



Bruce Andersen, Chairman  
Harold Bankirer  
Addison Causey  
Barry Hester  
Jeff Neely  
Joe Sailors

Sam Mount, Vice Chairman  
Todd Bowland  
Leonard Cook  
JoAnne Miller  
Randy Poindexter

### *Minutes of the Planning Board*

The Regular Meeting of the Planning Board was held at the Huntersville Town Hall at 6:30 p.m. on November 17, 2009.

#### *Call to Order*

The Chairman called the meeting to order at 6:32 p.m.

#### *Board Member Attendance*

Bruce Andersen, Harold Bankirer, Todd Bowland, Addison Causey, Barry Hester, JoAnne Miller, Sam Mount, Jeff Neely, and Joe Sailors were present. Leonard Cook and Randy Poindexter were absent.

#### *Staff Attendance*

Jack Simoneau, Planning Director, Bradley Priest, Senior Planner, Lisa McCarter, Planner I, and Michelle Haines, Secretary.

#### *Consent Agenda*

There is an Agenda change, which will be heard at the end of the meeting under other business.

Jeff Neely made a **Motion to Approve** the Minutes of the October 27, 2009 Regular Planning Board Meeting. Joe Sailors seconded the **Motion**, and the vote was unanimous.

#### *Public Comments*

There were no individuals signed up to address the Planning Board for public comments.

#### *Action Agenda*

1. Jack Simoneau, Planning Director presented the Text Amendment (TA09-12), which was a request by North Mecklenburg Landfill, Inc. to modify Zoning Article 9.23 to delete most of the current language and defer largely to North Carolina Department of Environment and Natural Resources ("NCDENR") regulations and to extend the time the landfill is permitted to operate with a Special Use Permit (SUP). A copy of the Staff Report is attached hereto as Exhibit "A", and incorporated herein by reference.

Jack Simoneau updated the members from the public hearing. The recommendation is to allow landfills to operate in accordance with NCDENR regulations, which are enforced by the State of North Carolina and Mecklenburg County. Another major change was to remove the requirement that landfills must be accessed by a major or minor thoroughfare, or commercial

streets, and require the connection to such road where feasible. Compliance with a Special Use Permit would be discussed in more detail after the text amendment.

The current SUP was issued for a five (5) year life span. At the time it was felt that would fill up in five years, but with the down economy and recycling efforts, the landfill has not filled. The applicant would like to allow that landfill to remain open beyond the five year time limit (ending in 2011). In addition, between the current open landfill and a previous landfill they would like to do infill. They are not asking to have a time limit on the closure, and not require that they front a thoroughfare or commercial street if one is not available. With the Special Use Permit, even though the Text Amendment does not put a time limit on it, the Staff would recommend that if the Town Board goes forward with the SUP that there is 10 year time limit included. This would allow a time for review and assessment with respect to the thoroughfares.

Staff further noted that in this particular instance, there is no available thoroughfare, and will not be for a number of years. The two (2) thoroughfares that have a potential for connection to the site is Verhoeff Extension and Asbury Chapel. It was further noted that some of the added language to the text amendment concerning a thoroughfare was suggested by the Town Attorney, Robert B. Blythe.

Todd Bowland questioned Mr. Simoneau why he felt it appropriate to move the time limit from the Zoning Ordinance to the Special Use Permit. Mr. Simoneau responded that the Town Board can put reasonable conditions on SUP's. If the Board thinks it is appropriate they can make a condition. In Staff's opinion is it appropriate in this case and being a 10 year time span. It will be a while before the thoroughfares are close to the North Mecklenburg Landfill. Staff stated that he felt comfortable leaving it up to the Town Board for the decision. Either way, if it is in the Ordinance or SUP a landfill would be on a 10 year renewal. The ordinance today is written for 5 years for an expansion area, which is not an appropriate time.

Joe Sailers questioned staff about the infill area of the project and Staff described the topography of the fill areas. Joe Sailers was concerned about the drainage areas through the site beginning on the northern side. He did not want any problems with water drainage for the adjacent property owners.

Ron Gilkerson with Griffin Brothers, Inc. responded to Mr. Sailers' concern. There are approximately 3.2 acres, which is an area void of any C&D materials currently. That is an area that is a wet weather conveyance. Storm water from the north conveys through the wet weather conveyance. It has been piped for many years and has conveyed the water between the two landfills. The storm water conveyed through there is very clean as it is not going by ditch. The cross section to DENR is to improve storm water quality and to also design this conveyance to 100 year storm standards. There will be two 36" HDPE pipes that will be placed above the seasonable high ground water table that come between Expansion Area I and the active Expansion Area II. There is compacted fill and other measures that have to be met for DENR requirements. That will allow the storm water to continue to convey through that area as it is filled to closure. Bruce Andersen questioned Mr. Gilkerson if future development from the drainage area will impact the amount of flow, and Mr. Gilkerson said it would not. They are required to design by a 25 year storm, and since considering additional development (upgrading

Holbrooks Road, maybe the Parks & Recreation Facility) they over designed to a 100 year storm capacity. There is plenty of future capacity and also within a 24 hour storm they can handle a 100 year storm. Addison Causey asked if the over design took into account a fully developed upstream basin, and Mr. Gilkerson affirmatively responded that they have considered two items; the weight of the fill on the landfill and all available drainage area of the site calculated by the 100 storm for the development of the drainage area. Joe Sailers asked if the pipes being used were rated and they are rated for the load and have been stamped by a professional engineer at the manufacture.

JoAnne Miller questioned Mr. Simoneau about the current provision that the expansion area should be no greater than 25 acres. Mr. Simoneau responded that if someone wants to expand their landfill under the proposed ordinance, they need to be in a Special Purpose District and a Special Use Permit. It would be up to the Town Board to approve rezoning and a SUP.

Jack Simoneau described the expansion areas. There was a permit to allow one expansion area that was good for 5 years. The boundaries of the landfill were expanded in 2006. This is when a Text Amendment came to allow a second expansion area with a 5 year time limit. In those cases the areas could go in the TR and NR zones, it did not require a Special Purpose District (SP). Those properties where the expansion occurred are not zoned for heavy manufacturing, but residential. We want the revised ordinance to provide that future expansions not zoned SP be rezoned to SP and require an SUP so they are not on residentially zoned property.

