

Revised Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met in person at 3:30 p.m. on Thursday, March 2, 2023.

Call to Order/Roll Call

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

Voting Members Present: A. Hallman, K. Jones, M. Jones, J. Kluttz, H. Whittaker, J. Palillo, S. Harrington, M. Pollard, and F. Gammon

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

Non-Voting Members Absent: None

Approval of Minutes

Item 2A. Consider approval of the February 2, 2023, Regular Meeting Minutes

Motion: H. Whittaker made a Motion to Approve the amended February 2, 2023, minutes. M. Jones seconded the motion.

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

Public Comments

No public comments.

Action Agenda

Item 4A: Consider recommendation on petition #TA22-15, a request by the Huntersville Planning Department for a text amendment to Article 7 Landscaping and Open Space to update penalties for removal/damage of required vegetation.

K. Mielenz, Planner I reviewed the proposed amendment as included in the attached exhibits. The proposed amendment would adjust the vegetation penalty calculation method and increase the fine amount, and add a cumulative fine in specific situations.

F. Gammon confirmed that the goal is trees and not fines and that residents will be encouraged to replace trees when possible. Staff confirmed that is accurate.

S. Harrington asked staff to confirm that the calculation would be based on the canopy of the tree and if multiple trees fell under the same canopy, how that would be calculated. Staff confirmed the example shown is based on the canopy and they would take the canopy of each tree and add them together.

H. Whittaker asked how the funds collected are used and if a tree is removed from an area not conducive for growth, why is it a tree area. Staff stated the funds are placed in the 'Tree Fund'

and used for planting of trees in town in other areas. The tree area is determined by the location of the trees prior to new development. The developer may install a retaining wall, a swell, etc. These newly added features may make it non-conductive to replacing the tree for the viability of the tree and the potential damage to the installed infrastructure. In these instances the developer would have the option to pay the fee in lieu of replanting the tree. These instances are seen when developers accidentally remove tree area that is supposed to be undisturbed.

J. Kluttz asked if the Town's penalties are in addition to possible State penalties for damages to Riparian buffers. Staff stated the proposed amendment tends to affect property buffers. State civil penalties that are collected are routed to the school system per state legislation.

F. Gammon asked staff if this could also apply to residents who have a rear yard buffer and tree save, and they remove trees. Staff confirmed that is correct.

Motion: J. Palillo made a Motion to Approve TA22-15 as presented by staff. M. Pollard seconded the motion.

F. Gammon asked staff if there is latitude for removing evasive species from tree save areas, and for real-life examples of how code enforcement has dealt with this and what resulted. Staff confirmed that there is latitude to remove kudzu an evasive species, typically poison oak, or bamboo. This work is typically done by a small bobcat and not equipment that is going in and mass clearing out areas. Staff stated that we have had the first two enforcement cases on this in the last six months. One with a resident and the issue was identified at closing, the second with a business and the owner removed the trees. There was discussion as to whether or not there is enough staff to properly enforce this, and who controls the tree fund. Staff responded that these are typically self-reported and the Planning Staff collects the funds which are used in parks and will be used for the Main Street enhancements.

M. Jones asked what enabling authority is used for this fee, to increase the fee, and how are we complying with rational relation. He then asked what the direct benefit is back to the party that paid the fines in lieu of planting. Staff confirmed they will provide the enabling authority information to the Board. Staff stated that typically cut down trees can be replanted. On properties where the applicant does not have room to plant they may select to pay the fees in lieu. Those funds are used town wide and not specifically at the site or near the site of the applicant who paid.

H. Whittaker expressed concern over inflation being the purpose for raising the fines when the money is not immediately used versus just stating you want to raise the fines.

Commissioner Munger asked what the maximum amount of fine we have assessed has been and how else is the Tree Fund funded. Staff commented that we have not yet assessed a fine and the Tree Fund is also funded through mitigation when developers cannot replant.

E. Sloop stated that the current fine has been part of the ordinances for 20 years. The Town of Huntersville has specific local legislation and general authority to adopt this as a benefit to the Town of Huntersville. This also grants the authority to raise the fines.

Vote: The motion passed (6-3) with M. Jones, M. Pollard, and H. Whittaker opposed.

M. Jones stated that he was voting against Item 4A due to the Board not receiving all material information related to this item in the agenda packet.

Item 4B: Consider a recommendation on petition #TA23-01, a request by the Huntersville Planning Department for a text amendment to Article 7, Part A: Landscaping altering the spacing and location of required street trees and providing greater flexibility for the types of supplemental residential lot trees.

