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Vote to approve a request by Zachary Fuller, PE on behalf of Swain Land & Timber, LLC for subdivision **First Plat** review and approval of **McBane Park Conservation Subdivision**, consisting of 149 lots on 161.97 acres, located off Old Graham Road, SR-1516, parcel #85448.

..ABSTRACT

Action Requested:

Vote to approve a request by Zachary Fuller, PE on behalf of Swain Land & Timber, LLC for subdivision **First Plat** review and approval of **McBane Park Conservation Subdivision**, consisting of 149 lots on 161.97 acres, located off Old Graham Road, SR-1516, parcel #85448.

Introduction & Background:

Zoning: R-1

Water System: Public Water (Aqua)

Sewer System: Public Wastewater (Aqua)

Subject to 100-year flood: No special flood hazard area within the development.

General Information: The subdivision process is a four (4) step process: Concept Plan, First Plat, Construction Plan, and Final Plat. The applicant has completed the community meeting and the Concept Plan review. This is a conservation subdivision and lot sizes, and setbacks vary, but the method of calculate net density is outlined in the Subdivision Regulation. Per Section 5.2 C (4) (a) "During a First Plat review, the first Planning Board meeting shall include a Public Hearing to receive comment on the proposed subdivision." Item (b) states "Following the Public Hearing, the Planning Board shall review the proposal, staff recommendation and public comments and indicate their recommendation for approval, disapproval or approval subject to modifications. If the Board recommends disapproval or approval subject to modifications, the necessary reasons or modifications will be specified in the minutes of the meeting."

Discussion & Analysis:

The request is for First Plat review and recommendation of McBane Park, consisting of 149 lots on 161.97 acres, located off Old Graham Road, S.R. 1516. A vicinity map showing the property location, attachment # 2, is included in the agenda packet. As stated above, the Planning Board has two (2) meeting to act on the proposal.

Section 7.7 of the Subdivision Regulations, Conservation Subdivision – Alternative Standards for Development states in part "As an alternative to conventional layouts, Chatham County encourages the preservation of large, contiguous blocks of land. When a project voluntarily preserves Conservation Space in accordance with this Section, a project can increase the number of units that would be allowed on the overall property by ten (10) percent. Calculations of the density bonus shall be based on the

applicable underlying land use regulations(s) dictating allowable development density.” Section 7.7 J. states in part “conservation subdivisions proposed for the purposes of sustaining existing on-site bona fide agricultural operations are entitled to a five (5) percent increase in permitted density (this in addition to the ten (10) percent density bonus)...” Please read the entire Section 7.7, Items A – N for a complete understanding of Conservation Subdivisions. Also, please refer to the Chatham County Conservation Subdivision Guidelines for Conservation Space Selection which is available on the Planning Department webpage under Ordinances and Regulations. A conservation subdivision requires that a minimum of 40% of the project area be retained as Conservation Space. A minimum of 80% of such Conservation Space shall be Natural Space and a maximum of 20% of the Conservation Space may be Open Space.

Density Calculations: The land required to be protected within a Conservation Subdivision under other regulatory provisions, i.e. riparian buffers and floodplain, is 12.46 acres. This amount (12.46 acres) was deducted from the total acreage of 161.97 acres to arrive at the net land available consisting of 149.51 acres. Based on the net land area the lot yield would be 137 lots and with the 10% density bonus would increase to 150 lots. The proposed project is 149 lots.

Conservation Space: Of the total project area of 161.97 acres, 64.79 acres is required to be in Conservation Space and the site plan indicates that 64.79 acres will be set aside. See the site plan for the breakdown and location of the Conservation Space. The developer allowed NC Natural Heritage Program to visit the proposed project prior to designing the subdivision layout. The area set aside for Conservation Space meets the requirement that 40% of the project area be retained as Conservation Space.

Natural Space: 80% of the Conservation Space is required to be Natural Space. The Conservation Space Guidelines states “Natural space is unimproved land in its naturally occurring state, or preserved to regenerate to its naturally occurring state, unaltered by human activity, and preserved to maintain or improve the natural, scenic, ecological, cultural, hydrological, or geological values of an area.” The site plan indicates this requirement will be met.