Bruce Andersen questioned if the buffer zones are equal to or more restrictive than the State regulations. Jack Simoneau stated they are equal to the State requirements. They were duplicated so if the State ever changes and reduces their requirements the Town can stay with the same. The current Ordinance allows for new landfills to have greater setbacks. The proposed is changed to be 500' from an existing residential water supply wells to fill area; 200' from adjacent property to fill area; no fill in the FEMA; 50' from delineated streams, and 50' from road right of way to fill area. This proposal is less restrictive than as it exist today for new landfills, and it is the same as what is required for expansion areas. New landfills had more restrictive buffer standard and expansion areas had a setback that was consistent with the North Carolina standards. Staff wanted to have the standards the same, and in the event the State reduced their buffer the Town standards will apply.

Mike Griffin with Griffin Brothers addressed the Board and introduced himself and others with him in the audience. He pointed out that they do not have any differences with the Text Amendment. There are three issues: thoroughfare, term limits, and bond assurance.

Concerning the thoroughfare, he stated they have a long history of trying to promote and look for a better access to the property. South is the proposed Verhoeff Extension. Several years ago they agreed to fund the study for that Extension (upper \$100,000.00) to determine the path. They are optimistic that this road will probably happen before Asbury Chapel. When there is a better opportunity they will cease use of Holbrooks Road. He stated that they agree that the highest and best use for road access is where they should go as soon as possibly available. He stated that it was properly addressed in §9.23.

He addressed the term limits being in §9.23 verses the SUP, or another instrument. They cause a problem for them for a couple of reasons. When they were here in 2005 they projected the existing fill they are in now would run out in approximately August 2011. Economic factors have extended the life of the facility by taking significantly less debris. They are doing a great deal more of recycling and reprocessing. They have rebranded themselves as a reclamation center in the context that they recycle, reprocess and landfill. They have diverted 6 thousand tons of gypsum from their facility this year. They are LEED Certified, which decreases the amount that is buried and increases the life of the facilities. Lastly, a term on the operation in any way can adversely affect their ability to obtain capital to do recycling. The equipment purchased is typically upwards of a half million or more (i.e. grinder). The shorter term limits does not allow them to go to the bank to get the money they need to make those investments.

NCDENR recently introduced more stringent regulations to operate landfill facilities; i.e. \$2.00 per ton tax, and Bond Assurance. The Bond Assurance is much more stringent than Article 9.23 in its previous form.

JoAnne Miller asked if the recycling was done at this site or all sites, and Mr. Griffin stated that currently they do it at this site, and all sites. They currently separate any type wallboard that comes into the facility, and haul to their reclamation center that focuses on sheet rock. Other components they do on site. They have a portable grinder and they stock pile clean wood and periodically process it to be used for wood burning boilers. They are currently working with asphalt companies to figure out how to best recycle asphalt shingles. Their primary recycling opportunities are concrete blocks crushed to aggregate; the wallboard is 100% perfected and clean wood. Bruce Andersen asked about the recycling of road asphalt. There are motivated sources to help augment a mix of that type product.

JoAnne Miller commented that this was considered a nonconforming use and they could not operate somewhere else in the Huntersville area. With the Text Amendment she was questioning if a landfill could be opened somewhere else. Jack Simoneau stated that under today's rules anybody can ask for a landfill (LCID or C&D) as long as it is in a Special Purpose District and get a SUP. There is no preclusion of this type activity in the future. Under the new Text Amendment it would be the same. Bruce Andersen remembered questioning where another area for a landfill would be located in Huntersville. His concern is the closing of a landfill, and having trucks running to other landfills. Mike Griffin stated that the other option in the County if they were to close is Fox Hole in the center of Ballentine, and that would be a significant increase in truck driving. Joe Sailors asked about the one off of Beatties Ford Road, and Mr. Griffin response that it is a land clearing and dirt debris (stump dump) that typically takes trees and dirt. Jack Simoneau stated there is one on Everett-Keith and they did a Text Amendment that would make them close by 2016. Mike Griffin stated that one is a stump dump. The only other C&D is in Lincoln County with limited capacity.

Sam Mount questioned Mr. Simoneau about the time limit on the Text Amendment. Staff responded that the recommendation was there not be a time limit on the Text Amendment (like today), but if there is an existing landfill you must have an active SUP. However, with the

SUP it is proposed to have a new provision to connect to thoroughfares, if available, and give a 10 year window to see the connections at that time and mandate a connect, if available.

Sam Mount made a **Motion to Approve** the Text Amendment as stated with staff recommendations. Addison Causey seconded the Motion. The vote was 8-1 with JoAnne Miller opposing.

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2. Bradley Priest, Senior Planner presented the request by North Mecklenburg Construction and Demolition Landfill to amend the Special Use Permit (SUP05-01). A copy of the Staff Report is attached hereto as Exhibit “B”, and incorporated herein by reference.

Staff gave a brief history and update of the Special Use Permit (“SUP”) expansion in 2005, which was the second expansion. Then there was a Text Amendment and SUP applied for with a proposed text to only have two (2) expansions, so therefore the current Ordinance is still applicable and no more expansions would be allowed. The SUP specifically had a five (5) year limit from the date NC DENR issue its permit. The permit would expire in 2011, and the operation of the landfill would have to cease.

Joe Sailers asked about the acreage involved in the total site area (closed and expansion), and it was responded from the audience that it was about 120 acres.

Staff noted that the proposed Text Amendment will have a new section 9.23.10 that is key for this landfill in that it will say that existing landfills that have an active SUP can continue under their current zoning district. If the SUP is granted as currently proposed, the landfill could then operate indefinitely.

The applicants are proposing to reserve a right of way for a connector on the thoroughfare plan (East Huntersville Plan). The right of way will go between and adjacent to the fill areas (not through), and the general vicinity will work. With the permit as submitted the applicants will still use Holbrooks Road as the main access. They have agreed to move the access to a thoroughfare or commercial standard road when the right of way and associated constructed street is immediately adjacent to the property. The applicant will comply with all the buffers, except the 100’ buffer to the northwest of the property. There is an existing road that is closer than 100’ to the property line; however, staff is comfortable with that because it is an existing condition. Joe Sailers questioned staff about the gas pipeline through the property. Mike Griffin came to the podium and responded to Mr. Sailers. He stated that the maintenance road has been there for some time to help maintain the integrity of the original road, which is on the other side of the pipeline. He further stated that there is 200’ feet between the northwestern most fill from the property line. Joe Sailers questioned staff about the setback, and Staff responded that the *road* is less than 100’ from the buffer, and staff is comfortable with it.

