

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

**December 6, 2021
6:00 p.m. – Huntersville Town Hall
101 Huntersville-Concord Road**

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 Town Hall, 101 Huntersville-Concord Road, at 6:00 p.m. on December 6, 2021.

GOVERNING BODY MEMBERS PRESENT: Mayor John Aneralla; Commissioners Melinda Bales, Dan Boone, Brian Hines, Lance Munger, Stacy Phillips, and Nick Walsh.

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 Metropolitan Transit Commission met a few weeks ago and agreed to raise the rates of the three communities outside of Mecklenburg County that taxpayers have been subsidizing their ridership.
- Expressed appreciation to Governor Roy Cooper, Congresswoman Alma Adams, State Representative John Bradford, Speaker Tim Moore, Senate Leadership, and Assistant Town Manager Bobby Williams for their efforts to get the Town's portion of the American Rescue Plan Act funding included in the State Budget.

Commissioner Bales

- Expressed appreciation to the Huntersville Parks & Recreation staff for their work on the tree lighting and Christmas in Huntersville.
- Mecklenburg County's Building Development Commission is in need of applicants.

Commissioner Boone

- Provided update from the Lake Norman Chamber of Commerce.

- The State of North Carolina will be inspecting the Huntersville Fire Department and giving the Town its insurance rating (ISO).
- Huntersville Police Department had 15 openings for sworn officers during the summer. Currently, there are 8 vacancies, with several good candidates in the review process.

Commissioner Hines

- Reviewed what transpired with Charlotte Regional Transportation Planning Organization over the last 2 years due to COVID.

Commissioner Munger

- Apologized for missing the last meeting due to a work-related commitment.
- Congratulated everyone who decided to run for office and take part in the process.
- Provided update from the Huntersville Ordinances Advisory Board meeting held on December 21.
- Charlotte-Mecklenburg School Board will hold a workshop tomorrow on Student Outcomes Focused Governance.
- Consider supporting local non-profits.

Commissioner Phillips

- Expressed appreciation to the outgoing elected officials who have shared their wisdom and knowledge over the years.

Commissioner Walsh

- Public Art Commission will not meet this month.
- Provided update from Visit Lake Norman.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

BeeJay Caldwell, 14521 New Haven Drive, said my vision for the newly elected Huntersville Town Board members at the swearing-in December 6, 2021, as a supporter of democracy, freedom, and justice for all, I am Betty "BeeJay" Caldwell.

It appears that some are not satisfied that democracy is being given to the masses and not just a select few. Allow democracy to work for all, otherwise it will undermine the safety and security of you and some of your neighbors who have endured unrelenting attacks on their person hood and property that has the potential to destabilize their lives.

I have a photo of two bird cages in my mind. Both are symbols of freedom. The door of the first bird cage is open and represents individuals of European descent who because of their color are born into "privilege." The door of the second bird cage is closed and represents limited freedom and oppression to descendants of the enslaved. The door represents the residents of Pottstown and Huntersville who are not given the same freedom and justice as others.

As the new board is given the oath of office, let it be known that the oath is to God, not to man. And may I suggest that the newly elected members make a special effort to envision that both doors of the bird cages are open and remain open at each meeting where equality, freedom and justice can prevail to all.

Written comments attached hereto as Exhibit No. 1.

AGENDA CHANGES (CURRENT BOARD)

Commissioner Hines made a motion to adopt the agenda. Commissioner Munger seconded motion.

Mayor Aneralla called for the roll call vote. *Note: A member of the incoming Board was participating remotely, therefore a roll call vote was required on all actions taken during the meeting.*

Commissioner Bales – Approve
Commissioner Boone – Approve
Commissioner Hines – Approve
Commissioner Munger – Approve
Commissioner Phillips – Approve
Commissioner Walsh – Approve

PUBLIC HEARINGS (CURRENT BOARD)

Mayor Aneralla recognized Planning Board members present: Frank Gammon.

Petition #ANNEX21-03. Mayor Aneralla called to order public hearing on Petition #ANNEX21-03, a request by Bowman Development Group, Inc. and SDH Charlotte, LLC to annex 6.898 contiguous acres (Holbrooks Road Property) into the Town of Huntersville.

Nathan Farber, Planner I, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 2.* Bowman Development Group and SDH Charlotte, LLC are looking to annex 10 lots into the Town of Huntersville contiguously. That equates to about 6.9 acres.

Commissioner Boone said when I Googled SDH Charlotte LLC, I came up with two companies – one in Midland with a mailing office there and a home office someplace in Texas, and another one in Charlotte, which one.

Mr. Farber said I believe they are from Charlotte.

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

OTHER BUSINESS (CURRENT BOARD)

Petition #ANNEX21-03. Petition #ANNEX21-03 is a request by Bowman Development Group, Inc. and SDH Charlotte, LLC to annex 6.898 contiguous acres (Holbrooks Road Property) into the Town of Huntersville.

Commissioner Walsh made a motion to approve Petition #ANNEX21-03 to annex 6.898 contiguous acres (the Holbrooks Road property) into the Town of Huntersville.

Commissioner Phillips seconded motion.

Mayor Aneralla called for the roll call vote.

Commissioner Bales – Approve

Commissioner Boone – Approve
Commissioner Hines – Approve
Commissioner Munger – Approve
Commissioner Phillips – Approve
Commissioner Walsh – Approve

Annexation Ordinance attached hereto as Exhibit No. 3.

Artist Selection – Downtown Greenway Trailhead Sculpture. The Public Art Commission has selected to work with David Landis for the Downtown Greenway Trailhead Sculpture. The Public Art Commission sent out a Request for Proposals and received 13 submissions. At the November 10, 2021, Public Art Commission meeting, a motion was made to move forward with David Landis' proposed project for Town Board approval. We are not finalizing the piece now, but moving forward to work with the artist on creating the final piece. The Greenway, Trail, and Bikeway Commission also made a motion at their November 16, 2021, meeting to support the Public Art Commission's decision to move forward with artist David Landis.

The Public Art Commission has received a donation of \$10,000 to go towards the sculpture and has also applied for two \$10,000 grants. The Public Art Commission and the Greenway, Trail, and Bikeway Commission will continue to seek funding for this project.

Commissioner Walsh made a motion to approve the Public Art Commission's selection of David Landis for the Downtown Greenway Trailhead sculpture.

Commissioner Phillips seconded motion.

Mayor Aneralla called for the roll call vote.

Commissioner Bales – Approve
Commissioner Boone – Approve
Commissioner Hines – Approve
Commissioner Munger – Approve
Commissioner Phillips – Approve
Commissioner Walsh – Approve

Landis RFP Submission attached hereto as Exhibit No. 4.

Petition #SUP21-03. 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 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 preferences 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 their decision.

I would like to recognize the applicant. Are there any other persons who believe they have standing? I believe I have several. I want to call you up one at a time and we'll determine if you have standing or not. Mr. Peter Jacobson.

Peter Jacobson said Peter Jacobson, 12505 McCord Road.

Mayor Aneralla said it's not adjacent to the property. Is there a reason why you think you have standing in this hearing?

Mr. Jacobson said yes, as a taxpayer who will be impacted by the construction of this apartment, high density dwelling. As a resident of Huntersville, I believe everybody who is a resident and pays taxes in Huntersville has standing.

Mayor Aneralla said do you feel you have more standing than anybody else?

Mr. Jacobson said no.

Mayor Aneralla said well, I'm sorry. Thank you. Our next person is Mr. Edward Cecil. Please state your name and address.

Edward Cecil said Edward Cecil, off McCord Road in Huntersville.

Mayor Aneralla said why do you think you have standing?

Mr. Cecil said I'm a citizen of this town. I'm a taxpayer. The situation concerning this property is that I will be burdened by possible additional taxes that can occur. In addition, the police and fire will have to police and regulate this area with the increase of 500 workers in a dormitory.

Mayor Aneralla said Mr. Cecil.....

Mr. Cecil said I'm not done. I don't reside next to it, but standing has nothing to do with proximity.

