

Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met virtually at 3:30 p.m. on Thursday, April 7, 2022.

Call to Order/Roll Call

Chairman Jones called the virtual meeting to order at 3:30 pm.

Present: M. Jones, T. Taylor, F. Gammon, A. Hallman, K. Jones, B. Skelly, T. Finlay (arrived at 3:39 p.m.), and H. Whittaker (arrived at 3:54 p.m.)

Non-Voting Members Present: Commissioner Munger, Emily Sloop, Jack Simoneau, Tracy Barron

Absent: J. Kluttz

Approval of Minutes

Item B1. Consider approval of the March 3, 2022, Regular Meeting Minutes

Motion: K. Jones made a Motion to Approve the March 3, 2022, minutes. A. Hallman seconded the motion.

Vote: The motion passed (7-0).

Public Comments

No comments

Action Agenda

Item D1: Consider a recommendation on Petition #TA22-03, a request by the Town of Huntersville Town Staff to amend Zoning Ordinance Articles 8.9.1 and Article 12.2.2 to update language regarding sight distance measurements in order to comply with State House Bill 489 (Attachment 2, 3)

N. Farber, Planner I provided a summary of the request to update the language regarding sight distance measurements to comply with State House Bill 489. Staff noted that this does not change how the Town measures sight distances, but it does change the wording to comply.

F. Gammon asked how often the easement changes and who is responsible for that. S. Trott, Town Engineer commented that the Engineering Department looks at each sight triangle on a case-by-case basis. Typically, this applies to Land Development and used to identify the necessary easement based on the existing speed and distances.

F. Gammon followed up and asked what changes when a road is widened. Staff confirmed that it is reevaluated when changes are made.

Motion: M. Jones made a Motion to Approve TA22-03, with the changes suggested by staff to comply with House Bill 489. T. Taylor seconded the motion.

Vote: The motion passed unanimously (7-0).

Item D2: Consideration of TA 22-05, a request by the Huntersville Town Board to remove the quasi-judicial process for major subdivision sketch plans and make it an administrative staff approval. There are also several minor edits related to State Statute references and rewording of provisions that are not substantive in nature. (Attachment 4, 5, 6, 7)

J. Simoneau, Planning Director provided a summary of the request from the Town Board based on the goal they set last year to reduce the number of quasi-judicial decisions that they have. Subsequently minor subdivision amendments became administrative decisions, a proposal has been submitted to remove solar panels from the special use permit process, and now we are considering changing subdivision approval to an administrative process. This amendment would apply to subdivision of property that is not being rezoned and that is proposing uses within the allowed density and open space requirements.

Staff reviewed the UNC School of Governments opinion regarding decision categories that may be considered. Administrative decisions based on clear objective standards (lot size, open space allocation, technical road specifications, etc.). If additional standards are applied that require judgment and discretion, then the decision must follow the quasi-judicial standards.

Staff shared a 2018 survey published by UNC School of Government which reported that 72% only use objective standards or an administrative process and 28% use discretionary standards or a quasi-judicial process for subdivision approval of the 275 jurisdictions reported.

In Huntersville there are currently three processes in subdivision approval. A sketch plan, preliminary plat, and final plat. The sketch plan is general in nature for the entire development with roads, lot layouts, concept plan for stormwater, etc. and this is the level that is considered quasi-judicial and decided by the Town Board. Once this is approved the remaining two levels are administratively approved unless there is a significant change.

Currently there are some subjective standards in our Subdivision Ordinance, so the process is quasi-judicial. An applicant submits a sketch plan application, holds a neighborhood meeting, the Planning Board makes a recommendation, and the Town Board holds a quasi-judicial hearing.

The proposed amendment is to modify the Subdivision Ordinance to contain all objective standards and follow an administrative process. An applicant submits a sketch plan application and staff is recommending that we will require the applicant to hold a neighborhood meeting. This informs the neighbors of what is coming. All further decisions will be based on objective standards and would be an administrative approval.

F. Gammon asked if the questions about the quasi-judicial could be separated from the questions about the Subdivision Ordinance and the primary factors to be considered in the discussion. Staff confirmed that the copies of the Ordinances provided with the agenda contain the existing language and the proposed amended stricken language.

Staff reviewed the proposed Subdivision Ordinance amendments and comments provided by M. Jones. Section 3.000 Decision Making and Administrative Bodies is where numerous changes begin because this is where the proposed change to objective standards and administrative decisions begin. The Planning Board is removed from making the recommendation and the Town Board would no longer approve subdivision sketch plans.

Staff agreed that Section 5.000 Amendments should include reference to the Huntersville Ordinance Advisory Board as a Board that can request amendments.

Section 6.200 General Guidelines and Requirements is the section that subjective items become a guide and objective items become a requirement.

Staff stated that Section 7.14 Easements is internally related to the development, for example, if Charlotte Water needs to extend a water line to your new development. That is a private property matter that is part of the applicant's responsibility and then the easement requirements apply.

