

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**November 15, 2021
6:00 p.m. – Huntersville Recreation Center**

PRE-MEETING

None

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

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Recreation Center, 11836 Verhoeff Drive, at 6:00 p.m. on November 15, 2021.

GOVERNING BODY MEMBERS PRESENT: Mayor John Aneralla; Commissioners Melinda Bales, Dan Boone, Stacy Phillips and Nick Walsh. Commissioners Brian Hines and Lance Munger were not present.

Mayor Aneralla called the meeting to order.

Mayor Aneralla called for a moment of silence.

Mayor Aneralla led the Pledge of Allegiance.

MAYOR AND COMMISSIONER REPORTS – STAFF QUESTIONS

Mayor Aneralla

- The Charlotte-Mecklenburg Historic Landmarks Commission unanimously voted last Monday to move forward with historic landmark designation of the Dellwood Center.
- Veterans Day Parade and celebration was a success.
- Recently had the honor of sitting as an interviewee for 19 perspective Congressional nominees to the service academies.
- Next meeting of the Metropolitan Transit Commission is November 17.
- Mayor Elect Bales and I met with the Charlotte-Mecklenburg Schools Superintendent and the principal of Hopewell High School to discuss ways the community can engage with the school. A Town Hall meeting will be held on November 17 at Lake Forest Church.

Commissioner Bales

- Encouraged Hopewell High families to participate in the meeting on November 17.
- The Lake Norman Chamber of Commerce and the Lake Norman Economic Development Corporation hosted the 5th Annual Speed Networking Event today for the three area high schools. More than 120 high school students participated.

- At the upcoming Lake Norman Chamber of Commerce Education Luncheon, Educator of the Year awards will be given for traditional public schools, public charter, and private schools in the area. The Inspire our Future award will be presented to an area business that has engaged with educators in making a difference in their lives.
- Tree lighting at Birkdale is November 20.
- Commended Huntersville Parks & Recreation and the American Legion for hosting a successful Veterans Day Parade and ceremony.

Commissioner Boone

- Provided update from the Lake Norman Chamber of Commerce.
- Huntersville Fire Department announced their 2021 fund drive.
- Boy Scout Troop 19 raised approximately \$1,000 for collecting campaign signs after the election.

Commissioner Phillips

- Provided update from Ada Jenkins Center.

Commissioner Walsh

- Provided update from the Huntersville Regional Chamber of Commerce.
- Next meeting of the Greenway, Trail and Bikeway Commission is November 16.
- Next meeting of the Parks & Recreation Commission is November 17.
- The ribbon cutting was recently held for the downtown greenway trailhead.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

Mayor Aneralla introduced Trey and Wagner Ramsey who recently purchased the Bob Blythe Building.

Trey Ramsey reviewed their plans to open a craft brewery. The goal is to have permits in hand sometime in January and open for business by Labor Day of next year. The second phase of the project includes building a kitchen on the west side of the property.

Charlie Holt, 19725 Playrights Way, Cornelius, said I'm with Leigh Brown & Associates One Community Real Estate and we are ecstatic to be on board with Inflatable Joy. One Community Real Estate would like to ask our neighbors to consider donating an inflatable to Inflatable Joy.

Laura Czerwinski and son Marek, Inflatable Joy, provided update on Inflatable Joy. Marek has been featured on Spectrum News, WSOC-TV and in the local Lake Norman publication. So far, we have collected 53 holiday inflatables, over 20 sets of lights, and games, etc. for children to enjoy in their rooms at Levine Children's Hospital. The deadline to receive donations has been extended to about Thanksgiving.

BeeJay Caldwell, 14521 New Haven Drive, read letter into the record from Dorothy McGuire concerning historic designation of the Rosenwald School.

Letter and email from BeeJay Caldwell dated November 11, 2021, attached hereto as Exhibit No. 1.

Crystal Silvas, 13925 Beatties Ford Road. Tonja McDonald and Tim McDonald deferred their time to Ms. Silvas. My husband and I own a little tiny chicken farm on Beatties Ford and there have been some developments right across the street and I've prepared a presentation for you. *Refer to Exhibit No. 2.*

Last week I started a petition. We now have over 200 signatures, 175 of those are directly affected by this situation.