Mayor Aneralla said do you feel you have more.....are you going to be more impacted than the general citizen in Huntersville?

Mr. Cecil said all general citizens in town have standing in regard to this issue.

Mayor Aneralla said please sit down, thank you.

Mr. Cecil said well, I also can comment as an expert as a police commissioner if we want to discuss another.....

Mayor Aneralla said you are welcome to sit down, thank you.

Mr. Cecil said you're not accepting my standing in regards to being a police commissioner, in regards to the burden of the town in regards to police presence that must be out there. I'm a former police commissioner. That would give me expert testimony.

Mayor Aneralla said you are welcome to sit down, thank you.

Mr. Cecil said thank you.

Mayor Aneralla said our next person is Mrs. Kimberle Burton. Please state your name and address.

Kimberle Burton said Kimberle Burton, 15555 Huntersville-Concord Road.

Mayor Aneralla said you feel you have standing.

Mrs. Burton said yes. I'm directly across the road from that whole Metrolina Greenhouse complex, which is connected to the property that they are talking about putting a dormitory on. It's about a half mile from my house, but the properties are completely connected.....their properties are completely connected. That's why I feel like I have standing.

Mayor Aneralla said you brought Mr. Robert Mugkenfuss as counsel?

Mrs. Burton said yes.

Mayor Aneralla said we'll let you come on over, we'll swear you in and swear Mr. Mugkenfuss in. Who is going to be here for staff? And Mr. Van Wingerden.

Mayor Aneralla swore in Jack Simoneau, Art Van Wingerden, Kimberle Burton and Robert Mugkenfuss.

Mayor Aneralla said are there any disclosures or anything that Board members would like to make? I can tell you that I know both the applicant very well, as well as one of the individuals with standing, but it won't impede my judgment on conducting this hearing.

Commissioner Phillips said Ed Cecil contacted me and said that the people in the community were unhappy, but that is the only bit of conversation I've had around this, so I do not think that it will impact my standing.

Commissioner Walsh said Ed Cecil also reached out to me and wanted to discuss it. He specifically mentioned the Burtons were upset about it and wanted to discuss it and I said well, it's quasi-judicial so I can't discuss it, and he said well I want to talk about the process. I said I can't discuss it and so we ended the phone call, but it won't influence my decision.

Commissioner Bales said I know the applicant. I know him relatively well and I also got a phone call from Ed Cecil wanting to discuss the citizens being upset, specifically Mrs. Burton or the Burtons, but neither will affect my judgment on making this decision this evening.

Commissioner Hines said I've talked to Mr. Van Wingerden on occasions in the past, not regarding this. I've talked to Mr. Cecil and in one of our last conversations this came up. Didn't really talk about it at length. I didn't even know it was quasi-judicial, but none of that is going to affect my decision.

Commissioner Bales said I did want to follow back up just to be very clear. In addition, the applicant has donated to my campaign in the past, so I wanted to also make that public. But again, that has nothing to do with the decision making this evening.

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 this case outside of the hearing. That may be an email communication, as well as conversations with parties, staff, or the general public. Does any Board member have any other ex parte communications to disclose?

There were no disclosures.

Mayor Aneralla said based on disclosures we've heard from the Board concerning partiality and ex parte communications, does any member of the Board or any party to this matter have an objection to a Board member's participation in this hearing?

There were no objections.

Mayor Aneralla said we'll hear from Mr. Simoneau.

Jack Simoneau, Planning Director, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 5.*

This is Special Use Permit Request #21-03, Metrolina Greenhouses. Art Van Wingerden submitted the application on behalf of Metrolina Greenhouses, Inc. Just to give you an idea of the property, I'm going to start with a large map.

Metrolina Greenhouses owns about 1,000 acres in the eastern portion of Huntersville. The map that you see in front of you, Huntersville-Concord Road, the greenhouse itself fronts on Huntersville-Concord Road where Huntersville-Concord Road intersects with Hiawasse, turn to the right. They also have property that's highlighted in yellow and the greenhouse. H-2A housing is proposed in this portion of their property. They do own all these acres. This is the 40+ acres that they are planning to locate the housing on. I can refer back to this at any point in time, as well as the folks with standing if they would like to explain using this map.

This is the zoning map of the property in question. It's zoned TR, the brown. Metrolina Greenhouses owned property is zoned TR, it's zoned Special Purpose, it's zoned Rural, so they have all of those different zones under their control. But this particular property is zoned Transitional Residential. I just put this map up here so in case we need to refer to it at some point in time. Again, you have Huntersville-Concord Road serving the property and a driveway will come off of Huntersville-Concord Road and the units will be placed generally in this area here. This is a wooded section, and this is the section of the property that is not wooded, so it's there in case we need to refer to it during this meeting.

This is one of the detailed maps that's been provided, and this shows the access point off of Huntersville-Concord Road and the area that they are removing the trees is around this area right in here. The road will come in, there will be a court here for the buses to come, there will be four buildings that are proposed. This area in question is about 46 acres and again Metrolina Greenhouses owns about 1,000 acres. As I mentioned before, it's zoned Transitional Residential. The asphalt will be crushed asphalt driveway. There are four dormitory buildings that will be 104 beds each. Each building is going to be one story, that would be 10,660 sq. ft. They have indicated that they are going to have buses that bring the workers to Metrolina Greenhouses. The proposed tree line is shown on this detailed plan, and they are proposing to connect to Charlotte Water and Sewer for their utilities.

This shows a site plan of the map that was included in your agenda packet. Again, each of these buildings contain up to 104 beds and accommodate 104 people. In August, Metrolina had a text amendment approved that gave this opportunity to ask for a Special Use Permit. The amendment that was approved basically says that dormitories for bona fide farms are permitted in the Rural, Transitional District if a Special Use Permit is granted. The criteria that's in there is (1) that the use will not endanger the health and safety and does not substantially reduce the value of nearby property; (2) the use does not conflict with long-range plans; (3) the use does not constitute a nuisance to adjoining properties with respect to noise, dust, fumes, odor, traffic; (4) buildings, parking, trash facilities shall be setback at least 100' from any adjoining property line and 500' from any public street right-of-way; (5) use be visually screened year-round from all adjacent adjoining properties and public streets; (6) the driveway and parking area shall, at a minimum, be ground asphalt; (7) the dormitory is located on a bona fide farm of at least 100 contiguous acres and is on the land being farmed by the occupants on a full-time basis; (8) the dormitory cannot exceed two stories in height and 15,000 sq. ft. per building and five buildings total; (9) building and housing will be constructed and maintained to meet H-2A program requirements or similar federal programs at the time. I'm sorry to have to read that into the record, but that's the criteria that we are basing our decision on tonight.

In your agenda packet is the Staff Report. Staff, after reviewing, did recommend approval of this Special Use Permit. There are some conditions that the storm water and storm drainage plans that are required are in the process of being reviewed by the Land Development Engineer and ultimately have to be approved before any building can occur. I want to get that on the record. Also, the grading plan is required. It's related to the storm water drainage plan. That, too, is in the process of being reviewed.

The Special Use Permit is issued that will all be a part of the review for any building permits are issued. The applicant shall, upon receipt of certification that the building meets H-2A program requirements or similar federal program, submit that certification to the Town Planning Department. That was the last criteria that I read off and the site plan has an indication that it serves 444 acres. In reality, the parcels in question are 46 acres, but again it's part of a 1,000 acre total development.

In your agenda packet you have the Planning Board recommendation. The Planning Board did recommend approval 9-0 and with that we'll be happy to answer any questions that the Town Board has. As you are aware, you will have to do a decision statement in making your ultimate decision, but I'm happy to field any questions that there might be.

Commissioner Bales said it says in the Staff Report that a Willingness to Serve letter from Charlotte Water was not requested as part of this Special Use application process. At what point would that occur, do you know?