L. Speight, Senior Planner presented the proposed amendment as included in the attached exhibits. The Board of Commissioners tasked Planning Staff with reviewing our requirements in response to challenges resulting from the street tree requirement on the public right of way. Possible alternatives proposed include increasing funding for sidewalk maintenance, changing the design parameters, and changing the space, location and type of tree required.

S. Trott, Engineering Director presented some of the impacts and the Engineering and Public Works desire to have the trees placed in the front yards with a 5 foot planting strip not containing trees.

J. Palillo commented that street trees a critical component of a community. The width of the planting strip should be wider, plant the proper trees of the proper size so they can be enjoyed. If you plant the tree in the front yard then you need adequate yard size between the sidewalk and the house. Communities should have been education regarding responsibility of maintenance of the street tree for proper pruning to achieve the goal desired. Communication between the utility companies and the developer should happen so that the trees and lights alternate and avoid being too close or interfering with each other.

H. Whittaker commented that he supports the solution that will not create the infrastructure issues with the sidewalk and road but he is not in support of the burden falling on the homeowners by placing the trees in the front yards.

F. Gammon asked if current large maturing trees may be replaced with small maturing trees for required street trees and how the required yard trees would be affected. Staff confirmed that existing large maturing street trees may be replaced by approved small maturing trees. Staff is recommending that you are allowed to put the additional tree in the front yard based on the size of the lot.

Commissioner Munger recommended staff review special consideration locations such as corner lots and if street trees on one side of the street were considered. Staff responded that single side street trees are not a consideration that was from development in the 1990's.

J. Kluttz asked if the developer agrees to the size of the planting strip and street trees prior to development. Staff confirmed that under the current proposal the developer would be given options for planting strip width and size of street trees and yard trees based on proposed lot sizes. The developer would select from the options and be responsible for installing per the approved site plan. The ordinance would outline the minimums and developers would have the option to select the minimum or greater based on their desired project outcome.

Staff confirmed that under the current ordinances yard trees are already required. One of the options before the Board include Engineering departments recommendation to move the required street trees to the yard in addition to the currently required yard tree.

Motion: J. Palillo made a Motion to Approve TA23-01 with all new developments having a minimum of 10-foot planting strip with a maturing tree and all existing subdivisions with less than a 10-foot planting strip have a tree specified that is appropriate within that space. No second.

Commissioner Munger commented that he was on a similar thought but the cars in the driveways interfering with the sidewalks is another factor to keep in mind and a key factor why he would not recommend making the planting strips wider. Staff commented that driveways now have a minimum separation between sidewalk and garage face of 20 feet.

Motion: K. Jones made a Motion to Approve TA23-01 as submitted by staff. M. Pollard seconded the motion.

F. Gammon recommended an amendment to the motion to include the concerns and considerations that Mr. Palillo mentioned in his motion for staff consideration if this amendment moves forward. K. Jones and M. Pollard approved the amendment.

H. Whittaker asked Public Works for their opinion on the proposed street trees. K. Fox Public Works Director confirmed that the trees selected for the various planting strip sizes are acceptable and deep rooting and should help minimize issues.

H. Whittaker went on to express concerns over staff's option two and placing the tree on private property for maintenance and potential underground damage. F. Gammon commented he has similar concerns about requiring additional yard trees on private party and creating more burden on tax payers and residents.

Substitute Motion: H. Whittaker made a substitute Motion to Defer TA23-01 to the April 2023 regular meeting. M. Jones seconded the motion.

Substitute Motion Vote: The motion passed (6-3) with J. Palillo, S. Harrington, and F. Gammon opposed.

Motion: H. Whittaker made a Motion to Defer Items 4C and 4D to the April 2023 regular meeting. M. Jones seconded the motion.

Vote: The motion passed (8-1) with J. Palillo opposed.

Item 4C: Consider recommendation on petition #TA23-03 Minor Subdivision Changes, a request by the Town of Huntersville Planning Department for a text amendment to Article 2 Definitions: "Subdivision, Minor" to cap the amount of lots allowed within a minor subdivision and to Article 7.5 "Buffer Yards" to require buffers for minor subdivisions located within the R and TR zoning districts.

Deferred to April 6, 2023

Item 4D: Consider recommendation on petition #TA23-04, a request by the Huntersville Planning Department for text amendment to Article 9.54 Solar Energy Facilities to clean up the language.

Deferred to April 6, 2023

Other Business

No other business.

Adjourn

Motion: K. Jones made a Motion to Adjourn. H. Whittaker seconded the motion.

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

Approval of Minutes

March 2, 2023, minutes approved unanimously as revised at the April 6, 2023 regular meeting.