, and Tanya Matzen, NNP Briar Chapel Vice President were present to answer questions. Also, present were Liz Rolison, Donna Sukkar, and Patricia Van Hoy all Briar Chapel residents who spoke during the public in-put with concerns about the Briar Chapel wastewater treatment plant not functioning properly. Board members discussed the Briar Chapel total lot count; capacity and malfunctioning of the wastewater treatment plant; if the board has authority to ask for a private review of the wastewater treatment plant; flood areas; and private drainage easements bypassing the stormwater pond.

Briar Chapel is approved for 2,300 dwelling units and 350 apartments; per Nick Robinson 2,008 homes are occupied; 59 lots are shown in Phase 13 Section 3, and 89 lots remain for final approval. Board members expressed their concerns with the sewage spills from the malfunctioning on-site wastewater treatment system. Board members wanted to know who is responsible for the substandard piping when Briar Chapel originally completed the construction of the wastewater treatment plant. The wastewater treatment plant is currently owned by Old North State and regulated by the NC Utilities Commission. Board members asked if Old North State had informed Briar Chapel about the length of time it will take to fix the wastewater issues. Mr. Robinson stated no, but Old North State has made significant repairs and that the wastewater treatment plant is not at capacity. The system was originally permitted for 250 gallons per day, per residence and the actual flow is between 90 to 100 gallons per day per residence. Mr. Robinson expressed that Briar Chapel isn’t the utility company and Briar Chapel has presented the items needed for final plat approval. Mr. Robinson agreed, in good faith, they would try to provide an update on the wastewater system, how the utility company plans to correct issues, and how long will it take before the next Planning Board meeting.

Board members decided they didn’t have the authority to ask for a private third party review of the wastewater treatment plant. It was requested that the final plat provide labeling of the private drainage and revise the application to show AE for floodplain. A revised application has been provided and posted on the Planning Department webpage. Board members decided to postpone the item until the September 1, 2020 meeting. At the time of completing the Planning Board notes the developer was preparing an update on the wastewater treatment plant issues, but they were not received in time to include in the packet. This is the second meeting on this item and the Planning Board has to make a recommendation on the request or it will automatically be forwarded to the Board of Commissioners as favorable vote per the pre-2008 Subdivision Regulations.

The subject property is located in an area designated as Compact Residential which allows a mix of detached and attached residential units complemented by a variety of open spaces. Phase 13, Section 3 will have 59 homes on 18.66 acres. Compact Residential allows community centers, amenities, recreational uses, schools and churches. Briar Chapel development has various amenities including parks, walking trails, club house and pool, along with public schools either within the development or on adjacent properties. Compact Residential areas are to be connected by a system of local and collector streets. Phase 13, Section 3 has public roadways connecting to the balance of Briar Chapel.

Mr. Sullivan stated in closing the Planning Department recommends granting final plat approval of **“Final Subdivision, Easement, and Right-of-Way Dedication Plat of Briar Chapel Development Phase 13 Section 3 for NNP Briar Chapel, LLC”** with the following conditions: 1. Prior to final plat recordation the county attorney shall approve the form of the contract and financial guarantee. 2. Prior to final plat recordation the engineer shall certify to the county that there is all weather access for emergency vehicles and the certification must be approved by the Fire Marshal. Mr. Sullivan also pulled up an email provided by Mr. Lee Bowman with Envirolink and showed the Planning Board. This email is posted on the Planning department website under this item. Mr. Sullivan also reminded the Planning board that this is the final meeting for this item and if there isn't a recommendation the item will automatically be forwarded to the Board of Commissioners as a recommendation for approval.

Board Discussion followed and some items discussed were as follows:

- Chair Lucier asked Mr. Robinson if he would like to make a presentation. Mr. Robinson stated Phase 13 section 3 was tabled August 4, 2020 Planning Board meeting based on concerns not about the adequacy of sufficiency of the plat submittal except for the issues brought up by Ms. Weakley which have been addressed, about operational issues to the third-party sewer utility Old North State and the sewer line breaks that have been experienced. The applicant agreed to seek information in the interim regarding the following matters. 1. Obtain information from the State regulated sewer utility, ONSWC, regarding what it says will be done to rectify the operational concern and when they estimate it to be completed. 2. Add Flood Zone AE to the map, add PVTDE abbreviation to legend/key, add 100/500 year floodplain to legend/key, and list both FEMA maps in notes on cover sheet. 3. Filing of as-builts and other information with County as per the CCO.

Mr. Robinson also stated staff was to confer with the County Attorney regarding scope of Planning Board authority in plat approvals with respect to actions of third-parties. The applicant has spent a significant amount of time since the last meeting seeking information from ONSWC and the various consultants involved and also conferring with Planning Staff to coordinate the information. ONSWC has been cooperative in helping to clarify the current and anticipated future status. ONSWC has advised NNP that it has engaged CE Group to “design an updated pump station and a revised force main routing” for the problematic force main. The new line will tie into a ductile iron force main. The pump station will include an additional bypass pump and natural gas service for standby/back-up operation. Design should be completed in the next couple of weeks. Permit timing is difficult to predict, but OCSWC’s “goal is to have the new line installed and connected by Thanksgiving.”

Mr. Robinson stated on August 20, 2020, McKim & Creed sent to Planning Staff the following: a revised Final Plat with Flood Zone AE added to the map, PVTDE abbreviation added to legend/key, 100/500 year floodplain added to legend/key, and both FEMA maps referred to in notes on cover sheet. The application was revised to add a reference to Flood Zone AE in addition to Flood Zone X. These revised versions are posted online. The applicant has also conferred with Planning Staff regarding filling of as-builts and related wastewater documents per the CCO and are working through that to see what has already been submitted and what needs to be submitted, all as part of the Briar Chapel closeout. At this point we have not only met the requirements of the Subdivision Ordinance, but we have also supplied the additional information sought by the Planning Board and we, therefore, respectfully request that the Planning Board follow the recommendation of Planning Staff and recommend approval of the Final Plat. We have our various consultants, Chris Seamster and Mark Ashness, and Tanya Matzen from NNP, to answer any questions.

- Chair Lucier thanked Mr. Robinson and asked if he wanted to make any responses to the public input. Mr. Robinson stated yes and it seems like the comments are in two categories, one being Briar Chapel

residents that are concerned about Old North State and the wastewater treatment issues and second, the adjoining property owners in the northern area of the development regarding trails within the perimeter easement. The issues brought up about the sewer are similar to what we have heard before with additional details and are regulated by the State level authority and not on a County level or staff level. This is important because much of what people have to say about these issues is highly technical and require expertise in this area and that is why there is separation between what the State regulates in respect to wastewater treatment and what the Planning Board is being asked to do in respect to a final plat. It would not be productive to respond to the multiple things that we believe are unfair and erroneous in what has been said about the wastewater treatment, but ultimately it doesn't matter if we think it is unfair or erroneous because the proper authority of those subjects is not the authority on the Board tonight.

Mr. Robinson stated with regards to the trails, this is a new issue that has popped up today and would like to make it clear that there are no trails shown in a perimeter buffer on any final plat and Briar Chapel is not building any bike trails in the buffer and never intended to build trails in the buffer. However, there are trails arising in those areas and is being done without NNP's consent and is most likely riders that are riding through there and creating trails. We sympathize with the neighbors and agree with them about the perimeter buffer in the northern area and would ask the citizens that spoke about the trails to email me at robinson@bradshawrobinson.com and would be more than happy to put those people in touch with NNP Briar Chapel to resolve the issues.