M. Jones commented that if a development has an approval condition required from a third-party for something such as a right-of-way acquisition, a sight triangle on someone's property, easement, stormwater drainage or your development stops and the Town does not give another mitigation option such as fee in lieu, we will condemn the easement for you, then that creates a problem with due process and under general authority statute we are required to have our Ordinances comply with the NC and the United States Constitution. It goes against due process and is referenced in several cases.

E. Sloop responded that she emailed out the specific statute that deals with utility easements in subdivisions and as brought out this section of the Subdivision Ordinance is specific to utility easements, not easements for roads. Secondly the Town cannot condemn for private development it can only be for public purpose. E. Sloop then offered to send Board members the FAQs that were created for the Town Board that explains the difference between exactions related to subdivision approval specifically as they fall under 160D-804 and our separate grant of authority under 160D-701 for adequate public authorities. These are separate grants of authority along with Section 8.1 of the Town Charter which also allows for permissive mitigation as it relates to transportation network infrastructure.

M. Jones followed up that when this was reviewed in the TIA Subcommittee process it gave the last Town Attorney nervous related to this specific issue so he would like to make sure it is being looked at and considered because he believes it creates a risk to our Ordinances, Town and citizens.

Relative to Open Space and Recreation Areas, E. Sloop commented that the first sentence specifies that this is relative to the open space and/or recreation area that would otherwise be required by Article 7. The formula that is used is the same as the cities of Concord and Durham. The language here is related to the predevelopment property tax value of the actual subdivision

site not the pretax value only of the open area that would have been dedicated. If wordsmithing the language to make the meaning more clear needs to happen that can be adjusted.

M. Jones gave an example to state that the way it is written seems to imply that the fee is generated from the total site acreage versus the open space acreage. E. Sloop responded that the statutory language states the formula in 160D-804(D) that all funds received pursuant to this subsection shall be used for the development of the park, recreation, etc... and then it goes on and talks about being based on the tax value of the development, the actual subdivision. This is something that we can return to and improve the language.

F. Gammon asked what the basis is for determining the percentage of the tax value in the formula. E. Sloop responded that they consulted with the Town's Parks and Recreation Director, and a comparison of neighboring Town's to determine a percentage for Huntersville. While many Town's did not have the information readily available, this is what was found in the research conducted thus far and additional research can be conducted. Ultimately per the statute the formula must be based off of the value of the development or subdivision. F. Gammon stated that still leaves him with the question on whether the proposed 300% is the right number for our Town since there is no supporting information to demonstrate if that is high enough, too high or just right.

Staff reviewed Mature Trees and Vegetation. M. Jones asked what authority we are relying on to enforce this ordinance. Staff responded that 160D gives us the authority to preserve trees. Over the years legislators have proposed language to change the language to state that you cannot regulate the trees unless there is specific local legislation but those bills have been defeated so far. E. Sloop concurred that the general and specific authority to have those types of regulations and the email forwarded to the Board outlines that. M. Jones stated that he would follow up offline with E. Sloop relative to this one because there may be some other considerations based on UNC School of Government and general and specific authority case law.

Relative to Section 6.850 Traffic Impact Analysis, M. Jones asked what enabling authority was being used and if we have authority for exactions for by right plans other than fee in lieu. Staff responded that 160D and the Huntersville Charter are what make this possible. E. Sloop responded that she will forward to the Board the document that discusses this more in detail and outlines the difference between exactions specifically related to subdivision under 160D-804(D) and is it relates to our authority in Charter at Section 8.1 and also 160D-701. In short the exactions are mandatory, they are specific subdivision streets for the most part, recreation areas, utilities, etc. The TIA stems from 160D-701 which deals with adequate public infrastructure and it is more of a way for a developer not to have their development denied or delayed to a future date because a town does not have current infrastructure in place at the time of the proposed development. It is an avenue for developers to propose voluntarily to mitigate by bringing the traffic network infrastructure up to par with preestablished service levels. It is tricky to get through the nuances with this but the document may be helpful. Staff

commented that the in 2007 the Town of Huntersville adopted an Adequate Facility Ordinance and Traffic Impact Analysis ordinance and at the same time changed the state charter for the Town to state specifically we can do those things. It was somewhat implied in the statutes, but it was decided to include it in the state charter and that is the Huntersville Charter that is being referenced.

Commissioner Munger asked for clarification on the comment that TIA is voluntary versus mandatory. E. Sloop stated that in Article 14 an applicant is required to do a traffic impact analysis to determine whether with the addition of the proposed development we would have sufficient infrastructure in place. If the traffic impact analysis comes back and states the infrastructure is insufficient, that is when the developer can permissively choose whether or not they will be carrying out those changes or delaying or declining to move forward with their development. Developments are predominantly conditional rezonings which is a separate third grant of authority which allows for the Town to negotiate with developers to certain conditions that are mutually agreed upon.

M. Jones commented that the exactions proposed under these scenarios have to still stay within constitutional limits, i.e. rationally related, relatively proportional, and if conditions related do not meet those standards then merely proposing those can create a problem for the Town. Commissioner Munger responded that the proposals are run by the Town Attorney who is going to make sure we are within our rights. M. Jones responded that most TIA's are not conducted with those limits in mind which is what creates a problem. You conduct a TIA and it says to, for example, put in a turn lane a quarter-mile away and pay 100% of that, that crosses the line. Further discussion on this can be continued off-line.

