



Bruce Andersen, Chairman  
Sam Mount, Vice Chairman  
Addison Causey  
Leonard Cook  
Barry Hester  
Brian Hines  
Jo Anne Miller  
Jeff Neely  
Randy Poindexter

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The Regular Meeting of the Planning Board was held at the Huntersville Town Hall at 6:30 p.m. on June 23, 2009.

***Call to Order***

The Chairman called the meeting to order at 6:31 p.m.

***Board Member Attendance***

Bruce Andersen, Leonard Cook, Barry Hester, Brian Hines, Jo Anne Miller, Sam Mount, Jeff Neely, Randy Poindexter, and Joe Sailers. The following member was absent: Addison Causey.

***Staff Attendance***

Jack Simoneau, Planning Director, Zachary Gordon, Principal Planner, Whitney Hodges, Senior Planner, Lisa McCarter, Planner I, and Michelle Haines, Secretary.

***Consent Agenda***

Jeff Neely made a **Motion to Approve** the Minutes of the May 26, 2009 Regular Planning Board Meeting and Barry Hester seconded the **Motion**. Leonard Cook abstained from the vote, which was considered an affirmative vote. The vote was unanimous.

***Action Agenda***

1. Nominations from the floor were made for the election of the Chairman. Brian Hines nominated Sam Mount, and Barry Hester nominated Bruce Andersen. Jeff Neely closed the nominations, and the Joe Sailers seconded. Four (4) members voted for Sam Mount, and five (5) members voted for Bruce Andersen. Bruce Andersen was elected Chairman.

Nominations from the floor were made for the election of the Vice Chairman. Joe Sailers nominated Sam Mount. No other nominations were made. The vote was unanimous and Sam Mount was elected Vice Chairman.

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2. Jack Simoneau, Planning Director presented TA 09-02, a request by the Town of Huntersville to modify the Zoning Ordinance Article 14 *Traffic Impact Assessment*. Mr. Simoneau advised the members of the Board that the public hearing has not been closed. He updated the members on additional wording that had been added to the amendment language since the Town Board workshop held on Monday, June 22, 2009. The June 23, 2009 version of the draft Ordinance (see Exhibit "A") was handed out to the members for their review and information. It was noted by Mr. Simoneau that the changes made did not affect the substance of

the Ordinance. The ICU process was noted by staff as using the best objective criteria, which is the method currently used. It was also mentioned that with the Town transportation and traffic staff there is a total of 71 years experience to rely upon with confidence for the TIA review process, building roads, long range planning, working with NCDOT, etc.

There were six (6) staff recommended points within the proposed amended TIA Ordinance to discuss for consideration and recommendation by the Planning Board (i.e. school traffic, coordination by developer, mitigation, bonding improvements, 7% intersection requirement, and Town coordination with NCDOT). The following are primary concerns, results, and/or consensus of the Planning Board:

School Traffic: It is proposed that the school traffic generation be based on MSTTA (Municipal School Transportation Assistance) calculator, which NDOT has determined to be more accurate for assessing the impacts of school generated traffic. The members supported staff's recommendation as proposed.

