



Minutes
Regular Planning Board Meeting
October 26, 2021 - 6:30 PM
Virtual Meeting

1. Call to Order/Roll Call

Members Present: S. Swanick, J. Sny, J. Davis, C. Graffy, F. Gammon, C. Boyd, G. Baber, S. Hensley, and D. Partee

2. Approval of Minutes

2.A. Consider approval of the September 28, 2021 Minutes of the Meeting.

J. Sny made a Motion to Approve the September 28, 2021, minutes. C. Boyd seconded the motion. The motion passed unanimously (9-0).

2.B. Consider approval of the October 14, 2021 Special Meeting Minutes

J. Sny made a Motion to Approve the October 14, 2021, minutes. D. Partee seconded the motion. The motion passed unanimously (9-0).

3. Public Comments - *Speakers are limited to 3 minutes. The Chairperson reserves the right to shorten the time limit for speakers when an unusually large number of persons have signed up to speak. Speakers may not give all or a portion of their time to other speakers*

Bruce Anderson, 16125 Weatherly Way commented: "If you live in Huntersville, when you see signs of development coming, you know traffic will get worse. The Town officials say the traffic impact ordinance, the TIA, will require the developer to "propose measures that fully mitigate the transportation impact of the proposed development." The reality is that in many cases few are right. As an example, say you live near an intersection in a Rural or TR District where the level of service standard is "C" as set by staff. In fact that intersection is running smoothly at LOS A. In the current TIA the developer is given the option to return the LOS to "either the adopted standard or to within 3% of the no-build percentage." If the cost to return the LOS to within 3% of the no build percentage, that is before the development, is \$80,000 and the cost to return the LOS to the adopted standard is zero, which option do you think the developer will choose? It get's worse. Say that intersection gets worse over time and the Town recognizes that they cannot expect the improvement there to only occur with development. The Town decides to spend tax dollars to make a major improvement that costs \$150,000. The LOS goes from "C" back to "A." A year later a developer builds near the intersection and the LOS declines back to "C" at this point the developer can choose to only return the level of service to "C" the standard. The effect of that \$150,000 expenditure is lost. Please understand that the TIA does result in improvements to intersections in many cases it just does not meet the intent implied by the language.

That is, it does not result in developers fully mitigating the transportation options. The Planning Board and the Town Board are being asked if they want to eliminate the TIA and/or rely on the North Carolina Department of Transportation to ensure development pays for necessary improvements. Based on Town experience, the NCDOT will not ensure anything close to what the TIA does or should do. Citizens that care about this town and the problems caused by traffic should expect elected officials to refuse to eliminate or weaken the TIA. We should also ask that the TIA to be modified to address the concerns listed. Watch the way Commissioners vote on this issue. Ask candidates for Commissioner if they support keeping and improving the TIA. Then ask the new Town Board to improve the TIA.”

Matt Jones, 6426 Colonial Garden Drive, former chair of the TIA subcommittee along with Planning Board member J. Sny and Planning Staff members commented that they spent a considerable amount of time analyzing the issue and primarily the legal parameters surrounding it. The current TIA is not equitable, predictable, or transparent. The goal of the committee was to find a solution that was equitable, predictable, and transparent. He believed that the subcommittee did find a solution that met these criteria as well as addressed some other issues. As it stands with the current TIA it likely creates what he would call litigation risks for taxpayers that he does not believe they should be subject to. Most notably it makes no provision for Nollan Dolan which is the rational nexus of rough proportionality. It makes no provision for that and in addition you have a right-of-way acquisition problem. When you require a developer to acquire right-of-way from a third party and you give them no alternative for acquiring that right-of-way it sets up another unconstitutional problem for the Town. If we look at these three principles that constitutional limits you have principle #1: exaction must be rationally related to the impact generated by development (Nollan 1987); #2: the amount of the exaction can be no more than the amount roughly proportional to impact (Dolan 1994); #3: a proposed condition of approval even if not ultimately imposed cannot exceed the exactions allowed under Nolan Dolan. (Koontz, 2004). With that said, most TIA’s that he has seen including ours proposes conditions that are unconstitutional and that steps across a line and potentially exposes tax payors to liability. That is the reason he believes the current TIA needs to be rescinded and a new set of traffic impact ordinances needs to be put in place. What was recommended by the TIA subcommittee would suffice, would be more equitable, transparent, and predictable, and much less risky than what is currently being done.

