

Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met at 3:30 p.m. on Wednesday, June 1, 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, F. Gammon, A. Hallman, K. Jones, and J. Kluttz

Voting Members Absent: B. Skelly, H. Whittaker, T. Finlay

Non-Voting Members Present: J. Simoneau, T. Barron, J. Glass

Non-Voting Members Absent: Commissioner Munger, E. Sloop

Approval of Minutes

Item 2A. Consider approval of the May 5, 2022, Regular Meeting Minutes

Motion: K. Jones made a Motion to Approve the May 5, 2022, minutes. T. Taylor seconded the motion.

Vote: The motion passed unanimously (6-0).

Public Comments

No comments.

Action Agenda

Item 4A: Continued discussion 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.

J. Simoneau, Planning Director followed up on the questions posed at the May meeting and shared the Legal departments summary of the current guidelines for quasi-judicial hearings as it relates to legal standing, how to establish special damages, and the differences between witnesses and parties with standing.

The redline version of the Subdivision Ordinance section 6.200 was reviewed related to the proposed changes. Examples of previously approved subdivision sketch plans for Mayes Road, Ranson Road, and The Hills were shared to show the differences between what was initially proposed and how it was adjusted based on the neighborhood input and then later approved by the Town Board.

There are two instances when a developer would still need to go before the Town Board if the subdivision approval process becomes an administrative decision versus quasi-judicial. One is if they request a modification of traffic impact mitigation and the second is if they want a variance, appeal or interpretation from the Subdivision Ordinance.

In reviewing Subdivision Ordinance, Section 4.00; Appeals and Variances, M. Jones asked if the Town Board wants to minimize the amount of quasi-judicial hearings if it would make more sense to adjust the current process of a variance going before the Planning Board for recommendation and to the Town Board as a quasi-judicial hearing, and instead send it to the Board of Adjustments, making the applicant only have to go to one meeting. Staff confirmed that what is proposed is what staff is recommending, and the Ordinance Advisory Board can recommend removing the Planning Board recommendation or having it decided by only the Town Board or the Board of Adjustments. As the elected officials it seemed to make the most sense for the Town Board to be the board that heard the variance.

M. Jones followed up that given the driving purpose of these changes was to minimize quasi-judicial cases before the Town Board that this adjustment would seem in line with that request.

F. Gammon asked how many appeals and variances have gone before the Planning Board. Staff stated that they do not really happen. Currently a block-length modification is the most common request and if the process becomes administrative then staff would have a set standard that can be approved, or the developer would have to request a variance. It is staff's experience that if a developer is facing a 60–90-day delay to approve what is typically a 30–50-foot block-length modification that they will probably figure out how to comply.

F. Gammon followed up that this explanation to him is a pro for keeping Section 4.00 as proposed. In addition, it would give the public another opportunity to speak up at the Planning Board meeting which could potentially have an impact on the decision.

K. Jones asked how this would be affected by a buffer reduction request. Staff confirmed it would be a similar process.

A. Hallman asked if some modification decisions are currently administrative for block length or right-of-way. Staff confirmed the Engineering manual allows for administrative modification of right-of-way but the block length modification requires Town Board action.

In reviewing the Subdivision Ordinance, Section 6.200-A; General Guidelines and Requirements, Item 2. Conformity. M. Jones expressed concern about language that is subjective remaining in the Subdivision Ordinance based on the email that he forwarded to the Board related to Professor Adam Lovelady's comments and case citation of how this can be an issue. Staff confirmed that Legal has reviewed this proposed language and is comfortable with the statement, He also indicated Item 2 was a guideline and not a requirement.

M. Jones restated in his opinion the Zoning and Subdivision Ordinance terms that are vague and subjective should be clearly defined so that we do not face issues similar to Pineville. Staff confirmed that they will go back and confirm with Legal to ensure the legal liability is considered.

In reviewing Section 6.200-B; General Requirements, Item 1. Consistency with adopted public plans and policies, M. Jones asked what happens when someone wants to develop a by-right subdivision according to current zoning but it is not in compliance with the adopted Comprehensive Plan. Staff provided an example of a property in a mixed-use node that has identified a property for a potential mixed-use, this would open the door if the current zoning does not permit this use, for a rezoning. It would not however stop an approval of a by-right use under the current zoning.