- Mr. Spoon stated he has some questions and thought it would be a good idea to separate the discussion into the two separate categories of wastewater and trails. Chair Lucier stated that is a good idea and let's start with the wastewater and then the trails.
- Mr. Spoon asked why was the control of the water utilities turned over to Old North State before buildout was completed. Mr. Robinson stated NNP Briar Chapel and Newland is in the business of creating master plan communities, but not running utilities. Originally they owned the property and they made sure the wastewater treatment plant was installed and it is typical in a situation like that to convey the utility to a North Carolina utility company that is in the business of managing utilities. The transfer from Briar Chapel to Old North State was in 2015. Mr. Spoon stated vetting and turning that process over to someone who is capable and will maintain the system is really important to guaranteeing what you sold to everybody that had moved into the development so far. Mr. Robinson stated he has been involved with a lot of different master plan community developers and they have all conveyed a way for wastewater treatment plant facilities to a regulated utility and that conveyance of the utility and infrastructure of the plant is actually reviewed and approved by the North Carolina Utilities Commission. The developer relies on the fact that the review, approval, and on-going regulation is efficient to manage the utility. Obviously there have been some early extraordinary problems here that were never anticipated and probably couldn't have anticipated. Mr. Spoon stated he is not questioning that the developer did anything wrong as far as regulations or that they didn't potentially designed a good system, it just needs to be functioning well for me to feel comfortable to move forward with any future development that is tied to this system.
- Chair Lucier stated tonight the Board has heard that there have been twenty seven (27) spills over the last four (4) years, just under 80,000 gallons of sewage leaked with fifteen (15) notices of violation, are these number correct? Mr. Robinson stated he is not the right person to answer that question, but doesn't dispute it. He does not know for sure if that is exactly right. Chair Lucier asked if anyone from the Briar Chapel team present would know if those figures were correct. Nobody from Briar Chapel answered.

- Chair Lucier stated there are some similar operations in Chatham County such as The Legacy, Chapel Ridge, The Preserve, The Governors Club, and Fearington. Has any of these locations had the same problems that has beset the Briar Chapel system? Mr. Robinson stated as a land use lawyer that has been involved in some of those developments over the years, he recalls that there was a time in the history of The Governors Club where there were some similar issues that arose. The way he remembers, when the development got to a tipping point with the number of residents, who were upset and emailed the Utilities Commission and he believes there were some proceeding about the issues. Some of the issues were odor and spray irrigation and those issues were resolved through the utilities Commission and haven't heard anything about those issues in ten years. Chair Lucier stated Governors Club and Legacy had odor issues over a period of time, but had not heard anything about the force main lines breaking or leaking like that has happened at Briar Chapel.

Ms. Weakley stated The Governors Club had an issue with the design of the wastewater treatment system because it didn't take into account the natural hydrology coming off of Edwards Mountain and as a result the ponds were not big enough to handle all the water so they had to spray more often. The golf course was one of the primary application sites for the reclaimed water and the golfers noticed that the course was saturated all the time and from her recollection the HOA had to sue the utility company. Ultimately, the holding ponds had to be increased in size.

- Ms. Moose referred to Mr. Robinson's comments earlier about providing the wastewater documents to County staff, but it seems like you are not committing to provide these documents until the final plat approval after the final phase of the project, is that accurate? Mr. Robinson stated over the course of time while we have been doing 10, 20, 30, different plat submittals for the County, each time we have submitted plans, it shows where the sewer lines and where the water lines are going to go along with the submitted permits, so a lot of information has already been submitted and provided to the County. After the last Planning Board meeting, Mr. Sullivan and Briar Chapel had a phone call meeting to discuss how to make sure that information gets complied with and we all agreed it would be reasonable to use the time we have between now and when the last final plat comes through to make sure the County has all the filings that are available for public review that is enumerated in the Compact Community Ordinance. Ms. Moose stated that makes sense, but from the discussion from last meeting, she feels the Board members would have liked to had access to those documents to inform our decisions going forward. Ms. Moose also asked if NNP Briar Chapel was aware of any issues with the wastewater system before it was transferred to Old North State. Mr. Robinson stated not to his knowledge and the system was transferred 5 years ago.

Ms. Moose asked Mr. Robinson from his perspective, what ordinance changes you would recommend so that this wouldn't happen again, if your view is that this is not a fixable problem. Mr. Robinson stated he believes it is a fixable problem, but it is natural to the process that we have laid out, not just in Chatham County, but counties all over North Carolina, the problem gets fixed at the State regulatory level and not at the County platting level. Mr. Robinson stated he feels the ordinance is setup pretty well in the way that they are supposed to function and it is frustrating because the Board has citizens coming to you and asking you to do something about a problem that is a real problem. Mr. Robinson stated he understands and is sympathetic about that, but is asking the Board to do something, in my opinion, you don't have the charter to do. There are other mechanisms and other venues for that to happen and all of those venues are also being pursued. Ms. Moose stated she does sympathize with the residents and the adjacent property owners and this is a problem that needs an immediate resolution. Mr. Robinson stated the good news is that Old North State has a pretty aggressive plan to resolve the issue, to take out the offending line and replace it with a brand new line connected to a ductile iron pipe, plus make repairs to the pump station where the vast majority of the issues has risen.

- Mr. Robinson stated that Mr. Mark Ashness is in this meeting and can speak more to the repairs if you have questions. Chair Lucier stated the repairs will be completed by the end of November. Mr. Robinson stated yes, but the only caveat to that is the State will need to approve the permits to do it, but they anticipate that it will be all done by Thanksgiving. Ms. Hager asked if permits have been applied for yet to fix this problem. Mr. Ashness stated CE Group has done a brief analyses over the last two weeks for Mr. John McDonald with Old North State. This is the original pump station and force main in the project that went back to the plant. We have determined that particular force main has some hydraulic pressures that over time has caused the PVC pipe to have some failure. There will be a 14" force main that will be coming from the SD East pump station that is near pump station A, so we are going to reroute the discharge from station A to the 14" force main and that is a ductile force main back to the plant and is sized to accommodate more than required, so based on the model it will work fine. Currently, we are working on the plans for this and our hope is to have them finished in the next three weeks and then submit the plan to the State for a fast track process and this should remedy the failure of the piping from the original force main.

Ms. Hager stated it sounds like there will be a completely new pipe and not a repair to the pipe that keeps failing. Mr. Ashness stated we are going to connect station A directly to the new force main and abandon the original force main. CE Group was not involved with the earlier remedies and what Old North State did was they switched out some of the old PVC piping with HDP pipe, which is a fused plastic pipe that doesn't have any joints and they were still having some issues where it transitioned from the original PVC to the HDP pipe after it was installed. He stated there is a pretty good elevation change from the wastewater plant to the lift station A, about 125' or 130', so when the pumps turn off there is some water hammering and the PVC pipe there has just worn out. Rather than continue to rely on stop fixes, it just makes sense with the capacity in the 14" force main to route it there. Ms. Hager asked if that will remedy the issue with the wet well not being big enough. Mr. Ashness stated the wet well is a 10' diameter wet well, which is a decently sized wet well and what will happen with the tying into the 14" force main and the pumps will be able to pump at a higher flow rate. The difference between water flowing from an 8" force main to a 14" force main, there is more capacity and less friction loss and that means the pump will pump more flow by having more capacity in the pipe itself.