Mr. Simoneau said they are in the process of getting that Willingness to Serve letter. As we are aware, Charlotte Water does have issues with sewer connections out in that particular area, so I'm not sure even if Charlotte Water is willing to say we are willing to serve you, but it's willing to serve you if we have capacity. And there are capacity issues out there. If that doesn't come to pass, then they are going to have to figure out another way to deal with waste and that might have to be a package treatment plant. I don't even know if a septic system could work for something of that size. I have doubts that could happen. This is a significant issue, but this would be reviewed at the time they apply for the building permit and if they are unable to connect and it affects their site, this could come back to the Board for a re-working of the site plan.

Commissioner Munger said just for clarification purposes, if you'd go back to the Article 9.62 screen, so essentially what we are doing here is we are approving a Special Use Permit as long as it fits all nine of these criteria and that is it. As long as it fits all nine of these criteria and that is it.....as long as it fits all nine of these, we have to approve it.

Mr. Simoneau said correct.

Commissioner Munger said real quick question on the timing of the H-2A approval. Do you have any idea of how quickly and that might be a question for the applicant.

Mr. Simoneau said the applicant is here and can answer that.

Mr. Van Wingerden said just to be sure I answer the question correctly, what was it.

Commissioner Munger said the timing of the H-2A approval, how does that process work and where are you in that process?

Mr. Van Wingerden said this will be our third year into it, so we just finished our second year. The first year we had 150. Last year we did 300. We can have them for up to 10 months. They start the end of January and are usually done by the end of November once poinsettias are gone....150 of them. We'll get 100 at the end of January, 50 mid-February. They don't leave until the end of November, so they are there for basically the entire time. The other 250 that we'll have will be there from mid-March to mid-June because that's our busy time.

Commissioner Munger said just to clarify, when you are mentioning these numbers, you are referring to workers, correct.

Mr. Van Wingerden said workers, that is correct. We have 400 total workers that we are going to be using this year, so 150 of them are for the 10-month period basically, so 50 of them are 9-1/2 months, but it's close enough to 10 months. The other 250 will be there 90-120 days. Once we are to that, then we will spread everybody out so everybody has plenty more room. We want to keep every building occupied so there's at least people in it.

Commissioner Hines said regarding the sewer issue, have you had additional conversations.....I mean, you may get a Willingness to Serve letter, but they're not even acknowledging those really anymore. Have you looked at alternatives?

Mr. Van Wingerden said we've started talking about alternatives. We have talked to the county about are we going to be able to hook up to the sewer. I can't get to Jack's map, but the sewer tap is about 250' from the building, so that's a pretty easy tap. If you are going down Huntersville-Concord Road there's a fire hydrant about 300' from the driveway, so that will be our water hook-up. If they don't do it, we're going to have to look at can we build some type of system to handle what we have there.

Mayor Aneralla said any other questions of the applicant?

Commissioner Bales said what is your timing?

Mr. Van Wingerden said timing, of course, is of the essence. I actually spoke to our H-2A guy today and he was asking me how we were doing with all this, and I said as typical it's a little slower than we want. They've been in hotels the last two years. We will do that again next year. It will come at a much greater cost to us because hotel rooms when we first started this, the first year we did it was when COVID started, so hotel rooms were pretty cheap and pretty available. Last year they were somewhat available and a little more expensive. This year they are not as available and are way more expensive. Our workers are having to travel ½ hour up to an hour to get to work and then ½ hour to an hour to get back.

Commissioner Bales said in regards to building these, if you receive your Special Use Permit, at what point would you start building?

Mr. Van Wingerden said we'll start on the permit process. We'll do the fast track on the permit we assume, let's call it 30 to 90 days just depending on how quickly that happens. As soon as we get the permit, we'll start building.

Commissioner Bales said in addition to the whole water and sewer thing, I'm just trying to understand at what point do you plan on having workers in the building.

Mr. Van Wingerden said the way H-2A works, there are federal guidelines that you have to follow, so many square feet per person, everything is regulated the way that it works. Once it's done, the Department of Labor has to come in and inspect you. That happens every year, so it's not just one time, you're done, and then you are finished with it. The next year when H-2A comes back, the Department of Labor comes and checks it and it's 30 days before move-in date. If we don't get approved, then we have to fix whatever they deem not to be to specifications or to standards and then the clock starts over the day the inspection is made. With everybody coming the end of January, my inspection would have

to be the end of December. I couldn't have a building by this December so I would say next year we're more likely going to be in hotels the entire season unfortunately, but that's just part of it.

Commissioner Bales said do you anticipate building all four buildings at one time?

Mr. Van Wingerden said yes. We'll probably get four separate permits is what we'll do so each building is on its own, so when we finish one we can have it hooked up and ready to go. They're pretty simple buildings. There's not a lot of walls in them. It's built like a military barrack. We went and inspected several of these around the country to see what we wanted to do and how we wanted to do it and just talked to different townships what they like. Some people build a lot of houses and then they will put two people per bedroom, have 14 people in a house. By the time you start building that many houses, especially for the people that are there 90-120 days, it just doesn't make a lot of sense. Michigan was the main place we went to look at these. They are all over the place in Michigan. Believe it or not Michigan is one of the top 3 states in the country for H-2A workers.

Mayor Aneralla said any other questions? Mrs. Burton.

Kimberle Burton said I want to begin by saying I'm not here to be confrontational. Our family has enjoyed good working relationships with our surrounding neighbors and we want to maintain those relationships. We've had conversations and that doesn't affect the quasi-judicial because we can have those conversations. But I am here because I truly care about our town, the community, and its vision for our future. I have deep concerns about the proposed request for the Special Use Permit that allows for, I thought it was when we spoke five buildings and 500, I see tonight it's four buildings, 400 bed dormitories to house the workers for Metrolina Greenhouse.

The dormitory would be placed very close to my property and it would be built in a rural, low density zone and I'm concerned, if allowed, this high density dormitory may set a precedent for others to request the ability to place more large dormitories such as this on their land. If you allow the density increase with a Special Use Permit, how do I have confidence that you will not vote to allow other high density development such as apartment complexes to be placed in our Rural zoned area. High density means more traffic, the need for more fire, EMS services, which the Town will have to provide. If this happens, the landscape of this part of Huntersville would be completely changed and would not be in keeping with the Town's 2040 Plan.

Mayor Aneralla said Mrs. Burton, can you point out where your property is?

Mrs. Burton said I have 100 acres across from Bradford Drive, so I'm just around the corner from the entrance to this. My farm starts in front of Bradford Drive and goes all the way to that corner right there where that yellow is. I have concern that the dormitory would have a negative effect on the property values for those in close proximity to the project. Where do we get the information regarding the effect the dormitory will have on the property values? I have consulted with a real estate broker who has stated to me there is a chance.....

Mayor Aneralla said is the broker here?

Mrs. Burton said no, he is not.

Mayor Aneralla said I'm not an attorney and I don't play one, but we have to have that person, if they are here, to be sworn in and so forth. If you have something to say, you should have your attorney say it, too.

Mrs. Burton said he will. I want to say something, then he will say something. What I went through is I looked at those criteria and there were three things on that that I want to make sure that we have assurances that these things are adhered to. One is that the density of the property will be changed as far as the density of the amount of people on a single property and that's not within the Town's 2040 Plan; that the Special Use Permit requires the buildings not be visible from the road and as I drive by the site, it's clear unless they are going to add substantial screening, that you are going to see these buildings from the public street. How will it be determined that the requirement of the buildings not be visible from the public street has been met. I've been in attendance to several of these Town Hall meetings and listened to other Huntersville residents who had a decrease in their property value because the Town of Huntersville has not enforced the provisions of sound and light requirements of a neighboring project.

Mayor Aneralla said Mrs. Burton, again, you are supposed to present evidence at this hearing.

Mrs. Burton said I was not allowed to be involved in any of this pre thing.....the preliminary hearing or whatever, so I do feel my property value will be affected and an impact study should be done to say yes or no and I do feel that it may trigger further development and I do feel that it will be visible from the street. Those are things that are on the list that need to be completely addressed and assured that will be adhered to. I feel an impact study should be done to decide whether my property value will drop or not. Him saying it or me saying it, that's just opinions of citizens, but an actual impact study would show that.