4. Action Agenda

4.A. Consider a recommendation on Petition #SUP21-04, a request by Karla Knotts on behalf of Knotts Development Resources of Parcel ID #'s 01517101 and 01517102, to remove a Special Use Permit to allow a Banquet Facility(Nathan Farber) (*Nathan Farber*)

N. Farber, Planner I entered the Staff Report into the record, a copy of which is attached hereto as Exhibit A and incorporated herein by reference. Staff reviewed the previous SUP approval for this site and indicated that the property owner is no longer going to develop the banquet facility. At this time the Planning Department has not received any commercial plans for a banquet facility. The property owner is requesting a removal of the SUP to allow the property to be developed in accordance with the Rural zoning district.

S. Swanick asked why it is necessary to remove the SUP designation. Staff confirmed that removal is required to adjust the development plans.

D. Partee made a Motion to Approve SUP 21-04, Saddlebrook Event Venue – Removal and in accordance with Article 11.4.10 of the Town Zoning Ordinance, the Planning Board recommends approval and finds that the special use permit amendment request in compliance with the following requirements; 1) does not adversely affect adjacent property owners or the

general welfare of the community, 2) all legal notification requirements have been met, 3) removing the 2018 special use permit will allow the property to be used and developed in accordance with the underlying zoning district, rural, requirements, and 4) any future use must comply with all of the lot size, yard and other standards which the zoning ordinance applies in all uses permitted in the rural zoning district. J. Davis seconded the motion. The motion passed unanimously (9-0).

4.B. **Consider a recommendation 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). (Lauren Speight)**

L. Speight, Planner II entered the Staff Report into the record, a copy of which is attached hereto as Exhibit B and incorporated herein by reference. Staff reviewed the applicants request which is following the recent text amendment related to dormitories. The applicant is now requesting the special use permit for the dormitories. Staff recommends approval with the outlined outstanding items addressed as noted.

S. Swanick asked for confirmation that the outstanding items are largely clerical and not substantive. Staff confirmed that is correct.

C. Boyd asked for confirmation of the placement of the buildings and the distance of the buildings to the property to the north and the flood plain. Staff confirmed that the proposed location has adjusted due to the flood plain and the current placement is over 800 feet away from the nearest residential structure and stated that they have confirmed with Rusty Rozzelle that the placement is not within the flood plain or the flood plain buffer.

F. Gammon asked Staff to explain why there is no Charlotte Willingness to Serve letter submitted by the applicant. Staff responded that a Willingness to Serve letter is required at the time of the construction documents but not with a special use permit application.

F. Gammon made a Motion to Approve SUP21-03 – dormitories for a bona fide farm for Metrolina Greenhouses, we the Planning Board find that the request meets all required conditions and specifications, is reasonable and does not impose 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: the proposed dormitories meet the requirements of and are consistent with the Huntersville zoning ordinance articles 9.6 2.1 through 9.6 2.9. Further the Planning Board adopts the finding of fact of the staff report and recommends approval for special use permit 21-03 with the following conditions: 1) that all legal notification requirements have been met, 2) approval by the Town land development engineer of a)stormwater and storm drainage lands and b)site grading plan. 3)Obtain certification from the North Carolina Department of Labor that the proposed dormitories have completed inspection and that these requirements of the migrant housing act/temporary labor camp standards have been certified to meet the applicable H-2A program requirements and provide proof of that certification to the staff upon request. 4) Add tax parcel # 02122102 to the application and evidence labeled attachment C. 5)Correct the site plan to show the correct total acreage, currently shown as 444.515 acres however correct acreage is 46 acres +/- G. Baber seconded the motion. The motion passed unanimously (9-0).