Staff further stated that the applicant continues to clean Holbrooks Road from dirt and debris that is left from the construction trucks, etc. The other findings are in the records, and Staff stated the recommendations, as follows:

1. East Huntersville Plan: The connector alignment in the East Huntersville small area plan currently conflicts with the proposed application. Staff recommends that the current alignment be fully reserved or an alternative alignment be approved by staff and reserved by the applicant.
2. Holbrooks Road: NCDOT has indicated that Holbrooks Road requires considerable maintenance due to the excessive truck traffic coming from the landfill (see email from Max Buchanan attached to Staff Report). Staff recommends that one of the conditions of the permit be that the applicant must upkeep and maintain Holbrooks Road as recommended by NCDOT. Staff will obtain a recommended maintenance schedule from NCDOT in the next few weeks.
3. Annexation Agreement: As a condition of the permit, staff recommends that the applicant voluntary annex into the Town of Huntersville. Bruce Andersen questioned why the annexation didn't happen in the past, and Staff stated that the previous SUP did not have a condition of annexation. Jack Simoneau further stated that once they are annexed there will be a Franchise Agreement which can be much more specific and controlling over the operation of the landfill. Mr. Simoneau stated that the Griffin Bros. now have to deal with Mecklenburg County and the Town. If they annex they will deal specifically with Huntersville through the SUP and Franchise Agreement. It is something that they desire to do. Joe Sailers questioned when they would make application for the annexation, and he was informed by staff that they have and it's being processed now. It was further noted to the Board members that if they are annexed there will be an Agreement which gives the Town another opportunity to reach compliance with any issue. Sam Mount questioned if the annexation would drive others to be annexed, and Mr. Simoneau stated, no. If they annex their property into the Town the Town will also annex the park land to be a contiguous annexation.
4. Time Limit: Staff recommends that the permit not be extended indefinitely. There are many compliance related items that may become applicable in the distant future. The moving of the main entrance to a thoroughfare or further improvements to Holbrooks Road are examples. Ten years may be a good amount of time for the conformance situation to be revisited and the status of the surrounding road improvements to be re-reviewed. Ultimately Staff wants the access to be off a thoroughfare or commercial road, and the applicants want the Verhoeff Extension to be punched through.
5. Reclamation Plan: As a condition of the permit, the applicant should have an updated reclamation plan approved by NCDENR.
6. Connector Road: It is unclear who will be responsible for constructing the connector road through the subject property. As a finding and condition of the permit, staff recommends that be clearly understood.

Sam Mount asked Bradley Priest if any roads being annexed would be Town maintained, and Staff stated that Holbrooks Road is a NCDOT road. The connector road would probably be a Town road. Sam Mount asked Jack Simoneau what a Town road implied, and he responded that the Town will maintain the road. A road would be developed by a developer. Every residential subdivision is a Town street built by the developer and then it is dedicated to the

Town. The State of North Carolina through the Powell Bill Funds give 'x' amount of dollars per years based on how many miles of road we have for maintenance of those roads. Sam Mount wanted to clarify his understanding of the recommendation in that NCDOT and Griffin Bros. need to work out something and he asked what happens if it is not worked out. Jack Simoneau responded that Staff will accept what NCDOT recommends. It is Staff's hopes that they will come to an understanding, and if not, it will be up to the Town Board to decide. Bruce Andersen questioned Mr. Simoneau if he had ever seen NCDOT ask for road improvement from only one property owner located on that particular road. Mr. Simoneau stated that he had never experienced a road like this where the heavy trucks were going to only one place. Bruce Andersen understood the logic, but not that only one party is responsible for a NCDOT road. Jack Simoneau stated that it has been requested that NCDOT walk the road with the applicants so it is certain understandings of cause and effect with the road conditions. Joe Sailers stated that the park used to be a landfill and that landfill contributed to the conditions of Holbrooks Road today. Jack Simoneau informed the members that the applicants have more details to the road issue, and that he was not sure when the road was last repaved.

Addison Causey asked what the linear footage (approximately) of the connector road between Verhoeff and Asbury Chapel. There was a discussion between the audience members that is inaudible, and Joe Sailers stated that the length was 3,500 to 4,000. Addison Causey asked staff what he anticipated the connection to look like and staff responded that it has been discussed in a TRC meeting. A lot of discussion was about an intersection with Asbury Chapel Road. Developing a road incrementally is a consideration, and has been discussed. Jack Simoneau stated that the distance is approximately 2400 feet. Addison Causey asked if it was staff's intent to include the cost of the road be with the developer. Sam Mount asked the applicant what happens to their taxes, and they responded that taxes will increase about \$5,000.00 per year.

Sam Mount stated he was concerned about the time limit (i.e. 2016) and felt that there should be a time of 5 years previous to its expiration (2011) for review and planning to begin by the Town. Jack Simoneau stated that if this SUP goes forward it would end in 2019. Sam Mount suggested that planning start well before the time of expiration. Jack Simoneau stated that the experience has been that the Griffin family members are astute businessmen, and they start their process well before the clock ends. Staff felt comfortable with the 10 year time limit as written, without including an additional limitation for planning before the 10 year time limit occurs. There are future roads being planned there now and the Town has worked with the Long family and the North Meck Industrial Park to prepare plats for future streets. Sam Mount pointed out that Staff is looking at roads, and he is concerned about the landfill. Joe Sailers commented that without the landfill, development can not be encouraged. JoAnne Miller commented that there are other landfills and they did not have to be in Huntersville. Addison Causey commented that part of the planning process for the Town is to identify certain areas for commercial development, and where arterially connected roads need to be. He further stated that if a landfill does shut down in the future that the Town and other townships would be actively involved in the development of the location of this type of landfill. Jack Simoneau stated to the members that the Text Amendment that has been recommended does not put a sunset limit as currently written. The Text Amendment is recommended by Staff and the developer has agreed to not having the limit in the amendment. Additionally, the Griffin family is more aware than most that

there is going to be a great deal more recycling (i.e. gypsum). The site on Holbrooks Road is a good site. It is remote from others, and has all of the features of having a good site.