- Chair Lucier asked how confident are you that the repairs will deal with all the weak pipes that are in the system. Mr. Ashness stated CE Group hasn't been involved in the operations, but to his knowledge most of the problems have been located in this section and lift station B, which has a manhole that is lower than the top of the lift station and there was some overflow in that location. The plan is to raise that manhole by lift station B so that overflow will not happen again. Mr. Ashness stated he is not aware of any other raw sewage locations and Old North State has asked them to look at lift station A and that is where their scope is at the moment. Chair Lucier asks because apparently there has been 27 spills and wondered if they have been all related to one particular section. Mr. Ashness stated he would be glad to ask Old North State that question as to how many spills were outside of lift station B, by the manhole, and how many at lift station A. Ms. Hager stated she is wrestling with how to approve a plan moving forward if there is not assurances that all the issues are being addressed and if we still have questions about where all these spills could be occurring and what needs to be done to fix them.
- Mr. Spoon asked why are these pipes are already failing, is this just one defective section, or is it a systemic problem. Mr. Ashness stated he doesn't think it is a systemic issue, there is a lot of elevation difference, lift station A is at one of the lowest areas on the property and the plant is at one of the highest location. When the pumps shut down and the check valves close, over time what has happened in that particular section of 8" force main the joints are starting to wear out. It is a good idea to just abandon that line in favor of the larger force main, but he is not aware of any other issues with the other force mains except lift station B with the manhole. Mr. Ashness stated he will ask Old North State if they

have had other locations with spills. Mr. Ashness stated he is optimistic that the replacement of the force main will stop the issues.

- Mr. Frazier stated the only authority as a Planning Board to regulate this based on the Compact Community Ordinance relates to the things Ms. Weakley mentioned last meeting in section 7.2 with a list of documents that the developer has to file with respect to the wastewater treatment system before final plat approval. Mr. Robinson mentioned some documents might be forthcoming, but hasn't been filed yet and asked Mr. Sullivan if all the documents required in section 7.2 regarding the wastewater system have in deed been filed with the County. Ms. Weakley stated the documents are not only to be submitted to the County, but "the developer shall require the operator of such systems to furnish the County with copies of any approved plans modifying said systems and to notify the county and the residents of the compact community of any violations or citations issued in connection with the operation within 30 days thereof." So the onus is on the developer, not the utility and it must be done within 30 days of any violations or citations and that has not been done.

Mr. Sullivan stated in regards to the as-built copy of the plans and specifications for wastewater treatment facilities, infrastructure, we have not received the as-built yet. This might be something we will visit as we work on the UDO. There are a number of documents that the developer won't be able to provide until the project is fully completed. Staff will not have those documents until all final plats are recorded and most of the development is completed, so staff doesn't have the as-built for wastewater treatment facility or infrastructure. Mr. Robinson mentioned that earlier, there was a meeting last week to discuss the project closeout and with Phase 14 there will be an additional condition to cover this issue. Newland has agreed to go through the C.U.P. process to evaluate everything and make sure everything is covered. We are also going to go through the Compact Community Ordinance and the original response back in 2004, then document what has been completed and what remains to be completed. Before the final Phase 14 plat is released we will have assurance, whether it is a contractual obligation or a financial guarantee, to cover the production of all of those documents.

Mr. Sullivan stated to regards of what Ms. Weakley had mentioned about any violations or citations issued in connection with the operation, staff has not received those directly from Newland or from Envirolink. Staff is aware of those issues, but staff doesn't have those documents in hand. Chair Lucier stated staff has not received any of the 15 notices of violations. Mr. Sullivan stated not that he is aware of and doesn't believe staff has received those copies. Mr. Seamster stated as far as the record drawings, in each phase that has been done, they are submitted to the State and are in the middle of pulling together all the records and drawings for the various phases to get to the County. We just haven't provided it to the County yet, we will do that, but there are some documents that Newland wasn't a part of and we are having to dig a little deeper trying to find copies when Newland became involved in the project in 2010. Mr. Sullivan stated as far as receiving as-builts, staff would prefer receiving them as larger sections rather than one here and one there, it just works better as far as an internal tracking standpoint. Mr. Seamster stated that is the plan to get staff everything at once. Mr. Sullivan stated just with discussions tonight and the changes to the infrastructure that has already been installed and in operation for 10 to 15 years that is going to have to be modified, receiving it later in the process is not a bad thing to ensure good tracking on that documentation, but just making sure staff does have the documents before the project is closed out.

- Vice-Chair Siverson stated she is concerned about the failure to notify the County and the residents of the violations. The Board wouldn't have known anything about these violations if we hadn't heard it directly from citizens of Briar Chapel. That is a breach of the ordinance to not provide notice of so many violations and why haven't they been reported. Mr. Robinson stated hopefully our relationship through the years of this project has been long enough and good enough for everybody to know that we are not

and have not ever tried to hide anything. If there is any element that hasn't been supplied, it had been out of inadvertent. As far as the as-built, we have never been asked for them and the expectation is to have them turned in at the end of the project with the systems as they exist when it is done and that will be done without hesitation. With regard to the notice of violations, we would be happy to collect copies from Old North State and submit them to the County to maintain in a record if that is helpful. Since the last Planning Board meeting we have requested Old North State supply us with every communication that they have with the regulating authority and any resolution documents they receive with regard to the notices of violation. We will turn those documents over to the County as soon as we can.

Mr. Robinson stated there is a Subdivision Ordinance in Chatham County and there is a Compact Community Ordinance in Chatham County and there is a Zoning Ordinance in Chatham County and there is a Watershed Protection Ordinance in Chatham County and a Sediment and Erosion Control Ordinance in Chatham County, all of those apply to Briar Chapel, if there is a violation under one of them, that doesn't mean you hold up anything that they are authorized, legally, and entitled to have under another one. If you ask your Director of Planning whether or not the requirements of the Subdivision Ordinance with respect to Phase 13 section 3 have been met, he would tell you that they have and you should approve it. If there is a deficient in compliance with another ordinance, that doesn't mean you should recommend not granting them what their legally entitled to under a separate ordinance and that is legally true.

- Chair Lucier stated the Compact Community Ordinance also states regarding odor control from wastewater treatment plants that the odor control would eliminate to the maximum extent possible adverse impacts to residents, has that been done? Mr. Robinson stated in 2015 NNP had been aware of an odor issue and had taken significant steps to make sure those odor issues got dealt with including paying for some of the corrective measures. There are some new odor issues that have risen at the beginning part of this year and Old North State has implemented a chlorination process to help eliminate those odor issues. There has been action steps taken and it is assumed that Old North State knows it is being watched by the Utilities Commission with regards to the odor issues as well and they are trying the best they can to get that under control and the developer is motivated to have Old North State rectify that issue.
- Chair Lucier stated the Planning Board Code of Ethics states we should consider health, safety, and welfare of Chatham County residents in all of the recommendations and decisions. Mr. Robinson stated the Code of Ethics for the Planning Board can be considered, but you can't consider anything that is beyond the legal right to consider, the Subdivision Ordinance is the embodiment and the manifestation of what it is that you are required to protect the public health and welfare. The way the Subdivision Ordinance goes about that, don't let somebody record a final plat unless they disclose the following things on the face of the plat, don't let somebody record a final plat unless they have constructed at least 40% of the infrastructure and have put up a financial guarantee to ensure that if somebody looks at the plat, sees the lot, and wants to buy it, they are going to have the infrastructure there to serve it. That is how you protect the public health and welfare in your role as an advisory body to the Board of Commissioners, you make sure that the applicant is required to comply with the Subdivision Ordinance, which they have done.
- Ms. Hager stated she is not quite clear on Mr. Robinson's point that the Planning Board can't enforce the Compact Community Ordinance because there is a different ordinance in place. It is clear the violations had not been reported, and not having the information about what violations have occurred in order to know if those violations are actually going to be addressed. This information is all required in order to approve the final plat. Ms. Hager doesn't feel she has the information needed to move forward with the final plats, how can we know where these other violations have occurred if we haven't seen

them and how can we reasonably represent Chatham County and approve plats moving forward if that is written in the Compact Community Ordinance. Ms. Weakley stated she agrees and the fact that not only was the County supposed to be notified, but also the citizens of Briar Chapel within 30 days of those violations. Had we known about this 4 years ago on a regular bases like we were supposed to be notified, maybe this issue would have been addressed sooner and she disagrees with Mr. Robinson about the Planning Boards role to help ensure the enforcement of the Compact Community Ordinance and other ordinances. Mr. Spoon stated the Planning Board is an advisory board and can't regulate, but we can make recommendations, but we can't regulate what they are doing.

