

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**August 15, 2022
6:00 p.m. – Huntersville Town Hall
101 Huntersville-Concord Road**

PRE-MEETING

The Huntersville Board of Commissioners held a Pre-meeting at Huntersville Town Hall, 101 Huntersville-Concord Road, at 5:15 p.m. on August 15, 2022

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Lance Munger, Derek Partee and Stacy Phillips. Commissioner Amber Kovacs was not present.

Mayor Bales called the Pre-meeting to order.

New Town Hall Update. Representatives from Edifice Creech & Associates presented options for a new town hall. *Refer to PowerPoint attached hereto as Exhibit No. 1.*

It was the general consensus of the Board to have an item on the next agenda for the Board to decide location for a new town hall.

ARPA Funds Update. Bobby Williams, Assistant Town Manager, provided update on American Rescue Plan Act (ARPA) Funds. *Refer to PowerPoint attached hereto as Exhibit No. 2.*

Jackie Huffman, Deputy Town Manager, noted that it is staff's recommendation to supplant the \$12 million in salaries for general government employees.

There being no further business, the Pre-meeting was adjourned.

**REGULAR MEETING
TOWN OF HUNTERSVILLE
BOARD OF COMMISSIONERS**

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Town Hall, 101 Huntersville-Concord Road, at 6:00 p.m. on August 15, 2022.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Lance Munger, Derek Partee and Stacy Phillips. Commissioner Amber Kovacs was not present.

Mayor Bales called the meeting to order.

Mayor Bales called for a moment of silence.

Mayor Bales led the Pledge of Allegiance.

STAFF QUESTIONS

Commissioner Partee requested update on the Town Center building.

Anthony Roberts, Town Manager, said a structural engineer will be coming to look at the building on Wednesday.

Mayor Bales requested an update on the roof of Town Hall.

Mr. Roberts said the staff is in the process of getting quotes to replace the roof.

Mayor Bales requested update on I-77 closures.

Stephen Trott, Director of Engineering, said the NCDOT has indicated the northbound ramp to Gilead Road will be closed starting August 19 for paving work.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

None

AGENDA CHANGES/ADOPTION OF THE AGENDA

Commissioner Kidwell made a motion to move Item 12.A Closed Session to the September 6, 2022 meeting at Town Hall, so all Board members can be present.

Commissioner Partee seconded motion.

Motion carried 5 to 0.

Commissioner Phillips made a motion to adopt the agenda, as amended.

Commissioner Boone seconded motion.

Motion carried 5 to 0.

CONSENT AGENDA

Approval of Minutes. Commissioner Phillips made a motion to approve the minutes of the June 6, 2022 Regular Town Board Meeting. Commissioner Kidwell seconded motion. Motion carried 5 to 0.

Progress Report on Mitigation Actions. Commissioner Phillips made a motion to receive as information the 2022 Progress Report on Mitigation Actions as Part of Implementation of Mecklenburg County Multi-Jurisdictional Hazard Mitigation Plan. Commissioner Kidwell seconded motion. Motion carried 5 to 0.

Tax Collector's Settlement and Order of Collection. Commissioner Phillips made a motion to approve Tax Collector's Settlement for Fiscal Year 2022 (Tax Year 2021) and adopt Order of Collection for Fiscal Year 2023 (Tax Year 2022). Commissioner Kidwell seconded motion. Motion carried 5 to 0.

Social District Ordinance. Commissioner Phillips made a motion to amend the Town's Social District Ordinance to incorporate legislative changes enacted by HB211 (S.L. 2022-49). Commissioner Kidwell seconded motion. Motion carried 5 to 0.

Joint Proclamation – End State of Emergency. Commissioner Phillips made a motion to adopt Joint Proclamation to End State of Emergency. Commissioner Kidwell seconded motion. Motion carried 5 to 0.

Resolution – Addendum to Cambridge Grove Stream Restoration Project. Commissioner Phillips made a motion to approve Addendum to the Interlocal Agreement for the Cambridge Grove Stream Restoration Project. Commissioner Kidwell seconded motion. Motion carried 5 to 0.

PUBLIC HEARINGS

Mayor Bales recognized Planning Board members present: Frank Gammon and Jodi Wright.

Soil Erosion and Sedimentation Control Ordinance. Mayor Bales called to order public hearing on suggested edits to the Town's Soil Erosion and Sedimentation Control Ordinance to reorganize and rename sections of the Ordinance, include qualifying language, and better align with legislative changes from HB489.