Coordination by Developer: Staff is proposing that responsibility for oversight of the TIA be transferred from the Town to applicants. Town staff will participate in preparation of the Scope of Work for the TIA and will continue to review and comment on the TIA's. This transfer of responsibility will free up planning staff time, and will allow the developer to make the final decision on the consultant that best meets their needs (including being able to negotiate the best prices). Currently, there are six (6) pre-qualified traffic consultants that the Town would accept if proposed by applicants. Other consultants would need to be qualified by the Town. In response to a question about the pricing of TIA's, Zachary Gordon responded that of the seven (7) TIA's that have been done since January of 2008, there was a fairly consistent range of prices per intersection (\$2,000 - \$2,500). Jeff Neely noted that of the ICU and HCM methodologies for assessing traffic impacts, staff felt that ICU gives the best objective criteria. Sam Mount was not comfortable with the developer contracting directly with a TIA consultant and felt that it could appear to skew and manipulate the process and the results of the TIA. He added that this is a Town issue and not an applicant issue; the consultant should be financially responsible to the Town, not the developer. Jack Simoneau reiterated to the members that he was confident that the professional consultants would not be manipulated and the Town will have a product that is consistent, with the TIA Process and Procedures Manual. Town staff would continue to be involved in the process. The amendment will allow the developer to choose a qualified consultant and negotiate the financial terms of the contract. Randy Poindexter stated that he was in favor of the developer selecting their own consultant, but wanted the consultant to be local and familiar with the area. Joe Sailors discussed the idea of having both the developer and Town join in a contract with the consultants so that the financial obligation was paid through the Town. Other members asked about the workload put on the staff, which Jack Simoneau explained the time involved by various staff members for administration. Bruce Andersen suggested a change in the Ordinance to reflect that the amount of funds paid to the consultants be known. Brian Hines made a point that the Town and/or Board members have nothing to gain by knowing or controlling the cost of an analysis, and Town staff will base the TIA on the merit of the consultants and the content of the reports. Jack Simoneau stated that staff recommends the amendment, and that the consultants will have to meet the criteria contained in the Ordinance just as in the past. Zachary Gordon indicated that, as the primary staff person responsible for

oversight of TIAs, (spending approximately 40% of his time on them) he favored transferring this oversight of TIAs to the applicant. Jack Simoneau reiterated that if funds are paid through the Town the contract would have to continue to be between the Town and consultant, which is not recommended in the amendment. Jeff Neely felt that based on staff's strength in support of the amendment he would support staff's recommendations.

Mitigation: Jack Simoneau commented on the level of service standards and mitigation contained in the Ordinance, where there is currently no flexibility. With all the assumptions made with a TIA, it was the consensus of transportation, planning & engineering staff that when an impact is 3%, or less, mitigation would not be required. This proposed amendment would also provide for a two-part test for modifying mitigation requirements; i.e. modification based on engineering judgment of Town staff and approval by the permitting authority (Town staff and Town Board), subject to the proposed modification meeting the purpose and intent of the Ordinance. Mr. Simoneau noted that Commissioner Lucas requested a provision giving the Board the authority to "waive" mitigation requirements also be considered. Town Attorney Bob Blythe advised the Town about due process and creating legal vulnerability by allowing the Town Board to waive mitigation requirements without clear standards for doing so. However, the proposed modification based on engineering judgment would be defensible according to Mr. Blythe.

Bonding Improvements: Staff is proposing a requirement that incomplete transportation mitigation improvements be bonded at 115% at the time that a Certificate of Occupancy ("CO") is issued. Sam Mount was concerned about the process and gave the example of Northcross Village. Several members were concerned about the 115%, and whether it will be sufficient to cover the incomplete improvements. Staff responded that Town staff, Mecklenburg County and NCDOT work together to ascertain the amount of the bond. The conditions of the rezoning have to be improved by the time of the CO, which are specific requirements.

Jack Simoneau informed that some Town Board members felt it appropriate that all pre-approved developments be retroactively allowed to benefit from the TIA amendments. He suggested that the Town could give a six (6) month time frame for developers to request relief from the amended Ordinance at no cost to the applicant. This same process has happened before when the OPS zone was changed to the Rural and Transitional zone. Properties split by the two zones were allowed to submit for rezoning to one zone free of charge up to 6 months after the change.

Seven Percent (7%) Traffic Impact: Staff explained that currently if an intersection is impacted more than 7% it must be studied, and if necessary, mitigated. Staff is recommending that the 7% requirement be deleted in determining the TIA study area. The size of the TIA study area would be based upon the square footage of the development. Staff gave the example of Huntersville East where the 7% impact area was used, where an intersection (NC 73 & 115) was studied that was located beyond the maximum 2 mile study area radius from the project

Brian Hines made a **Motion to Approve** the amendment with staff's recommendations. The Chairman asked Mr. Hines' to delay his Motion until one (1) more point of discussion was made.

