

Comments to Chatham County Board of Commissioners by Eileen Gavin McKenna on May 17, 2021

**When the BOC will consider Final Plat Approval for Phase 3 of The Legacy at Jordan Lake**

Good evening, my name is Eileen McKenna; my husband and I are property owners at The Legacy at Jordan Lake for the past ten years. I have no objection *per se* to the Final Plat for Phase 3 of Legacy, but many other homeowners and I have serious concerns about the developer Freehold's practices over the years. We recently sent them a ten-page letter detailing our grievances; a month later we received a terse reply that seems to be a stall tactic. We seek the Commissioners' help.

Since Freehold became declarant in 2014, it's had *exclusive control of the HOA*, to which each property owner now pays \$200/month. I'll mention just two specific complaints we have:

**First**, *the developer is repeatedly charging the HOA for the cost of capital improvements or repairs properly borne by them*, including conversion of stormwater retention ponds from temporary to permanent devices; repair of roads damaged by heavy construction vehicles; and cleanup of silt and flooding caused by failed erosion control.

**Second**, *the developer's failure to renew the state-required effluent spray permit* resulted in the golf course irrigation being turned off, and about \$200,000 in costs charged to the homeowners for required repairs and replacements of damaged turf and irrigation components, temporary conversion to expensive potable water, and more.

These are not routine wear and tear repairs properly borne by the homeowners, but expenses incurred as a result of the developer's actions or failures to act.

*Freehold has exhibited a pattern of neglect, negligence, misallocation of developer expenses, misrepresentations, improper accounting practices and more* which has resulted in "loans" from them to the HOA of more than a half-million dollars, which we homeowners are expected to repay.

**On behalf of Legacy homeowners, I ask three things of the County:**

**First**, please do not release any performance bonds until the entire property is thoroughly inspected, and the developer corrects deficiencies.

**Second**, condition any approval of their current application upon a substantive response to our letter and good-faith effort to resolve the disputes.

**Third**, deny any developer attempt to remove the vacant land known as Phase 7 (Parcel 89437) from the Legacy PUD.

Our declarant is part of a Boston real estate investment firm with communities nationwide, including seven in the Southeast managed by their VP in St. Augustine, FL. They are rarely on site, but we *residents* of the (eventual) 463 Legacy homes are here day in and out, for the long term.

My family's very glad that we chose NC 25 years ago. Chatham County schools launched our daughters to become the healthcare professionals they are today. My husband and I hope to enjoy many more years in our Legacy home, and ask that you do what you can to help us and our neighbors. Thank you.

**DATE: June 21, 2021**

**TO: Chatham County Board of Commissioners**

**RE: Public Input: The Legacy at Jordan Lake Final Plat Approval Request – Phase 3  
(Developer: F-L Legacy Owner, LLC, aka Freehold)**

Good evening, my name is Eileen McKenna, and I live at The Legacy at Jordan Lake. I first want to thank the Commissioners for taking the concerns of Legacy homeowners seriously at last month's meeting, where you declined to vote on developer Freehold's request for approval of the last phase of the project - the Phase 3 Final Plat. I respectfully ask that you do so once again this evening.

Almost three months after Legacy Owners Group notified Freehold by email and certified letter of our serious complaints, and proposed a sit-down meeting, that meeting has still not taken place. In fact, the only substantive communication from Freehold was an email/letter from their attorney delivered 13 minutes before your work session on May 17th, in which they essentially discounted or denied all of the grievances of which they'd been notified over six weeks earlier. We'd not submitted our March 30th letter for the public record at last month's Commissioners' meeting, hoping to reach a fair settlement without airing Freehold's dirty laundry. But since they put their response on the record, for completeness we are now doing the same with our original letter, as well as our June 4<sup>th</sup> reply to their attorney, Russell Killen.

Since last month's meeting, we've discovered serious new wrongdoings, including Freehold's violation of a NC law requiring that *homeowners* be elected to the HOA Board of Directors by no later than the ending date of declarant's control period, which was last December 31<sup>st</sup>. (See next page.) Almost six months later, the election process has not even been started by our HOA management company, who as late as last Wednesday had still not been instructed by Freehold to do so. This despite our request that the election process be initiated ASAP. To this day, Freehold holds onto exclusive control of our HOA.

We've also become aware of Freehold, in its marketing of The Legacy, falsely representing our school district, with no mention of Chatham County Schools, but the touting of the Chapel Hill-Carrboro School District as one of the best in the state, including the soon-to-be open Seaforth High School. This claim resides not only on their website (see below), but also in their full-color, professionally prepared sales brochure. At worst this is an intentional, fraudulent deception of prospective homebuyers; at best, it is one more indication of the developer's negligence and cluelessness as an "absentee landlord", so to speak.

We understand from the County attorney's remarks last month that the Board does not have jurisdiction over these disputes, and lacks legal grounds to deny Freehold's Final Plat approval. But you do have the ability to send them a clear message to sit down and deal fairly with Legacy owners with legitimate, serious grievances, by once again declining to vote on this matter. I thank you in advance for your consideration.

Eileen Gavin McKenna  
Rolling Meadows Lane

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ELECTION OF HOMEOWNERS TO HOA BOARD:

As stated in Legacy Owners Group June 4, 2021 letter to Russell Killen, attorney for developer Freehold (yellow highlights added):

"First, we have learned of an important issue that was not raised in our March 30 letter, namely, that Freehold has violated NC state law by failing to hold an election of homeowners to the HOA Board of Directors by December 31, 2020, the date their Class "B" declarant control ended. The NC Planned Community Act contains the following provision:

§47F-3-103(e) *Not later than the termination of any period of declarant control, the lot owners shall elect an executive board* of at least three members, at least a majority of whom shall be lot owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election. (Italics added)

You might counter that the Legacy By-Laws contain the following language:

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:  
... (b) *Not later than the first annual meeting occurring after the termination of the Class "B" Control Period, the Board shall be increased to five (5) directors and the Association shall hold an election at which the Class "A" Members shall be entitled to elect all five (5) directors....* (Italics added)

However, Section 6.3 ("Conflicts") of the By-Laws specifically states that *state law prevails* over the community provisions. *Since Declarant has already missed the Dec. 31, 2020 deadline, we hereby demand immediate measures be taken to hold election of five homeowners to the Board as soon as possible.*"

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SCHOOLS (yellow highlights added):

From developer Freehold's website: [www.legacyjordanlake.com/location/](http://www.legacyjordanlake.com/location/) :

**"Exceptional Schools**

When you live at Legacy, you can feel good about acclaimed schools and an educational environment where kids are excited, engaged, and empowered in learning. The Chapel Hill-Carrboro School District is one of the top ranked school districts in North Carolina. It has strict academic standards, so each child will confidently be college and career ready. In addition, a global perspective, embrace of technology, and STEM focus provides students with infinite possibilities today, and for the future. The district has announced the opening of Seaforth High School in 2021. And when they are ready, The University of North Carolina and North Carolina State University are among the top schools in the nation. They also have a cherished and time-honored athletic tradition with passionate fans."

From developer's printed sales brochure at Legacy clubhouse:

"The Chapel Hill-Carrboro School District is one of the best in North Carolina. ...The school district has announced the 2021 opening of Seaforth High School just a few miles away."

Commented [EGM1]:

From sales brochure on developer's website [www.legacyjordanlake.com/brochure/?page=4](http://www.legacyjordanlake.com/brochure/?page=4) :

"The Chapel Hill-Carrboro School District is one of the best in North Carolina. High academic standards and a STEM focus help kids reach higher than ever before at Seaforth High School, Margaret B. Pollard Middle School and North Chatham Elementary School."

