

The CC Planning Board, on June 3, 2024, voted 8-1 to recommend approval of the Ridgewood first plat application. Colbert voted in the minority:

## **MINORITY REPORT**

**Shelley Colbert /s/ 06/09/2024**

### **Ridgewood Subdivision First Plat Application**

#### **RECOMMENDATION:**

**The minority recommends that the Commissioners reject the current application. The application contains a material error in the identification of the current legal owner that is repeated throughout the application and on the proposed first plat itself. The minority is unpersuaded that the first plat application, including the proposed “Latest Revised First Plat” document (attached) meets the requirements of the ordinance for approval.**

During the planning board meeting, Ms. Colbert directly questioned the applicant’s representative, Sam Nye, PE, concerning the correct identification of the legal owner of the property. Mr. Nye was unable to refute the information in the public record or Colbert’s analysis of the error to her satisfaction. It is the applicant’s responsibility to ensure the accuracy of the application. Ms. Colbert found the error after noticing a discrepancy in Chatham public records linked through the county’s GIS portal, not through the application itself.

**The correct legal owner of the parcel as of the date of the planning board meeting and vote appears to be ITAC 525 LLC (“ITAC 525”),** a North Carolina Limited Liability Company, which acquired title as grantee via warranty deed transfer on November 6, 2023. No subsequent transfers of title (grant deed, warranty deed, quitclaim deed) have been recorded in Chatham County based on available public records in the Chatham County Register of Deeds (CCROD). A copy of the deed is attached.

**The first plat application and supporting documents, including the first plat subject to approval, incorrectly state that the legal owner of the parcel is Rutherglen Holdings LLC (“Rutherglen”).** No authoritative or relevant evidence supports that assertion. The recorded November 6, 2023 warranty deed contradicts the applicant’s assertions concerning the legal owner of the real property.

#### **BACKGROUND and DISCUSSION:**

1. As of the date of the planning board vote on June 3, 2024, all available public records in Chatham County, NC, where the real property parcel is located, support the conclusion that ITAC 525 is the legal owner of the parcel and that there appears to be a material error in the application. Misidentification of the legal owner of the property throughout the application, including ownership misidentification on the first plat subject to approval by the Board of Commissioners, is not a trivial error.

2. As part of the first plat checklist, the applicant submitted a “First Plat Comments” response to county staff on May 8, 2024. (linked, below) Items 14 and 15 on the checklist response attempted to address staff requests for the correct identification of the legal owner. In his response, Mr. Nye indicated that an unrecorded assignment of membership interest in an LLC, and a satisfaction of security instrument were provided in support of the identification of Rutherglen as the legal owner, and that Rutherglen was noted on the first plat document as the legal owner. **Mr. Nye is incorrect in relying on those documents to establish the legal owner of real property in the application.**

A membership interest in a Limited Liability Company (LLC) **is an intangible personal property interest**, and a transfer of an intangible personal property interest from one LLC to another LLC does not transfer legal ownership/title to real property. **Recorded security instruments in real property likewise do not transfer title/legal ownership**, including Deed(s) of Trust and Satisfaction(s) of Deed. Those instruments establish the priority of creditor interests, not legal ownership.

The unrecorded 12-19-2023 Rutherglen LLC membership assignment, the 11-06-2023 ITAC525/ Rutherglen Deed of Trust, and the 12-19-2023 Satisfaction of Deed of Trust did not transfer the legal ownership of real property in parcel 17357 in Chatham County. (attachments and links below)

3. As a result of erroneous reliance on those documents, the applicant/agent has misidentified the legal owner of the real property in the application, in multiple supporting documents, and on the proposed first plat. The application should not be approved unless and until the ownership errors (and irrelevant and incorrect assertions) in the application and the first plat are corrected.
4. **It is the applicant’s responsibility to ensure that information submitted in the application is correct.** Ms. Colbert was inadvertently alerted to the apparent errors in the Ridgewood application on the day of the planning board meeting, when she was refreshing her memory about the various agenda parcel locations by viewing parcels in the county’s GIS mapping application. GIS links directly to the CCROD database, where she noticed the *warranty deed* discrepancy that was not included in the application.

Colbert then reviewed the grantor/grantee index but found no additional transfers of title. Since the CCROD records are deemed reliable but not guaranteed, Ms. Colbert questioned Mr. Nye at the meeting to clarify if there were any transfers that may have been missed, but he was unable to provide any relevant evidence or authority that supports Rutherglen as the legal owner on the first plat, as noted above.

**Ms. Colbert would like to note for the commissioners that her primary purpose in submitting the minority report is to articulate and escalate the**

**technical details relating to the legal ownership and the validity of the application for further consideration, and possibly correction, prior to the commissioners' vote.** In her professional experience with similar discrepancies involving legal ownership and title of real property, it was always the case that the best practice to resolve an error or omission in the public record (if, indeed, an error or omission exists) is for the responsible party to correct it administratively upon its discovery whenever possible, and before things get intractably messy.

#### **Attachments and Links to Planning Department application and other documents**

- **“Latest Revised First Plat” (attachment, annotated)**
- **First Plat comment response letter from applicant [see items 14 and 15] (link)**  
<https://www.chathamcountync.gov/home/showpublisheddocument/67921/638512835808230000>
- **Warranty Deed from Contentnea to ITAC 525 [from CCROD] (attachment)**
- **Deed of Trust [from CCROD] (attachment)**
- **Satisfaction of Deed of Trust (link)**  
<https://www.chathamcountync.gov/home/showpublisheddocument/67925/638512835883430000>
- **Assignment of membership interest in LLC (link)**  
<https://www.chathamcountync.gov/home/showpublisheddocument/67927/638512836343270000>
- **Screenshot 6/3/2024 CCROD index for ITAC 525 (image attachment)**