Robert Mugkenfuss said I'm a partner with the McGuire Woods Law Firm in Charlotte. I represent Kim and Jeff Burton. I'll briefly address a couple of points. The most important point I want to note is Kim's testimony, which I believe she's competent to testify as to the impact of the value of her property. Being a resident, homeowner, she believes that this development, this construction, will substantially reduce the value of her property which is one of the requirements that the applicant has to overcome. Under North Carolina law the applicant has, as Mr. Mayor you noted, to present competent, substantial, material evidence to satisfy the requirement that it would not substantially reduce the value of nearby property.

As Mr. Mayor you noted, my clients have standing. They do have property which is nearby. When I look at the Staff Findings under 9.62.1, it's noted that the applicant has made a note on his application that it does not substantially reduce the value of nearby property, so it appears from the staff findings that this is a statement by the applicant as far as I have not had the chance to question the applicant, but as far as I know the applicant is not a real estate broker, he's not an expert in real estate value. Under North Carolina law, his statement as to the impact of value would not be competent evidence as to whether it substantially reduces the value of nearby property. On that point alone the applicant has not satisfied the burden to obtain the Special Use Permit and in addition my client has testified that she does believe it will substantially reduce the value of her property. With that opinion from a homeowner who has standing, I would submit that the applicant has not satisfied the burden. There should be additional investigation as to the impact of this construction on nearby property. My client and other nearby property owners would certainly be impacted. It's the prudent thing to do. Hopefully the Town respectfully would want some competent evidence as to the impact of this construction on the value of property. That's what my clients are asking.

Emily Sloop, Town Attorney, said vague, general allegations of decreased property value that are not substantiated by a certified North Carolina appraiser is generally not admissible in quasi-judicial hearings and therefore they are not competent, material, substantial evidence. We haven't necessarily heard anything that would reflect upon the record that Mrs. Burton has standing per the definition in 160D-1402. She's not a person that has property ownership interest, meaning she does not own the property that's subject to the application. She doesn't have an option to purchase the property. She does not necessarily have special damages that she has supported by expert opinion testimony. She also does not belong to a homeowners association with regards to the property. Her property, while in some proximity, is not necessarily abutting the property that is subject to this application. There is case law that says while proximity has some weight, proximity in and of itself is insufficient to grant standing. That is a case from North Carolina out of Raleigh. I would ask for clarification to reflect upon the record how she has special damages that would equate to standing for this matter.

Mr. Mugkenfuss said *Whitman v. Forbes* of the North Carolina Court of Appeals 1982 held that a layperson is competent to testify as to property value of the property they own. I'd share the Complex Commercial Litigation Department at my firm have litigated a lot of property cases and it is absolutely competent for a homeowner to testify as to their property value. That is competent evidence. Someone else, in this case the applicant, has to present evidence to this Board as to his belief that it would not substantially reduce the value of nearby property. As far as I know, there has been no evidence presented to this Board that it would not substantially reduce the value of nearby property.

As to standing, I think the criteria of the Town is that it won't substantially reduce the value of nearby property. It's unquestionable that the Burtons have nearby property. As far as I know, the definition of nearby property is not defined in the ordinance; therefore, and I think Mr. Mayor you acknowledged that they have standing, and I think by virtue of my clients being where they are, Mrs. Burton pointed out on the record where their property is. It's probably as close.....obviously we are out in the country. I live in Charlotte where people are very close to each other. I think it's as close as you could possibly be. It's across the street. I certainly believe that with regard to the criteria of nearby property they have standing and Mrs. Burton can certainly testify as to the value of her property. Again, the case of *Whitman v. Forbes* establishes that, and it is competent evidence. And, again, on the flip side, I am not aware of any competent evidence of the applicant who has the burden to show that it would not substantially reduce the value of nearby property.

Mayor Aneralla said one quick question, sir. The Pavilion Estates, would you say that their proximity is potentially plus or minus.....

Mr. Mugkenfuss said in the upper left?

Mayor Aneralla said would that group of people have more or less standing than the Burtons.

Mr. Mugkenfuss said certainly I'm not the judge or jury, but.....

Mayor Aneralla said they are right across the street from it.

Mr. Mugkenfuss said I think one of the issues, my understanding is that the residents of the Pavilion Estates did not receive actual notice of this hearing. Absolutely, I think again nearby, it's not defined as far as I know in the ordinance, but I would think the people in that community would have standing as would my client.

Mayor Aneralla said any other questions, or the applicant can speak.

Mr. Van Wingerden said Jack pointed out this 46 acres, so we have to make it 100 acres even though it's all contiguous, all 1,000 acres are there. If we have to put two or three other lots into it, we are going to put this one, this one and this one. That's 256 acres right there, just that lot. That's where if we had to say okay what parcel of land if we had to put tax parcels, those are the three parcels we are going to put with it because they are connected to said parcel.

I don't have any evidence that the property value went up or down in Michigan. I didn't know I had to have that. If I knew I had to have that, I would have made sure and gotten that, but obviously I don't. That's the piece of land that we will connect to it to give it the 100 acres that the ordinance says. When we first did it, I just figured the whole 1,000 acres since it's all connected as one property.

Mr. Simoneau said how we viewed it, they own 1,000 acres outlined in yellow. It's all contiguous, so that's how we determined they met the 100 acre threshold.

Mayor Aneralla said Mr. Simoneau, there was a question about screening and seeing it from the street, and density. Can you address those two questions.

Mr. Simoneau said that's one of the reasons why I have this aerial photograph here. This is the site and so you can kind of see the existing woodlands, so this is the area that's going to be cleared. You can see the existing woodlands are going to stay. This area right here is not treed. This happens to be SWIM buffers, so this is all vegetation, so that vegetation is staying. It will be cleared as it comes in and curves around. When they come in for their permit, we will be checking the woodlands that will be preserved and based on the aerial photography that we have and the site area that would be impacted, we have determined they meet that standard. Having said that, if Charlotte Water is unable to provide sewer and there has to be some kind of system built, we will have to reevaluate because we don't know if that impact will change. I would say it's probable that it would be outside of this area, so when it was asked who's going to be checking that, that would be the staff's job. If there's a substantial change in the site as approved by this Town Board, we will bring it back to the Town Board so you can reconsider.

Mayor Aneralla said Commissioner Munger.

Commissioner Munger said this is probably a question for the attorney, but is the burden for property valuation on the applicant or nearby property owner at this point?

Ms. Sloop said as far as proving special damages, they have to be particularized to the property owned by the opponent, in this case Mrs. Burton. While she has stated that she would like or feels that and thinks that a study is necessary, she has not provided any concrete evidence of property value decreasing that would be substantiated by an opinion, or an expert witness opinion I should say, rather if I heard her correctly her damages would be because she could see it from the street which would be not particularized to that particular property, as everyone could see it from the street that is passing by. The burden you asked about as far as who has to prove, an opponent has to because once the applicant has met their burden of providing to a reasonable mind that the elements and requirements of the ordinance have been met, the burden then shifts to the opponent to show why they are not met.

Mr. Mugkenfuss said with all due respect, the burden, and the Mayor actually quoted the burden correctly. Innovative 55, LLC v. Robeson City which is a 2017 Court of Appeals case, set forth the burden

of the applicant, that the applicant has the burden of production. It's not the burden of proof, it's called the burden of production. The applicant has to put forth substantial, competent, material evidence which is what the Mayor stated at the beginning as to each criteria stated in the ordinance, so the applicant would have to put forth substantial, competent, material evidence that it does not substantially reduce the value of nearby property. I think the applicant has admitted here today that he didn't know he had to present any evidence to that issue. In the staff findings, they simply note that he has a note on his application that it would not, so he has not presented any evidence, competent evidence, at all that it would not substantially reduce the value of nearby property. The burden only shifts to the opponent once he satisfies his burden, so my clients have no burden I would contend. They have no burden to rebut that because he has not satisfied his burden in the first instance to provide substantial, competent, material evidence on that point.

Mayor Aneralla said do you have any other comments, Ms. Sloop?

Ms. Sloop said my previous comments stand on their own.