NCDOT Coordination: The current standard is that the Town coordinates with NCDOT, and the proposed amendment includes that the applicant shall be ultimately responsible to work with NCDOT.

Bruce Andersen wanted to further discuss the 7% requirement, referencing conversations from the June 22, 2009 workshop. He noted the chart on page 4 of the handouts and that there was no equalization provided. He quoted statistics from the Transportation Committee of 21 (Mecklenburg County) identifying the congestion time, delay time, and costs, etc. He felt that there needs to be a number that recognizes and equalizes differences between different locations where developments are placed.

Sam Mount questioned the language in the June 23, 2009 draft, page 3, Section 14.3.3b), “Town Board or Town Staff”. He requested that it read “Town Staff or Town Board”.

Joe Sailers commented on the 2 mile radius and other Towns and projects near our jurisdictional lines and the effects of their projects on our intersections. He suggested that the radius in rural zones be larger than 2 miles, and gave the example of Beatties Ford Road as an un-signalized area. Jack Simoneau responded with the example of Bryton and Huntersville Village projects in or near rural zones. It was noted that the ITE manual, which is the accepted standard practice, gives the recommended study area based on the size of the project.

Brian Hines requested that this issue be tabled to the end of the meeting so that the next four (4) matters on the Agenda can be heard; giving courtesy to the applicants waiting in the audience. The members agreed.

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3. Lisa McCarter, Planner I presented TA 09-03, which is a request by Jonathan Yates to modify the Zoning Ordinance Article 9.9 *Commercial Communication Tower* to allow co-location on all existing cell towers. A copy of the Staff Report is attached hereto as Exhibit “B” and incorporated herein by reference. Staff recommends approval of this text amendment as it encourages co-location consistent with the intent of the Zoning Ordinance conditions regarding Communication Towers.

Jonathan Yates, Esquire, representing T-Mobile USA addressed the Board. He stated that from a carrier’s behalf the last thing they want is to build a new tower as it causes unrest in the community. Therefore, they use the existing towers available. The current Ordinance reads that you must use an existing tower if technologically is feasible. This tower is a perfect location to complete the coverage area. The 360’ foot lattice style tower (3 sided) has equipment included with whip antennas on top and microwave dishes. T-Mobile will be able to place their equipment at 180’, and against the backdrop of the tower it would take a trained eye to be noticed. By not using this asset (the tower), they conflict with existing parts of the Ordinance. They have worked with staff and Bob Blythe, Town Attorney to come up with a solution. The public policy is that if it is already in the air it should be used versus constructing a new visual obstruction.

Barry Hester asked staff why the condition was put on the tower originally, and staff responded that it was subject of a variance in 2002. This was to be a government public safety tower. The location at the time was an open space district, and in order to comply it would need to be less than 180'. For public safety broadcasting it was needed to be 360'. Therefore a variance was requested, and granted by the Board of Adjustment with the condition of no commercial co-location.

Sam Mount stated that he was ready to make a Motion. The Chairman asked Mr. Mount to delay his Motion until discussion was concluded.

Bruce Andersen removed himself from the panel and showed the members photographs of towers near the intersection of Northcross Drive and NC73 (both north and south side). Randy Poindexter questioned the point of the photographs, and Bruce Andersen stated that using an existing transmission tower has value, and noted the one next to the Duke tower. Jonathan Yates, Esquire commented that using transmission towers are problematic and a last resort. They reduce coverage. The existing cell tower in question can cover roughly 3-4 times the area of a transmission tower. From a practicality stand point and service to the community, it is far more efficient. It also withstands inclement weather and service on the lines. He referenced Hurricane Katrina and the cellular networks.

Sam Mount requested to make a Motion, and the Chairman indicated he had not finished.