Emily Sloop, Town Attorney, said last September the Town Board adopted some edits to the Town Soil Erosion and Sedimentation Control Ordinance and that was to reflect legislative changes from HB489. Since that time in working with staff and also reviewing the state's model ordinance to reflect these edits, we have identified some areas of the ordinance that we felt could be further clarified to better assist staff with applying the new legislation from a practical standpoint.

Frank Gammon, Planning Board, said I know this is in the ordinance. Will it cause any changes in the Zoning Ordinance or Subdivision Ordinance.

Ms. Sloop said no, sir.

There being no further questions or comments, Mayor Bales closed the public hearing.

OTHER BUSINESS

Soil Erosion and Sedimentation Control Ordinance. Commissioner Boone made a motion to approve the edits to the Huntersville Soil Erosion and Sedimentation Control Ordinance that reflects the legislative changes resulting from HB489.

Commissioner Kidwell seconded motion.

Motion carried 5 to 0.

Soil Erosion and Sedimentation Control Ordinance attached hereto as Exhibit No. 3.

Bryton Townhomes – Parcel 2 Subdivision Sketch Plan. Mayor Bales said this hearing is a quasi-judicial hearing on the application submitted for the Bryton Townhomes – Parcel 2 Subdivision Sketch Plan. It's a request by the Northbridge, LLC to subdivide 3.114-acres located at the northeast intersection of Statesville Road and Bryton Ridge Parkway for a 25-unit townhome development.

Quasi-judicial hearings are evidentiary in nature.

Only parties with standing, including the applicant, property owner, local government, and individuals who can show they will suffer special damages have the right to participate fully in the hearing.

Special damages must be particularized, separate, and distinct from damages to the public at large. Special damages are a fact-specific inquiry. While proximity may bear weight in the determination of special damages, proximity in and of itself is insufficient to grant standing.

Parties may present evidence, call witnesses, and make legal arguments. Other individuals may, but are not required to be, allowed to speak as a witness; however, they will not be allowed to participate fully as a party, such as by questioning other witnesses, or by calling other persons to testify.

Witnesses must swear or affirm their testimony. General witness testimony is limited to facts, not personal preferences or opinions.

Certain topics require expert witnesses including projections about impacts on property values and traffic impacts. Individuals providing expert opinion testimony must be qualified as experts and provide the factual evidence upon which they base their expert opinion. Mere conclusory testimony lacking the foundation of the expert's opinion is insufficient to establish the existence or nonexistence of a fact or conclusion.

The Board must base quasi-judicial decisions upon competent, material, and substantial evidence in the record.

Competent evidence is evidence that is sufficiently trustworthy and reliable, and that is legally fit and acceptable for consideration by the Board. Speculative, irrelevant, or vague evidence; non-expert opinions as to something that requires an expert; and non-expected hearsay evidence will likely not be competent evidence.

Material evidence is evidence that shows that the standards will or will not be met.

Evidence is substantial if it is relevant and regarded by a reasonable person as sufficient to support a specific conclusion. Speculation, unsubstantiated fears of the community, or vague assertions do not constitute substantial evidence.

Quasi-judicial hearings are constrained by the standards in the ordinance and the facts presented.

Even though the Board may hear other evidence if it is not objected to, the Board should rely on competent, material, and substantial evidence in making its decision.

The Board will recognize the applicant as a party, as well as the property owner(s), if different than the applicant.

Are there other persons who believe they have standing to participate fully as a party? If so, please come forward at this time. However, if you do wish to participate as a party, please wait to come up until after we have identified parties with standing. If you wouldn't mind please just stating briefly why you believe you have standing.

Aaron Shier said I'm with Boardmand Land Partners the developer, representing the property owner.

Mayor Bales said you certainly do have standing.

Commissioner Munger said is it possible that since she started the entire parameters for quasi-judicial that she only has to read it once because we have two, or does she have to read it for the second one as well.

Emily Sloop, Town Attorney, said typically we read it into the record of each one of them. If we had started out saying that it would be said for both, it might have been, but it's best practice to read it for both.

Mayor Bales said The parties to this case are entitled to an impartial board. A board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter, or a close relationship with an affected person. Does any board member have any conflicts of interest to offer at tonight's meeting.

There were no disclosures.

The parties to this case have rights for any ex parte communication to be disclosed. Ex parte communication is any communication about the case outside of the hearing. That may be email communications, as well as conversations with parties, staff, or the general public. Does any board member have any ex parte communications to disclose?

There were no disclosures.

Mayor Bales said I would like to call on Planning staff for the presentation of their Staff Report.