Mayor Aneralla said Mrs. Burton, do you have any other comments? Mr. Van Wingerden? Mr. Simoneau?

Mayor Aneralla said my last question is based on your opinion and expertise. Has the applicant met all nine points of our ordinance?

Mr. Simoneau said yes, as indicated. The Planning Board also did recommend approval.

Commissioner Walsh said it's the math here. We've got 1.5 units per acre that's allowed here. Is that correct?

Mr. Simoneau said correct, TR would be 1.5 – that brown area is 1.5.

Commissioner Walsh said if there are 104 beds, four dormitories, that's 420 people I heard. Here you are showing it as 46 acres. I know the property is over 1,000, but there's commercially built upon there, then you are mentioning the two other properties bring it to 100, so I'm just trying to figure out what's the math here.

Mr. Simoneau said density is units per acre. Dormitory is not quite to units per acre, it's beds. When the text amendment was done there was specific criteria in there saying it has to be at least 100 acres in size, could be no more than five buildings with "x" amount of square feet. That's the parameters that you work on. The way we see it is all 1,000 acres are a part of this whole conglomerate that we would call the Metrolina Greenhouse property and where you see the buildings is basically the purple area, but everything else, as you can see from the aerial photography below, is just scattered buildings here or there.

Commissioner Walsh said so they wouldn't be allowed to build additional buildings on the 100 acres, correct.

Mr. Simoneau said this Special Use Permit is for these four buildings with the numbers that are outlined on that, so that's this Special Use Permit and if things change, including not being able to get a sewer connection and then having to build a packaged treatment plant and take on additional land, that changes the nature of the Special Use Permit, and it has to come back before the Town Board.

Commissioner Walsh said I guess clarification is it says the approximate 46 acres, so it's really 100 acres.

Mr. Simoneau said it's really 1,000 acres. The applicant highlighted this is the area generally that we are going to be disturbing and represents 44 acres, so that's kind of what they said. From our standpoint the way the ordinance reads, is it's got to be a part of a farm of at least 100 contiguous acres. There's 1,000 acres that's contiguous here.

Mayor Aneralla said any other questions?

Mayor Aneralla said hearing no additional questions or presentation of relevant facts, the Board will now begin deliberation. The evidentiary hearing remains open so that the Board may ask clarifying questions.

As a reminder, the Board is tasked with deciding if, based on the evidence presented at the hearing before this Board, the proposal meets the applicable standards.

If the applicant meets the 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 or 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 the Board may want to consider and evaluate based upon the evidence that was presented at the hearing before this Board.

Is there a motion or any other discussion? It's awfully quiet. Motion? Discussion? Is there a motion? Is there something I'm missing here?

Commissioner Bales said I think you are seeing individuals mulling through what they have just listened to.

Mayor Aneralla said you are allowed to deliberate for a motion, as well.

Commissioner Bales said correct. One of the things that I just want to make sure that I am clear. It really does circle back around to the water connection and making sure that if this were approved and I think we heard this, if this were approved and there was an issue with water and sewer hook-up, that they would have to come back to us regardless of the modifications necessary if it's not as presented. Is that correct?

Mr. Simoneau said yes.

Commissioner Bales said I think the other question that came up is in regard to standing. I know when he said that Mrs. Burton had standing, but then what I heard from 160D.1402 makes me stop to question that. If I'm going to make a decision like this, I would like to hear that again.

Mayor Aneralla said not knowing the statute verbatim, it's typically been tradition to at least allow somebody who is somewhat close to a project to speak. I personally don't like these quasi-judicial hearings because of the formality and then I always have to look like the bad guy. If you think about all our quasi-judicial hearings that we've held, we've given some leeway but then it is ultimately your determination if that person did have standing or not.

Commissioner Bales said the last thing that stands out to me is the burden to show that the property values will not be substantially reduced. I'm not quite sure that's been proven here this evening. These were my takeaways since we were having dead air space, I thought I would throw this out there as everyone is mulling through.

Mayor Aneralla said I think Ms. Sloop can address that one more time.

Commissioner Bales said I think that would be a good idea.

Ms. Sloop said the burden originally lies with the applicant. Once the applicant has provided and met the evidentiary burden, that burden then shifts to any opponents, such as Mrs. Burton, to show why the standard is not met or why they will have the special damages that will affect the property in terms of standing requirements. Just to reiterate, per the statutory definition of standing, one of the ways you can qualify as a person with standing is if you have special damages, but usually special damages may factor in proximity, but typically proximity in and of itself has not been sufficient to provide special damages. Usually special damages are economic in nature showing a specific decrease, not a future hypothetical decrease, in property values. For example, that decrease is typically shown by expert witness opinion coming from a certified appraiser, not the applicant's opponent themselves as to their own opinion of their property decrease or what it may decrease in the future. Other things have been considered such as secondary impacts, however as far as her testimony on what made her, in her opinion, have standing. All I heard was that she could see the building from the road, which is what any person passing by would see.

Commissioner Munger said is it possible to ask the applicant a question.

Mayor Aneralla said yes, it's still open.

Commissioner Munger said it seems to me we are stuck on one issue. How did you arrive at the fact that the property valuation would not be adversely affected by this? What was your process?

Mr. Van Wingerden said I just looked at all the other buildings that we've built there. A lot of times people look at farms and go my property values are going to go down because of farms. We have a 50 year history two years from now of being in Huntersville. When we moved here, land was \$600 an acre, that's what we bought our first acreage for. The last acreage that we bought was \$35,000 an acre. If I buy any more land that's in and around that, I'm going to pay more than \$35,000 an acre. If I buy land today from any of my adjoining neighbors, I'm going to pay more than \$35,000 an acre and we know H-2A housing is on the books to hopefully go there. All the neighbors know that. We've tried to be very upfront with our neighbors. We've had them over to the greenhouse if they wanted to look through

what we are doing. I think the Burtons would tell you I've had them over several times to discuss it. It's not adversarial at all. We've discussed what we are doing, why we need it, why do we need H-2A – we can't get seasonal help. It's very difficult to get seasonal workers.

I started this process in March of 2021. I think it was March I called Jack and said I'm thinking about doing this, so whatever the land value was then, I'll pay more today than I did in March. And we know that H-2A is not something that I just sprung on somebody a week ago. This is something that has been going on for 9 months. That's my opinion because any piece of land I've bought, or Metrolina has bought since we've started, because obviously we didn't start at 1,000 acres, we started with 88 acres. The first land we bought, I-77 wasn't even here yet, so there's a few people that remember that. Every subsequent piece of land we have bought since 1973 has gone up in value. Every one of them and if I buy land in 2022, I will pay more than I paid for this last piece of land that I bought in December of 2019. That's the way I look at it as a resident of Huntersville, as a resident that lives right across from the Greenhouse, as a resident who has bought property personally and as a company. I've paid more for property than I have in years past. Again, if I have to buy land in the future, I'm going to pay more for it.

Commissioner Munger said is that rate of increase comparable to other properties?

Mayor Aneralla said stay on point. Any further discussion, motions? Some of us have a lot longer to go tonight.

Commissioner Hines made a motion in considering the Special Use Permit SUP21-03, Dormitories for a Bona Fide Farm for Metrolina Greenhouses, we the Town Board find the request meets all required conditions and specifications, is reasonable and does pose an injurious effect on adjoining properties and finds that the character of the neighborhood or the health, safety and general welfare of the community will be minimized. This decision is supported by the following findings: (1) the proposed dormitories meet the requirements and are consistent with the Huntersville Zoning Ordinance Articles 9.6 2.1 and 9.6 2.9.

Commissioner Phillips seconded motion.

Mayor Aneralla said any further discussion?

Commissioner Munger said on the motion you mentioned 9.6 2.1 and 2.9. Doesn't it have to meet all of 9 criteria?

Commissioner Hines said I said through.

Commissioner Munger said my apologies. I heard wrong then.

Mayor Aneralla said any other points of clarification or discussion?

[inaudible]

Commissioner Hines said can I just add other recommendations by the Town Staff.

Commissioner Phillips seconded amended motion.

Commissioner Bales said I just wanted to make sure that each one would not need to be spelled out.