Bruce Andersen showed a photograph of the tower located behind CVS, on which there is an Osprey nest. Jonathan Yates noted that Osprey nests on these towers are typically seen on the east coast. Bruce Andersen stated that there was a good reason not to allow collocation on this tower; visibility. This tower can be seen 2 miles away, and 75% of it can be seen from his residence. He stated that the cellular use will not have a significant impact, but was extremely uncomfortable with the Ordinance as written because it does not provide limits. It creates a nightmare of visibility problems. He recommended that it be lower than 180', or a reasonable height. Also the type, height and coloring has not been identified and examined. He felt the language as written was "bad language" and needs to be changed to something that recognizes limitations including size, color, safety considerations, all of which are addressed in a handout he prepared (see Exhibit "C").

Jonathan Yates, Esquire addressed his comments. The tower in question with the present loading can not have six antennas; that it would hold about 1 or 2. There are several microwave dishes, and then the whip antennas, and T-Mobile can not interfere with their signal. Furthermore, the finish on the antennas is usually a gray finish that blends. This is a 360 foot lattice style tower with air navigation lights on top and not a mono-pole. He stated that in terms of being an eye-sore the lattice is prohibited in most jurisdictions'. He did not believe an additional antenna would make it look worse.

Sam Mount made a **Motion to Close Discussion**. Joe Sailors seconded the Motion. Bruce Andersen asked for other discussion, which there was none.

Sam Mount made a **Motion to Approve** as consistent with the Town of Huntersville Community Plan and other applicable long range plans as reasonable and in the public interest because it encourages co-location consistent with the intent of the Zoning Ordinance regarding communication towers. Brian Hines seconded the Motion. The vote was 8-1 with Bruce Andersen opposing.

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4. Lisa McCarter, Planner I presented TA 09-04, which is a request by the Town of Huntersville to modify the Zoning Ordinance Article 11.3.1 *Board of Adjustment* to decrease ETJ membership by one seat in accordance with State Statutes, and increase Town membership by one seat. A copy of the Staff Report is attached hereto as Exhibit "D" and incorporated herein by reference. Staff supports this request.

Brian Hines made a **Motion to Approve** as consistent with the Town of Huntersville Community Plan and other applicable long range plans as reasonable and in the public interest because it is consistent with the population figures of the Town of Huntersville. Barry Hester seconded the Motion. The vote was unanimous.

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5. Whitney Hodges, Senior Planner presented the revision to Centennial Sketch Plan, which is a request by SMB Auburn to modify the existing sketch plan to add 8 additional lots, to change the entrance location of the subdivision and eliminate one connection to the Brown Property. A copy of the Staff Report is attached hereto as Exhibit "E", and incorporated herein by reference.

Staff explained to the members that she would present this matter and Item 6 together and h separate votes would need to be taken. SMB Auburn who is represented by Nate Bowman and the families of the Brown Property has requested revisions to the Sketch plans as they relate to each other. Staff explained the proposed changes for further explanation and showed the comparisons. The road entrance change from Ramah Church to Fred Brown Road is recommended by the Town transportation staff as being more efficient. The proposed school will be using an entrance from Fred Brown Road. The developer has put in a 20' buffer that is not required. The road to the south has been removed and there is one row that is double sided. This change affects the Brown Property. There are a total of 8 lots being added. The changes are minor in scope but considered major revisions according to the Ordinance.

Bruce Andersen questioned why the road changes improve the flow from Fred Brown Road, and staff responded that there is now a 3 legged intersection. The school will have road improvements from Fred Brown Road, and Centennial will improve roads as well. Town staff has reviewed all proposed intersections so they do not conflict. Bruce Andersen questioned staff that non-aligning roads are better than aligned roads, to which staff responded that two 3-legged intersections are more efficient and is endorsed by the Town traffic and transportation staff. Barry Hester questioned the traffic due to the proposed school. Staff responded that usage is not being decreased on Fred Brown Road because of the school. Currently the school is not there, but it is a future proposed Elementary School and will be the heavy user with a 4-legged intersection. Breaking that intersection into two 3-legged intersections is more efficient. Jack

Simoneau reiterated the concept of the intersections to the members (2 intersections is better than 1).