- Mr. Little stated when Ms. Crompton spoke earlier she indicated that a visit had taken place with Senator Valerie Foushee on May 12, 2020. She wrote a letter about the odor problem and as a result of that Mr. John McDonald testified that Chatham North has obtained an engineering and cost estimate proposal for constructing a commercial greenhouse type enclosure that will contain odors from the reclaimed water treatment plant. Those were comments about the wastewater treatment plant odor, not about chlorination of the irrigation pipe supply to the community. So to answer the question about the odor and if it has been resolved, the answer is no.
- Ms. Sukkar stated she is concerned about what she has heard tonight about the developer stating they talked to Mr. Lee Bowman and spoke to Old North State, which is a conflict of interest. They are an owner and an operator and who we should be talking to is the regulatory agency, which is DEQ. We have spent several hours last week talking to DEQ and going over these capacity issues and they were quite surprised. We are over capacity for irrigation, plant processing, and storage in the ponds. Everything that was submitted to the Planning Board this evening had a hyperlink to an official regulatory document. The ordinances and the regulation state, we cannot move forward with development in this situation. This community is being setup for catastrophic events and people are going to be held responsible. We have heard promises from Old North State for years, but they have never delivered. We have to make decisions on where we are today and today we are not in a position to continue to grow this community. As much as the developer wants to finish this project and as much as we want the big trucks and earth moving completed, we are very concerned about our wastewater treatment plant.
- Chair Lucier stated the Board discussion will move onto the concern about the trails.
- Mr. Spoon stated there was a map provided in one of the emails and is that map a conceptual drawing for marketing or are those actual design photos of where the trails will be located. Ms. Tanya Matzen stated those are conceptual marking plans and Newland has no intention of building trails in the northern area. Mr. Robinson stated it is a different question between what Newland intends to do and what some bicyclist may do on their own, which can be a vexing problem. It would be a good idea to open a conversation between the adjoining landowners and the developer because he sympathizes with what they are going through and it is a real issue. Mr. Robinson wants the property owners to know it is not the developer making trails and wants to work together to come up with a system to deal with it. This is a valid issue that needs to be resolved much like the wastewater issue, but it is not a subdivision issue. Vice-Chair Siverson asked if it is the HOA that controls what goes on in the open space. Mr. Robinson stated it depends on who owns it or who has license to operate it. In Briar Chapel it varies whether the developer still owns it or the HOA, right now the 100' buffer along Phase 13 is owned by the developer and the issues about the trails were presented to us today, we need to get on it and we will.
- Chair Lucier stated Mr. Oakley informed us that a bike ramp was constructed on his mother's property. Mr. Robinson stated that is blatant trespassing and that would be hard for the developer to control.

Chair Lucier confirmed on Phase 13 there have been no trails constructed. Mr. Robinson said, correct. Ms. Weakley stated the developer is showing proposed trails in that area on your map and website. Ms. Matzen stated this was brought to our attention today and the map has been since removed from the website, this map was created in early 2018 and maybe at that time there was some consideration for trails, again this is an illustrative map and have no intentions of building trails in those phases in the buffer. Mr. Robinson stated there is a legend on the map that says precisely that and they are not guaranteed. "The map is for illustration purposes only, based up on current development concepts which are subject to change without notice. No guarantee is made that the features depicted will be built, or, if built, will be as depicted." The developer is not going to build any trails there and don't want anybody to create trails there. Ms. Weakley stated TORC must have assumed if it is proposed, then they can be built. Mr. Robinson stated they were wrong.

- Ms. Moose asked if there was no intent in having trails in these areas, why this document was published in the first place. Ms. Matzen stated there may have been an intent back in 2018, but I am telling you today we have no intentions on building those trails. Ms. Weakley asked if they have plans to remove the trails and re-vegetate the buffers. The developer is the responsible party if they still own the property. Mr. Robinson stated they will take a look at it. Ms. Matzen stated they will take a look at the trails and this was just brought to their attention today.

Ms. Weakley asked what the process is having trails approved on the property and are they required to be shown on a final plat. Mr. Sullivan stated trails are not required to be shown on the final plat and staff has not received any plans for trails to review. Staff had been made aware of this from Mr. Oakley's email yesterday and several today. These have been forwarded to our zoning administration staff and they will start investigating and there could be violations through the Compact Community Ordinance. Impacts within the riparian buffer has been submitted to the Watershed Protection department and they will be visiting the site to look at any sediment issues that might exist and any issues with the riparian buffers. Riparian buffers is a dual enforcement role between Planning and Watershed Protection, but they are going to start investigating. Ms. Weakley stated any trails that have been built in the Jordan buffer would have had to receive buffer authorization and may be in violation. Mr. Robinson stated there is a process, if there ever were any intent to build trails in a buffer area that was dealt with the Watershed Protection department and the issue we have here is there are trails we didn't even intend to create. Mr. Sullivan stated any trails that are on private property is a trespass issue and can contact the Sheriff department about trespassing on the property.

Chair Lucier asked if it would help to install signage in the buffer area, which might slow down the trespassing. Mr. Sullivan stated the communication from the HOA to the residents is important and make residents aware of what is off limits and to stay off of other peoples properties. Mr. Arthur stated he had heard the developer say they don't intend to build trails, he wants to hear they won't put trails in that area. Ms. Mazten stated we will not install any trails in the northern section.

- Mr. Medlin stated with the plat that is in discussion, what language will be added to the perimeter buffer, something to the effect of a "privacy buffer" or whatever an attorney such as Mr. Robinson would suggest. Mr. Sullivan stated there is already a recorded restrictive covenants that covers all of the past and future perimeter buffers. Mr. Robinson stated yes, there is a recorded restrictive covenants and now we know there is a problem so we can begin the enforcement in conjunction with the adjacent property owners.
- Ms. Weakley stated Mr. Robinson followed up on the different items from last meeting, but there is one area in the survey notes on the cover sheet, note #5 Zone AE still needs to be added. Mr. Seamster stated he added Zone AE to the application, but missed that and will add it before it gets recorded.

- Ms. Weakley also stated the western pond has not been permitted for use, is that correct. Ms. Matzen stated they are in the process of permitting that pond now. Mr. Sullivan pulled up the aerial photos of the project which were taken around the beginning of 2019 and Ms. Weakley stated the western pond looks as full as the central pond, why is this pond as full if it is not permitted to be used yet. Mr. Ashness stated the western pond was submitted this past spring, initially that pond was planned to be used for irrigation in the Encore area of the project and there is rainfall in the pond. We have done this on other projects and added spring water when there wasn't enough water to accommodate that use. This western pond was designed to be used as a non-reclaim source. Ms. Weakley stated initially it was an irrigation pond, but now it will be used as a wastewater pond and it was never conceived to be a wastewater pond? Mr. Ashness stated it was planned to be used for treatment, the central pond was permitted with package A, B, C, D, and that pond was adequate to support those uses. By the end of this project there will be 9 spray packages and with the spray packages to the west, which is when the western pond needs to come on line for reclaim use. Ms. Weakley stated it was full in the beginning of 2019, is it full now? Mr. Ashness stated the pond is about 5' to 6' below the zero level. This pond today has an irrigation pump on it, but it has never been activated.