Mayor Aneralla called for the roll call vote.

Commissioner Bales – Approve
Commissioner Boone – Approve
Commissioner Hines – Approve
Commissioner Munger – Approve
Commissioner Phillips – Approve
Commissioner Walsh – Approve

Mayor Aneralla said that passes 6 to 0.

The staff will draft, and I will authorize and sign, a final written decision to reflect the vote and the reasoning for this decision. The written decision will be provided to the applicant and the other parties with the right to such notice.

CONSENT AGENDA (CURRENT BOARD)

Commissioner Phillips made a motion to approve the Consent Agenda. Commissioner Walsh seconded motion.

Mayor Aneralla called for a roll call vote.

Commissioner Bales – Approve
Commissioner Munger – Approve
Commissioner Hines – Approve
Commissioner Boone – Approve
Commissioner Walsh – Approve
Commissioner Phillips – Approve

The following items on the Consent Agenda were approved:

- Minutes of the November 15, 2021, Regular Town Board Meeting.
- Award the bid for the purchase of two transformers from Virginia Transformer Corporation and authorize the Town Manager to execute contracts associated with the purchases. *Bid award recommendation attached hereto as Exhibit No. 6.*
- Budget amendment appropriating Electric fund balance (353890.9999) of \$1,336,430 for Transformer #3 of \$668,215 in account 358100.0512.35074 and for Transformer #4 of \$668,215 in account 358100.0512.35057.
- Contract with Heartline Fitness Systems for commercial fitness equipment at HFFA. *Contract attached hereto as Exhibit No. 7.*
- Budget amendment appropriating Fund Balance in the amount of \$292,534.72 for fitness equipment at the HFFA facility.
- Resolution authorizing a general fund loan to HFFA for fitness equipment purchase. *Resolution attached hereto as Exhibit No. 8.*

RECOGNITION OF OUTGOING ELECTED OFFICIALS

Commissioner Hines expressed appreciation to the Town staff. One of the things that makes it easy for me to step away from this role is because I know we have such a good team that is going to keep moving Huntersville forward. I've had a great time serving with everyone I served with on the board. The previous board and this board as well. We don't always agree on everything, but what I found is we are always respectful and we always appreciate the differences. Continue to be proactive in moving Huntersville forward and thank you Huntersville for allowing me to serve.

Commissioner Walsh said one of the biggest privileges I've had is to be able to serve the town that I love enough to call my home. The staff is absolutely awesome and make our jobs a lot easier. I hope the new board will work with the staff and continue to make those improvements and continue to make Huntersville a better place. I hope that in my four years I've left it a better place than I found it, so thank you.

Mayor Aneralla said I have enjoyed my time as Mayor and always tell everybody the best part of being mayor was finding out how much good is being done in this community. I think during COVID we saw that exponentially. We had a lot of accomplishments over the last 6 years. I often tell people that we are the best funded community in the state. We are AAA rated and all those things without raising taxes. Huntersville is 65,000 people and one of the reasons why I ran 6 years ago was because I felt like we needed to lead on a lot of the issues instead of follow. And I think we did. We led on transportation issues, taxes, education. We didn't always win, but we were there and we spoke up for you all and I think that's what you asked us to do when you elected some of us six years ago. I've had three different boards, basically 10 different people that I have worked with and that's a lot of different personalities and a lot of different backgrounds. What I'm most proud about is we have six people here and the mayor only votes when there's a tie, and I have only voted twice in two years. Despite our differences and our backgrounds and political parties and everything, somehow we ended up coming together and moving the Town's agenda forward. I also want to thank our staff. They do work hard and they do have the best interest of the community. To the citizens of Huntersville, I want to thank you all. I know we don't agree all the time on everything, but I try to treat you professionally and with respect. And then finally I want to thank my friends and family who supported me over the last six years.

INSTALLATION OF ELECTED OFFICIALS

Judge George C. Bell administered the Oath of Office for Mayor to Melinda Bales.

Judge George C. Bell administered the Oath of Office for Commissioner to Dan Boone, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Judge George C. Bell administered the Oath of Office for Commissioner to Rob Kidwell who was present virtually.

AGENDA CHANGES (NEW BOARD)

Commissioner Boone made a motion to adopt the agenda as presented. Commissioner Partee seconded motion.

Mayor Bales called for a roll call vote to adopt the agenda.

Commissioner Munger – Approve
Commissioner Partee – Approve

Commissioner Phillips – Approve
Commissioner Kovacs – Approve
Commissioner Boone – Approve
Commissioner Kidwell – Approve

NEW BUSINESS (NEW BOARD)

Election of Mayor Pro Tem. Commissioner Kidwell nominated Stacy Phillips as Mayor Pro Tem.

Commissioner Partee seconded motion.

Mayor Bales called for a roll call vote to elect Stacy Phillips as Mayor Pro Tem.

Commissioner Munger – Deny
Commissioner Partee – Approve
Commissioner Phillips – Approve
Commissioner Kovacs – Approve
Commissioner Boone – Approve
Commissioner Kidwell – Approve

2022 Meeting Schedule. Commissioner Phillips made a motion to adopt the Meeting Schedule for the Town Board.

Commissioner Kidwell seconded motion.

Commissioner Boone made a substitute motion to approve the Regular Meeting Schedule except move the June 20, 2022, meeting to June 21, 2022, for the Juneteenth holiday and the December 19, 2022, meeting to December 20, 2022, for the first day of Hanukkah.

Commissioner Munger seconded amended motion.

Mayor Bales called for a roll call vote to approve the Regular Meeting Schedule.

Commissioner Munger – Approve
Commissioner Partee – Approve
Commissioner Phillips – Approve
Commissioner Kovacs – Approve
Commissioner Boone – Approve
Commissioner Kidwell – Approve

Appointments to Various Boards and Committees. Commissioner Phillips made a motion to approve appointments to various boards and committees.

Commissioner Kovacs seconded motion.

Commissioner Boone made a substitute motion to approve appointments as presented except to appoint Derek Partee as the Public Safety Officer for the Town.

Commissioner Partee said I wholeheartedly would like to agree with your selection to have Commissioner Boone as Fire and myself as the Police liaison, but if Commissioner Boone would give me that position, I would not decline it, but I would like to see him as the Fire liaison.

Commissioner Bales said what I hear from you is that you prefer to leave Fire and Police broken up.

Commissioner Munger said I don't know if you could give a little bit of background, some of the history behind this position.

Commissioner Bales said it was established six years ago under Mayor Aneralla and we had one commissioner overseeing Police and Fire. I did feel like with everything that we have it would be easier to break that up and share the load, so that not just one person was having to balance both departments.

Commissioner Bales said we have an amended motion that has been proposed that is on the floor.

The amended motion died due to the lack of a second.

Mayor Bales called for a roll call vote on the original motion to approve the committee assignments as presented.

Commissioner Munger – Approve
Commissioner Partee – Approve
Commissioner Phillips – Approve
Commissioner Kovacs – Approve
Commissioner Boone – Approve
Commissioner Kidwell – Approve

Committee Assignments attached hereto as Exhibit No. 9.

Presentation of FY21 Financial Statements. Beau Hildebran, Senior Accountant for Martin Starnes, presented report on the FY21 Financial Statements. *Refer to PowerPoint attached hereto as Exhibit No. 10.*

Commissioner Boone said how many years has Martin Starnes done the audit.

Pattie McGinnis, Finance Director, said at least 14 years.

PUBLIC HEARINGS (NEW BOARD)

Petition #R21-10. Mayor Bales called to order public hearing on Petition #R21-10, a request by ADE 883, LLC, to rezone 10401 Hambright Road (Parcel 01740103) from Corporate Business to Corporate Business Conditional District to reduce the planting requirements of the 80' CB buffer.

Brad Priest, Principal Planner, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 11.*

This application is for Petition #R21-10, North Chase at the Park Building 100. Here's the zoning map to show the location on Hambright Road near the corner just to the west of the intersection of Hambright Road and Mt. Holly-Huntersville Road.