Staff reviewed the summary of changes to the subdivision process and highlighted that we would be removing the subjective standards for objective standards. Staff is recommending that a neighborhood meeting still be held but for the purpose of letting the neighbors know what is being developed near them and to ask staff any questions that they may have. It would not be a point to negotiate things. If the subdivision meets the standards, then they are issued the permit but at least the meeting is occurring to notify the neighbors in advance.

F. Gammon asked if public notice procedures would remain the same since the neighborhood meeting would continue. Staff stated that the residents within the same distance of the proposed project would receive the notice of the neighborhood meeting but would no longer receive a notice of a Planning Board or Town Board meeting.

H. Whittaker asked this could lead to a situation where a neighbor finds out about a project and goes to a Commissioner to find out and then the Commissioner puts it on the Planning Department. Commissioner Munger responded that it's a complex situation and the goal of the Town Board is to not have their decisions limited to quasi-judicial with its very strict and limiting standards.

Commissioner Munger asked if there is anyway that the Town Board can continue to have subjective authority over approving a subdivision without it being quasi-judicial even if it was deferred to Planning Board. E. Sloop responded that the ordinance language must either be subjective which is quasi-judicial or objective which is administrative. It is her recommendation that if the standards become objective then it is not heard by the Town Board because they cannot deny the application if all standards are met and there is no need to add on the lengthy processing time.

Commissioner Munger commented that the quasi-judicial process is frustrating and the opportunity to negotiate by the Town Board could be improved upon to try to get better results. Staff showed an example of a proposed development that due to the ordinances being subjective, the approved development exceeded the minimum requirements. Commissioner Munger stated he is not sure if we should be doing away with quasi-judicial for this reason.

A. Hallman asked what 'standards that require judgment and discretion' can entail. Staff responded that the Subdivision Ordinance General Requirements, Conformity states 'shall' and has some leeway. Essentially if a development meets the basic requirements then there may be some adjustments to meet what are now requirements.

A. Hallman asked if the quasi-judicial process goes away then essentially the Town Board would not know or be involved in the process at all unless it was a rezoning or a special use permit. Staff confirmed that the Planning Board and Town Board members would receive the Neighborhood Meeting notice but otherwise that is correct the decision would be administrative.

F. Gammon asked if we do away with subdivision quasi-judicial proceedings if special use permits are also done away with. Staff stated it does not do away with special use permits.

Referencing the UNC School of Government quote on subdivision approval, F. Gammon asked if the question, is it in harmony with the area? Will it harm neighboring property values? Would still be considered in the administrative decision. Staff stated those are subjective questions and could not be considered administrative. The Subdivision Ordinance is calibrated to promote development that fits with the existing development and as displayed in the example on Mayes Road subdivision it doesn't always fit in.

F. Gammon asked what a neighbors recourse would be if a development harmed their property value. Staff stated there would be no recourse unless the development did not meet the objective standards. F. Gammon asked if it is still possible for someone's property value to be negatively affected. Staff responded that historically it is a person's subjective standard that it is harming their value, such as when a neighboring zoning district allows more density then their zoning district. Any perceived harm to their property value would have to be substantiated by an appraisal.

F. Gammon recommended that staff research how many civil suits have been brought against other municipalities that do not have the quasi-judicial process and what their outcomes are.

Staff responded that in their experience it is extraordinarily remote that a development approved under objective standards hurts a neighboring properties value. If there is a problem it is typically with the zoning allowing a density, lot size or use that creates an issue.

M. Jones commented that this is tricky because the Town cannot give a third-party veto power over another person's property and a Town can down zone a person's property as long as there is some practical use and value remaining. Staff confirmed that all areas currently zoned TR and R were once zoned OPS, Open Space district which allowed 2.5 units per acre and 15% open space. A 100-acre tract of land could have 250 dwelling units and 15 acres of open space. That property got zoned to Rural and was changed to .9 units per acre and 45% open space and TR to 1.5 units per acre and 40% open space. That affects the property.

M. Jones asked the Board if given the time how they would like to proceed with this item. Staff explained that the public hearing is scheduled for May 2, 2022, and the next Ordinance Advisory Board is May 5, 2022. The goal is to have the Ordinance Advisory Board recommendation prior to the Planning Board and Town Board take action.

M. Jones commented that he thinks it would be good to hear if the public comments on this discussion at the public hearing and to incorporate that into this Board's recommendation.

Motion: F. Gammon made a Motion to Defer TA 22-05 to the May 5, 2022, meeting. B. Skelly seconded the motion.

Vote: The motion passed unanimously (8-0).

Item 4C: 3. Election of Chair and Vice Chair

Nomination: B. Skelly nominated M. Jones as Chair. K. Jones seconded the nomination. The nomination passed (8-0).

Nomination: K. Jones nominated T. Taylor as Vice-Chair. F. Gammon seconded the nomination. The nomination passed (8-0).

Adjourn

Motion: A. Hallman made a Motion to Adjourn. H. Whittaker seconded the motion.

Vote: The motion passed unanimously (8-0).