Mike Griffin presented to the Board. He stated that for Mecklenburg County there are only two facilities that handle a majority of the debris that is created in their facility. The Fox Hole and North Meck facility are the epicenters of South Mecklenburg and North Mecklenburg, and the growth in the areas. As an environmentalist you should promote close proximities to landfills to growth. The carbon footprint is reduced by the dramatic decrease in truck traffic.

Post Closure there are two economic viable opportunities; one being solar panel farms. The closed southern-most facility they have has about 4 to 5 acres that is already a candidate for a solar farm. The eventual closed facility that they are proposing (the infill) will create a huge opportunity for a solar farm. He also indicated that it created a wonderful opportunity for a nature parks and recreation application. He stated he was on East Huntersville Plan committee several years ago, and noted that the development that looks like Vermillion is not. It is a proposal for an extension of Vermillion. Griffin Brothers, Inc. owns about 50 to 80 acres of that land and would embrace that type of development. Outside of the 120 acres, they own an additional acreage on Holbrooks that they look forward to developing it in the spirit of Vermillion and what was approved in the East Huntersville Plan. From Waymer to their property contains a great deal of green space that would buffer North Meck Industrial Park from the existing Holbrooks community as well as any expanded and enhanced Holbrooks Road community. He envisions natural trails connecting and going through their properties.

He further stated that their onsite recycling opportunities are within the approved NCDENR permit for the landfill. The southern most area was finished out in the early 2000, and that is the area conducive for solar farms. He has worked and talked with all three power companies in Huntersville to get the best opportunity to put in a solar farm.

Joe Sailors asked Mr. Griffin about the filling south of the existing fills to the same level, and Mr. Griffin stated that area would be a much greater challenge because there is a tributary located there. Ron Gilkerson spoke from the audience and indicated there were preservation areas with SWIM buffers.

Mr. Griffin discussed the road connection and in long term opportunities he stated there may be an opportunity to attach to the southern most and go toward the Industrial Park. There is a segment that is not conducive for development (due to topography), but which is conducive for their industry and there could be opportunity to go that direction. With coming out of a recession and assuming normalcy to growth, this facility probably does have 25 years of time line, and could have opportunities beyond that as well.

He stated they had two (2) concerns. One is the term limit within the SUP. It is a minor concern, but they highly encouraged the Board to consider letting the Franchise Agreement control. If there are issues pertaining to continuing their operation as a result of the roads at a later term that it be integrated in the Franchise Agreement. He reiterated that it was not a huge concern. The Holbrooks Road improvement is a concern. He was recently aware of the NCDOT's initial feelings about what they needed to do on that road. They have prided

themselves with their partnership with DOT. In the mid 1990's they helped pay for the extended shoulders on the road by a total of three feet. Also at that time DOT put a new layer of asphalt on Holbrooks Road ('94-'96). They recently created a right turn lane at the intersection of Holbrooks Road and 115, which was dramatically improved. In his opinion Holbrooks Road is not in that bad of shape. He looked at it today and noted that there are four areas that have some concern for stress marks. There are two shoulders that he thought needed to be improved in the turns. The initial information from NCDOT would mean doing significant patch work and paving which would be an unbelievable burden to his family. The estimate is about \$300,000.00 in work. NCDOT cut and patched a significant portion of the road in 2007. He contended that they need to save resources to focus on the commercial thoroughfare, in particular Verhoeff Extension and any roads from that. That is the plea to the Boards and NCDOT. They fully recognize and anticipate doing repairs on Holbrooks, as needed. He stated that they have yet to receive a concern from the citizens that live on Holbrooks Road, and pride themselves with the partnership they have with them. They have yet to hear concerns from their customers about the road (they do not do the hauling). They have dozens of customers and hundreds of trucks using that road and facility. He noted that those trucks pay approximately \$1,000.00 per year, per truck specific for road improvements and fuel tax that is paid to the State for the roads. He felt that with the preliminary statement from DOT they were being double hit. He stated that he would love for the Board to consider some constraints or opinions. Lastly, they are working with alternative means to get to their property. In a grander plan they look to be inside North Meck Industrial Park with a facility that does very impressive recycling. He stated that there is not a demand from the other citizens and partners down that road (Holbrooks), and he did not feel there is a need to do significant improvements to the road. They are willing to do some, but not to the level of the preliminary information.

Addison Causey wanted to clarify the cost of the connector road and stated that it would be approximately \$700,000.00. Mr. Griffin stated that if it goes from Verhoeff all the way to Holbrooks it will be in the range of 1.3 Million. Mr. Griffin stated that they have had very limited discussions about the connector road. There have not been any discussions about building the road, and would have a hard time financially to build it with the exception of being a partner inside the Industrial Park. Typically those partnerships in developments require road improvements. Bruce Andersen wanted to be clear with Mr. Griffin in that they are willing to donate the right of way for the road, but have not had discussions about building the road. Mr. Griffin agreed, and suggested there may be a possibility of connection from Verhoeff to their operations. JoAnne Miller questioned if the Verhoeff Extension would be close enough to the property to be considered "adjacent". Mr. Griffin responded that there is approximately 50 acres between their property and Verhoeff Drive. The North Meck Industrial Park and the Griffin family would love to have access and ownership of that property. It is the desire to get Verhoeff stubbed to the end of the Long property for the prospect of industrial development. That would create 2 opportunities for them. 1) If they owned a portion of the Long property they would have immediate access to the thoroughfare, and 2) the planned attachment road that would go through some of their property connecting to Holbrooks Road, and this would be the second way to access a better thoroughfare.

Joe Sailers wanted clarification about the gas pipeline and the location of the connector road on their property, and if there was a restriction concerning the proximity of the pipeline and

the road. Bradley Priest responded that the road can not be on top of the pipeline, and it was his understanding with the Transportation Review Committee there were no objections. Addison Causey stated that the road right of way can be immediately adjacent to the gas easement, which Staff agreed. Joe Sailers stated that he wanted to be sure that if the requirement of dedicating the right of way is feasible. Mr. Griffin stated that their willingness is for the road to go through their property that has not been used for land filling purposes. If it changes and does not hit landfill cells that will not be a problem. Bradley Priest made it clear that there is only a reservation for that area. It is not dedicating it at this point.