I understand that our Town Ordinance allows for outdoor neighborhood parks to be built without a special use permit. The issue with that is that this is not just a park, this is a stadium that has a very loud system and has lights that are completely outside of our Town Ordinance. No special use permits were given.

If you look at Page 2, you can see what our neighbors in Arrington are dealing with. You'll see a picture of the lights directly across the street. These photos were taken one minute apart, and you can see the vast difference between Richard Barry and CSD Athletic Complex. I got on POLARIS and got you the exact footage of where these pictures are taken.

I do not know a lot about footcandles, but I have a little bit of a guide for you. Fifty footcandles is where you are going to be able to read. Legally they are allowed to have 0.1 footcandles 10' into the closest adjacent property. Clearly, they are well past that. This is not something that is happening on Friday nights, this is every soccer practice, every lacrosse practice, this is usually five nights a week that our neighbors' yards are lit up.

I have reached out to Huntersville PD and Anthony about the noise. I apologize about this, but the last time, Officer Reynolds was told to f-off and that it is a \$50 citation, so they don't care.

I understand that this is a Davidson charter school that came in. Essentially every child from Huntersville that is going to this school is taking dollars away from CMS. I understand that they are doing a great job as far as building tennis courts for us, but they are touting that they built this completely by themselves and not accounting for the over \$300,000 that our town gave to them.

The road frontage in Davidson is pristine. The road frontage on Beatties Ford has had a silt fence up for 2 years. There is nowhere to walk our children to school. There is nowhere to safely walk them to Richard Barry Park. We have contacted them multiple times and they are unwilling to discuss it. Jay Martin, Athletic Director, told me to get off his property, at which point I bought a ticket to their game.

We are requesting that sidewalks be built immediately. I understand that we have a reimbursement contract with them, however they are already using their fieldhouse primarily as a school. They opened what is called a Ripple program. There are students in those classrooms every single week with plans to do two to three times a week as soon as it is possible. That is clearly within the guidelines of our reimbursement agreement which states as soon as they have a building whose primary use is a school with classrooms, that they are to build those sidewalks. I have action items for you, and it is basically a summary of all of this. I would like to point out that a project like this absolutely deserves a special use permit and public hearings. This has greatly affected our home values because anyone would agree if you were buying a farmhouse, there's a very large difference between the price you are going to pay for a farmhouse across the street from a farm with thousands of trees and what you are going to pay for a farmhouse across the street with noise and light nuisance regularly.

I have notes from the community members. I only highlighted some main ones. Obviously, there's not appropriate barriers for noise and light pollution near homes. CSD knew what needed to be done, but they are not holding up their end of the deal. I really don't enjoy having to listen to every event that takes place in my backyard. This was brought up a month ago and nothing has been done outside of one Board member coming and actually taking audio and seeing what we are experiencing. It's been for

me about a 2-1/2 year fight when I came home to find a silt fence and equipment in my yard after the Town of Huntersville and the NCDOT signed off on a quarter acre of my land being stolen. It took me 6 months to get that reversed and another 1-1/2 years to get compensated. The people who are in charge had to be looking at these projects before they said okay, I'm going to permit these lights, because they are not in the ordinance; before they say we are going to permit the sound system, because they are not within the ordinance.

Ed Cecil, off McCord Road. Kimberly Burton and Peter Jacobson deferred their time to Mr. Cecil. I thank the board members that are here from the Board of Adjustment. I am Chair of the Board of Adjustment and I am here representing the Board of Adjustment. The members of the Board of Adjustment are objecting to Consent Agenda 9.D or any attempt to transfer it to the regular agenda, the attempt by the Town Attorney and whomever else to improperly repeal the right and authority from the Board of Adjustment to adopt and amend its own rules which are granted to the Board of Adjustment and which has been held for decades.