The property is currently zoned Corporate Business and the application would rezone it to Corporate Business Conditional District. To the north of the property you've got the Burkert Industrial Complex and a little bit to the west on Patterson Road you've got the Kurz development, which is also industrial. Down here at the bottom left you see the 2040 Plan calls for this area to be employment center. Corporate Business is consistent with that 2040 Plan land use recommendation.

As mentioned in the Staff Report, this item has been continued a couple of times, so the plan that was submitted prior to the public hearing is the one that has to be presented. I just want to present that and then just update the Board on the new plan that staff has received and discuss that.

The rezoning includes a 203,000 sq. ft. light industrial distribution flex space building. These uses and the building that is proposed is allowed in the Corporate Business district. The intent of the CD rezoning application is to modify the requirements of the 80' buffer planting requirement. That's really the only reason why the rezoning is coming forward, because all aspects of the plan in regard to the setbacks, the use, etc. would be allowed, so the applicants are looking for a modification to the buffer requirements.

The Town approved in September a text amendment that modified and added flexibility to the 80' buffer requirements. There was a pause on the application to see what would come out of that text amendment. That was approved, so the application is now moving forward.

Looking at the top right here, visually you can see the landscaping requirement, so looking at the middle column there, you see the requirements of the ordinance. The middle column we have the requirements of the ordinance, the 40' buffer requirement, and here the submitted plan, so essentially the original plan for the public hearing the shrubs were there, but the requirements for trees were not on the old plan.

With that in mind, I'll move to the updated plan that was submitted and the application changes. Looking at the updated plan, you see the requirement and this is consistent with TA21-10. The updated text amendment no longer is an 80' buffer required, but only a 40' buffer. The width and therefore the planting requirement was cut in half. The application and the planting numbers that you will see here on the top righthand corner of the slide, you see the shrubs still work, but the evergreen trees and the large maturing trees still do not meet the ordinance requirements there.

The applicant would like to put together some view corridors. You see in the bottom righthand side, the landscaping is grouped in clumps and then there's spaces in between. Looking at the configuration, and this is the architectural elevations that are included in the packet and attached to the CD rezoning plan, the building is a really nice aesthetically looking building and when you think about flex commercial buildings and think about industrial buildings, that's not always the case. This has a very nice aesthetic appeal to it, very nice materials in regard to stone, a lot of glass throughout, so what the applicants are looking to do, they are trying to make view corridors or view windows to be able to have visibility on Hambright Road to look through the planting and see the architecturally emphasized portions of the building. That seems to be the configuration of what the landscaping is doing there.

The catch is the full landscaping requirement as required in the buffer is specifically to limit visual permeability and to not have visual windows. Therefore, that's the conflict and that's the reason for the

modification and the application and the rezoning to modify those buffer requirements, not necessarily the width which we have had many applicants come and say we are looking for flexibility on the width, we want to go from 80' to 40' to 35', what have you. That's not the case here. They have the setback, but they want to have less landscaping to increase visibility.

Staff does not support the application at this time because of the intent of the ordinance in the buffer requirements. Article 11.4.7 (K) discusses how during the CB rezoning process the Town Board can modify the ordinance as long as those modifications meet the intent of the ordinance. The ordinance was clear in the intent that it's supposed to be an opaque or a semi-opaque buffer that limits visual separation or has visual separation. We just had Text Amendment TA21-10 that reaffirmed that need to have an opaque buffer. Even though there are modifications, the opaque buffer is still required, so the intent there is outlined.

A couple of tangible items to discuss as well as we go through. You see on the bottom righthand side, there's a development that was just approved for a rezoning outlined in orange and very similar situation. A 40' buffer was required and when they rezoned, they committed to do the required landscaping 100 percent of the 40' buffer. An amendment here would not be consistent with that.

When we look at the outlined area in yellow, very low density Rural residential which is likely to stay that way because south of Hambright Road is critical area of the watershed, so that's not going to become commercial. Most likely it's going to be low density residential and a full opaque buffer would fit in very well to help soften that transition from the high intensity commercial to the residential.

Collin Brown, Alexander Ricks PLLC, said the actual petitioner is McDonald Development Company. Tracy White is here from McDonald. *Refer to Petitioner PowerPoint attached hereto as Exhibit No. 12.* In this photo you can see this site was planted in kind of rows of pine trees and this was important because McDonald has been working with the Town of Huntersville and your staff for almost a year now. When we began this process, your ordinance required that existing trees remain and so that was a real challenge for us because you had kind of these scrub pines that were commercially planted to be harvested that really was not a nice front door for us.

We were working with your staff to see what we could do to make this project successful. Your staff has been working with business owners over the last several months to amend your ordinance to provide some more flexibility in the buffer requirements. I want to adjust the zoning of this to Commercial Business so I can build this warehouse. McDonald could build this use. It's consistent with your plan. The reason we are here is McDonald is trying to figure out how to make it successful.

McDonald does these developments around the southeast. It is important that they have an attractive business part so the tenants can see that and others coming down the corridor can see it. McDonald has designed a good building with nice architecture and they would like to get some visibility. The language in your ordinance says it has to be opaque and opaque means you can't see through it and so that is really the entire reason we're here.

We think we've offered a nice design on this where we are talking about the buffer reduction. We're certainly not talking about having no buffer. Bohler Engineering has done the design. I think they have done a nice job of the plantings. We have prepared a rendering of the proposed buffer to show you how that looks. We are asking for no relief on the shrub planting because when we talked with staff, one of the first things they said when we started this was we really didn't want people looking in from the street and seeing cars and trucks and so we are asking for no lesser requirement on the shrub

plantings. We will have a screen there at the lower level, so you'll see no parking, you'll see no trucks. Where we have asked for some relief mostly is on the evergreen trees. We would like just some visibility to see the main features of the building and so that is our request.

Tracy White, McDonald Development, said the text amendment that was passed in September was necessary and a very good first step in accommodating what developers like McDonald need in the way of balance between the landscaping and having an attractive building that we are going to build be visible to tenants and their visitors. As you can see, we have an attractive building that we are going to spend tens of millions of dollars to build and then lease out to the tenants that we have not yet identified, and those tenants want their employees and their visitors to be able to see their signage as they are driving down Hambright Road. We are very mindful of what the spirit of the ordinance is. We're just asking for some relief in little places to create some view corridors through the trees to be able to see portions of the building.

Mr. Brown said we do understand it's not a bad idea that you have as your baseline the requirement for a fully opaque screen because with a conventionally zoned property, you have no idea what could be built there, so it makes sense in some scenarios you may absolutely want to enforce that opaque screen. That's the reason we are in a conditional zoning so we can come to you and say this is actually what we are trying to build. This is a building we feel like is attractive and we're providing a very detailed planting plan to show we are talking about view corridors.

Commissioner Partee said can you go to that overhead slide of the pine tree line. The pine trees that are there, they're indigenous to this area, is that correct.

Mr. Brown said they are, these were commercially planted.

Commissioner Partee said and this is what we are talking about decreasing to create the buffer in this particular area.

Mr. Brown said the current ordinance would now allow those to be removed, but the requirement would be that it be replanted with a fully opaque buffer.

Commissioner Partee said to remove those trees, does the Town get any relief in regard to mitigation for that.

Mr. Brown said currently your new ordinance has required plantings, so there is the ratio. Typically, the Town would get 183 trees which is very thickly planted, might not see the building. What we are proposing is 109 trees and then we are actually planting more shrubs than required because we really want to screen that lower level from the street.

Commissioner Munger said one of the comments in our packet was you had some concerns on the tree survey and that we didn't have trees between 12" and 24" specified in the tree survey. Has that changed? Do we have any updates on that?

Mr. Priest said no, we haven't had any updates to those comments. The main focus to this point has been along Hambright Road and then what the buffer is looking like, but there's also other site comments that we are working through.

Commissioner Munger said another comment was we don't have a first draft of the TIA, is that still true.