Mayor Bales swore in David Peete and Aaron Shier.

Mayor Bales said before you begin, please state for the record your name, address and relation to the case as you come up. Mr. Peete, we'll go ahead and let you present.

David Peete, Principal Planner, said do you want the applicant to identify himself?

Mayor Bales said please.

Aaron Shier, Boardmand Land Partners, 1687 Half Pint Loop, Fort Mill, SC.

Mr. Peete said I want to enter the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 4.*

Very quickly, this property is 3.114 acres located along 115, just north of Bryton Ridge Parkway. It is part of the Bryton development. It was from the outset zoned Neighborhood Commercial, which is that dark bluish color.

This is just a quick context map to show you the location, located in this area right there. A couple of aerial shots. It's essentially is forested. It is surrounded by Bryton Ridge Parkway on the south, 115 on the west and the railroad on the east and then it comes to a pinch point with very little linear footage on the north side.

Twenty-five (25) townhomes are proposed in this particular subdivision. That would come out to eight (8) dwelling units per acre. You can see the parking spaces that are looking to be provided.

The project is oriented in this fashion. You can see that the majority of the townhomes front on 115. There is no connection to Bryton Ridge Parkway. That is just a turnaround that looks like it goes very close. There are five units that face onto Bryton Ridge Parkway. There is a private alley to rear to serve all units and there is additional perpendicular parking back there. Storm water will be on the very north edge.

The mixed-use center elements for this cover all of the Bryton project, but the intersection of Hambright and 115 creates the center of mixed-use center. You can see along the bottom that I have identified all of the references in the 2040 Community Plan for this subdivision that lends support. They are in your Staff Report and I'm certainly happy to revisit any of those if you would like to.

If you have any specific questions about the site plan, we can go over those. I will very quickly show you the CMS input report shown here. You can look on the bottom there that they are not identifying any significant impacts on this particular project.

The Staff Report found that this application was complete. There were a couple of bullets here talking about providing a landscape easement for the second row of trees on 115. Working with staff on the design of the urban open space there at the entrance to the alley and then all of the miscellaneous Town transportation, water quality plan, and other comments would be addressed.

We received an email this afternoon that indicated by the applicant, Mr. Shier, that they would satisfy all of those outstanding items. There are no outstanding items to go over.

At last month's Planning Board meeting on July 26, they recommended support for this subdivision by a unanimous vote for essentially all of the reasons that I just went over that our outlined in the Staff Report.

The applicant is here. Are there any questions of myself or the applicant.

Commissioner Munger said do we still have TOD zoning?

Mr. Peete said yes, we do.

Commissioner Munger said we recently changed our rules on subdivision sketch plans. Was the applicant afforded the opportunity to choose a non quasi-judicial path on this.

Mr. Peete said they were and they elected to stay the course because they would not be allowed 100 percent attached.

Commissioner Munger said is that because of the change to the TOD zoning?

Mr. Peete said that's because of the removal of the provision of distance from a designated rail station.

Commissioner Munger said one of the comments and I know it has been addressed but the outstanding transportation review comments. I did not see those anywhere.

Mr. Peete said those are in our electronic plan management system software. I could certainly provide those, but what those typically get to are crosswalk is not at a 90 degree set-up. Very miscellaneous. Our Engineering Department would certainly bring forward anything that would change the site plan such as a decel lane or maybe a curb cut that wouldn't be allowed, that kind of thing. But there are always minor transportation elements, you know the turn radius on a sidewalk or something like that. Again, not trying to get out of my realm there not being the engineer, but those are in our electronic plan review, what we call our redlines.

Commissioner Munger said one of the previous slides mentioned those have been addressed at this point.

Mr. Peete said they are willing to comply with every comment that they have been provided.

Commissioner Munger said during your Neighborhood Meeting and Q&A you mentioned the price point to begin in the upper 300's to low 400's. Is that still accurate?

Mr. Shier said that was I think two months ago. Pricing is all over the board right now, but we maintain that would be close to the price point for these townhomes.

Commissioner Munger said why didn't we connect to Bryton Ridge Parkway?

Mr. Shier said that would probably be an answer for the engineer.

Mr. Peete said I can give you the quick answer, although Mr. Trott is here as well. The geometry of coming off of Bryton Ridge Parkway from the east across the railroad tracks is highly elevated and to come down to have a curb cut would be not a safe condition. That has been analyzed. Mr. Shier's application is not the first that we have seen for this property since Bryton was originally proposed. That is something that we have definitely struggled and wrestled with, but another connection was just not something that could happen in a safe manner.