Ms. Weakley stated, the western pond currently doesn't have wastewater in it, only rainfall. Mr. Ashness stated we are in the middle of permitting with the State and he had asked Old North State if any wastewater had ever been transferred to that western pond and an estimated 5 million gallons may have been transferred for storage, but none of that has been discharged out. Ms. Weakley stated the pond hadn't been permitted for that use yet. Mr. Ashness stated when he submitted the plans to the State, he was not aware of any use of that pond for reclaimed water. Ms. Weakley stated, what you are saying is at least 5 million gallons of wastewater is sitting in it, but it hasn't been permitted yet for that use. Mr. Ashness stated he responded to the State what the utility company said, there is an estimated 5 million gallons of reclaimed water in that pond. Ms. Weakley stated, you are not answering my question, it is not permitted for that use right now, is that correct? Mr. Ashness stated we are in the process of permitting with the State and the pond was constructed to meet reuse standards, it has a liner that meets the requirements for a reclaim pond and that is all I can say. Ms. Weakley stated it sounds like it is not yet permitted for that use, but yet it is being used for wastewater. Mr. Ashness stated that pond is a little over 30 million gallons in size at capacity.

Chair Lucier stated is that where the 7.8 million gallons had gone that Mr. Little had mentioned. Mr. Ashness stated there is evapotranspiration and all kinds of things occur, it is not a perfect world where you transfer "X" gallons from the treatment plant and exactly "X" gallons is stored in the pond. There are other factors such as rainfall and evapotranspiration, so it is not like we are in a controlled lab, it sounds like about 5 million gallons may have been transferred to that pond. Ms. Weakley stated that is a violation of the State permit. Mr. Robinson stated we need to be careful surmising these calculations because he had a conversation with a person at Old North State and they stated the calculations about the capacity of these ponds are way off, by about 100%. Chair Lucier stated the point is well taken. Mr. Robinson stated he appreciates all the effort that has gone into the public comments, these folks are hardworking and smart, but it is a treacherous business trying to intuit when we are not experts in this field.

- Ms. Weakley asked when does Phase 13 and Phase 14 get transferred to the utility company from Newland. Mr. Seamster stated typically within a month or two after the final plat is approved by the Board of Commissioners. Ms. Weakley stated Briar Chapel residents are currently paying for wastewater services to Old North State, is that correct. Mr. Robinson stated, yes they are being billed by Einvrolink, but it is for wastewater services by Old North State. Ms. Weakley stated, so potentially any violations, fines, and repairs may be passed on to the residents of Briar Chapel. Mr. Robinson

stated he is not a utilities lawyer, but from his understanding, penalties can't be passed along to the consumers. Some ordinary maintenance and repairs are part of the cost of operating the system and go into the rate for operating the system, but that is beyond his knowledge to know specifically.

- Ms. Caroline Healy asked Ms. Matzen about the trails in the northern section and that Briar Chapel doesn't intend to build trails. Ms. Matzen stated she is correct they are not building trails in the perimeter buffer. Ms. Healy thanked Ms. Matzen and asked if they would pledge to remove that map of trails. Ms. Matzen stated the map has already been removed from the website and it will be updated and reposted.
- Ms. Rolison stated of the 27 spills 15 of those were tied to the problematic section force main. Of the last 3 sewage spills that we have had, 1 has occurred at lift station A the others have occurred at lift station B and another 1 spill at lift station E. The proposed repairs are not going to address all of the concerns and as of yesterday they have not submitted any plans to DEQ to move this forward. The repairs and upgrades to the system do get passed onto the customers. It is interesting that Old North State, being the pivotal issue in all of this, why they did not ask anyone from Old North State to attend this meeting to represent what their company is doing and that they stand behind it. They are not here and that speaks volumes.

Motion to not approve this item made by Vice-Chair Siverson, second by Ms. Weakley.

- Vice-Chair Siverson stated as a Planning Board member she cannot vote for approval of this item at this time. She was on the Planning Board in January 2005 when Briar Chapel was originally approved and voted against it then and the reason was because she had concerns about the wastewater treatment plant at that time and her vote tonight will be consistent with her vote all those years ago. The idea of such a large community having a wastewater treatment plant that was reliant on pond storage of raw wastewater and then spray land irrigation just seemed unwieldy. Vice-Chair Siverson had concern at the time and still does now. She also doesn't agree with Mr. Robinson about the Planning Board can only consider the health, safety, and welfare of Chatham County within the confines of the Subdivision Ordinance and there is also a community to consider with their concerns that they brought before the Board tonight.
- Ms. Weakley stated it is very irresponsible for the Planning Board to approve any more plats for this development until information is received that a modification has been submitted to DEQ and the wastewater treatment plant is fully in compliance with DEQ regulations. Ms. Weakley referred to the Compact Community Ordinance, "The developer shall require the operator of such systems to furnish the County with copies of any approved plans modifying said systems and to notify the county and the residents of the compact community of any violations or citations issued in connection with the operation within 30 days thereof."

Chair Lucier completed a roll call vote and the motion to not approve this item passed 10-0, unanimously.

- Chair Lucier stated this is a complicated issue with a lot going on, but the Planning Board does consider the health, safety, and welfare of the citizens in our recommendations. This is an unusual amount of spills and violations. The Board doesn't have any problems with the final plat ultimately being approved, but there is a problem to have it approved and add to the existing issues. We applaud Briar Chapel for trying to get this resolved and Chair Lucier thanked everyone for participating in this item.

2. A request by Tanya Matzen, Vice President, on behalf of NNP Briar Chapel, LLC for subdivision **Final Plat** review and approval of **Briar Chapel, Phase 14**, consisting of 89 lots on 31.45 acres, located off Catullo Run, Baldwin Township, parcels #89624.

Ms. Tyson stated the request is for Final Plat approval of Briar Chapel, Phase 14 consisting of 89 lots on 31.45 acres with a financial guarantee for the completion of required infrastructure. Phase 14 received preliminary plat review and approval by the Board of County Commissioners on October 21, 2019 for 89 lots. The submittal includes a request for a financial guarantee for completion of the required infrastructure. Under the pre-2008 Subdivision Regulations, a project must have a minimum of 40% of the infrastructure completed prior to submittal of a final plat and the roads must be accessible to emergency vehicles. A cost estimate letter, dated August 7, 2020, has been provided by Chris Seamster, PLA, McKim & Creed, Inc. stating that the required infrastructure is 40% complete. The cost letter may be updated prior to plat recordation if additional work has been completed. Staff recommends granting the request for a financial guarantee. Staff also recommends that the final plat not be recorded until the engineer has certified that the roadway providing access to the parcels are accessible to emergency vehicles and recommends that the final plat not be recorded until the county attorney has reviewed and approved the form of the contract and financial guarantee.