Open Space: A maximum of 20% of the Conservation Space may be Open Space, of the 64.79 acres designated as Conservation Space and the site plan indicates this will be met. The ‘Guidelines’ state “Open space, as defined in the Subdivision Ordinance, allows amenities such as recreational uses and some non-intrusive common uses (e.g. when land application is not the preferred means of wastewater disposal, community septic systems are allowed in Open Space areas). Open space should be located as close to proposed development as practicable, taking into account considerations such as public safety and soil suitability.” See Section 7.7 (D), Items 1 – 7 for allowed uses in Open Space related to Conservation Subdivisions. All land disturbing activities

associated with the Conservation Subdivision are subject to the full provisions of the Soil Erosion and Sedimentation Control Ordinance, regardless of the designated use or status of a given area.

Roadways: The roads are to be built with a 60-foot-wide travelway with a 20-foot-wide public right-of-way, will be approximately 2 miles in length, and are to be state maintained. An existing easement located near Lot 1 will be abandoned and relocated between Lots 37 and 38.

Historical: Bev Wiggins with Chatham County Historical Association stated a cultural resources review was completed in 2006 and noted: "Based on the proximity of these sites to the project boundary, an archaeological reconnaissance survey to determine whether there are any archaeologically significant sites located within the project boundary may be helpful." CCHA would like to see the reconnaissance survey completed before the area is disturbed. The request is not a regulatory of the subdivision regulations. North Carolina Department of Natural and Cultural Resources letter dated August 18, 2020, stated "We have conducted a review of the project and are aware of no historic resources which would be affected by the project. Therefore, we have no comment on the project as proposed." There is an old hunting cabin located on the property, the developer plans to remove the cabin.

Schools: Notification of the proposed development was provided to the Chatham County School System.

Environmental Impact Assessment: Due to the number of lots, an Environmental Impact Assessment (EIA) was required to be submitted and peer reviewed. The EIA dated February 18, 2021, and updated, May 10, 2021 was prepared WithersRavenel and peer reviewed by Johnson, Mirmiran & Thompson, Inc. (JMT). Per the EIA, Exhibit 27 noted that Carolina Darter, Carolina Ladle Crayfish, Septima's Clubtail, Cape Fear Shiner Buttercup Phacelia, Dry Mesic Basic Oak Hickory Forest, Dry Oak Hickory Forest, Mixed Moisture Hardpan Forest, and Upland Depression Swamp Forest has been documented in a one-mile radius of the site. The Carolina Darter was observed on the project site.

The developer engaged the NC Natural Heritage Program to visit the site and provide a survey report. Justin Robinson, Special Projects Botanist, and Judy Ratcliffe, Zoologist, visited the site in early 2020 and provided a report dated March 9, 2020 (the report is included as Exhibit 23 in the EIA). The report included that "it is recommended that the two rare to uncommon natural communities found within this project area (Upland Pool and Mixed Moisture Hardpan Forest) be conserved and periodically monitored for changes. Although no rare plants were observed in this survey, soils found in the project area are associated with rare plants and salamanders in adjacent counties." The report

also “recommends setting aside a 200 ft riparian buffer zone along Dry Creek to support the aquatic community and habitat condition of Dry Creek and the Haw River downstream.” The conservation subdivision layout follows the recommendation to protect the Upland pool and Mixed Moisture Hardpan Forest by including those areas in the Natural Space portion of the Conservation Space and the NCNPH has designated it as the Terrells Hardpan Natural Area. The developer has also provided an additional variable width buffer along Dry Creek, but not a continuous 200’ riparian buffer.

In the Conservation Subdivision Guidelines for Conservation Space Selection two maps are required to be submitted, a Fragmentation Map and an On-site Inventory Map. The Fragmentation map illustrates the project site and all land within one mile of its boundaries and is designed to assist the applicant in deciding where Conservation Space should generally be located to create connections with existing Natural Space or allow future Natural Space connections on adjacent properties. The Onsite Inventory Map is used as the “primary decision-making tool for the applicant in selecting specific areas to include in Conservation Space, and the County in issuing approvals. Data required to generate this map should be available on the Chatham County GIS and from on-site investigations. This can include information on existing landcover, proposed natural space preservation locations and acreages, topography, locations of streams, wetland, floodplains, and required buffers, adjacent natural areas, and cultural and historic resources. Watershed Protection Department staff has reviewed the maps and determined they are adequate to meet the submittal requirements.