Commissioner Munger said so we felt this was the best way to do it safety.

Mr. Peete said with the number of units and it is right-in/right-out only, so there's just not a lot of movement that's going to happen at this development, so that's about as safe as you can get when you've got very limited options.

Commissioner Munger said I guess my only concern is if there's an incident anywhere along this street that blocks it, they are basically trapped in there. Would that be fair?

Mr. Peete said if you are cutting off that particular stretch, then that would probably be fair to say.

Commissioner Munger said but it's not a high concern then, would that be fair?

Mr. Peete said the fire marshal offered no comment about that, so no concern.

Commissioner Kidwell said I would like to thank Commissioner Munger for asking a connection question because I know how much this Board really wants the neighborhoods to connect to each other and to streets. CMS said they didn't see any issue. There was no significant impact. Has CMS ever seen significant impact on anything we presented to them in your history.

Mr. Peete said I don't want to get into that term that they use but they often will outline the majority of the projects have some bearing. Typically when you see most all of the numbers over 100 percent, they will say something. Again, I don't want to use those terms because I don't think that's what they actually say.

Commissioner Kidwell said we talked about the connection there and that's really all I have. I think it's a bit dangerous to have the way this is locked in one road in and one road out. I've known a lot of firemen, good friends of mine, and it just seems like that is a potential hazard in my opinion.

Mr. Peete said I do certainly understand that completely, but I will offer to you that somewhat recently the fire code was raised to 100 units before a second entrance is required. Previous to that, it was 30 and we're at 25. I fully understand your point, but the fire marshal would not have commented with the old code.

Commissioner Phillips said could you go back to the page that has the mixed-use center. Can we amend this because at the bottom it says "The Hamlet" for your report in the record.

Commissioner Partee said that is my fault, I can definitely do that.

Commissioner Partee said has there been any given foresight as to the chatter around the redline starting to get in talks with Norfolk Southern and possibly how that construction, if it does come to fruition, how that will impact the future residents of that particular area and will there be like a covenant to the lot to let them know that there's a possibility that there will be a commuter line coming up next to their particular residences and properties.

Mr. Peete said I'll have to leave the first part of your question to either Jack or Stephen if they feel so led, but the second part, as part of the Bryton development all of the Bryton development was set up to be within that capture area for the rail station, so that walk has been contemplated. That distance is found to be accessible. Just about all of the land to the east of this particular triangle has over time become apartments or townhomes and so the sidewalks are in, there's legs of greenway. There will be ways for them to get to that station, including walking straight down 115 and turning on Hambright. If that comes to fruition, they definitely would be within that capture area. The status of the rail, I don't have the latest information.

Mayor Bales said if I may just to piggyback off of that, I think it's more about making sure that the residents who, if this is approved, that the residents who are living that close to the line itself recognize that they are living that close to the line. Being notified. They should see it, but.....

Mr. Peete said it's going to be.....there's not a lot of topographic relief here, so it's something that you will know.

Mayor Bales said I would like to think that but just to make sure. I do have another question in regards to fire and turnaround and the fire trucks ability to make that turn and back in and the ability for them to get back out.

Mr. Peete said I will have to defer to the fire marshal's lack of comment. I believe that this motion will allow them to do what they need to do. It does have a good bit of length there.

Mr. Shier said if I could add to that. Our design engineer did as part of the sketch plan submittal on their software they provide turn radius design for a fire truck. That shows how a fire truck might maneuver. Again, this is an alley, so these lots also obviously are fronting on the public right-of-way. This is an alley behind the townhomes, so it's not a public street with no access behind the homes. The alley will actually give us a double access.

Mr. Peete said the fire marshal would tell you that the front of these units would be just as accessible as the back, so you are not limited to just one. This shows you the turning templates that they used to evaluate the plan. They do have two options from the front and the back.

Mayor Bales said are there any other questions for staff or the applicant?

Mayor Bales said hearing no additional questions or presentation of relevant facts, the Board will now begin deliberation. The evidentiary hearing remains open so that the Board may ask clarifying questions, if needed.

As a reminder, this Board is tasked with deciding if, based on competent, material, substantial evidence presented at the hearing before this Board, this proposal meets the applicable standards.

If the applicant meets their burden of producing competent, material, and substantial evidence that the standards in the ordinance will be met, the burden shifts to the other parties opposing, and on one has come to oppose this application, to show by competent, material, and substantial evidence that the standards in the ordinance will not be met.

Is there a motion regarding this request?

