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Vote on 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.

**...Abstract**

**Action Requested:**

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**Introduction and Background:**

**Zoning:** Conditional Use District / Compact Community

**Water System:** Public, Chatham County

**Sewer System:** Private wastewater treatment plant

**Subject to 100 year flood:** Floodable area in Phase 13 Section 3

**General Information:** Compact Community approved in 2005 for 2,389 dwelling units on 1,589 acres, permit revised in 2012, 2014 and 2017. Current number of dwelling units allowed based on the 2017 CUP amendment is 2650.

**Reviewed:** Under pre-2008 Subdivision Regulations. Current number of dwelling units allowed based on the 2017 CUP amendment is 2650.

**Discussion and Analysis:**

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 features 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.

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, PLA, 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 public input with concerns about the Briar Chapel wastewater treatment system 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.

September 1, 2020 Planning Board: The Planning Board meeting was held virtually on September 1, 2020 and the Board had to vote on recommendation due to the time limit in place in the Subdivision Regulations. During public input Liz Rolison, Tony Little, Rusty Field, Diane Crompton, Donna Sukkar, all residents of Briar Chapel, spoke about their concerns with the Briar Chapel private wastewater treatment plant. Don Medlin, Douglas Roberts, Gary Oakley, Brandi Wilson, and Ash Harrison residents of Half Dollar Road and Polks Landing Road spoke of their concerns with a bike and walking trails within Briar Chapel 100' wide perimeter buffer.

Nick Robinson, Attorney; Tanya Matzen, Vice President, Chris Seamster, PLA, and Mark Ashness, P.E. were present. Attorney Robinson presented the Board with a recap of August 4, 2020 meeting. He explained they had provided the Board with the minor corrections on the plat and application and the applicant has spent a significant amount of time seeking information from Old North State Water Company (ONSWC) and various consultants. ONSWC advised Briar Chapel they have contacted 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 few weeks. Permit timing is difficult to predict, but ONSWC's goal is to have the new line installed and connected by Thanksgiving.

Attorney Robinson responded to the public input concerns. He explained the issues with the wastewater treatment plant were highly technical and require expertise in the area; this is not a county staff level review; and that the NC Department of Environmental Quality regulates the wastewater treatment plant. Ms. Matzen addressed the bike and walking trail concerns. She explained that the bike and walking trail referenced during public input was an old trail proposal and NNP Briar Chapel had no intention to move forward with the trail plan and she would remove the map from website.

Board members discussion included why the wastewater treatment plant was turned over to ONSWC; 27 sewage spills within four years; providing wastewater treatment documents; repairs to the sewer line and if the lines are failing or if there's one defective section or a systemic problem; and failure to notify the County and the residents of the sewage spill violations.

Mr. Robinson explained that NNP Briar Chapel was not in the public utilities business, but was in the business for creating master planned communities. It was stated during public input that the wastewater system has had twenty-seven sewage spills within four years, a little under 80,000 gallons of sewage leaked, and fifteen (15) notices of violations. Mr. Robinson explained he isn't the correct person to answer the question, but doesn't dispute it. Board members asked if anyone on Briar Chapel's team knew if the figures were correct and there was no response. Mr. Robinson explained each time Briar Chapel have submitted plans they show where the

sewer lines are being placed, where the water lines are being placed, and submit the permits. Board members 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.

Mr. Ashness explained the CE Group has done a brief analysis over the last few weeks for Mr. John McDonald with Old North State. This is the original pump station and the force main in the project that goes back to the plant. They have determined this particular force main has had some hydraulic pressure issues that over time has caused the PVC pipe to fail. There will be a 14" force main that will be coming from the SD East pump station that is near pump station A and they are going to reroute the discharge from station A to the 14" force main. This is a ductile force main to the plant and is sized to accommodate more than required. Plans are currently being prepared and their hope is to have the plans finished in the next few weeks and submitted NCDEQ for a fast track approval. This should remedy the failure of the piping from the original force main.

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. He doesn't believe issues are systemic because there is a lot of elevation difference.

Board members expressed that there's a breach of the ordinance to not provide notice of the many sewage spill violations. Mr. Robinson commented that hopefully our relationship through the years of this project that we are not and have not ever tried to hide anything. If there is any element that hasn't been supplied, it has been inadvertent.

Mr. Robinson stated there is a Subdivision Ordinance, there is a Compact Community Ordinance, there is a Zoning Ordinance, there is a Watershed Protection Ordinance, and there is a Sediment and Erosion Control Ordinance and 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 and entitled to have under another one. If there is a deficiency in compliance with another ordinance, that doesn't mean you should recommend not granting them what their legally entitled to under a separate ordinance.

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

The subject property is located in an area designated as Compact Residential (Strategy 5.2) 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.

**Recommendation:**

The Planning Board unanimously recommends denial by a vote of 10-0. 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.