Ownership / Management of Conservation Space: Section 7.7 (F) of the Subdivision Regulations requires that the applicant identify the current and intended future owners(s) of the Conservation Space and who will be responsible for maintaining the area / facilities. Per the Draft Conservation Management Plan the Natural Space and the Open Space will be maintained by the McBane Conservation Subdivision Homeowners Association. Section 7.7 (G) requires that a management plan for the Conservation Space be submitted to and approved by the County. A copy of the draft plan has been provided by the applicant. Per Section (G) “Upon initial approval of the management plan by the County, changes to the plan shall be allowed only when approved by the County Board of Commissioners.” Section (H) requires that the Conservation Space shall be protected in perpetuity by a binding legal document that is recorded with the deed upon review and approval by the County. The applicant has provided a draft copy of the deed which will convey the Conservation Space to the third party (homeowners association) and has included a draft copy of the Declarations of Covenants and Restrictions. Prior to final plat recordation, the county attorney shall review and approve the form of the Management Plan, the Declaration of Covenants and Restrictions, and the deed for the Conservation Space.

Trails: Trails are proposed to be rustic and located within the natural space of the project.

Community Meeting: A community meeting was held December 3, 2020, at Northwest District Park and virtually. Approximately eighteen people attended the meeting. Some concerns were drainage into Dry Creek, will the developer conserve more land along Dry Creek, will the lots be mass graded, will there be street lighting, would dry stormwater ponds be considered, property owner has numerous erosion control violations on adjacent property so how are we ensured the violations will not happen on the project, and can screening be added at the end of the cul-de-sac to limit car lighting to existing home. The applicant's response included that the stormwater ponds will treat runoff and provide detention pursuant to the county stormwater requirements. The proposed project will have minimal light pollution. The violations were isolated and an unfortunate incident that happened over the summer. They will investigate shrub screening and the existing buffer vegetation should eliminate the light pollution.

Technical Review Committee: The TRC met virtually on May 12, 2021, to review the First Plat submittal. The applicant Zachary Fuller and developer Hadley Swain Kirkland were present. Items discussed included some Native American artifacts may be present on the proposed project, the Dark family owned the property longer than the McBane's and would the developer consider using the Dark's name, NCNHP recommends a 200' wide buffer on Dry Creek and Watershed Protection agrees, trails need to cross perpendicular and a trail management plan will be needed, whether a water point will be located inside the subdivision, will there be fire hydrants, and if any of the crossings on the trails use a culvert a permit will be needed from the Army Corp of Engineers.

Septic: NC Aqua **Water:** NC Aqua

Road Name: The road names Loxley Drive, McBane Park Drive, Wynwood Drive, Southwood Lane, Barclay Lane, Stanton Ct., Galax Ct., Bradfield Ct., and Baywood Ct. have been approved by Chatham County Emergency Operations Office as acceptable for submittal to the Board of Commissioners for approval.

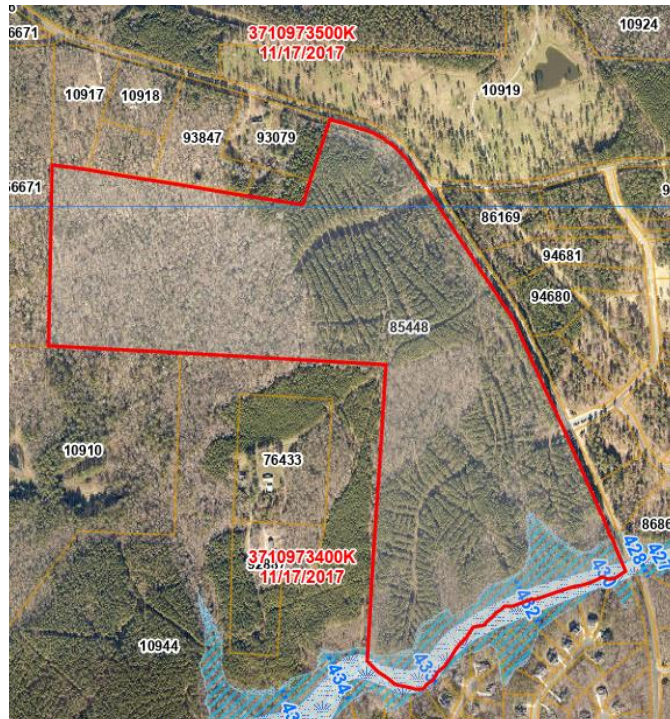
Water Features: Alyssa Ricci, submitted the Riparian Buffer Review Application along with a riparian buffer map, to Drew Blake, Senior Watershed Specialist for review. Mr. James Lastinger of the US Army Corps of Engineers completed an on-site determination on July 14, 2020 to verify wetlands. Mr. Blake and Ms. Ricci visited the site August 17, 2020 and May 3, 2021, the second site visit was to review the remaining portion of the project. Mr. Blake confirmation letter dated May 7, 2021 stated six (6) ephemeral streams, three (3) intermittent streams, one (1) perennial stream, and five (5) wetlands were identified. The six (6) ephemeral streams require a 30-ft buffer, the three

(3) intermittent streams require 50-ft buffers, the one (1) perennial stream require 100-ft buffer, and the five (5) wetlands require 50-ft buffers from all sides landward.