Commissioner Partee made a motion that the Town Board approve the Bryton Townhomes Parcel 2 Sketch Plan review. The Board finds the application to be complete. The application complies with applicable requirements. The application is in keeping with the Huntersville 2040 Plan, Section EOS 8.3, EOS 10, LU 2.1, LU 5.3, LU 7.1, LU 8.3, LU 9.1, LU 10.1, and T 5.1. The Town Board recommends approval of the sketch plan with the following conditions: (1) Work with staff on the design of the Urban Open Space during Preliminary Plan; (2) Provide landscape easement along NC 115 frontage for the second

row of street trees; (3) Town Transportation comments must be addressed; (4) Water quality concept plan must be approved by staff; and (5) all other plan comments are addressed.

Commissioner Munger seconded motion.

Mayor Bales called for the vote to approve Bryton – Parcel 2 Townhomes Subdivision Sketch Plan.

Motion carried 4 to 1, with Commissioner Kidwell opposed.

Maxwell Avenue Townhomes Subdivision Sketch Plan. Mayor Bales called to order evidentiary hearing on Maxwell Avenue Townhomes Subdivision Sketch Plan.

Mayor Bales said this hearing is a quasi-judicial hearing on the application submitted for a decision on Maxwell Avenue Townhomes Subdivision Sketch Plan, a request by NorthState Development to subdivide 2.79 acres located at southeast intersection of Old Statesville Road and Maxwell Avenue. This is for a 35-unit townhome development.

Quasi-judicial hearings are evidentiary in nature.

Only parties with standing, including the applicant, property owner, local government, and individuals who can show they will suffer special damages have the right to participate fully in the hearing.

Special damages must be particularized, separate, and distinct from damages to the public at large. Special damages are a fact-specific inquiry. While proximity may bear weight in the determination of special damages, proximity in and of itself is insufficient to grant standing.

Parties may present evidence, call witnesses, and make legal arguments. Other individuals may, but are not required to be, allowed to speak as a witness; however, they will not be allowed to participate fully as a party, such as by questioning other witnesses, or by calling other persons to testify.

Witnesses must swear or affirm their testimony. General witness testimony is limited to facts, not personal preferences or opinions.

Certain topics require expert witnesses including projections about impacts on property values and traffic impacts. Individuals providing expert opinion testimony must be qualified as experts and provide the factual evidence upon which they base their expert opinion. Mere conclusory testimony lacking the foundation of the expert's opinion is insufficient to establish the existence or nonexistence of a fact or conclusion.

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Material evidence is evidence that shows that the standards will or will not be met.

Evidence is substantial if it is relevant and regarded by a reasonable person as sufficient to support a specific conclusion. Speculation, unsubstantiated fears of the community, or vague assertions do not constitute substantial evidence.

Quasi-judicial hearings are constrained by the standards in the ordinance and the facts presented.

Even though the Board may hear other evidence if it is not objected to, the Board should rely on competent, material, and substantial evidence in making its decision.

The Board will recognize the applicant as a party, as well as the property owners, if different from the applicant.

Are there any persons who believe they have standing to fully participate as a party? If so, would you please come forward.

Stephen Trott, David Dupree, Colin Jenest, Susan Irvin came forward

Mayor Bales said I would like to have each person just come forward to the microphone and briefly state the reasons why you believe you have standing. Anyone other than the applicant must provide a specific reason that the proposed subdivision will affect them differently from the rest of the community.

David Dupree said I'm the applicant.

Colin Jenest said I'm with ColeJenest and Stone, civil engineer, expert witness.

Susan Irvin, Attorney, said I should introduce myself if I speak on behalf of the applicant.

Emily Sloop, Town Attorney, said what are you planning to speak on.

Ms. Irvin said I won't be testifying, but I might introduce someone.

Ms. Sloop said not at this time then.

The parties to this case are entitled to an impartial board. A Board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter, or a close relationship with an affected person. Does any Board member have any conflicts of interest to offer at tonight's meeting?

There were no disclosures.

Mayor Bales said the parties to this case have rights for any ex parte communication to be disclosed. Ex parte communication is any communication about the case outside of the hearing. That may be email communications, as well as conversations with parties, staff, or the general public. Does any Board member have any ex parte communications to disclose?

There were no disclosures.

Mayor Bales said we will now go ahead and swear our folks in.

Mayor Bales swore in David Peete, Stephen Trott, David Dupree and Colin Jenest.

Mayor Bales said before we begin, please state for the record your name, address and relation to the case. I would need everybody and let everyone know who you are, your address and why you are here this evening participating in the hearing.