You were sent an email on November 14 pointing out the objections in detail to which neither the Town Attorney nor the Town Board can with a swipe of a red pen and wave of a hand with no proper public process by way of the improper, surreptitious method of inserting into the Consent Agenda. The Board of Adjustment hereby requests that the said objection letter to the Town and Commissioners and the public comment request by me, to be placed in the public record and I will give it to the clerk. *Refer to Exhibit No. 3.*

In our review of the facts, we are of the belief that the Town Attorney or whomever else might have incorrectly interpreted Section 160D-308 of the NCGS, in believing that the Town can unilaterally take away and over the Rules of Procedure from the Board of Adjustment.

That section does not have to do with a Board of Adjustment that was established decades ago and given the right and the authority to adopt and amend its own Rules of Procedure. It is only as to new established boards. If there's an attempt to take away that right and authority, which the Board of Adjustment objects to, then only by way of public process, public hearing, discussion with total transparency and not by way of a Consent Agenda item or by transferring it to the agenda that eliminates all of that. As I recall, the Mayor Elect specifically stated that she wants citizens of Huntersville to participate and be involved.

Another concern we have is that it was mentioned by a commissioner that there appears to have been star chamber discussions to dissolve the Board of Adjustment entirely or transfer it to an advisory board that the Town controls. Not only would that remove the independence of the Board of Adjustment as mandated by the State of North Carolina, but it might also be a pre-text in an attempt to get rid of it. That is why I'm wearing a black suit in fear of the death and burial of the Board of Adjustment.

The present standing members of the Board of Adjustment are probably some of the best qualified people that have ever been on it. The Board is diverse. There's owners of businesses, vice president of a regional corporation, chief financial officer, teachers, a former chair of the 2040 Plan Steering Committee, prominent architect and three attorneys with over 120 years of experience with analytical experience, vast trial and appellant work experience. They have represented hundreds and actually up to thousands of major clients and corporations. All have taught law, have assisted in writing legislation for a governor of a state, one having been a judge pro tem and a member licensed to practice in the 9th, 6th, 4th United States Circuit Court of Appeals, as well as being a member and entitled to practice before the United States Supreme Court.

We have been informed and believe that you may be removing it from the Consent Agenda and wrongly placing it on the agenda. We are strongly requesting that you not only remove Item 9.D from the Consent Agenda, but that you do not place it on the agenda. To do so and any attempt to pass it would be illegal and void on its face. To pass this without a public hearing is unethical. It is also potentially illegal as it violates the spirit of a transparent government and the constitutional rights of due process and equal protection of the law.

If the Town wants to go down this road, the better approach would be to hold public hearings and solicit the input of the entire town. There's a larger concern for if these changes can be made by the Town as to the Board of Adjustment without transparency, what other changes are being made behind closed doors in the town without any transparency.

John Passarelli, 12503 Levins Hall Road, said I'm just here to augment what Mr. Cecil has said. I have practiced law for over 50 years. I've had cases before foreign governments. I've been a prosecutor for both the state and federal government. I think I know what I'm talking about, and I took a look at the law of this state and your ordinances with regard to the matter of the rules of the Board of Adjustment. According to the law in the state of North Carolina, if the Town Board does not adopt Rules of Procedure and the statute uses the word may, not shall adopt, may adopt rules, then the Board of Adjustment is entitled to adopt its own Rules. The wisdom of your predecessors established within your own ordinances a specific provision that indicates that if the Board of Adjustment is to hear any appeal or petition that comes before it, that it must do so under its own rules, not the rules of the Town. Consequently, if I were an attorney representing a client before the Board of Adjustment, I would allow the hearing to go ahead and immediately sue the city and the Board of Adjustment for violation of procedural due process. I've done this in the past in the state of Illinois and won. The situation is that any decision made by the Board of Adjustment based on rules passed by this Town or the Town Board, would be null and void, and they would be a denial of due process. The Board of Adjustment is the only one under your own law that is allowed to adopt Rules of Procedure and if you do it, then immediately you are going to essentially negate the ability of the Board of Adjustment to have any hearings whatsoever because they would not be done under its own rules as required by your law.