4.C. **Consider a recommendation on Petition #TA21-08, 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)

L. Speight, Planner II entered the Staff Report into the record, a copy of which is attached hereto as Exhibit C and incorporated herein by reference. Staff reviewed the current requirements and proposed amendments to further indicate that land development permits delineate by a certified professional using the methodology of the U.S. Army Corps of Engineers and/or N.C. Division of Water Quality.

C. Boyd asked for clarification regarding the continued use of Mecklenburg County GIS. Staff confirmed that Mecklenburg County GIS can still be used for discovering if there are S.W.I.M. buffers on a property and the Zoning Ordinance already requires a site plan have a site survey conducted to determine if there are any streams or buffers on the property, this amendment is further clarifying.

S. Hensley confirmed that this is not a new requirement and that the proposed amendment clarifies what methodology is used to provide what is already required. Staff confirmed that is correct.

S. Hensley made a Motion to Approve TA21-08 to amend Article 8.25 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 to clarify which and how buffers must be shown on the land development plans for review, and approval by the Town of Huntersville; the Planning Board recommends approval as the amendment is 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. It provides landowners and applicants an alternative to GIS information when targeting extreme locations which provides better accuracy for development plans. It further helps prevent unintended disturbances of S.W.I.M. buffers throughout the Town of Huntersville which will aid in the protection of our drinking water source. C. Boyd seconded the motion. The motion passed unanimously (9-0).

4.D. Consider a recommendation on Petition #TA21-12, a request by the Huntersville Engineering Department to amend Article 14 of the Huntersville Zoning Ordinance regarding traffic impact analysis.

Stephen Trott, Director of Engineering, Town of Huntersville provided a review of the proposed amendments, a copy of which is attached hereto as Exhibit D and incorporated herein by reference. Staff reviewed what a TIA can help us to find which includes a way to quantify the traffic impacts of a new development and compare traffic for different development proposals. A TIA is looking to find if improvements are needed to impacted intersections and if so, what improvements are needed. Staff has proposed changes to the current TIA process as follows: Option 1: raise the threshold to complete a TIA to 150 peak hours or 1,500 daily trips; allow the Town Engineer to waive a Town TIA if NCDOT is requiring a TIA; and raise the threshold for

intersections to be studied to 40 trips on an approach or 70 for an intersection. Option 2: Remove the Town TIA requirement and defer it back to the State.

Staff provided a review of TIA's conducted and how an adjustment to 150 peak hours or 1,500 daily trips and when NCDOT required a TIA. Staff also stated that currently the threshold for intersection is 30 trips on an approach or 50 for an intersection for it to be studied, not mitigated. What staff is seeing is that proposed developments where the threshold is near the current numbers are resulting in no mitigation but requiring staff time to study. Therefore, staff proposed raising the threshold to increase the likelihood that when an intersection is studied it will result in mitigation.

F. Gammon asked what the legal authority is for permitting the Town to require a TIA and if there are legal ramifications to the Town's position. Staff responded that the items in the Town Charter that give the Town the ability to evaluate impact of traffic. J. Glass, Staff Attorney commented that the TIA is legal and there are scenarios that need to be reviewed project by project.

S. Swanick asked if the TIA subcommittee provided different recommendations, then what are being presented. J. Simoneau replied that the Huntersville Ordinance Advisory Board formed a subcommittee to review TIA who then met with the UNC School of Government to review. The idea was that if everyone paid their fair share then it could be equitable but that was getting towards an impact fee which is not legal in North Carolina. Ultimately the TIA subcommittee provided recommendations and no action has been taken on those at this time.

J. Sny, member of the TIA subcommittee reviewed some of the concerns that the subcommittee addressed regarding an intersection level of service may not decrease to a point of mitigation until the second or third developer has affected it, then leaving the burden on the next developer in line which is not their fair and equitable share, it is the result of all the previous development before them as well. More directly the relationship between the number of residences being added and how that translates directly to additional traffic was considered as well.