Stephen Trott, Director of Engineering for the Town.

David Peete, Principal Planner, Town of Huntersville.

David Dupree, Principal with NorthState, 18825 West Catawba Avenue, Cornelius.

Susan Irvin, representing the applicant, 19726 Zion Street, Cornelius.

Colin Jenest, ColeJenest & Stone, speaking as an expert witness, 2714 Normandy Road, Charlotte.

David Peete, Principal Planner, said I enter the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 5.*

The site is located there in the hatching. This is zoned Town Center in the red and is located on N. Old Statesville Road to what we would call the front and then Maxwell Avenue would be to the rear. Maxwell Avenue actually goes around the north end and connects to N. Old Statesville Road.

Here's a bit of a context map. You can see some development pattern that exists around it and as you zoom in you can see that the parcels involved here all have older, single-family homes on substantial sized lots that are being redeveloped. The 2.79 acres that are accumulated here would look to have 35 townhomes. That's a density of 12.5 units per acre. You can see the parking relationship there and what they are looking to provide in the site plan.

The 2040 Community Plan identifies this as part of a mixed-use center. The references are there on the right side of the screen. We can visit those again if you would like to. The sketch plan is shown here. You can see that the units either front along N. Old Statesville Road, this part of Maxwell Avenue or this part of Maxwell Avenue and then these over here actually front an urban open space that is proposed there on the south edge.

The CMS report is shown here and due to the, you can see in the yellow there that they do express significant issue. I think while it only is looking to generate about six students, I think the capacity for the schools in this particular zone are well over 100 percent.

The recommendation here is the application is complete for this particular subdivision. The conditioned bullet items would include working with the applicant to save as many as the specimen trees as possible. They are compliant with their number, but we're looking to try to save a few more if possible that are identified. There are power lines along Old Statesville Road that we would like to as part of the subdivision process have those buried with working with Electricities on that. The urban open space type, looking to qualify that as a square and I'll show you the applicant's responses to all these items in

just a second. There is a sidewalk that's coming out of all the units that are on the southside and rather than have each one of those, the recommendation is that they would be consolidated to eliminate impervious area, as well as to sort of make it more aesthetically pleasing as part of a urban open space set-up. The last three bullets again get into miscellaneous Town transportation comments, water quality, as well as the other staff comments that may exist.

The recommendation would be that with that, staff would recommend that you could approve. The applicant emailed again this afternoon indicating that they would be able to comply with all of the items. I will let the applicants speak to the second bullet that they would like to speak with you about.

The Planning Board at the July meeting by unanimous vote recommended approval. The motion is there, but it is essentially the summary of the Staff Report that I gave just a moment ago.

Commissioner Munger said we recently modified TOD zoning to disallow 100 percent attached, but this contains 100 percent attached. How is that possible.

Mr. Peete said they were submitted prior to the change and they were given the option and the elected to continue forward rather than seek a different zoning.

Commissioner Munger said if they had chosen an administrative path, would they have been subject to the lack of TOD zoning. Would they have been subject to the change in TOD zoning i.e. would they not have been allowed to do 100 percent attached if they had chosen not to go quasi-judicial.

Mr. Peete said the ability to do it was again their distance from identified rail station. TOD does not exist in this area, and would not offer that provision.

Commissioner Munger said if they had chosen to not go quasi-judicial, they would have been allowed to do 100 percent attached, is that correct?

Mr. Peete said not to go quasi-judicial?

Commissioner Munger said if they weren't here and they decided administrative, would they have been allowed to do 100 percent attached.

Mr. Peete said the date of their application there was a provision that allowed them to do 100 percent attached relative to the identified rail station. That's what's allowing it.

Commissioner Munger said I'm just trying to figure out why they are here as opposed to have gone administrative. Was there a particular advantage to them having chosen quasi-judicial.

Mayor Bales swore in Jack Simoneau, Planning Director.

Jack Simoneau, Planning Director, said to answer your question the Town Board changed the ordinance to require no more than 30 percent attached units in the Town Center zone and took away the ability to go 100 percent attached if you are within ¼ mile of the transit station. This is within ¼ mile of a transit station. To answer your question, that's correct. They would not be able to have an administrative approval and do this development as it's proposed. I will also say when the Town Board adopted that standard to eliminate 100 percent attached within ¼ mile. It did so with a timeline. It didn't get

adopted that night. It was a several month process because people knew this was in process and there were already commitments made, so this was not unexpected. Does that answer your question?