Rob Kidwell, 7219 Handon Lane, said you've heard a lot of points I was going to make, so I'll be brief. Under the same General Statute 160D-308 that you are reviewing tonight under the Consent Agenda, which I still don't know why it's on the Consent Agenda. When you get your preview packets, one of you should have said let's move this up. One of the six, there's only four here tonight, which is another reason this needs to be punted down the road until six Board members can make an informed decision. It says in the absence of action by the Governing Board, each board created under this article is authorized to adopt its own Rules of Procedure that are consistent with the revisions of this chapter. Since its inception nearly 30 years ago, the Governing Board has not been involved with adopting the rules of the Board of Adjustment. They've been their own entity. The Governing Body has been an absent parent for a child that has grown and created its own rules. It needs to stay that way. They're grown, they're doing well, they're doing what we've asked, let them continue to do that. Furthermore, the statute is not clear on whether a governing board can override existing rules of procedure when we provide ones for a new board. If this was a new board, if we were creating a new Board of Adjustment for the Town of Huntersville, we absolutely would have that power. But it does not state that in the statute. It does not say if you have an existing one you can override it, so it's very ambiguous. I would ask the Board with only four members present as I said earlier, to postpone it until six board members can hear this and also allow the public and the Board of Adjustment to weigh in on this. I think there needs to be a lot more communication before this is passed.

Kevin Bray, 9708 St. Barts Lane, said I'm also here to speak in support of the remarks by Mr. Ed Cecil and Mr. Passarelli and also Mr. Kidwell. I think the one point that I would like to make about this is I think for the operation of township and respect for the citizens of the township, I think it's essential that the Board of Adjustment have a position that's absolutely independent of the Town Board. I think that's an important role that the Board of Adjustment can play and that any perception of interference by the Town not be permitted. Even the impression of impropriety I think dilutes the power and the impact that the Board of Adjustment has on the community, and the community's expectations of the board as well and for that reason I think that the Board of Adjustment should have the power to make its own rules without interference from the Town and I think the only criterion we should be held to is that anything we do is in compliance with the laws of the state of North Carolina.

AGENDA CHANGES

Commissioner Bales moved Item 9.D (Adopt Rules of Procedure for the Huntersville Board of Adjustment Pursuant to NCGS 160D-308) off the Consent Agenda to Item 8.I under Other Business.

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

Commissioner Phillips seconded motion.

Motion carried unanimously.

PUBLIC HEARINGS

Abandon and Close Portion of Patterson Road. Mayor Aneralla called to order public hearing on request to abandon and close a portion of Patterson Road.

Lora Mastrofrancesco, Town Transportation Engineer, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 4.*

On October 4, 2021, the Town Board adopted the Intent to Abandon a Portion of Patterson Road. Since then the Town has followed NCGS 160A-299, which is titled Procedure for Permanently Closing Streets or Alleys.

The Town completed a project in 2019 to realign Patterson Road at the intersection of Hambright and also upgrade the intersection. This is a picture to show you the portion of the road that is no longer in use and has been petitioned to be abandoned. The total area to be abandoned for this roadway is 6,296 sq. ft. The staff has no objections to this abandonment, and I have not received any comments during this period of time.

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

OTHER BUSINESS

Abandon and Close a Portion of Patterson Road. Commissioner Walsh made a motion to adopt an Order Closing a Portion of Patterson Road.

Commissioner Boone seconded motion.

Motion carried 4 to 0.

Order attached hereto as Exhibit No. 5.

Petition #SUP21-03 – Metrolina Greenhouses Dormitory. Mayor Aneralla called to order evidentiary hearing on Petition #SUP21- 03, a request by Art Van Wingerden on behalf of Metrolina Greenhouses, Inc. for a Special Use Permit for a dormitory for Bona Fide Farm for 14846, 14568, and 14654 Huntersville-Concord Road (Tax parcel #s 02122102, 02122108, 02122105, and 02122104).

Mayor Aneralla said it's my understanding that the applicant would like to continue to December 6.

Commissioner Walsh made a motion to continue the evidentiary hearing for Petition #SUP21-03 until December 6, 2021 to be held at Town Hall.

Commissioner Bales seconded motion.

