

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, May 5, 2022.

Call to Order/Roll Call

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

Voting Members Present: M. Jones, T. Taylor, T. Finlay, F. Gammon, A. Hallman, K. Jones, J. Kluttz, B. Skelly, H. Whittaker

Non-Voting Members Present: Commissioner Munger, J. Simoneau, E. Sloop, T. Barron

Approval of Minutes

Item 2A. Consider approval of the April 7, 2022, Regular Meeting Minutes

Motion: B. Skelly made a Motion to Approve the April 7, 2022, minutes. A. Hallman seconded the motion.

Vote: The motion passed unanimously (9-0).

Public Comments

No comments.

Action Agenda

Item 4A: Consider a recommendation on TA22-05, a request by Huntersville Town Board to remove 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 that are rewording of provisions that are not substantive in nature.

J. Simoneau, Planning Director reviewed that this request is being proposed at the request of the Huntersville Town Board that would require extensive changes to the Subdivision Ordinance and Zoning Ordinance.

The Town Board continued the Public Hearing on this item to June 6, 2022. There were a lot of questions regarding this proposed change.

The School of Government states that the subdivision process must be either objective or if any standards are subjective, requiring judgment or discretion, then it must be quasi-judicial. The state statutes state that if the decision is administrative then it may be assigned to staff or any appointed Board. However, if the decision is quasi-judicial it has to be assigned to a governing Board, Planning Board or Board of Adjustments that is appointed pursuant to the chapter.

The UNC report from December 2020 containing the results of the 2018 survey showed that 72% of the 275 jurisdictions that were surveyed had only objective standards, 28% had subjective/discretionary standards.

Subdivision of land is a three-step process. The sketch plan is general in nature and reflects roads, lot layouts, and concepts for stormwater. The developer holds a neighborhood meeting. The Planning Board makes a recommendation and then it goes to the Town Board as a quasi-judicial decision. Once that subdivision is approved then the developer prepares a preliminary plan. Once that is administratively approved the infrastructure is installed and then the applicant returns for a final plat.

This proposal is to create objective standards for the subdivision sketch plan process, maintain the neighborhood meeting to notify nearby residents of what is being developed, and then administratively approve the development if it meets the standards.

Staff reviewed the current Section 6.200 General Requirements which are things the developer shall do. The proposed amendment would create a Section 6.200(A) Guidelines and a Section 6.200(B) Requirements.

Staff drew attention to the current Section 6.200, Item 1. Consistency with adopted public plans and policies which staff and the Legal department have reviewed as an item that could be moved to the proposed Section 6.200(B) Requirements. Additionally, any requests to modify traffic impact standards; variances, appeals, interpretation from the Subdivision Ordinance would continue as they are currently to be Town Board decisions.

Chairman Jones requested that Commissioner Munger relate a synopsis of the Town Board discussion related to this topic from the Town Board May 2, 2022, meeting. Commissioner Munger stated the Board struggles with this topic greatly. There is a desire to have some input as to what type of developments can be approved and have some negotiating ability and the difficulty of not having any discussions prior to the hearing causes a lot of angst among the Board and residents. Additionally, one of the issues is someone who wants to come before the Board during quasi-judicial must have a determination of standing which is not always clear. There has been discussion about moving these hearings to the Board of Adjustments which would allow the Town Board to have discussion prior to the hearing but they would have no say in how the Board of Adjustments decides and their decision is final.

It appears that there are three options related to the proposed amendment to the process. To either leave it with the Town Board as quasi-judicial, shift it to the Board of Adjustments as quasi-judicial, or join the 72% of the state and make it an administrative decision with objective standards and essentially if you check all the boxes, you can build it. Currently he has not formed an opinion as to what he thinks would be the best decision and he looks forward to hearing what the Ordinance Advisory Board discussion is on this.

F. Gammon restated that one of his questions was if the quasi-judicial process moved to the Board of Adjustments, if the Town Commissioners could then speak with constituents which from Commissioner Mungers comments sounded like they could though they would have no impact on the Board of Adjustments decision.