Bruce Andersen asked staff about the Franchise Agreement containing a term limit. Jack Simoneau stated that Bob Blythe will draft the Agreement. Mr. Griffin informed the members that according to NCDENR regulations it is required to have a term limit in the Agreement. In order for them to get a permit to operate their facility they (NCDENR) require a Franchise Agreement with the host municipality, which technically at this moment is Mecklenburg County. With the annexation, Mr. Blythe will have to help to create a Franchise Ordinance. There are several stipulations in an Agreement, and there has to be a limit. The typical limits are 30 years and 20 years. The currently Mecklenburg County Franchise Agreement expires the same time that the zoning expires to match up to the zoning since it is the superseding event. It is their desire that the Franchise Agreement contain the term limit and is a better document to deal with these issues and road issues that may come about in a period of time.

Mr. Griffith stated that they agree 99% with staff, but ask that the terms limit be with the Franchise Agreement and not within the SUP. They have fears that they hope can be resolved between now and December 7<sup>th</sup>. Ron Gilkerson informed the Board that they have matched in the past with the DENR term based on expansion volume. Now they have exceeded that with the infill area plus what is in the existing Expansion Area II. The 10 year term proposed by staff does not meet their requirement. They have enough capacity with the level of recycling for 15 to 20 years. As a technical point, the infill area represents about 1.2 to 1.3 million cubic yards of air space which is substantial.

Joe Sailers questioned the Planning Director if the term limit in the SUP could coincide with the Franchise Agreement limitations. He gave an example of the Franchise Agreement being for a 30 year term, with the SUP having a 10 year term, and the applicants needing an extension of the SUP to meet the terms of the Agreement. Jack Simoneau stated that a 10 year time frame is reasonable and sensible so the Town can see what has happened to the road patterns, Holbrooks Road, and reassess the road infrastructure. Five years does not work, and 10 years will give a better sense of our roads. Bruce Andersen questioned if staff would have input on the Franchise terms, and Mr. Simoneau responded that the Agreement will be with the Town Manager and Town Attorney. They should include the Public Works Director and the Planning Director for further input and the the nature of the SUP.

Sam Mount wanted to clarify with Mr. Simoneau what other issues he wanted to reassess in the term limit. Jack Simoneau gave an example of the applicant coming back in 8 ½ years with some improvements done to Holbrooks Road; and the North Meck Industrial Park extends on Verhoeff and builds a portion of a north connector road. Then there is the SUP expiration and planning staff reassesses, and NCDOT wants another 100 Thousand Dollar improvement to

Holbrooks Road. A better solution could be that they partner with the Town of Huntersville and make a connection to Verhoeff. The 10 year term limit will allow the opportunity to do the reassessment. Sam Mount gave an example that they do not reach an agreement with NCDOT, and he understood it that they would then be able to appeal to the Town Board. Jack Simoneau clarified that NCDOT stated for them to do patches and complete overlay of the road (estimated from \$250,000.00 to \$350,000.00). That is obviously not what the Griffin family feels is appropriate for this situation. Mr. Simoneau's expectation is for the two parties to come together to reach an agreement or understand the positions. Those issues will be presented to the Board on December 7, 2009, who will make the decision at that time (mandate improvement per NCDOT or vote on agreement between the parties). There is a potential that on December 7, 2009 there will be two opposite positions to decide. Addison Causey made a scenario of what if Griffin family comes to a decision that the procedures that NCDOT demands for Holbrooks Road is too expensive, and it is not financially feasible for them to spend that level of money. Then it goes to the Town Board and the Town Board agrees. If this is a NCDOT road, can the Town Board compel NCDOT to accept that decision? Jack Simoneau stated that NCDOT ultimately controls the road and they will have to say to the elected officials what needs to be done. Mr. Simoneau was not sure what actions NCDOT would take if the Town Board extends the life of the landfill but does not get the level of improvement they feel is appropriate. There could be weights limits set on the road. Addison Causey commented that in his opinion NCDOT is under tremendous duress, and if NCDOT believes that Holbrooks has to be improved they will not care a lot about what the Town Board says about it. Jack Simoneau stated that the Town needs to be careful with this; we (the Town) are partners with NCDOT in a lot of other road projects. There is a \$20 million partnership with NCDOT on NC73, and we can not jeopardize any partnerships with NCDOT (Ramah Church Road & 115; NC73; US 21; Exit 25, 115 widening at Bryton, etc.). He agreed with Mr. Causey's statement that this is NCDOT's road and we (the Town) would be wise to see resolution between the parties.

Sam Mount commented that the 10 year limit was arbitrary, and questioned the importance of the limit. Jack Simoneau reiterated that the 10 years gives the planning staff and Town to understand where the thoroughfares are going and reassess the roads and connections. Without this conversation now there would not be any talk about the ½ dozen issues that Mike Griffin found today on Holbrooks Road.

Todd Bowland commented that with all the information given that he did not have a problem with the 10 year term, and it made perfect sense. Bruce Andersen agreed, but with the term in the Franchise Agreement, but not in both the Agreement and SUP. Perhaps it should say in the SUP that there is a 10 year term until such time as the Franchise Agreement states, and the SUP disappears. Sam Mount stated that there is a difference in coming back in 10 years and checking in and having a Franchise Agreement that expires in 10 years. He gave the example of financing a business with a 10 year term in the Franchise Agreement verses a 30 year Agreement with a 10 year review time. He wanted to be sure that they are protecting the ability of a business in Huntersville to do what they need to do to grow, and at the same time maintaining responsibility of the government of Huntersville to say as you grown we have a responsibility of the streets. He did state that he has an issue with the Town saying how they are going to govern that is by giving a 10 year window.