Commissioner Boone said I've got a question on the motion. Will the new board or old board hear this quasi-judicial.

Mayor Aneralla said it's the old board.

Commissioner Boone said that wasn't in the motion.

Commissioner Walsh amended his motion to include that the petition be heard by the old board.

Motion to continue Petition #SUP21-03 to December 6 carried by 4 to 0 vote.

Petition #SUP21-04 – Knotts Development Resources. Mayor Aneralla said as a reminder quasi-judicial hearings are evidentiary in nature. The Board must base quasi-judicial decisions upon competent, relevant, 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.

Only parties with standing including the applicant, local government, and individuals who can show they will suffer special damages have the right to participate fully in the hearing. Parties may present evidence, call witnesses, and make legal arguments. Other individuals may 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 preference 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.

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

Who is here for the Town and who is here for the applicant.

Nathan Farber, Planner I, said my name is Nathan Farber and I'll be representing the Town.

Mayor Aneralla said nobody is here for the applicant.

Mayor Aneralla swore in Nathan Farber.

Mayor Aneralla said the parties in 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 include email, as well as conversations with parties, staff, or the general public. Does any Board member have any ex parte communications to disclose.

Seeing none, now you may proceed.

Mr. Farber said I would like to present my Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 6.*

Back in August 2018 the Town Board approved a SUP to allow a banquet facility off of Hambright and Beatties Ford Road. The property owner has decided they no longer want to develop the Saddlecreek banquet facility, and the property owner is now requesting to remove the 2018 Special Use Permit. Removing the 2018 Special Use Permit would allow the property to be developed in accordance with the underlying zoning district requirements. In this case they would have to follow the Rural zoning district and here's just an aerial overview of the property and that includes the small little triangular property at the corner. And the Planning Board decision. If you guys have any questions, I can answer them.

Commissioner Bales said if we remove the Special Use Permit, that does go back to Rural.

Mr. Farber said correct.

Mayor Aneralla said as a reminder the Board is tasked with deciding if, based on the 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 the application to show by competent material and substantial evidence that the standards in the ordinance will not be met. If conflicting evidence as to a standard is presented, the Board will weigh the evidence and determine which side's evidence is correct. As an example, the Board may determine that one side's evidence is more credible and more reliable.

If the applicant does not meet their burden of producing competent, material and substantial evidence that the standards in the ordinance will be met, the Board must deny the application.

The application as originally submitted was considered by the Planning Board and the Planning Board made a recommendation. Nothing that occurred at the Planning Board level, including the Planning Board's recommendation, is considered evidence that you can base your decision on. However, the Planning Board's recommendation may be useful to the Board in identifying issues that this Board may want to consider and evaluate based upon the evidence that was presented in the hearing.

Commissioner Walsh made a motion in considering the Special Use Permit #SUP21-04, Saddlebrook Event Venue, we the Town Board find that the request meets all required conditions and specifications, is reasonable and does not pose an injurious effect on adjoining properties and find that the character of the neighborhood or the health, safety and general welfare of the community will be minimized. The decision is supported by the following findings: (1) all legal notification requirements have been met; (2) removing the 2018 Special Use Permit would allow the property to be developed in accordance with the underlying zoning district (Rural) requirements; and (3) any future use must comply with all the lot, size, yard, and other standards, which the Zoning Ordinance applies to all uses, permitted in the Rural zoning district.

Commissioner Boone seconded motion.

Motion carried by 4 to 0 vote.

Mayor Aneralla said staff will draft and I will sign a final written decision to reflect the vote and reasoning for this decision. That written decision will be provided to the applicant and other parties with a right to such notice.

Petition #TA21-08. Petition #TA21-08 is a request by the Town of Huntersville Planning Department to amend Article 8.25.4: S.W.I.M Stream Buffers, Buffer Delineation; Articles 8.17.12(a)(2) and 8.17.12(b)(1): Water Quality, Performance Criteria, Performance Criteria for Low Density Projects, Performance Criteria for High Density Projects; and Article 12.2.3: Definitions, Watershed Definitions of the Huntersville Zoning Ordinance.