Mr. Priest said that's correct. The applicants are also looking at doing several buildings along to the west on Patterson Road, so what's likely to happen is the TIA is going to combine those buildings with this building and have one comprehensive TIA. That would have to be done prior to the opening of all the improvements. Anything that mitigation is required would have to be done. Staff is comfortable with dealing with that at the construction phase rather than the rezoning since we are only dealing with landscaping at this point.

Commissioner Munger said it was mentioned of contacting the adjacent property owner for permission to extend utilities relating to sanitary and storm sewer. Have you been able to do that?

Mr. McDonald said we have an easement from Burkert that's recorded.

Commissioner Kovacs said you noted that the property at the corner of Mt. Holly-Huntersville and Hambright was conditionally rezoned and they include the required vegetated buffer. Was that automatic?

Mr. Priest said they had a conditional rezoning approved and they had a note in there that they would meet the ordinance requirements.

Commissioner Boone said total trees is 109. Large maturing and small maturing you are just talking about caliper inches here – 48 trees that are 2.5 caliper inches, is that what you are talking about.

Mr. Priest said large maturing trees is going to be based on a species, so a large maturing tree in our ordinance at planting is 2', but a large maturing tree is differentiated by how tall it's going to get, so a large maturing tree is going to get 50' to 60' tall. A small maturing tree is likely to only get about 20' tall. The large evergreen trees are your big buffer trees that are really going to assist, so that's what you really look for when you are looking for a substantial buffer is large maturing and evergreen.

Commissioner Boone said the time that they start to replant this 40' buffer they all will be 2.5.

Mr. Priest said that's correct. Removing existing vegetation and replanting all the trees are going to be probably around 8' to 10' tall maximum at planting.

Commissioner Kidwell said as this public hearing moves forward to other committees, where we started with 80' buffer to a text amendment to the 40' buffer to what they are requesting now is considerably less vegetation than we've had out there and if we've already had another applicant in that area who has agreed to the updated 40' buffer plan we need to make sure everybody takes that into consideration.

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

Petition #TA21-16. Mayor Bales called to order public hearing on Petition #TA21-16, a request by the Town of Huntersville Planning Department to amend various provisions of the Town of Huntersville Zoning Ordinance, Subdivision Ordinance, and Code of Ordinances to comply with NC SB300 to decriminalize certain ordinances adopted under Article 18 of G.S. 153A (Planning and Regulation of Development) or 160D of the General Statutes and to comply with NC HB218 to allow an applicant to exceed the allowable built-upon area (density) under the water supply watershed rules if all statutory requirements are met.

Kayleigh Mielenz, Planner I, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 13.*

This text amendment addresses two state legislature bills. Senate Bill 300 requires the removal of criminal penalty from ordinances adopted under Article 18 of G.S. 153A or 160D of the General Statutes, except those ordinances related to unsafe buildings. Sections 1 through 17 of the Ordinance for Adoption pertain to Senate Bill 300.

House Bill 218 clarifies storm water runoff requirements applicable to pre-existing development in water supply watersheds and allows an applicant to exceed the allowable built-upon area under the water supply watershed rules if all statutory requirements are met. Sections 17 through 23 of the Ordinance for Adoption pertain to House Bill 218.

The Huntersville Ordinances Advisory Board recommended approval of the proposed text amendment for Senate Bill 300 on October 7, 2021. The Huntersville Ordinances Advisory Board recommended approval of the proposed text amendment to comply with House Bill 218 on November 4, 2021.

Planning staff recommends approval of the text amendment application as proposed.

Commissioner Boone said could you tell me what the vote was for the Huntersville Ordinances Advisory Board.

Ms. Mielenz said the vote was 5 to 4 on Senate Bill 300. The reason for the 5 to 4 on that was the members didn't feel like they were given enough time to review the ordinance.

The vote was 8 to 0 on House Bill 218.

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

Petition #TA21-11. Mayor Bales called to order public hearing on Petition #TA21-11, a request by the Town of Huntersville Planning Department to amend Hearing Requirements for Special Use Permits; Conditions For Certain Uses; Appeals and Variances in MIL-O District; and Appeals and Variances in LN-O District. The purpose of the amendment is to standardize existing requirements for Special Use Permits and delete repetitive standards; and amend definitions of major and minor variances from Watershed regulations and findings of fact required for variances from Watershed regulations to be consistent with the North Carolina Administrative Code.

Kayleigh Mielenz, Planner I, entered the Staff Report into the record. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 14.*

This text amendment addresses two items. The first item is an amendment to the Zoning Ordinance regarding Special Use Permit requirements. The purpose of the amendment is to incorporate the general standards found under 15 uses that require SUPs in Article 9 into the comprehensive requirements for all SUPs. It will also delete repetitive standards from uses that require an SUP in Article 9, Sections 1 through 16, of the Ordinance for Adoption.

The second item is an amendment to the Zoning Ordinance regarding the definition of major and minor watershed variances and the findings of fact required for watershed variances. The amendment is to

comply with updates to the North Carolina Administrative Code Sections 17 through 19 of the Ordinance for Adoption.

The Huntersville Ordinances Advisory Board recommended approval of the draft of this text amendment during the October 7, 2021, meeting. Planning Staff recommends approval of the text amendment application as proposed.

Commissioner Boone said what was the HOAB vote.

Ms. Mielenz said I will have to check on that, that was not included in the Staff Report.

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

OTHER BUSINESS (NEW BOARD)

Petition #TA21-14. Commissioner Phillips made a motion to call a public hearing for Monday, January 3, 2022 at 6:00 p.m. at the Huntersville Town Hall (101 Huntersville-Concord Road), on Petition #TA21-14 to amend Sections 2.100: Definitions, Section 6.300: Sketch Plan Required for Major Subdivisions, Section 6.310: Sketch Plan Not Required for Minor Subdivisions. Section 6.520: Exceptions: When Preliminary Plan Not Required.

Commissioner Partee seconded motion.

Commissioner Munger said typically calls for public hearings fall under the Consent Agenda. What would happen if we decided to vote against this?

Emily Sloop, Town Attorney, said these calls for public hearings (which are not necessarily legally required per the statutes, only if the statute specifically says that the Town Board must set the public hearing date), are typically on Consent because that affords staff the opportunity to make sure that all legal notice requirements are satisfied and coordinate those dates with the newspaper for publication. Because we have in our ordinances a process for applicants to submit applications to amend the zoning maps and the zoning text, as well as the subdivision text, we would be going against our own process and potentially discriminating against an applicant that has filed a valid application for a text amendment. You do have the opportunity once the public hearing comes before you and then it's up for final action to vote on the request. It's not advisable to deny an applicant who has paid the application fee and submitted a valid application the right to a public hearing.

Commissioner Munger said in general we put this on the Consent Agenda for the most part, with the exception of this time, for transparency.

Ms. Sloop said typically it's added to the Consent Agenda, but it's not legally required. It gives you all a heads up of when the item will be coming back before you, as well as the public. It is transparent because the information is provided in the Consent Agenda.

Commissioner Kidwell said I'm the one who pulled this from the Consent Agenda, and I did it specifically because I believe, not that the applicant has done anything wrong or deny it, but to let the general public know that we are looking at what's on the agenda and that we are going to have thoughtful discussion about the items as they come forward. If that's a problem, I'm sorry. I'm going to be doing this on a regular basis, so please prepare yourself.

Mayor Bales called for a roll call vote on calling a public hearing on Petition #TA21-14.

Commissioner Munger – Approve

Commissioner Partee – Approve

Commissioner Phillips – Approve

Commissioner Kovacs – Approve

Commissioner Boone – Approve

Commissioner Kidwell - Approve

CLOSING COMMENTS

Mayor Bales said I'm looking forward to working with you over the next two years. I have been working on providing more opportunities for community engagement.

Commissioner Boone suggested the Board discuss the pros and cons of the 3 on 3 meetings at the retreat.

Commissioner Partee said I'm looking forward to working with my fellow Board members and staff.

Commissioner Kidwell said I want to thank the staff and Mayor for their work in allowing me to participate virtually in the meeting and I look forward to working with my fellow Board members.

There being no further business, the meeting was adjourned.

Approved this the 3rd day of January 2022.