F. Gammon then asked if the hearing went to the Planning Board is there an appeal process to their decision? E. Sloop responded that it depends on if it remains quasi-judicial. All quasi-judicial appeals go to the court.

F. Gammon asked if the process becomes administrative if Planning Staff takes the Community Plan, Small Area Plan and impact upon residents into the consideration or if the standards are strictly the Ordinances. Staff confirmed that the current Section 6.200, Item 1. Consistency with adopted plans and policies, could be adjusted to fall under Section 6.200(B) General Requirements as something administration would consider in approval. This would include the Huntersville 2040 Community Plan.

E. Sloop followed up to point out that if this item is moved and becomes a General Requirement then there would only be two remaining items that would be Guidelines; Conformity and Relation to topography. All other standards would become objective decisions under General Requirements.

A. Hallman asked if the General Guidelines would be relevant if this process becomes administrative as the developer would not be required to apply those. Staff stated that there are recommendations within the ordinances to highlight their importance but the developer is not required to do them. E. Sloop stated that all proposed projects under conditional rezoning would be able to discuss/negotiate for changes in the development plan for that individual site. A. Hallman asked if this conditional rezonings are a legislative versus quasi-judicial process. E. Sloop confirmed that is correct and stated many proposed subdivisions complete a conditional rezoning first and then submit a subdivision plan.

A. Hallman asked how a developer would find themselves under a quasi-judicial hearing. Staff responded that the current standards are discretionary which requires the process to be quasi-judicial. E. Sloop stated that it is largely due to how some of these requirements are worded. She provided an example of the current language which states, "as so far as practicable" which is a subjective standard versus a objective standard such as "20 foot setback" that you either meet or you do not.

A. Hallman asked if sketch plans would still be required if the process is no longer quasi-judicial. Staff confirmed that we would still have the requirement, but it would be an objective approval either by staff, a technical review committee, or a Board. E. Sloop added that if the standards were objective and approved administratively then if the decision were appealed it would be run through the Board of Adjustment which hears all appeals of administrative decisions made by staff. If you have the administrative decision, go to the Town Board then it would no longer be appealed through the Board of Adjustment it would have to go straight to court. E. Sloop followed up and stated that if the standards become objective, we are not recommending that the decision be made by the Town Board as it would add time to a non-subjective decision, and it removes the Board of Adjustment appeal process.

A. Hallman asked for clarification on the differences between objective and subjective related to wiggle room/negotiations/conversations. E. Sloop stated that when it is purely objective the decision is black and white, either you meet it or you don't. There is no wiggle room in that. However, even when it is quasi-judicial in a by-right subdivision (meaning there is not a conditional rezoning), as long as they meet the requirements they must be approved. Under the current ordinances there really are only a few subjective standards and that is the only current place where there is any wiggle room.

Staff reviewed an example of Mayes Road subdivision and the neighborhood meeting requesting additional buffer due to the existing neighboring lots being much larger. The developer met the minimum requirement. Staff reviewed the conformity section of the ordinance which states it shall be most advantageous to neighborhood. The developer was advised that the neighbors would have standing and could come speak at the meeting to state they don't think the development complies with conformity and the developer would be risking being turned down for the entire development. The developer modified their plan and created the additional buffer.

H. Whittaker stated he has confidence that staff can handle what is being proposed. He expressed concern about the Town Board only being to approve and removing them from the decision altogether does not seem to be what the public would want.

H. Whittaker asked if either the existing or proposed process would allow more citizens to have input. Staff stated that it is their opinion that the neighbors have more input in a quasi-judicial process. E. Sloop stated that simply being a neighbor does not mean that they automatically have standing at an evidentiary hearing. Typically standing is simply the Town, the applicant or property owner, and someone who can prove special damages. Special damages must be proven with specificity. To fully participate in the quasi-judicial hearing the parties must have standing. The neighborhood meeting is an opportunity for the citizens to come out and speak and share their concerns which is a meeting format that is being recommended to continue even if the process becomes an administrative objective process.