J. Davis asked how a standard for an intersection is identified, if it is updated when it is inspected and studied, and if staff has considered addressing the standards to update those requirements. Staff responded and stated that Article 14 of the zoning ordinance has an adopted standard related to the adjacent zoning. Those standards have been the same since they were adopted in 2007. If the standard is changed then the question becomes will the Town act to improve those roads when there is no development or will they simply allow those roads to fall below an acceptable level of service and wait until there is development associated with that intersection.

S. Swanick asked how often the intersections are studied to identify their current level of service. Staff stated that the process is to capture the movement at a moment of time and apply projections and forecasting, this could lead to a different result each time you study it so you can increase the number of studies you conduct but it would lock you in to new information each time. J. Simoneau responded that the level of service for an intersection was established at acceptable levels when the Ordinance was adopted and then a developer would have to complete an impact analysis (TIA) for a certain radius of a proposed project to determine if the level of service would be impacted such that mitigation would be required.

J. Davis asked J. Sny if the level of service was discussed in the subcommittee meetings. J. Sny confirmed that they did review the level of service and they did look at the possibility of

adjusting the method. She then commented that it is her understanding that under House Bill 772 the Town still has the authority to impact traffic and given that the standards were formed in 2007 and have not been updated it would appear that the Town would benefit from reviewing these standards for improvement.

S. Swanick stated that since M. Jones was the Chair of the TIA subcommittee he would like the Board to be able to ask him questions. J. Davis asked why his recommendation is to get rid of the TIA when we have the authority to have one and while it may need to be fixed if we get rid of it we risk not getting it back. M. Jones responded that his primary reason for recommending that we get rid of it is that it is unconstitutional via requiring right-of-way acquisition and stepping across rough proportionality tests. When you tell an applicant that they have to build a turn-lane half a mile away and not just their incremental impact on the turn lane that is half a mile away, that steps across a line. Anything not right at the driveway that they are required to pay 100% for creates a problem. There is language adopted in the 160D amendments that allow for exactly what is proposed in the TIA subcommittee, a fee in lieu. There are two things permitted under the authorized in the statutes that allow fees in lieu in the subdivision statutes under 160D.804.C. Level of service was also discussed and the subcommittee proposed a solution that would pick up the majority of impact via the fee in lieu structure which was discussed with Professor Adam Lovelady at the UNC School of Government which he believed to be viable.

J. Glass, Staff Attorney commented that the impact fees and level of service is not written in a way to make it equitable. It is written in a way to require a fee when a level of service falls to a certain level.

G. Baber asked if Staff could provide a brief review of how the changes proposed would differ from what is currently required, how the letter correlation to level of service applies, if that relates to funding for improvements, and how mitigation is determined. Staff explained that the peak hour or daily trips counts relates to trips anticipated to be generated on average by a development. There is nationally accepted data that the Town uses to identify what the trends are to establish what the trip generation rates or traffic counts would be to use based on size and type of development proposed. The Town uses this data to estimate a traffic impact. The threshold for intersections to be studied are based on assumptions of where the trips will likely head from a proposed development and then apply the standards for generating a trip count to identify if that causes a turn-lane or intersection to fall below the acceptable level of service or identify additional road improvements that may be necessary. Article 14.4.1 of the zoning ordinance establishes the Town's measurement system, the Intersection Capacity Utilization (ICU) which is a percentage with zero being no traffic and 100% being congestion level expected for a period of 60 minutes or more. The letter system is a relatable system for discussion with A being the best at zero traffic. Another point is that 'bad' is subjective and each person you speak to may have a different opinion. The ICU percentage number is determined with the proposed development and without the proposed development. If the difference in the two numbers or the resulting number falls below the acceptable level of service, then mitigation is required.

S. Hensley asked Staff if the level of service is a static number or if that number is updated when an analysis is completed and if other municipalities require a TIA. Staff confirmed that the level of service is updated at the time an analysis is completed, when things are rezoned the level of service may also change. Staff stated that there are varying results when looking at other municipalities, some have a TIA requirement and others do not. Within those that have a requirement there are also differing standards for measurement that are applied.