Bruce Andersen asked Mike Griffin to respond to Mr. Mount's comments. Mike Griffin stated that they do not mind the periodic check ups, but their plea is to put it in the Franchise Agreement. When dealing with banks and a SUP process verses an Agreement renewal, the franchise renewal is easier. The SUP ends their financing. He gave the example of buying a million dollar piece of equipment and the banks see they only have 5 years left on the zoning they will not give them a 5 year term. 5 years left on a Franchise Agreement the bank is more likely to work with them. Bruce Andersen asked if the Franchise Agreement was 10 years would he have a problem getting it renewed every 10 years. Mr. Griffin stated that he would not have a problem for the first 10, and understood staff wanting to look at infrastructure. He would ask the Board to consider a 10 year limit in the Franchise. Hopefully when the new Industrial Park and other opportunities are there, a longer Franchise Agreement can be considered. He further commented that the citizens on Holbrooks Road would rather they stay there forever. They are fully aware of this and the previous meetings. They are 100% happy for them to stay there due to the partnership they have. Mike Griffin thinks they should be part of the Industrial Park, and that is their hope.

Bruce Andersen commented that he did not want to see the landfill shut down due to long term planning responsibilities and NCDOT pressures. Jack Simoneau stated that the Griffin family will do everything they can do to have a meeting with NCDOT and that Town Staff (including Max Buchanan, Public Works & Engineering Director) will assist in getting the parties together. Joe Sailers asked what likelihood there was in this meeting taking place before December 7, 2009, and Jack Simoneau stated they would speak with the Town Manager to get all parties together.

Hal Bankirer was curious of what level can NCDOT can require in a Franchise Agreement, and Jack Simoneau responded that NCDOT has no influence on the Agreement. It is strictly between the Town and applicant.

Bruce Andersen summarized the Board's comments, as follows:

- The connector reservation
- Working with NCDOT
- Annexation
- Moving toward a Franchise Agreement
- Reclamation will be solar farm (possible)
- Future Verhoeff Extension is in the planning
- Term in the Franchise Agreement per NCDENR, and they would except 10 years

Bradley Priest reminded the Board and Mr. Andersen that Staff made findings for the SUP, and asked them to either agree or modify the findings (1-10) as written in the Staff Report.

The Chairman questioned the members on the following findings:  
Off Site LCID and C&D landfills are permitted in the SP District-subject to a Special Use Permit, according to the procedures of Section 11.4.10. The Town Board shall issue a Special Use Permit for the subject facility in the SP District if, but not unless, the evidence presented at the Special Use Permit hearing establishes the conditions below.

*STAFF FINDINGS: The North Mecklenburg Landfill is an existing landfill with an unexpired special use permit that would be allowed to continue to operate in its current zoning designation per Article 9.23.10. The proposed application is to amend the existing special use permit to remove the expiration date so it can continue its use within its current boundaries indefinitely; infilling the site as shown on the attached site plan. No rezoning to SP would be required as long as 1. The special use permit does not expire and 2. No expansions outside of the current property boundaries take place. The current special use permit is good through October 26<sup>th</sup>, 2011. The Planning Board agreed with the findings.*

1. That the site will operate in compliance with the rules according to NCDENR for C&D and LCID landfills.

*STAFF FINDINGS: The NCDENR (North Carolina Division of Environment and Natural Resources) permit was approved on October 26<sup>th</sup>, 2006 and is attached for reference. Please also find an email from Joe Mack (Solid Waste Management, Mecklenburg County). Mr. Mack reports no violations or compliance issues in the last five years. The North Mecklenburg landfill will continue to be subject to the NCDENR rules and regulations. The Planning Board agreed with the findings.*

2. That the proposed use will not endanger the public health and safety, nor substantially reduce the value of the nearby property; and

*STAFF FINDINGS: Per the email from Mecklenburg County Waste Management, staff has no reason to believe public health, safety, or property values will be negatively affected by the amended special use permit. The Planning Board agreed with the findings.*

3. That the proposed use will not be in conflict with the objectives of the most detailed plan adopted for the area; and

*STAFF FINDINGS: The proposed use does not conflict with any adopted/accepted small area plans. However, the East Huntersville Plan does call for a connector road to be established through the proposed property in question (connecting the proposed North Mecklenburg Industrial Park to the south with the future Asbury Chapel Road extension to the north). The applicant has agreed to reserve right-of-way for the future connection only in their required buffer area. The proposed alignment of the connector road in the East Huntersville plan however does not stay in the buffer areas of the landfill. Therefore an alignment conflict currently exists. Staff plans to bring this issue up at the Transportation Review Committee (TRC) meeting next week to explore whether or not the alignment can be altered to stay in the buffer areas.*

*Also, it is unclear at this time who would be responsible for constructing the connector road through the subject property. The Planning Board agreed with the findings.*

4. That the comprehensive site plan addresses each of the environmental and development standards below:

(a) A landfill which would be larger than 10 acres shall be accessed from a major or minor thoroughfare or from a street built to commercial street standards that connects directly to a major or minor thoroughfare-where available. Landfills 10 acres or less must directly connect to a major or minor thoroughfare or to a non-residential collector or non-residential local street where available.

*STAFF FINDING: The applicants intend to continue to use Holbrooks Road as their main access to the facility as no thoroughfare or commercial street is currently available. Please see the letter from the applicant attached. They have agreed to move their main entrance from Holbrook Road to the future thoroughfare (Asbury Chapel Extension) to the north or the commercial business park roads (North Mecklenburg Business Park) to the south. However their proposal would only make the move required if a completed and constructed street along with associated right of way becomes immediately adjacent to their property. No proposal to construct any of the proposed thoroughfares or commercial streets (on or off their property) has been offered.*

*Please find an email from Max Buchanan (Huntersville Public Works Director) attached. According to Mr. Buchanan, the NCDOT Maintenance Engineer for the area has stated that “Holbrooks Road requires regular maintenance activities be performed due to a large volume of truck traffic on pavement structure not designed to carry such volumes/weights”. However no proposal for improvements or maintenance for Holbrooks Road has been received (other than to clean debris and trash; see below) from the applicant. The Planning Board agreed with the findings.*

- (b) That the proposed or existing use will be in compliance with the rules and regulations as established by Traffic Impact Analysis (TIA) Article 14.