Sam Mount made a **Motion to Approve**, and Jeff Neely seconded the Motion. The vote was unanimous.

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6. Whitney Hodges, Senior Planner presented the revision to Brown Property Sketch Plan (Toll Brothers), which is a request by SMB Auburn to modify the exiting sketch plan to eliminate one connection to the Centennial Subdivision and reconfigure the open space. A copy of the Staff Report is attached hereto as Exhibit "E" (collectively) and incorporated herein by reference.

Joe Sailers made a **Motion to Approve** and Sam Mount seconded the Motion. The vote was unanimous.

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Continuation of Item 2 (TA09-02): Joe Sailers made a **Motion to Approve** with staff recommendations, with Sam Mounts' suggested language in Section 14.3.3b).

Bruce Andersen raised Sandy Kritzinger issues addressed during the workshop on June 22, 2009, where she stated that the TIA did not recognize the effective mixed-use within the block in which their development is situated. She also mentioned the mitigation requirement for a right turn lane (westbound) and that the right of way cost to build this lane could be astronomical. He wanted staff to comment. Jack Simoneau responded that staff took out any reference to cost in the amendment language because it is too complicated of an issue. What might be a high cost to one developer might be an acceptable cost to another developer. It was staff's belief that the primary focus needs to be public safety and traffic movement. Initially there was a comment about the cost benefit, but it was removed. Bruce Andersen questioned staff about the "virtual" mixed-use nature of this development. Jack Simoneau responded that it was not a mixed use subdivision. It was an apartment complex, and while there is a library within walking distance there could be some "internal trip capture". This trip capture would be almost impossible to quantify. The comments from the Town traffic engineers were that the ITE manual does have some provisions for internal capture with a real mixed use development (retail, multi-housing types, etc.), but for something of this nature they did not see it as being appropriate. Jeff Neely commented that the purpose from the discussions at the workshop was to take out subjectivity and make it black and white. Jack Simoneau stated that the manual establishes the parameters for making these types of determinations.

Jack Simoneau informed the members that the public hearing was not closed and that the Town Board would consider the text amendment once again on July 20<sup>th</sup>. The Rules of Procedures states that when something has been subject to a public hearing the Chairman controls the debate. However, the public hearing is open and if someone wants to address the Board permission would need to be granted by the Chairman. Jeff Neely commented that Commissioner Jeter stated at the workshop that while the Planning Board was discussing this

matter they were not to get involved in specifics of current projects, which Jack Simoneau agreed due to the *quasi* judicial circumstance of this specific project.

The Chairman acknowledged Sandy Kritzinger and she appeared before the Board. She stated that the main issues they are trying to work through when going through their TIA process were the assumptions made during the TIA process. As much as she understands the Town wanting to take the subjectivity out of the process, the reality is at the end of the day it is not an equation. There are multiple assumptions that go into the trip generation data, and whether you do or do not include internal capture. She disagreed that the project is not a mixed use project. There is the library with (current) limited access, and they are providing a residential component to nearby retail, office and a library which are four (4) uses. The internal trip capture is to take away the trips from any intersections on the public street since they will be internal rather than going to 21, NC 73 or Rich Hatchet and NC 73. She further noted that the traffic consultant from Winston-Salem can only make assumptions since they do not know the area and how things function. Given the difficulty of making these assumptions, there is a large margin of error. Brian Hines asked who she was representing, and she responded that she was representing the developer for Holly Crest. She addressed the HCM and ICU methodology, and stated that HCM looks at the context of the roadway system and ICU looks at a specific intersection, and in her opinion both should be done. Instead of just taking ICU and coming up with mitigation requirements, HCM should be use, because NCDOT looks at HCM and they should both be looked at in tandem. She addressed Sam Mount's concern about the developer, or Town, being in control. She submitted that the pendulum has swung from the Town not having input to having all the input and we, the developer, had a hard time getting involved in the scoping meeting with NCDOT and the consultant. She stated that they do have input with the subjectivity that comes into a traffic analysis.