C. Boyd commented that he is concerned about there being only two options presented today to either lower the bar or remove the bar altogether. S. Swanick commented that these are the two being presented for consideration but it is the role of the Planning Board to select what they will recommend.

C. Boyd asked J. Glass for his opinion regarding the concerns expressed on the legality of the TIA. J. Glass responded that the TIA itself is legal and there are exactions related to the TIA that must be considered on a project by project basis to ensure it is being enforced legally and accurately.

C. Boyd asked J. Sny which one of these options was identified as more equitable. J. Sny commented that neither of these options achieve the equity that was desired by the subcommittee.

F. Gammon asked S. Trott if not requiring a Town TIA would adversely affect the people of Huntersville in any way. Staff reviewed the list of projects that have had a TIA completed and identified that there are projects where mitigation was identified by the Town TIA where an NCDOT TIA was not required.

J. Sny asked S. Trott if the peak hour and total threshold were recently amended and if his position has shifted from previous discussions related to the TIA. Staff confirmed that when the ordinance was adopted the peak was 50 or 500 in a day and after looking at the data they found that everything below the 100 or 1000 did not require any mitigation. With the addition of more data points his position is that the TIA is a tool that is not perfect but is available for use.

J. Davis made a Motion to Approve TA21-12 TIA Modification, the Planning Board recommends as outlined in the staff report to 1) raise the threshold to require a Town TIA to 150 peak hours or 1,500 daily trips; 2) Town Engineer may waive Town TIA if NCDOT is requiring a TIA and 3) Raise the threshold for intersections to be studied to 40 trips on an approach or 70 for an intersection. S. Swanick seconded the motion.

J. Davis stated that she selected supporting this option because she cannot support getting rid of the TIA when traffic is the number one concern of our citizens. Eliminating the one tool that we use to gauge intersections seems counter productive even if it is an imperfect tool. She stressed that in her opinion the TIA subcommittee should either continue on or a new one should be formed so that continued effort can be placed towards establishing a better standard. She would like to see continued effort to keeping the standard legal and workable for the Town.

S. Swanick stated that he seconded the motion because he feels that the discussion this evening was not relative to the presentation. Potential legal issues have been raised which are valid concerns. The subcommittee potentially investigating level of service and ways to improve and strengthen this without going to impact fees is not included in this discussion. These appear to be administrative improvements to aid staff but there seems to be a strong reason to give this more attention to address the real problem. While we know that there are NCDOT improvements slated it is not going to fix all the traffic issues. He echoed J. Davis comments that he would like to see the Town Board reappoint a subcommittee to work on this topic.

J. Sny commented that while the legal issues mentioned came from the subcommittee that it may also identify how the TIA ordinance is not doing its job. When he looks at both of these options he sees this as providing minor administrative assistance but there is no talk of replace.

He would like it to be repealed and replaced and maybe the Planning Board should consider that motion versus the currently proposed motion given the likelihood that at least one of the Town Board Commissioners will be newly seated and the learning curve to understand the TIA issues is steep and this issue may continue to be pushed out versus addressed.

S. Swanick replied that he would be surprised at repeal without replace and while repeal may force the hand towards replace how long will that take?

S. Hensley stated he will support the motion because he does not think there is a perfect solution because if there was we would simply copy the municipality that has identified that. If we repeal the TIA the road improvements will have to come completely from the General Fund which is general tax dollars so is there a way to offload some of those improvements and costs and as imperfect as the TIA is it accomplishes some of that for now. As for the legal concerns he defers to the Legal Department to monitor that.

G. Baber stated that he will most likely not support the motion. There is not a perfect solution but the two options presented seem worse than what we currently have so denial would keep it as it is which does not fix the problem but also does not make it worse. The chart reflected some mitigation would be lost and while sympathetic to the time and cost of staff to complete the work he does not have those numbers and he does not want to make the situation worse when pretty much every complaint residents have with him is regarding traffic concerns.