Phasing: The applicant has provided a phasing schedule stating that Construction Plan submittal for Phase 1 within 2 years of First Plat approval and Final Plat submittal for Phase 7 (final phase) by March 31, 2032.

Stormwater and Erosion Control: Four stormwater devices are proposed. As part of the stormwater permitting process additional information will be provided to the Watershed Protection Department. A Stormwater Permit and Sedimentation & Erosion Control Permit will be obtained from the Chatham County Watershed Protection Department prior to Construction Plan submittal. No land disturbing activity can commence on the property prior to obtaining Construction Plan approval.

Site Visit: Site visits were scheduled for May 20, 2021, for Planning Department staff, Watershed Protection Department staff and various Board members to attended. Zachary Fuller and Hadley Swain Kirkland were present to walk the property with staff and Board members and discuss the project. Areas viewed included wetlands, perennial streams, upland pool, intermittent streams, ephemeral streams, and proposed conservation spaces. Pictures of the site visit can be viewed on the Planning Department webpage at www.chathamcountync.gov/planning, Rezoning and Subdivision Cases, 2021. Questions raised during the site visit include whether the buffer along Old Graham Road would be undisturbed or timbered and graded, removing or relocating lots adjacent to Dry Creek to expand the riparian buffer, preserving isolated stands of mature trees within the development footprint as pocket parks by adjusting lot sizes, and providing informational signs and plant identifiers along the trails in the Natural Space to emphasize the uniqueness of the Terrells Hardpan Natural Area.



Planning Board June 1, 2021:

The Planning Board met June 1, 2021, to review this request and during the public hearing several adjacent property owners spoke of their concerns. The concerns included the developer not following regulations resulting in violations on other projects, light pollution with the proposed 149 homes, increased traffic, water quality, stormwater runoff, location of the homes along Dry Creek are high density and would like to see 1-3 acres size lots in the proposed area, would like a 200' wide buffer along Dry Creek, flooding on Dry Creek, and the use of contaminated water from Pittsboro.

Mr. Jason Bertoncino, Civil Engineer, explained the stormwater ponds are designed to capture 1 ½-inches of runoff from the roads and rooftops, this design will allow detention that will filter out pollutants, and the ponds are constructed for a 25-year storm event. A 25-year storm event is not a 100-year event but is similar in nature. The backyards of the homes located along Dry Creek would not be captured.

Board members had concerns with a stormwater pipe draining directly into Dry Creek, would like to see a 200' buffer along Dry Creek, voluntary open space, easements over the trail areas by Lots 21 & 22 and Lots 33 & 34, details on the wastewater treatment plan, if the open space or 25' wide buffer along Old Graham Road would be left natural, and if there will be a protective covenant for the trees and require the builders to only clear enough for home site and small garden.

Nick Robinson provided the details for the wastewater treatment plan. He stated the wastewater will be collected and delivered to and treated at the Chapel Ridge treatment plant. The Chapel Ridge plant is a North Carolina regulated utility and has not experienced any difficulty with its collection and treatment of wastewater since it has been in operation.

The water is provided by Aqua and there is an agreement that the town of Pittsboro will supply water to Aqua who then supplies water to the residents.

The developer agreed to place a 200' voluntary buffer along Dry Creek excluding the stormwater ponds, agreed to eliminate the drainage pipe into Dry Creek and agreed to eliminate the cul-de-sac by Lots 66-70. It was agreed to change the voluntary open space to voluntary natural space and place an easement over the trail areas by Lots 21 & 22 and Lots 33 & 34. The 25' wide buffer or open space along Old Graham Road will remain natural. Since the developer did not know the location of the pocket of trees within the development, the developer did not agree to the board's request for a protective covenant for trees.

Board members voted unanimously to postpone voting on the application until their July 6, 2021, meeting.

