



# Friends of Bolin Creek

*Protecting our Bolin Creek Watershed*

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March 23, 2022

Dear Chapel Hill Mayor Hemminger and Town Council Members,

Eight years ago, Friends of Bolin Creek petitioned the Town Council to clean up the coal ash on the Town property where the Police Headquarters presently resides. Since that time the Town has learned a great deal about the nature of the large deposit of coal ash and construction debris that was formed over the years and rediscovered in 2013 when the Town decided it wanted to sell the property.

Friends of Bolin Creek would prefer that the Town not proceed with the housing project portion of this proposal. We support development using a commercial scenario, which did not show the risk of exposure above certain levels. Here are our main concerns with the project:

First, we disagree with the Town's attorney's statement at the public information session that all risk will be eliminated by the capping process. A landfill, composed of construction debris and coal ash, on a steep slope is inherently unstable. Even with a soil cap and pavement over portions of the site, there will continue to be a future risk of exposure to ash and contaminated soil (for example, due to activities of children or pets, digging, erosion, or structural failure) that makes housing not suitable for this site. Coal ash buried adjacent to a steep slope that has been paved over for reuse can fail, as happened at the We Energies facility in Wisconsin. See news story and before and after photos in **Addendum #1** below. See news story here: <https://archive.jsonline.com/news/milwaukee/authorities-investigate-bluff-collapse-at-we-energies-plant-132929538.html/>

Second, the steep bank of ash above Bolin Creek is likely to continue to erode because additional soil is easily washed away, as evidenced by the continued daylighting of coal ash on the slope. The retaining wall will not prevent stormwater from mixing with existing exposed patches of coal ash from being carried down the hill in a liquid slurry to the Bolin Creek Greenway below. (See **Addendum #2** recent pictures of exposed ash)

Third, Bolin Creek is an impaired waterway on EPA's 303(d) list, and feeds into Jordan Lake, a drinking water supply for up to a million people. Contaminated ground water and eroded ash can potentially pollute that drinking water supply.

Fourth, climate experts know flooding catastrophes will be more frequent. Witness the on-site video tape of stormwater scouring the coal ash hillside during a storm on the Bolin Creek Greenway. The coal ash and steep slope where a retaining wall would be constructed sit alongside the floodplain of Bolin Creek. More violent and long lasting storms increase the chances of structural problems or coal ash becoming exposed. <https://youtu.be/QbCIK0hMUo0>

Finally, contrary to Mr. Johnson's assertion, we note that the current rules for coal ash in North Carolina would not allow coal ash as structural fill at this site, along with other rules that this project would not be able to meet if permits were sought today. See attached **Addendum #3**.

We remain concerned that constructing residential housing on top of a coal ash site is largely unprecedented. When asked about other examples of such a project elsewhere in the country, town staff and Belmont Sayre pointed to a housing development in Michigan, Mason Run. However, the developer of that project explains on its website that they did not build the housing units on top of coal ash, and instead removed the coal ash from those areas: "The coal ash wastes posed the most significant environmental challenge. *Over 150,000 cubic yards of material had to be removed from the home sites and replaced with an equivalent amount of clean fill.*" <https://www.sme-usa.com/project/from-urban-brownfield-to-thriving-500-home-community> That is not what is being proposed here; instead, the developer is proposing to build on top of the existing coal ash.

We are disappointed that a Council majority appears to have accepted the reassurances of the Town's outside attorney and Belmont Sayre, the prospective developer and manager of the project. We think these reassurances are not accurate – see 3/23 letter to Town Council from Pamela Schultz. It is notable that the consulting health risk experts hired by the Town did not attend the public information session, and that protecting public health is not mentioned once in the draft Memorandum of Understanding.

While the MOU document is not binding, it documents the Council's intentions, and we suggest adding language that set goals protective of human health that will serve as foundational principles for the binding permits and development agreements to follow. Therefore, we strongly urge the Town Council to renew their commitment to the highest standards needed to protect human health by making the following changes in the MOU:

***Page 4, "Regarding the brownfields agreement"***

*Present language*

"Belmont at its expense will be responsible for preparation of a development environmental management plan under the brownfields agreement, per DEQ requirement, with input from the Town's environmental consultants and counsel"

*Please ADD* "will be designed with additional safety margins to prevent any exposure to coal ash pollutants, even if this approach exceeds DEQ requirements."

Note that at the March 21 public information session, the town's attorney and representatives from Belmont Sayre stated that this was their intention and were invited to put it in writing.

***Page 6. "Site-wide Redevelopment and Remedial Tasks"***

Note: At the public information session, the representatives stated that the retaining wall would run the length of the property. Therefore, we suggest removing this limitation in the MOU: "Under the current concept plan, the retaining wall will be located on the private portion of the redeveloped Property".

*Please ADD:* “The retaining wall will be designed to ensure stability along the entirety of the steep slope. The Town will approve the final design of the retaining wall, and the parties will negotiate how to share the responsibility for maintaining the safety of the steep bank and wall areas in a manner protective of greenway users and Bolin Creek.”

Friends of Bolin Creek will continue to call for the highest standards possible to protect public health as the Council navigates the permits and binding agreements.

Thank you for your careful review of these recommendations.

Julie McClintock for  
Friends of Bolin Creek

Attachments  
Copies to FOBC, DEQ

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#1 Addendum: We Energies facility in Wisconsin, before and after photos



#2 Recent pictures of steep bank with exposed coal ash on surface.



#3 Addendum: 2014 NC Coal Ash Management Act (current rules)

<https://deq.nc.gov/about/divisions/waste-management/solid-waste-section/coal-ash-structural-fills>

- A liner,
- Leachate collection system,
- Cap,
- Groundwater monitoring system which is certified by a licensed geologist or professional engineer to be effective in providing early detection of any release of hazardous constituents from any point in a structural fill or leachate impoundment to the uppermost aquifer, so as to be protective of public health, safety, and welfare, the environment and natural resources.

- Sufficient dust control,
- Financial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring any corrective action required, and to satisfy any potential liability for accidental occurrences, and subsequent costs in response to an incident, and

**A structural fill must not be:**

- Within the 100-year floodplain; it shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity or result of washout of the waste to pose a hazard to human life, wildlife or land or water resources.
- Within four feet of the seasonal high ground water table.
- Within 25-feet of a property boundary, bedrock outcrop.
- Within 50-feet of a property boundary, wetland, bank of a perennial stream or other surface water body.
- **Within 300-feet of a private dwelling or well.**

#4 Addendum: Sources

**Childrens' health**

"Children have an increased risk of exposure to fly ash. Children have higher rates of respiration relative to adults, increased hand-to-mouth behavior, and a tendency to play near the ground, which increases exposure to ambient particulate matter.<sup>16,17</sup> "

<https://journals.sagepub.com/doi/full/10.1177/2333794X17720330>

<https://nicholas.duke.edu/news/new-tests-can-detect-tiny-toxic-particles-coal-ash-soil>

**Lake Norman**

<https://pulse.ncpolicywatch.org/2021/07/23/duke-university-scientists-found-a-new-way-to-trace-coal-ash-in-soil-spoiler-alert-its-found-near-lake-norman/#sthash.k00Xjoff.irEQKeXg.dpbs>