Commissioner Munger said it absolutely does and I do hate catching staff off guard. I wish I could ask these questions prior, but you know with quasi-judicial, I'm not allowed to.

Mr. Peete said I do apologize. That is what I was indicating, but perhaps I didn't say it that way.

Commissioner Munger said my other question related to this, would the tree save percentage have changed if they went administrative.

Mr. Peete said no, that's based on the zoning.

Commissioner Munger said I see a dead end. Why didn't we connect?

Mr. Peete said connectivity is essentially something we focus on with Town streets, not with alleys. Everything internal is a private alley and we just needed to have turn around for fire and garbage and what have you. We would not look to connect an alley to a state road.

Commissioner Munger said when I went through some of your Neighborhood Meeting notes, one of the questions that was asked was what is your percentage of tree save. The answer that was given was 30 percent of specimen trees. That is accurate. My issue is when you were talking to residents, tell them the true story. It's 17 percent of all trees. When you say specimen trees, typical residents don't understand what a specimen tree is and what a non-specimen tree is. Just be more forthright in what you are saying to them. Say it's 17 percent, although we are saving 7 out of the 21 specimen trees. That's a more factual statement. Although what you said was not untrue, it was just slightly misleading. Going forward, just think about that. I literally just picked this up from the Neighborhood Meeting notes, so that's where I got the source of information. Quick question on where are we on sidewalk consolidation to reduce the impervious coverage.

Mr. Peete said the applicant stated that they are willing to do that.

Mayor Bales said any other questions for staff or the applicant? Seeing none, is there a motion.

Commissioner Munger made a motion to approve the Maxwell Avenue Townhome Subdivision Sketch Plan, in considering the application by NorthState Development for Maxwell Avenue Townhomes, the Town Board finds the application is complete, the plan complies with all applicable requirements and the plan is supported by the findings of fact outline in Parts 2 through 4 of the Staff Report, which are incorporated by reference herein based on the following conditions being met: (1) Applicant will continue to study opportunities to save additional trees; (2) applicant will work with staff to resolve the small maturing trees proposed under the power lines; (3) a compliant urban open space type be provided; (4) numerous townhome sidewalk connections be consolidated to create more open space and reduce unnecessary impervious coverage; (5) Town transportation comments will be addressed; (6) water quality concept plan approved by staff; (7) all other plan comments be addressed.

Commissioner Partee seconded motion.

Mayor Bales called for the vote.

Motion carried 4 to 1, with Commissioner Kidwell opposed.

Mayor Bales said staff will draft and I will sign a final written decision to reflect the vote and reasoning for this decision. Thank you to everyone attending the hearing. We welcome you to stay for the other items on the agenda. If you are planning to leave now, please do so quietly at this time.

Huntersville Fire Department Contract. The current Huntersville Fire Department contract to provide fire services expires in October 2022. This contract would renew that 5-year expiring contract for an additional 5-year period. The contract does provide that in the event that HFD no longer provides services to the Town, that the existing assets would be turned over to the Town at no additional cost to the Town.

Commissioner Kidwell said I would like to thank the Town Attorney for taking my emails and answering them. I know it was a lot of questions dealing with what happens if the Fire Department should say we are parting ways, what happens to the equipment. What if they sell it off sooner. She answered a lot of those questions for me and I appreciate that. One of the things that I wanted to discuss and my fellow Board members were on those emails as well, but indemnification. It says the Fire Department will indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, etc. My point in a couple of emails to the Town Attorney and copied on the Board was to put defend there – defend the Town, because if hypothetically and don't get me wrong, we have a great Fire Department, but people can sue people or organizations at will. They don't have to have a reason. Let's say someone's house burns and their pet is lost in the fire and they decide well, the Fire Department didn't get there fast enough and I'm suing you for \$100 million and I'm suing the Town for \$100 million, but they sue the Town and not the Fire Department, where is the Fire Department at in that. We're left holding the legal fees, we're left dealing with that, which I'm sure we'll outsource as we do most lawsuits. My question and the Town Attorney did say that we could put in there defend – have the Fire Department would defend, indemnify and hold harmless the Town, meaning they would help step us for those legal fees if such an act should occur. Now in the future that they've been the Fire Department, I don't think anything has ever happened, but we live in a weird and interesting time.

Mayor Bales said in regard to this potential word addition, what is your recommendation.