The developer provided a cover letter and a revised first plat. Per the cover letter dated June 21, 2021, provided by Mr. Zack Fuller, P.E., the following items were revised:

- 20' Greenway easement added along Lots 21 & 22 and Lots 33 and 34
- 3.70 acres voluntary open space renamed to voluntary natural space.
- Road names added to Sheet 1.0 and Sheet 2.0
- R009 cul-de-sac removed
- Drainage easement at R009 cul-de-sac removed.
- Lots 57-70 revised.
- Cul-de-sac at end of McBane Park Drive (formerly R002) shortened and road shifted north.
- 200' buffer provided behind Lots 61-70 along Dry Creek. A 200' buffer is not provided along Dry Creek where adjacent to SCM #3 and #4
- Grading and drainage along McBane Park Drive (formerly R002) revised
- Southwood Lane (formerly R004) was shortened and Lots 71-76 revised accordingly.

Planning Board Discussion:

The Planning Board met virtually July 6, 2021 and an adjacent property owner asked if non-residents of the development, be allowed to walk the trail. Staff explained there is no criteria in the Subdivision Regulations that requires the trail to be public and any

enforcement would be through the HOA. Board members discussion included; since the Dark family own the property longer than McBane would the developer consider acknowledging the Dark family, concerns with the development phasing lasting for ten years, stormwater pond (SCM) 3 and 4 be constructed outside of the 200' Dry Creek buffer, development of the lots and protection of trees, and the cumulative impacts to Dry Creek and hope the developer will include an educational component into their promotional material and restrictive covenants to inform residents to best management practices.

Mr. Zachary Fuller, P.E., Mr. Jason Bertoncino, Civil Engineer, Nick Robinson, Attorney, Hadley Swain Kirkland, Developer were present. Ms. Kirkland explained the subdivision name would not change, but they are open to honoring the Dark family in the natural space. There was a request for the stormwater ponds (SCM) 3 and 4 to remain outside the 100' riparian buffer and not be included in the voluntary 200' Dry Creek buffer. It was agreed by the board and developer, construction of the stormwater ponds (SCM) 3 and 4 can be within the voluntary portion of the 200' Dry Creek buffer. Developing the lots and the tree protection, Mr. Robinson explained, only the roadways will be cleared, and the lots will be left for the homeowners to clear as little as possible for their homes.

Staff explained, there are seven phases proposed for the project, the first phase must be submitted within 24 months after First Plat approval and the developer set their own schedule after. The proposed phases are phase one submitted by August 2023 and the final phase seven submitted by March 31, 2032.

How does this relate to the Comprehensive Plan:

Plan Chatham was adopted by the Board of Commissioners in November 2017 and is a comprehensive plan that provides strategic direction to address the most pressing needs in the county. These properties are in an area of the county identified as Rural on the Future Land Use and Conservation Plan Map. The description for rural includes single family on large lots or in a conservation subdivision, agriculture, home-based & small-scale businesses, greenway trails, farm buildings, and pastures. Conservation (Strategy 5.2) subdivisions are encouraged to protect nature resources while not disrupting agricultural practices. The developer also contacted the NC Natural Heritage Program to review their database for any rare species, important natural communities, natural areas, or conservation/managed areas within the project boundary and some rare species were identified in their records. It should be noted that Plan Chatham is not intended to be used as a regulatory tool but is a policy document. When reviewing subdivision applications, the boards can use the plan as a tool to identify future regulatory changes.

Recommendation:

The Planning Department and Planning Board by vote 9-1 recommends granting approval of the road names Loxley Drive, McBane Park Drive, Wynwood Drive, Southwood Lane, Barclay Lane, Stanton Ct., Galax Ct., Bradfield Ct., and Baywood Ct. and granting approval of subdivision First Plat for **McBane Park** with the following conditions:

1. The following development schedule shall apply: Construction Plan submittal for Phase 1 within 2 years of First Plat approval and Final Plat submittal for Phase 7 (final phase) by March 31, 2032.
2. Prior to final plat recordation, the county attorney shall review and approve the form of the Management Plan, the Declaration of Covenants and Restrictions, and the deed for the Conservation Space.
3. "Labeling of the "200 ft Dry Creek Buffer" shall be changed on the final plat to "200 ft Dry Creek Natural Space" except for construction and location of the SCM 3 and 4 as shown on the first plat and shall add a note to the final plat "200 ft Dry Creek Natural Space shall follow the regulations of the 100 ft riparian buffer." Chatham County shall enforce the requirements of the Chatham County Watershed Protection Ordinance within the inner 100-ft or to the furthest extent of the mapped floodplain, whichever is more restrictive. The McBane Subdivision Home Owners Association shall enforce the same requirements of the Chatham County Watershed Protection Ordinance for the remaining 100-ft of the buffer.