*STAFF FINDING: Because the facility existed prior to the effective date of the TIA ordinance, it is not required to submit a traffic impact analysis per Article 14.2.1 (G). However if there is ever an expansion to the outer property boundaries of the site, a TIA may be required if the expansion meets the threshold requirements of Article 14. The Planning Board agreed with the findings.*

- (c) Neither clearing, grading, land disturbing activities, nor any portion of a C&D or LCID landfill may be located within 100 feet of any exterior property line. Further, the buffer requirements for the site are required per the state permitting criteria. The requirements stated below take precedence over any and all modifications made by the state unless the state standards become more restrictive.

- 500-foot buffer from existing residential water supply wells to fill area.
- 200-foot buffer from adjacent property to fill area.
- No fill in designated wetlands or the FEMA and /or Community Special Flood Hazard Areas.
- 50-foot buffer from delineated streams.
- 50-foot buffer from road right of way to fill area (non-state requirement).

*STAFF FINDING: The North Mecklenburg Landfill letter states that they comply with all buffers listed above except one. The northwest portion of the property has an existing dirt road that is within the 100 foot undisturbed buffer area. This is a pre-existing condition that, because of the location of closed out fill areas, can not reasonably be changed. The Planning Board agreed with the findings.*

- (d) Driveway access to the facility must be paved for a distance of at least 100 feet from the public street.

*STAFF FINDING: According to the attached letter from the applicant, their main driveway is paved 170 feet back from Holbrooks Road to their gated entrance. The Planning Board agreed with the findings.*

- (e) Vehicular and pedestrian access to the site must be controlled; the site must be closed and secured during hours when filling activities are not under way. A non-climbable fence, at least 6 feet high, shall be installed around the landfill and all of its operations as a safety device. These fences must be constructed of wire mesh with openings not to exceed 2 inches by 4 inches or equivalent and must be placed on the interior side of screening/buffering devices.

*STAFF FINDING: The North Mecklenburg Landfill currently has a security fence that extends around the active fill area and the front main entrance. The closed out fill area does not have a security fence. The Planning Board agreed with the findings.*

- (f) All driveways which serve the site must be wide enough to accommodate two way traffic for a distance of at least 100 feet from the public street so that no traffic waiting to enter the site will be backed up on any public right of way.

*STAFF FINDING: The application letter lists the driveway entrance at 48 feet wide 100 feet back from Holbrooks Road. The Planning Board agreed with the findings.*

- 5. That the landfill operator will be responsible for removal of any and all debris, dirt, or other materials which fall from trucks entering or leaving the landfill from all adjoining streets on at least a weekly basis. Failure to comply constitutes a violation of this ordinance and may constitute grounds for revocation of the operating permit.

*STAFF FINDING: In the letter attached, the applicant has agreed to be responsible for a weekly cleaning of Holbrooks Road. The Planning Board agreed with the findings.*

- 6. That use of the site for any purpose shall be limited to the hours of 7:00 a.m. until 6:00 p.m. Monday through Saturday, if the site adjoins or is across the street from property located in a residential district.

*STAFF FINDING: The North Mecklenburg Landfill is adjacent to and inside a residential zoning district therefore the restricted hours of operation will apply. The Planning Board agreed with the findings.*

- 7. That a timetable has been submitted with the application indicating the development phases and the projected life expectancy of the landfill.

*STAFF FINDING: The letter from the applicant estimates the new life expectancy of the landfill to be 25 years. Sam Mount suggested that the Franchise Agreement be including in this finding and stated that it should have an initial term of 10 years. Jack Simoneau commented to the members that these are facts, and the applicants agreed that the franchise should have an initial limit of 10 years for reasons stated about the infrastructure, and that language could be a finding of fact. Mr. Simoneau stated that that in his opinion the true public arena is through a SUP and not a Franchise Agreement, and that is why it was recommended this process. The Planning Board agreed with the findings.*

- 8. That a reclamation plan is provided that shows how the site will be reclaimed upon the closing of the landfill. The reclamation plan shall state the proposed method of conservatorship

and perpetual maintenance or use. It shall demonstrate that the site, when closed, will pose no threat to public safety; that the finished contours and groundcover will reestablish a compatible appearance with surrounding lands and buildings; and that the method of maintenance or use will cause no future environmental degradation.

*STAFF FINDING: Please find the proposed reclamation plan submitted by the applicant attached. The submitted information has not been approved as of yet by NCDENR. The Planning Board agreed with the findings.*

9. An existing LCID landfill shall not be required to be brought into compliance with the provisions of this ordinance provided:

- (a) The landfill has been continuously operating since 1991 and was not within the zoning jurisdiction of the Town of Huntersville in 1991;
- (b) The landfill has a valid LCID or demolition landfill permit and/or obtains any renewals of the LCID or demolition landfill permit required by the State of North Carolina and/or Mecklenburg County;
- (c) The landfill has a closure plan approved by the State of North Carolina and/or Mecklenburg County; and
- (d) In no event shall the landfill operate under a LCID landfill permit later than December 4, 2016 and further provided that on the earlier of the final date permitted for operation of the landfill or the date the landfill permanently ceases operation, the owner and/or operator of the landfill shall immediately commence and continuously pursue to completion closure of the landfill according to the provisions of the then current closure plan approved by the State of North Carolina and/or Mecklenburg County. Failure to complete closure according to such approved plans shall be a violation of this ordinance enforceable by all remedies and penalties available to the Town.

*STAFF FINDINGS: The North Mecklenburg Landfill is a Construction and Demolition Landfill (C&D) and is not subject to this section of the ordinance. This section of the ordinance applies to Land Clearing and Inert Debris Landfills (LCID). The Planning Board agreed with the findings. The Planning Board agrees with this finding.*

10. Any existing C&D landfill shall be permitted to continue operating in the zone in which it is located provided that landfill has an unexpired special use permit. Any expansion beyond the property boundary of an existing C&D landfill as approved on November 11, 2005 must be located in the SP district with a special use permit in accordance with the provisions of this Section.

*STAFF FINDINGS: The current special use permit for the North Mecklenburg landfill is currently unexpired and valid. It states that the landfill could operate no longer than five years from the date the final state approval is granted. The state approval was granted in October 26<sup>th</sup>, 2006 therefore under the current special use permit the landfill needs to cease operation on or before October 26<sup>th</sup>, 2011. This proposed special use permit amendment however would remove the time restriction from the permit and the existing landfill would be allowed to continue to operate within its current boundaries indefinitely per the article above. The Planning Board agreed with the findings.*

Bruce Andersen proposed that all findings of fact be accepted with an additional finding added to 7.