Lauren Speight, Planner II, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No 7.*

The SWIM buffer delineation text amendment is proposed to clarify which and how buffers must be shown on land development plans for review and approval by the Town. Currently, if someone is submitting, someone being a developer, a land development plan, Article 8.25.9(a) requires that buffer boundaries, including all buffer zones, be clearly delineated on all site-specific plans for approval on construction plans, grading and clearing plans, erosion and sedimentation control plans and site plans. The proposed ordinance would clarify that the delineation be by a certified professional using US Army

Corps of Engineers and/or North Carolina Division of Water Quality methodology and that for projects that do not require a land development permit, such as an individual property owner who wants to put a deck in their backyard and they happen to have SWIM buffer, they would not have to have the delineation by a certified professional. This proposed text amendment has been sent through the County Storm Water Administrator who has, I won't say approved, but supported the language of the text amendment. The Planning Board made a motion to approve the text amendment as well.

Commissioner Walsh made a motion in considering the proposed Amendment #TA21-08, to amend Article 8.25.4: SWIM Stream Buffers, Buffer Delineation; Articles 8.17.12(a)(2) and 8.17.12(b)(1): Water Quality, Performance Criteria, Performance Criteria for Low Density Projects, Performance Criteria for High Density Projects; and Article 12.2.3: Definitions, Watershed Definitions of the Huntersville Zoning Ordinance, to clarify which and how buffers must be shown on land development plans submitted for review and approval by the Town of Huntersville, the Town Board approves based on the amendment being consistent with Policies EOS-1 and EOS-5, of the Huntersville 2040 Community Plan. It is reasonable and in the public interest, to amend the Zoning Ordinance, because it clarifies which and how buffers must be shown on land development plans submitted for review and approval, by the Town of Huntersville and helps to prevent unintended disturbance of SWIM Buffers, throughout the Town of Huntersville.

Commissioner Bales seconded motion.

Motion carried by 4 to 0 vote.

Contract – Commercial Fitness Equipment for HFFA. Commissioner Boone made a motion to continue to our meeting on December 6 with the current Board.

Commissioner Bales seconded motion.

Motion carried by 4 to 0 vote.

Budget Amendment – Fitness Equipment for HFFA. Commissioner Boone made a motion to continue to our meeting on December 6 with the current Board.

Commissioner Phillips seconded motion.

Motion carried by 4 to 0 vote.

Resolution – General Fund Loan to HFFA. Commissioner Boone made a motion to continue to our meeting on December 6 with the current Board.

Commissioner Phillips seconded motion.

Motion carried by 4 to 0 vote.

Planning Board Appointments. Consider appointments to the Planning Board to fill the vacancies of Derek Partee (seat vacant as of November 9, 2021, appointed as Town Commissioner) and Catherine Graffy (vacant as of November 17, moving).

Commissioner Walsh nominated Jodi Wright and Trina Loomis.

Commissioner Phillips nominated Jodi Wright and Trina Loomis.
Commissioner Boone nominated Steve Genenbacher and Scott Harrington.
Commissioner Bales nominated Jodi Wright and Trina Loomis.

Commissioner Bales made a motion to appoint Jodi Wright and Trina Loomis to the Planning Board.

Commissioner Phillips seconded motion.

Motion carried 3 to 1, with Commissioner Boone opposed.

Rules of Procedure – Board of Adjustment. Emily Sloop, Town Attorney, said as you all may recall the Board of Adjustment previously adopted edits to their Rules of Procedure. Recently, the Chair submitted additional proposed edits and those edits have been encompassed in the proposed edits for tonight's agenda with the addition of a few other grammatical edits.

Commissioner Walsh said is the Town of Huntersville required to have a Board of Adjustment.

Ms. Sloop said no. The North Carolina General Statutes do mandate that certain types of decisions be made using quasi-judicial procedures, however the statutes allow that those decisions can be made by the Town Board, Planning Board or Board of Adjustment. There are several jurisdictions in North Carolina that do not have separate Boards of Adjustment.

Commissioner Walsh said the Planning Board or the Town Board could perform those functions, if necessary.