Emily Sloop, Town Attorney, said the previous fire services contract did not have an indemnification term and so I suggested that we add one of our standard indemnification terms from our standard Town contract. In those terms we don't include the word defend, because we include indemnify and hold harmless, but without the word defend that would not mean that they would have to be in charge of the litigation on our behalf. They would rather still have to indemnify us and hold us harmless in terms of any costs, claims, expenses, attorney fees, damages, etc., they just wouldn't be the ones actually defending, meaning litigating on our behalf, but rather we would retain the ability to litigate, we would just get reimbursed. That had been my suggestion, but again it's the Town Board's prerogative as to whether or not they would like to amend this term and include the word defend.

Mayor Bales said you are saying as it's currently constructed, we would retain the ability to defend ourselves, but then the cost of that would be sent over to the Fire Department, which would then reimburse.

Commissioner Partee said correct me if I'm wrong, but there are five fire districts in the county that have contracts similar to what we have presently.

Ms. Sloop said I don't know what the terms of the other fire service contracts are. I know that we have an interlocal with the county and that's pretty standardized terminology and the interlocal indemnity term does not include the word defend.

Commissioner Boone said I'm getting ready to make a motion and I don't have the word defend in my motion for Point No. 26. I'm going to go ahead and make my motion as I have written it out here and if a commissioner would like to amend that motion to add that, that's the route I think I should go.

Commissioner Boone made a motion to approve the contract with the Huntersville Fire Department to provide fire service. The current Fire Department contract expires in October 2022. This new contract would renew that 5-year expiring contract for an additional 5 years. This contract does provide that in the event the Huntersville Fire Department no longer provides service to the Town, that the existing assets would be turned over to the Town at no additional cost.

Commissioner Partee seconded motion. Motion carried 4 to 1, with Commissioner Kidwell opposed.

Contract attached hereto as Exhibit No. 6.

Highway 21 Greenway Tunnel Agreement. Michael Jaycocks, Parks & Recreation Director, explained the current Hwy 21/Gilead Road Improvements provide an at-grade crossing at a new traffic signal at the intersection of Hwy 21 and Arahova Drive. This crossing will connect the Downtown Greenway with the Torrence Creek Trib #2 via the new I-77 Greenway Tunnel. During the last couple of years, NCDOT staff, Town staff and Mecklenburg County staff have discussed the option of taking the Greenway under Hwy 21 instead of having the at-grade crossing at Arahova.

NCDOT has restarted the planning and design process for the next phase of Hwy 21 going north. Recently, NCDOT provided the Town with an option for a 10'x10' tunnel to go under Hwy 21 as part of the next phase of Hwy 21. This tunnel would be approximately 119' long. The cost to go under Hwy 21 is estimated at \$3.25 million. The Town would enter into an agreement with NCDOT that would require the Town to fund the Greenway Tunnel. The project completion timeline is late 2027- early 2028. NCDOT would not need the funds from the Town until the project was completed. The Town will have numerous opportunities to apply for CRTPO Funds to help pay for this project. NCDOT will need to know if the Town has an interest in moving forward with an agreement by this September. The Greenway, Trail and Bikeway Committee unanimously recommended that the Town move forward with the Greenway Tunnel under Hwy 21.

It was the general consensus of the Board to leave lighted crosswalks and not move forward with tunnel.

MAYOR AND COMMISSIONER REPORTS/CLOSING COMMENTS

Mayor Bales requested update on Huntersville-Concord Road closure.

Kevin Fox, Director of Public Works, noted as of today Huntersville-Concord is open temporarily just to the parking lots on both sides. It's going to be open during the daylight hours. The project is still on schedule to open prior to the August 26 deadline.

Mayor Bales – No Report

Commissioner Boone

- This week the Martin Truex Foundation opened the kids' emergency room at Novant Hospital in Huntersville.

Commissioner Kidwell

- Next meeting of the Charlotte Regional Transportation Planning Organization is Wednesday.
- The Raptor Center is celebrating the International Vulture Awareness Day on September 3.

Commissioner Phillips

- Provided update from Ada Jenkins Center.

Commissioner Partee

- August 13 I was invited to attend and speak at the Pakistani Independence Day Gala at Highland Creek Elementary School.
- Next meeting of the Greenway, Trail and Bikeway Commission is August 16.
- Announced promotions at the Huntersville Police Department.
- Advocate for gun safety.
- Bring awareness to Cool Kids Clubhouse.

Commissioner Munger

- Attended ribbon cutting at Angels and Sparrows resource center.
- Attended Huntersville Ordinances Advisory Board meeting on August 4.
- Provided update from the Public Art Commission.
- Consider supporting local non-profits.

There being no further comments, the meeting was adjourned.

Approved this the 6th day of September 2022.