K. Jones stated that she watched the quasi-judicial hearing for The Hills subdivision on Asbury Chapel Road and asked E. Sloop to clarify how someone is determined to be a person with standing versus an interested party. E. Sloop responded that the statutes only allow parties that can establish standing to fully participate in the hearing. Once they have established standing they can call witnesses, present evidence, offer rebuttal, etc. If you are a person of interest then you may not participate in the hearing. The Town may allow you to speak in their discretion but anything that someone says typically is not something the Board can rely on to make their decision. The decision must be based on information that is competent material, substantial evidence in the record and typically persons that are just interested are not offering that type of evidence. There may be an occasion where the interested person states something that is not objected to by an actual party.

K. Jones asked what a witness is allowed to say versus an interested party. E. Sloop stated that an interested party with standing may call witnesses. An interested person may be allowed to speak but may not present evidence. Staff stated that following The Hills quasi-judicial case there were great concerns from the Town Board related to staff attending and addressing more of the neighborhood concerns at the neighborhood meeting and to communicate and provide the residents with more information related to how the quasi-judicial process works.

F. Gammon followed up with stating again that the only way the Town Board can have any influence is for the process to remain quasi-judicial so that at least those with standing and possibly interested parties can express themselves to the Board. While either process has their own set of frustrations and limitations, at least the Board gets to communicate with their constituents through the hearing process. Staff responded that if it became administrative the Town Board would be able to attend the neighborhood meetings to listen/speak with people.

Commissioner Munger stated that he appreciates the dialogue. He described the current quasi-judicial setting as the illusion of choice. Unless the item being requested has a fundamental issue with expert testimony and compelling evidence as to why it should be denied, it will be approved. Based on the discussion and the point E. Sloop provided that an administrative decision could be appealed to the Board of Adjustments versus the court, he stated he is leaning towards an administrative decision being the way to go.

A. Hallman asked if the neighborhood meeting would become more of a for your information setting if quasi-judicial goes away. Staff stated that technically the neighborhood meeting is a for your information event now. They referred back to the Mayes Subdivision example and stated that if the process changes to administrative, staff would not have the conformity statement to request plan adjustments

A. Hallman asked how the standing is determined. E. Sloop responded that the state statutes define who has standing and it is the Town, the Town Board, the applicant/land owner and anyone who can establish special damages. More than one person can establish special damages, its just that they have to be established with specific showings of evidence.

A. Hallman recommended that additional examples/education be provided to explain quasi-judicial and what qualifies as standing so that residents can understand the process to identify how they can be heard and perhaps get something done.

T. Finlay stated that the quasi-judicial process seems to protect and make it an even playing field where Board members do not have the ability to impact and influence things as much, he then asked staff if the process becomes administrative what protections would be in place so that Board members would not have the ability to influence staff in the decision. Staff responded that for the decision to be administrative the standards must be objective. They are black and white or yes and no, if it meets the standards then it would be approved, there is no wiggle room or subjectivity.

K. Jones asked if modifications may still be requested of developers if the process becomes administrative. Staff responded they would still request it but the developer would not be required to comply, they would only have to meet the minimums. In the event an issue was identified repeatedly then the only means of change would be to adjust the objective standard in the ordinance.

K. Jones asked if “Conformity” standards as listed in the Subdivision Ordinance could be moved to General Requirements as well since this is one of the main ways that citizens can express their concern and be heard. Staff responded that under the current language it is too subjective. M. Jones followed up and said that defining things like a detrimental effect, most advantageous development, etc. must become objective standards.

K. Jones asked if under the quasi-judicial process the Town Board members are not allowed to have any ex-parte communications, why the minutes from the neighborhood meetings are included in the agenda packets. Staff stated that the Board Members can be provided the information but they are not allowed to use that to make a determination. E. Sloop confirmed that they can use that information to review what questions were raised but it is not considered evidence that they can base their decision on.