Ms. Sloop said that's correct. NCGS 160D-302 specifically makes the appointment of a Board of Adjustment optional.

Commissioner Walsh said is it within the authority of the Town Board to extend, limit, terminate or in other ways change those who serve on the boards, commissions, and committees that the Town is responsible for.

Ms. Sloop said yes, the statutes allow the Town to establish and appoint members to the various boards including the Planning Board, Board of Adjustment, and other advisory boards. The Town Board may also remove members appointed to its various boards as established by both common law and also by case law. The UNC School of Government has several publications on that topic. Aside from its statutory authority to appoint and remove members, the Town Board also adopted a resolution in 2018 that specifically set term limits, service limits, etc. and directed Town staff to carry out those changes in the various boards' Rules of Procedure, bylaws, etc., as well as make any necessary updates to the Town Ordinances to align with what was set forth in the resolution.

Commissioner Walsh said just to be clear, the Town Board may extend, limit terms and in other ways change those who serve on these various boards, including the Board of Adjustment.

Ms. Sloop said that's correct and the specific statute reference for Board of Adjustment is 160D-302. You do have to appoint them within the confines of that statute, meaning that is if you choose to establish a Board of Adjustment, you have to have at least five members and there has to be 3-year term limits. However, as I mentioned, the Town previously passed a resolution that set limitations on

the ability to serve as far as the number of terms. You do have the authority to change, remove, add to, appoint, that's specific in the statutes.

Commissioner Walsh said in the last year or so have we changed any rules or bylaws for any other boards, commissions or committees.....Public Art, Greenway, Trail & Bikeway, Parks & Rec, etc.

Ms. Sloop said almost every single board or committee has undergone revisions. In February 2021, we edited the Town Board Code of Ethics and also established one for the other Town boards. We edited the Town Board Rules of Procedure in April 2021. The Parks & Rec Commission, Public Art Commission, Greenway, Trail and Bikeway Commission were also updated in May 2021 and in August 2021 we established bylaws for the 150th anniversary committee. The HOAB bylaws were updated in September 2021. The Planning Board also had edits proposed to their Rules of Procedure which they approved in September 2021. I would note that the statutes do not require a public hearing to amend any of these rules and in fact none of them had a public hearing, as it's not legally required.

Commissioner Walsh said so over the last two years we've been making these adjustments. What was the reason behind that.

Ms. Sloop said the Town Board did pass a resolution in 2018 which specifically directed Town Staff to update the bylaws, rules of procedure etc. for the various boards to align them with what was set forth in the resolution with regards to term limits, service limits, etc. We also needed to go through and make any necessary changes to account for legislative changes, specifically 160D-109, with regards to conflict of interest rules, and also some of them were requested specifically by that board.

Commissioner Walsh said in any case, when we changed for those various groups, did we ever put it on the consent agenda.

Ms. Sloop said yes, we did. Some were on the Consent Agenda, some were not on the Consent Agenda, some were moved from the Consent Agenda.

Commissioner Walsh said is the Board of Adjustment an independent entity from the Town of Huntersville.

Ms. Sloop said the Board of Adjustment serves as an arm of the Town in that it is a decision-making body for the Town with duties assigned to it by the Town. Town Planning Staff are responsible for providing staff reports to the Board of Adjustment on individual applications coming before it, such as requests for variances. Town legal staff are responsible for ensuring that the Board of Adjustment follows all statutorily mandated procedural processes and requirements in carrying out its assigned duties. However, that being said, the Board of Adjustment independently decides when to approve or disapprove applications and appeals coming before it without influence from the Town Board or Town staff.

Commissioner Walsh said an example of the Board of Adjustment making a variance request, does the Town Board have any authority to overrule it.

Ms. Sloop said no, it does not. The board makes its own decision to approve or disapprove variances independently from the Town Board. They do have to apply the four statutorily mandated variance requirements that are set forth in 160D-705(d).

Commissioner Walsh said the Board of Adjustment is not an independent entity from the Town, but their rulings are

Ms. Sloop said that's correct.

Commissioner Walsh said who can override a Board of Adjustment decision.