C. Boyd stated he will support keeping the TIA and he likes the bar where it is now, and he feels that the majority of the Town would prefer to add another staff person to keep the TIA efforts going versus reducing the TIA efforts. Traffic is our number one issue and taking a step back does not seem to be going in the right direction. S. Swanick clarified the options available to the Planning Board based on the concerns expressed.

D. Partee stated that he will vote in favor of the motion because the Town has professional staff and this is their job, to present to us the best options to benefit the citizens and to review the options presented with the Legal department. His confidence is in the staff and he will vote for the motion presented.

C. Graffy commented that she has been listening to the questions and concerns and she does recall having a text amendment presented where the options were not more clearly laid out to accept or reject the amendment. She expressed she may want to make a substitute motion to allow the amendments proposed and to add on to that the need to continue to study the TIA. Maybe since this is all a moving target and not static the study has continued for years but she is not comfortable with the two options currently presented. S. Swanick asked for confirmation that she supports the three amendments but would want to add a request to reevaluate the findings of the subcommittee and/or reinstate or reform a subcommittee to continue research. C. Graffy confirmed that is the amendment she is proposing. S. Swanick confirmed he would like an amendment to the motion to state such. J. Davis accepted the amendment. S. Swanick accepted the amendment.

S. Hensley asked Staff to assign a value to the items that required mitigation which in his opinion shows the value of the TIA. Staff estimated the value of items mitigated that are above the red line on the chart where NCDOT required to be in the millions.

F. Gammon commented that he agrees with Jeff and Greg and that this option is more than a band-aid. The first option puts the TIA on life support until a new method can be identified. He

thought that the goal of the TIA subcommittee was to find a new methodology and he is not opposed to the motion proposed because the discussion will continue until a real solution can be identified; however, it is possible that the more votes against this will cause the Town Board to take a deeper look at it and the concerns expressed.

G. Baber made a Substitute Motion to Deny TA21-12 TIA Modification, the Planning Board recommends denial of both options A and B based on the amendment being inconsistent with policies T-2 and T-3 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to not amend the Zoning Ordinance because it will create less mitigation which is used to handle increased development in the Town. C. Boyd seconded the motion.

G. Baber stated that both options seem to be in the wrong direction so given no other choice he recommends keeping things the same in addition to the concerns he expressed of it being in conflict with policies T-2 and T-3.

C. Boyd commented that he is concerned about losing C. Graffy's amendment because what we have now is also not perfect and there is more discussion to be had.

J. Davis stated that she could not support the substitute motion because there was a subcommittee and recommendations have been presented by staff. Despite the TIA not being perfect these recommendations are going to assist staff and keep the TIA in process. The proposed amendments will help staff.

F. Gammon stated that he supports J. Davis position on this. Being stuck in the mud and spinning in the same place is not a beneficial option. Both of the options presented do something but as stated before he would like the Town to continue discussions or a subcommittee to find a way to come up with a better process if possible.

C. Boyd stated that the substitute motion would catch the two items that were mitigated and that would no longer be mitigated under the proposed amendments which seems to be the more aggressive option to protect the TIA. He understands that raising the bar may be beneficial for an administrative reason but it will not alleviate the problem. S. Swanick commented that he agrees this will not alleviate the problem but it can alleviate staff and make them more effective and allow us to potentially get better results out of the items below the line and hopefully lead the way to a better solution.

G. Baber accepted the amendment made by C. Graffy a request to reevaluate the findings of the subcommittee and/or reinstate or reform a subcommittee to continue research to the substitute motion. C. Boyd accepted the amendment.

The amended substitute motion failed (2-7) with S. Swanick, J. Sny, J. Davis, C. Graffy, S. Hensley, F. Gammon, D. Partee opposed

The amended motion passed (6-3) with J. Sny, G. Baber and F. Gammon opposed.

5. Other Business

J. Sny made a Motion to Adjourn. S. Hensley seconded the motion. The motion passed unanimously (9-0).

6. Adjourn