JoAnne Miller questioned whether they should vote on the matter since the public hearing was still open. Jeff Neely did not want to prolong some type of direction to the Town Board. Sam Mount stated that if there is not a vote this matter will come back to the Planning Board when the public hearing is closed. He added that it is the Planning Board's responsibility and obligation to take their concerns to the Town Board for their consideration. The members agreed.

Sam Mount proceeded to guide the Board through a review of each of the six (6) issues addressed by staff.

School Traffic: The members support staff's recommendation.

Coordination by Applicant: Sam Mount suggested that the applicant be responsible for the selection of the TIA traffic consultant, with the Town staff maintaining administrative (including financial) oversight of the study process. The Chairman asked for votes: JoAnne Miller voted for staff recommendations; Joe Sailors voted for staff recommendations, Leonard Cook voted for staff recommendation, Bruce Andersen leaning toward staff recommendation but with an addendum to the manual for the format of a TIA; Barry Hester agreed, and is leaning toward the staff recommendations; Jeff Neely voted for staff recommendations; Randy Poindexter voted for staff recommendation, and questioned if staff if the consultants were asked

to be involved. Jack Simoneau indicated they were invited to the workshop, but had not heard any comments from them. There was input received from applicants from the first public hearing that they wanted to be more involved in the process. Brian Hines voted to support staff recommendation. Planning Board consensus was to support staff's recommendation that oversight of the TIA process be transferred from Town staff to the applicant.

Mitigation: Sam Mount suggested that the language permitting the Town Board to waive mitigation requirements be removed. Jack Simoneau explained to the members that according to a conditional rezoning the Town Board may modify standards as long as the spirit of the Ordinance is maintained. He further gave the example of the Bryton height waiver, and Huntersville East for faux windows and mechanical equipment on corner lots. To date, the relief from the Ordinance has been in keeping with the spirit of the Ordinance and not an ignoring of any section or language. Jack Simoneau reminded the Board that the Town Attorney had indicated that there are legal issues that are raised should the Town Board be granted the authority to waive mitigation requirements without specific criteria and standards. The consensus of the Board was to endorse the staff position regarding the 3% waiver standard and modification of other mitigation requirements, based upon engineering judgment and Town Board approval or other Huntersville permitting authority.

Bonding Improvements: The members agreed with the staff recommendation for bonding of all improvements not completed at the time that a Certificate of Occupancy is granted, at 115% of the cost of remaining improvements and that Section 14.3.3b) be modified to read "Town Staff or Town Board".

Seven Percent (7%) Intersections: Sam Mount suggested that instead of deleting the 7% that "and/or" be included, as follows:

"14.4.1 Town Center & TOD Districts:

- a) half-mile radius from the property line or as provided in the chart in section 14.4.2 below, by land use, whichever is less; and/or
- b) intersections where proposed development contributes seven (7) percent or more of the traffic on any intersection approach during any peak hour."

Bruce Andersen suggested that with the 7% be utilized at the discretion of the staff for all districts. The members agreed.

NCDOT Coordination: The members supported staff's recommendations.

Sam Mount requested that the Planning Board make a formal vote on this amendment after the public hearing is closed.

Joe Sailers made a **Motion to Defer** to the next Regular Planning Board Meeting with the above comments being sent to the Town Board prior to their closing the public hearing. Barry Hester seconded the Motion. The vote was unanimous.

***Other Business***

There was no other business to discuss.

***Adjournment***

Sam Mount made the Motion to adjourn the meeting, and Randy Poindexter seconded the Motion. There being no further business the meeting was adjourned.

Brian Hines announced his resignation from the Planning Board.

Approved this 28th day of July 2009.

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Bruce Andersen, *Chairman*

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Michelle V. Haines, *Secretary*