Ms. Tyson also stated per the approved preliminary plat, roadways are proposed to be public and state maintained roads. Phase 14 is located off Catullo Run and there are thirteen on-street parking spaces and each townhome will have front loading garages. Phase 14 has one common area, Common Area #98, and contains 24.272 acres. Common Area #98 has a common boundary with Richard and Anne Marie Telford (parcel 79908) and there is a 100' perimeter buffer provided along the boundary. Riparian buffer widths of 50 feet per side (100' total) measured from top of bank landward has been shown on the plat. There are stormwater features in Phase 14. The final plat information includes the approximate BMP location using top of bank of the existing features and has been reviewed and approved by Watershed Protection staff. The required stormwater note regarding the Operations and Maintenance Agreement and the maintenance responsibility of the stormwater features is included on the final plat.

The following conditions were added to the preliminary plat approval for this phase –

1. The final plat shall include the approximate location of the BMP using top of bank of existing feature (no pipes or risers); the BMP maintenance easement be labeled and shown as 'private' with a minimum of 10 feet clearance; and the location of the access to the stormwater easement from the public right-of-way.
2. A note shall be placed on the final plat stating the maintenance responsibility of the stormwater features.
3. The final plat shall state the width of the riparian buffers.

The Technical Review Committee met on August 12, 2020 to review the request. Staff had no concerns. This is the final residential phase of Briar Chapel and staff has met with the developer to discuss closing out the project. The developer will be providing staff with an update on the conditional use permit and each section of the compact communities ordinance prior to release of the final plat for this phase. The update will include an assessment of items that have been completed, those that are on-going, and those that remain to be completed. A separate assurance will be prepared between the developer and county to cover the completion of the remaining items. The subject property is located in an area designated as Compact Residential which allows a mix of detached and attached residential units complemented by a variety of open spaces. Phase 14 will have 89 single family detached homes on 31.45 acres. Compact Residential allows community centers, amenities, recreational uses, schools and churches. Briar Chapel development has various amenities including parks, walking trails, club house and pool, along with public schools either within the development or on adjacent properties. Compact Residential areas are to be connected by a system of local and collector streets. Phase 14 has public roadways connecting to the balance of Briar Chapel.

Ms. Tyson stated in closing the Planning Department recommends granting final plat approval of “**Final Subdivision, Easement, and Right-of-Way Dedication Plat of Briar Chapel Development Phase 14 for NNP Briar Chapel, LLC**” with the following conditions:

1. Prior to final plat recordation the county attorney shall approve the form of the contract and financial guarantee.
2. Prior to final plat recordation the engineer shall certify to the county that there is all weather access for emergency vehicles and the certification must be approved by the Fire Marshal.
3. Prior to release of the final plat the developer will provide staff with an update of the conditional use permit and compliance with the Compact Communities Ordinance for the entire project. This includes the county and developer entering into an agreement, such as a financial guarantee, to cover completion of the remaining items. Ms. Weakley stated the line that is being shown on the final plat is a center line or top of bank situation, since it differs from the intermittent below it.

Board Discussion followed and some items discussed were as follows:

- Ms. Weakley stated similar to the previous phase the floodplain Zone AE needs to be shown on the cover sheet, application, and the map itself, and note #5 needs to be updated. Ms. Weakley also asked for clarification why there was a 105’ buffer on the intermittent stream and not a 100’ buffer. Mr. Sullivan stated they are measuring from the top of stream bank. Ms. Weakley stated, usually intermittent streams have channels much smaller than 5’ wide. Mr. Seamster stated they may be providing more buffer than required, because of the delineation that was what the buffer was supposed to be, but he will double check it.

Ms. Weakley also stated she is not inclined to approve this phase as well until the wastewater situation is remedied and they are in compliance with their State permit.

- Ms. Hager stated we have two meetings to discuss this item, would it be better to not vote on this item if the Board is leaning towards a denial and give the applicant time to produce documents that might change the approval or denial vote. Chair Lucier stated the Planning Board doesn’t need to make a decision on this item tonight and if we as a Board did vote tonight it would be for denial based on the previous vote. Maybe within the next month the applicant will bring more information regarding the repair or replacement in the wastewater treatment that might potentially change our minds. Chair Lucier asked the Board what they thought about that. Ms. Moose stated she is comfortable with that and would not recommend approval based on the information we have tonight. There are so many inconsistencies between what is laid out in the CCO and what is happening on the ground and she could not recommend approval. Ms. Moose stated the Board wants businesses to do well here, but not if it means asking residents to step over raw sewage when they are going for a walk in their neighborhood and the business interest in one company doesn’t outweigh our responsibility to the public. Chair Lucier asked Ms. Moose if she was in favor of voting on the item tonight or waiting until next month. Ms. Moose said she was comfortable with either option.

Mr. Frazier stated he would like to know what the developer would prefer because both of these phases are so similar maybe they need to go together to the Commissioners. Mr. Frazier asked if they would like to go to the Commissioners or have another chance with the Planning Board. Mr. Robinson stated last month when we were at this same juncture we were asked to do some very specific things and we went out and we did all the things we were asked to do and it still was voted for denial. It is hard for me

to imagine that in the next month we can supply to the Planning Board more information that will be satisfactory, so we would probably prefer the item to be voted on tonight.

- Mr. Spoon sent an email and stated, I did want to say that I think Newland has been a good developer and neighbor. I trust they will work to resolve the trail issues. I disagreed with Mr. Robinson's argument that we should be bound to recommend a project because it has all the supporting documentation. Part of that is a theoretical allotment for sewer and water capacity. We have real world evidence that the assured capacity may not be available. This is not a Newland controlled issue, but they designed the system and chose the operator. I cannot, in good faith, recommend approval with so much uncertainty regarding the water and sewer regardless of whether it has all the right attachments.
- Chair Lucier stated based on what Mr. Robinson had said the Board should vote on this item tonight.

Motion to not approve this item made by Mr. Arthur, second by Ms. Weakley.

- Ms. Hager stated she feels that not all the specific questions were answered, plus not having the violations reported and being able to act upon them in good conscious was significant to her.

Chair Lucier completed a roll call vote and the motion to not approve this item passed 10-0, unanimously.

- Mr. Robinson thanked the Planning board and all their hard effort and to the citizens that commented as well.
- Ms. Moose asked staff if the County is likely to take any enforcement action based on the requirements in the CCO for public filing of documents which clearly has been neglected for the entire time Briar Chapel has had issues with wastewater and also the trails issue. Mr. Sullivan stated part of the Phase 14 recommendation has a third condition to address everything that is remaining to be submitted to the County or completed. Those documents will have to be received before that final plat is released by the Planning department staff. Staff wouldn't enforce anything at this point on that and we will have an assurance in place with the financial guarantee and we will have the documents in hand before those financial guarantees are released. With the trails issues, he has forwarded all the emails received to zoning enforcement staff and they will have to go out to the site and look at the different areas. Staff will also have to look at ownership as well because it has been changing between Newland and HOA, Planning and Watershed Protection staff will be working on this for sure. Ms. Weakley stated she just wants to make sure the documents that are included in the CCO and report any violations to the County and residents with 30 days. That is really important, we would have known about this a long time ago and we would have been notified directly from the developer and she wants to see that enforced.
- Chair Lucier stated based on the conversations tonight he believes the issues with the trails will be looked at and Briar chapel has pledged to work with the homeowners as well. Also, they will be more careful to the public filing of the wastewater documents based on the conversations we have had over the course of the last two meetings.

VIII. ZONING:

1. A quasi-judicial public hearing for a request by Chatham County Emergency Management on a conditional use permit for a new proposed 350 foot communications tower to be located at the Moncure Volunteer Fire Department, 2389 Old US 1, Parcel 81087, being approximately 8.33 acres, Cape Fear Township.