Ms. Sloop said quasi-judicial decisions made by the Board of Adjustment can be appealed to Mecklenburg County Superior Court pursuant to 160D-1405.

Commissioner Walsh said is there any provision in state law that gives the Board of Adjustment the authority to independently write their Rules of Procedure without any oversight from the Town Board.

Ms. Sloop said 160D-308 specifically provides the Town Board with authority to adopt Rules of Procedure for not only the Board of Adjustment, but all boards that it creates pursuant to Article 3 Chapter 160D. In the absence of action by the Town Board, the Board of Adjustment could adopt its own rules as long as they are consistent with Chapter 160D and other applicable laws. The adoption is typically done and coordinated in jurisdiction with the Legal Department, however once the Town Board takes action, that forecloses the ability for them to adopt their own rules.

Commissioner Walsh said in your legal opinion, does the Town Board have the right to approve the rules included for the Board of Adjustment included in our agenda packet this evening.

Ms. Sloop said yes, pursuant to 160D-308, and as confirmed by the subject matter experts at the UNC School of Government.

Commissioner Boone said I would like to know if you could re-read your opening comment about where the suggestions came from.

Ms. Sloop said those were specifically, well with the addition of a few grammar changes, they came from the chairman of the Board of Adjustment.

Commissioner Boone said is there any local towns that has the Board of Adjustment and the Planning Board under one hat.

Ms. Sloop said we did some research to see and many jurisdictions have their Planning Board set as both the Planning Board and the Board of Adjustment including Cornelius, Graham, Asheboro, Pinehurst, Tryon, Davie County, Caldwell, etc.

Commissioner Walsh made a motion to adopt the Rules of Procedure for the Huntersville Board of Adjustment pursuant to NCGS 160D-308.

Commissioner Boone seconded motion.

Motion carried by 4 to 0 vote.

Rules of Procedure attached hereto as Exhibit No. 8.

CONSENT AGENDA

Approval of Minutes. Commissioner Phillips made a motion to approve the minutes of the November 1, 2021 Regular Town Board Meeting. Commissioner Walsh seconded motion. Motion carried unanimously.

Call for Public Hearing – Close Portion of Birkdale Commons Parkway. Commissioner Phillips made a motion to adopt Resolution declaring intent to abandon and close a portion of Birkdale Commons Parkway and call a public hearing for December 20, 2021 at 6:00 p.m. at Huntersville Town Hall, 101 Huntersville-Concord Road, on the question of closing a portion of Birkdale Commons Parkway. Commissioner Walsh seconded motion. Motion carried by 4 to 0 vote.

Resolution attached hereto as Exhibit No. 9.

Call for Public Hearing – Petition #ANNEX21-03. Commissioner Phillips made a motion to adopt Resolution to call a public hearing for Monday, December 6, 2021 at 6:00 p.m. at Huntersville Town Hall, on Petition #ANNEX21-03, a request by Bowman Development Group, Inc. and SDH Charlotte, LLC to annex 6.897 contiguous acres (Holbrooks Rd Properties) into the Town of Huntersville. Commissioner Walsh seconded motion. Motion carried by 4 to 0 vote.

Resolution attached hereto as Exhibit No. 10.

Updated Meeting Schedule. Commissioner Phillips made a motion to adopt Updated 2021 Town Board Regular Meeting Schedule changing the location of the December 6, 2021 and December 20, 2021 meetings to Huntersville Town Hall, 101 Huntersville-Concord Road. Commissioner Walsh seconded motion. Motion carried by 4 to 0 vote.

Updated Schedule attached hereto as Exhibit No. 11.

CLOSING COMMENTS

Mayor Aneralla said this is my last time to sign-off and I want to thank everybody for six great years and wish the new board luck and thank everybody else for serving over the last two years. I think Huntersville is one of the best places to live. It's moving in the right direction, and I feel confident that the new board, along with the new mayor, will keep everything moving in the right direction. I'm looking forward to the progress that continues to be made here. Happy Thanksgiving.

There being no further business, the meeting was adjourned.

Approved this the 6th day of December 2021.