A. Hallman asked how often staff looks at the public plans and may make modifications in the 20 years that it is forecasted, or is that strictly by Town Board approval. Staff responded that the Town Board consistently updates the long-range plan every 7-9 years since 1995 and then there are small-area plans that are typically updated less frequently.

In reviewing Item 4 regarding fee in lieu for open space and the proposed 300% of the pre-development property tax value. M. Jones commented that the Concord version this was drawn from has a limitation to the value of the open space land only, whereas how the proposed language is it would be a 300% fee on the total acreage which in his opinion breaches the rough proportionality test. J. Glass commented that Legal can review the statute language and confirm if any additional adjustments need to be made to the language. M. Jones confirmed that he is okay with the proposed 300% and responded that there are two issues here he suggests be reviewed, 1. Rough proportionality on the fee being limited to the open space land and 2. Can the language be enhanced to accelerate community assets and come up with an arrangement with the county.

F. Gammon commented he has no issue with the process being administrative, quasi-judicial, or changing which Board may hear a quasi-judicial hearing but he does not know how the Town Board will decide so it seems early to have a discussion related to the wording without knowing what they will decide.

Motion: F. Gammon made a Motion to Approve the changes to the Zoning and Subdivision Ordinance as written based upon the Town Board making the decision to make this an administrative decision process versus quasi-judicial. J. Kluttz seconded the motion.

Staff confirmed that the comments and concerns from the Ordinance Advisory Board will be forward to the Town Board for consideration.

A. Hallman commented that with discretionary standards that are in place now will be removed if this becomes an administrative process. As she reviews the changes to conformity, we are going from shall to should, and sometimes those developers are the same that write the community plans which is something she is still struggling with. She would like for the Boards to be able to ensure accountability of any developer as well as to the existing neighborhoods so that it is fair and across the board for everyone.

Vote: The motion passed (5-1) with A. Hallman opposed.

Item 4B: Discussion related to stormwater runoff from new development impacting adjoining property

B. Richards, Assistant Planning Director followed up on the concerns posed and current status.

K. Jones stated that the Robinette's on Second Street & Huntersville-Concord Road are still flooding, have not received the gravel for their driveway and they were told via an email that a 'hump' would be added to divert the water run-off into the drain. The issues on the Walker property have been resolved. K. Fox, Director of Public Works commented that the commitment to the stone is still in place and he will follow up with them to find out the status on the 'hump' that they agreed to install.

K. Fox also stated that the lack of crown on Second Street adds to the issue, therefore the Town is working to hire a contractor to mill and reinstall a crown on Second Street which will further assist the alley.

K. Jones stated that her concern is for more than her immediate neighborhood because this issue affects many areas of Huntersville. She believes an amendment to the minor subdivision to minimize as much as possible any negative impact to existing property owners that are in close proximity to the project. Specifically grade changes that create flooding and soil erosion and the steps required to mitigate those issues or concerns would be required and not just suggested. Whether that is through an erosion control study, grading plan, or stormwater review that should be required and existing homeowners need to be protected.

K. Fox agreed that staff would like to see that as well since homeowners who buy a home that is not done correctly ultimately end up complaining to Public Works despite the fact that the builder is the one that created the problem. K. Jones stated that the builders will not talk with the neighbors directly so the neighbors are left with no other recourse but to call Town Hall.

Staff confirmed that some additional requirements have been put on our forms above the County requirements and additional amendments are being reviewed to confirm they are within the legal rights to require which may lead to a future text amendment.

M. Jones asked if a grading plan is required on small lots. Staff stated that 1 acre or less does not require a grading plan but does require an erosion control. Staff is reviewing what administrative requirements can be required in the erosion control.

K. Jones asked what constitutes a minor subdivision. Staff responded that historically it was a farm that cut off an acre for a relative to build on. Now there are many different versions of minor subdivisions so in reviewing the standards we have to come up with something fair and equitable to all.

K. Jones asked if the minor subdivisions can be listed on the website in addition to the current development that is listed. Staff responded they will have to review if there is a way to

differentiate the minor subdivisions to identify a list of projects that staff would be able to realistically maintain.

Other Business

No other business.

Adjourn

Motion: T. Taylor made a Motion to Adjourn. J. Klutz seconded the motion.

Vote: The motion passed unanimously (6-0).