Ms. Plummer stated a quasi-judicial public hearing was held August 17, 2020. Planning staff presented the application and Emergency Operations Director, Mike Reitz, commented. No other persons spoke. In the Spring of 2019, the Chatham County Board of Commissioners approved a text amendment to allow communication towers for purposes of emergency facilities to exceed the 300 foot limit to allow them up to 400 feet. The Board also approved a capital improvement budget item for five such towers to be located in various areas of the county where communication issues exist and to be able to upgrade radio equipment in order to keep up to date with the new technology for emergency services.

This tower is proposed to be 350 feet. However, Mr. Reitz stated it may be required to be lowered due to the municipal airport in Sanford. He is awaiting their response. In reviewing and considering approval of the CUP, the Board must find that all of the findings of facts shall be supported. Per the Zoning Ordinance, "In considering an application for a conditional use permit or revision to a CUP, the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done. If the Board should find, after public hearing, the proposed conditional use permit or revision thereof should not be granted, such proposed permit shall be denied."

Findings are as follows:

Finding 1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located. The use is allowable with approval of a conditional use permit in the Ind-H Heavy Industrial zoning district. No errors are claimed. **It is the opinion of planning staff this finding is satisfied**

Finding 2 – The requested conditional use permit or revision to the existing permit is either essential or desirable for the public convenience or welfare. By allowing the new tower, emergency services communications will be enhanced to better serve the citizens of the county. The new tower is needed has part of the system upgrade for enhanced radio technology which in turn improves communications to emergency personnel. The taller towers are needed to provide adequate coverage that does not currently exist. The tower will also provide space for up to three colocations for telecommunications providers which will has the potential to enhance cell services in these areas as well. **It is planning staff opinion this finding is satisfied.**

Finding 3 – The requested permit or revision to the existing permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community. The Communications Tower Ordinance includes a 1.5 mile separation between communication towers unless additional justification is provided. The closest tower is 1.68 miles and is located on a water tower which can be seen on the maps provided. There will be no noise generated from the tower site. The tower is proposed to be a total of 350 feet and will require all regulated lighting as controlled by the FAA which are red blinking at night and white blinking during the day. This project will replace outdated radio systems which no longer meet the need of public safety agencies in the county. These towers are vital and will provide coverage to all areas of the county to better serve residents. Per the report from Pyramid Network Services, there are no historical structures or areas that require preservation. The tower will be constructed with a 0% fall zone. **It is planning staff opinion this finding is satisfied.**

Finding 4 – The requested permit will be or remain consistent with the objectives of the Plan Chatham comprehensive land use plan. In November 2017, the CCBOC adopted the Plan Chatham. The county is among the fastest growing counties in the state and the population increase is resulting increased government

services. One area of most importance is emergency services. On page 21 of the Plan, it states the county is 708 square miles and takes at least one hour to drive from the southwestern corner to the northeastern corner. This is one reason emergency radio communications is vital. Page 43 Objectives encourages becoming more resilient by mitigating, responding, and adapting to emerging threats. One such way noted is to improve emergency response. These new communications towers are expected to significantly improve county-wide radio communications in order to dispatch emergency services personnel responding to various needs of its citizens. The system will also be able to better coordinate communications between different agencies. Page 138 Utilities and Public Services, Recommendation 01, states under Utility Policy 1 to ensure adequate utilities and public services are being developed to support the desired development patterns. **It is planning staff opinion this finding is satisfied.**

Finding 5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County’s plans, policies, and regulations. Although there is floodable area noted on the property the tower location is over 200 feet from the closest flood mapped area. There will be no county water or septic needed for this site. A service road will be provided on site for maintenance of the tower. Stormwater and Erosion Control will be coordinated through county and/or state regulations. No adverse traffic will be generated from this project. **It is planning staff opinion this finding is satisfied.**

Based on all five findings being supported, planning staff supports the CUP revision request.

Ms. Plummer stated in closing the Planning Board has up to three meetings in which to make a recommendation to the Board of Commissioners. The following conditions are provided for consideration if recommended for approval:

Site Specific Conditions

1. None

Standard Site Conditions

2. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place. These include but are not limited to landscaping, lighting, signage, parking, building construction, etc.
3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Land and Water Resources, Environmental Health Division, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department to the initiation of the operation/business.

Standard Administrative Conditions:

4. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspections.
5. Continued Validity – The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditional listed above.

6. Non-Severability – If any of the above conditions is held to be invalid, this approval in it's entirety shall be void.
7. Non-Waiver – Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

Board Discussion followed and some items discussed were as follows:

- Ms. Weakley asked if these projects have to complete the full C.U.P. application. Ms. Plummer stated yes, that was part of the change in the table of permitted uses. Ms. Weakley stated she didn't see the responses in her packet for the five findings. Ms. Plummer stated she had a few issues with the submittals and it came in as a separate document. Ms. Weakley asked, why is a cell tower proposed for a low spot, wouldn't they be normally placed in a higher site. Mr. Reitz stated that site was chosen because it is a good position for the Moncure Fire Department, plus they already own the property and that part of the County a tower is needed because it almost has zero radio coverage. Ms. Weakley stated if it was higher ground then the tower could have been shorter. Mr. Reitz stated yes, and they did hear back from the FAA and they are okay with the 350' tower. Ms. Weakley also asked if the County is renting space to co-locators. Mr. Reitz stated that will be looked at in the future and the additional three co-locators would follow County practices. Chair Lucier stated there is a cell tower ordinance that requires them to follow practices and co-location minimizes the number of towers needed.

Motion to approve this item made by Mr. Arthur, second by Ms. Moose. Chair Lucier completed a roll call vote and the motion to approve this item and passed 10-0, unanimously.

2. A quasi-judicial public hearing for a request by Chatham County Emergency Management on a conditional use permit for a new proposed 300 foot communications tower to be located at the new proposed Emergency Operations Center, Parcel No. 12481, 188 Innovation Way, being approximately 272 acres, Hickory Mountain Township.

Ms. Plummer stated a quasi-judicial public hearing was held August 17, 2020. Planning staff presented the application and Emergency Operations Director, Mike Reitz, commented. No other persons spoke. In the Spring of 2019, the Chatham County Board of Commissioners approved a text amendment to allow communication towers for purposes of emergency facilities to exceed the 300 foot limit to allow them up to 400 feet. The Board also approved a capital improvement budget item for five such towers to be located in various areas of the county where communication issues exist and to be able to upgrade radio equipment in order to keep up to date with the new technology for emergency services. Since then Chatham County has purchased a 200+ acre tract with future plans for a new Emergency Operations Center, school administration building, and potentially a government services building. The tract will be subdivided at a later date for each prospective user and the communications tower will be located on the new parcel for the EOC. This tower is proposed to be 300 feet.

In reviewing and considering approval of the CUP, the Board must find that all of the findings of facts shall be supported. Per the Zoning Ordinance, "In considering an application for a conditional use permit or revision to a CUP, the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done. If the Board should find, after public hearing, the proposed conditional use permit or revision thereof should not be granted, such proposed permit shall be denied."