K. Jones asked if the process changes to administrative if minutes of the neighborhood meeting will still be recorded and provided with the staff report, and if staff verifies that all relative information is included in the minutes. Staff stated that there would no longer be a need to take the minutes as the decision would become objective and staff, Town Board and Planning Board would be invited to attend the meetings. The nature of a neighborhood meeting is that there are multiple conversations going on at once and the minutes recorded are not verbatim, the goal is to cover the gist of what was discussed and issues that were raised that addresses main topics covered.

K. Jones asked if it is possible to keep the quasi-judicial process but allow citizens to have input. Staff stated that in the past the Town Board has allowed interested parties to provide commentary to understand where the citizens are coming from. E. Sloop added that if everyone is allowed to speak at a quasi-judicial hearing it is a slippery slope because it becomes difficult to determine if a Board member, after hearing so many different things from people without standing, can remain impartial when making the quasi-judicial decision. She referenced the findings emailed to the NC Supreme Court fining Board members for compensatory damages when even one member of a Board is biased in a quasi-judicial decision.

K. Jones expressed her concerns on behalf of the citizen and requirements to be an expert witness, costs involved in hiring someone, and what is required to be heard. Staff responded that there are zoning, lighting, storm water, landscaping, and parking standards to protect the public. M. Jones commented that many of these standards are more restrictive than most of the neighboring municipalities as well. Staff commented that these development standards are in place and developers have the right to develop land as well, if they meet the standards then it is going to get approved.

H. Whittaker asked if a final version of the proposed changes would be provided prior to making a decision and it would be his preference to keep the Town Board involved. E. Sloop recommended the Board first consider if they want the process to remain quasi-judicial or become administrative; and if administrative is selected, then you determine who would make that decision. As discussed, based on the School of Government recommendation, it is recommended that an administrative decision be made by staff to not unnecessarily delay the developer in waiting for a Town Board meeting when it is a simple yes or no decision; and in the event of an appeal, if the decision is made by staff then the appeal would go to the Board of Adjustment versus going straight to court if the decision is made by the Town Board.

Motion: F. Gammon made a Motion to Approve the Subdivision Approval process remain a Town Board conducted quasi-judicial process as stated within the ordinance. K. Jones seconded the motion.

F. Gammon commented that he thinks that the public will have more input if the process remains quasi-judicial and the primary reason for this process to change was out of Commissioner frustration.

A. Hallman agreed that the major frustration was the citizen outcry and it does not seem to get resolved with an administrative decision. At the moment she is not sure the citizens or the Board members can get the communication with either option but at least there is a small amount in the quasi-judicial format.

Vote: The motion failed (4-5) with T. Taylor, T. Finlay, J. Kluttz, B. Skelly, M. Jones opposed.

Motion: T. Finlay made a Motion to Approve the Subdivision Approval process of sketch plan, preliminary plat and final plat move to an administrative process for approval. J. Kluttz seconded the motion.

M. Jones recommended an amendment to the motion with the additional caveat that some of the overriding issues be commented on and the text be thoroughly reviewed in the next meeting. T. Finlay and J. Kluttz accepted the amendment.

M. Jones restated that we are voting only on whether the process should go from quasi-judicial to administrative and not the final version of the proposed text, which we will discuss further at the next meeting.

Vote: The amended motion passed (5-4) with F. Gammon, A. Hallman, K. Jones, and H. Whittaker opposed.

Other Business

T. Finlay asked about returning to in-person meetings. H. Whittaker, K. Jones, T. Taylor, J. Kluttz, F. Gammon, and B. Skelly expressed their support for returning to in-person. Staff stated they

would investigate what option for in-person meeting and streaming are available and report back to the Board. The Board was unanimous to return to in-person meetings (9-0).

Adjourn

Motion: M. Jones made a Motion to Adjourn. A. Hallman seconded the motion.

Vote: The motion passed unanimously (9-0).