Findings are as follows:

Finding 1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located. The use under the Conditional Use Permit option is allowable in the R-1 Residential zoning district. No errors are claimed. **It is planning staff opinion this finding is satisfied.**

Finding 2 – The requested conditional use permit or revision to the existing permit is either essential or desirable for the public convenience or welfare. By allowing the new tower, emergency services communications will be enhanced to better serve the citizens of the county. The new tower is needed has part of the system upgrade for enhanced radio technology which in turn improves communications to emergency personnel. The taller towers are needed to provide adequate coverage that does not currently exist. The tower will also provide space for up to three colocations for telecommunications providers which will has the potential to enhance cell services in these areas as well. **It is planning staff opinion this finding is satisfied.**

Finding 3 – The requested permit or revision to the existing permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community. A photo simulation was provided in order to show no adverse impacts on the surrounding area. The area is wooded and will be located well away from US 64. A study was also conducted by Pyramid Network Services which was also verified by the Chatham County Historical Association that there are no historical structures on this property. There is one on an adjacent parcel per Bev Wiggins with the association. This tower is to be constructed with a 0' fall zone so adjacent properties should not be affected if the tower fails. There will be no noise generated from the tower site. The tower is proposed to be a total of 300 feet and will require all regulated lighting as controlled by the FAA which are red blinking at night and white blinking during the day. This project will replace outdated radio systems which no longer meet the need of public safety agencies in the county. These towers are vital and will provide coverage to all areas of the county to serve residents. The Communications Tower Ordinance includes a 1.5 mile separation between communication towers unless additional justification is provided. This tower is 1.49 miles from another tower; however that tower is not capable of meeting needs of emergency operations. **It is planning staff opinion this finding is satisfied.**

Finding 4 – The requested permit will be or remain consistent with the objectives of the Plan Chatham comprehensive land use plan. In November 2017, the Commissioners adopted Plan Chatham. The county is among the fastest growing counties in the state and the population increase is resulting increased government services. One area of most importance is emergency services. On page 21 of the Plan, it states the county is 708 square miles and takes at least one hour to drive from the southwestern corner to the northeastern corner. This is one reason emergency radio communications is vital. Page 43 Objectives encourages becoming more resilient by mitigating, responding, and adapting to emerging threats. One such way noted is to improve emergency response. These new communications towers are expected to significantly improve county-wide radio communications in order to dispatch emergency services personnel responding to various needs of its citizens. The system will also be able to better coordinate communications between different agencies. Page 138 Utilities and Public Services, Recommendation 01, states under Utility Policy 1 to ensure adequate utilities and public services are being developed to support the desired development patterns. **It is planning staff opinion this finding is satisfied.**

Finding 5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County's plans, policies, and regulations.

There will be no county water or septic needed for this site. Access to the site will be by private road, 15 feet wide for vehicle access when needed. Stormwater and Erosion Control will be coordinated through county and/or state regulations. No adverse traffic anticipated to be generated from this project. **It is planning staff opinion this finding is satisfied.**

Based on all five findings being supported, planning staff supports the conditional use permit request.

Ms. Plummer stated in closing the Planning Board has up to three meetings in which to make a recommendation to the Board of Commissioners. The following conditions are provided for consideration if recommended for approval:

Site Specific Conditions

1. None

Standard Site Conditions

2. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place. These include but are not limited to landscaping, lighting, signage, parking, building construction, etc.
3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Land and Water Resources, Environmental Health Division, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department to the initiation of the operation/business.

Standard Administrative Conditions:

4. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspections.
5. Continued Validity – The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditional listed above.
6. Non-Severability – If any of the above conditions is held to be invalid, this approval in it's entirety shall be void.
7. Non-Waiver – Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

Board Discussion followed and some items discussed were as follows:

- Mr. Arthur asked if this location is near the landfill. Ms. Plummer stated yes, it is near the detention center and animal shelter. Chair Lucier stated that is where the Emergency Operations Center will be located.
- Vice-Chair Siverson asked if parcel 12486 was also owned by the County. Ms. Plummer stated no, and there have been no negative input from the neighbors and the community meetings went well also. Vice-Chair Siverson also asked about the failure or malfunction that lasts more than 30 minutes of the light on top of the tower, how will it be known if the light has gone out or malfunctioned for more than 30 minutes. Mr. Reitz stated the light will be connected to a monitoring system that the emergency staff will have access to and will be notified if the light is not operating.

- Ms. Weakley stated she was not aware that the County had purchased this parcel and her concern is the conservation area designation and saw that the cell tower is outside of the conservation portion, but is located in the agricultural portion. Mr. Sullivan pulled up the conservation viewer on his computer. Ms. Weakley stated she is in support of this cell tower, but Harlands Creek on this parcel is a significant connector and hopes that the County, when they develop this site, takes that into consideration. Ms. Weakley stated the aerial photos in 2017 shows it was forested, but in 2019 it had been logged, was it logged before the County bought the land? Mr. Sullivan stated portions were logged before the County purchased, but the timber rights have been sold so there has been logging since the County purchased the land. That was part of the agreement and the County knew that when the land was purchased. Ms. Weakley stated she hopes as the County is developing site that they are sensitive to those sensitive areas because we expect that of developers and we should expect that of ourselves also.

Mr. Sullivan stated there had already been some evaluation of the stream and water features and even though there is no subdivision occurring, there is a stream that has been identified that doesn't show up on USGS or NRCS, but has already been accounted for and definitely a major consideration as it is being evaluated. Chair Lucier stated the Agriculture Center is located on 92 acres and the County owns all that land as well, there is a lot of area for the County to expand.

Motion made by Vice-Chair Siverson to approve this item, second by Mr. Arthur. Chair Lucier completed a roll call vote and the motion to approve this item was approved 10-0 unanimously.

IX. NEW BUSINESS:

X. BOARD MEMBERS ITEMS:

Chair Lucier stated he had a conversation with Mr. Ray Bode with the Environmental Review Advisory Committee (ERAC) and with Ms. Weakley about setting up liaisons with ERAC because there is an connection with a lot of the items the Planning Board does and what ERAC does, an example is the mixed use zoning changes proposed by the Vickers Bennett group and it might be important to keep abreast to what ERAC is doing and they want to keep abreast to what the Planning Board is doing. At the next meeting there will be a proposal for the Board to consider on establishing the liaisons.

1. Update from the Planning Board liaisons.

- Chair Lucier stated the Pittsboro Planning Board will be held this coming Monday and has nothing to report.
- Vice-Chair Siverson stated she had not been able to attend the virtual Siler City Planning Board. The Chatham County Planning Board subcommittee will have two representatives from the Agriculture Advisory Board as well as Mr. Lucier, Ms. Moose, Mr. Frazier, and Ms. Siverson as Chair. Mr. Frazier suggested we find someone from the development community to join in on the discussion as well. There will be discussion on setting up meeting dates as well. There might be someone who can speak with geological knowledge so we can understand groundwater supply in different parts of the

County. Mr. Sullivan stated Mr. Phil Bradley has already agreed to help out the subcommittee and also provide some information from USGS and DEQ.

- Ms. Moose stated the Agriculture Advisory Board is reviewing applications for new Board members. They are coordinating ideas on scheduling guest speakers and they are very appreciative about the subcommittee and the Planning Boards effort.
- Ms. Weakley stated the Chatham Conservation Partnership has nothing new to report at this time.

XI. PLANNING DIRECTOR'S REPORTS:

Mr. Sullivan reported on the following:

1. *Minor Subdivisions/Exempt Maps* - Information was included in tonight's agenda packet for your review.
2. *Public Hearing for August BOC meeting.*
3. *UDO update.*

Chair Lucier asked the Planning Board members if he should write a brief statement about the reasons for denial for the final plats of Phase 13 section 3 and Phase 14 of Briar Chapel. The Board members agreed to write a short statement.

XII. ADJOURNMENT:

There being no further business, the meeting adjourned at 10:02 p.m.

Signed: _____ / _____
George Lucier, Chair Date

Attest: _____ / _____
Daniel Garrett, Clerk to the Board Date