Addison Causey made a **Motion to Approve** and accepts all Staff Findings listed above with the exception of adding language to item 7, in that applicant has agreed to an initial Franchise Agreement term of 10 years. Joe Sailers seconded the Motion.

Hal Bankirer stated that he does not disagree with 7, but felt it should be a separate paragraph and finding of fact. Barry Hester agreed.

Addison Causey made a **Motion to Amend** to move the additional language to a new item 11. Joe Sailers seconded the Amended Motion. The vote was unanimous.

Bruce Andersen called the question of the following:

1. East Huntersville Plan: The connector alignment in the East Huntersville small area plan currently conflicts with the proposed application. Staff recommends that the current alignment be fully reserved or an alternative alignment be approved by staff and reserved by the applicant.
2. Holbrooks Road: NCDOT has indicated that Holbrooks Road requires considerable maintenance due to the excessive truck traffic coming from the landfill (see email from Max Buchanan attached). Staff recommends that one of the conditions of the permit be that the applicant must upkeep and maintain Holbrooks Road as recommended by NCDOT. Staff will obtain a recommended maintenance schedule from NCDOT in the next few weeks. Bruce Andersen appreciated the recommended maintenance schedule, and would support this. Addison Causey complimented staff and the Griffin family.
3. Annexation Agreement: As a condition of the permit, staff recommends that the applicant voluntary annex into the Town of Huntersville.
4. Time Limit: Staff recommends that the permit not be extended indefinitely. There are many compliance related items that may become applicable in the distant future. The moving of the main entrance to a thoroughfare or further improvements to Holbrooks Road are examples. Ten years may be a good amount of time for the conformance situation to be revisited and the status of the surrounding road improvements to be re-reviewed.
5. Reclamation Plan: As a condition of the permit, the applicant should have an updated reclamation plan approved by NCDENR.
6. Connector Road: It is unclear who will be responsible for constructing the connector road through the subject property. As a finding and condition of the permit, staff recommends that be clearly understood. Bruce Andersen was unclear as to what was expected from the Planning Board. Bradley Priest stated that there is not an expectation that the road be done at this time, and it can be clarified. Jack Simoneau stated that the

members of the Board could eliminate this paragraph and replace the renewal with the Agreement.

Addison Causey made a **Motion to Approve** based on the above staff recommendations 1-5, and that Staff Recommendation 6 be eliminated from this recommendation. Jeff Neely seconded the Motion.

Sam Mount asked about amending the Motion concerning number 4 that the time limit be specified and established in the Franchise Agreement. Addison Causey accepted the **Amended Motion**, and Jeff Neely seconded the Motion. Mr. Mount also requested that a statement be inserted that within 3 years of the termination of the Franchise Agreement the Town will initiate the development or alternate access for equivalent use of the facilities. Addison Causey did not agree to further amend his Motion. It is a valid consideration and Planning Board should ask Staff to study and bring back to the Board the opportunities there are within the general plan for Huntersville for this type facility. It should not be tied to a particular petition. Bruce Andersen wanted to be certain that the Franchise Agreement will be signed after Annexation, and the SUP can not exist without a term limit. Bradley Priest stated that if it (SUP) is as written it will exist indefinitely.

The Amended Motion was 8-1 with Todd Bowland opposing.

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2. Lisa McCarter, Planner I, presented TA 09-06, which is a request by the Town of Huntersville to modify the Zoning Ordinance Article 9.52 Uses Permitted with Conditions, 12.2.1 General Definitions, and Article 3 Zoning Districts to establish regulations for alternative energy sources, expressly wind and solar energy which are the most common types of alternative energy. The proposed text would allow small facilities by right as an accessory use in all zoning districts, and allow large facilities as a use permitted with conditions in the R, TR & SP and additionally for rooftop solar in the HC & CB zoning districts. A copy of the Staff Report is attached hereto as an Exhibit, and incorporated herein by reference.

Staff updated the members and explained that the words major and minor were being used as requested instead of small and large. The setback was increased for small wind facilities for a minimum of two times the height, and limited the sound generated to a maximum of 55 decibels as measured from the adjacent property line. Staff included they had no problem with Bruce Andersen's height limitations (3 times the height).

Staff reviewed with the members the email from Bruce Andersen and his copy of the Southwest Wind Power Zoning Model Ordinance. Staff prepared a table with a summary of Mr. Andersen's points and the proposed amendment. The first comparison is using residential versus commercial for threshold for major and minor facilities. Staff does not recommend this because it would discourage commercial from using a small turbine on a roof. Staff does not have a problem with the kilowatt threshold for electrical output produced for major and minor facilities as indicated by Bruce Andersen. The second point was resale back to the utility, and Staff would encourage resale because of the State Statutes that require increasing the amount for renewal

energy sources. Concerning safety, Staff talked to Mecklenburg County Code Enforcement Director (James N. Bartl). Mr. Bartl told staff that for any wind turbine erected it would have to comply with State building code as well as electrical code. It would also require certification from engineer for construction and installation, and there would be inspections. Bruce Andersen stated his point was not to set out rules but to point out that the connections and rules with Duke (in example) are many and expensive. Staff pointed out the text could specify that the towers will not be lattice forms. Notification to utility companies is already done by Mecklenburg County through the permits issued. Bruce Andersen suggested that more than just a distribution person with the utility company be notified. Jack Simoneau, Planning Director questioned if the Text Amendment needed to get to that level of detail. It is Staff's recommendation to keep this simple. Lisa McCarter noted that staff does not recommend the enforcement measures specific to wind turbines because of the other requirements in the Ordinance, which reverts to 11.2 for Code Enforcement. Bruce Andersen questioned if the Police Department enforces 11.2, and staff responded that it would be the Code Enforcement Officer. Bruce Andersen was concerned that enforcement has not been effective.

Staff further noted that the Southwest Model Ordinance did not address large facilities, and staff feels there should be limitations on the large facilities; i.e. larger tracts on R and TR. JoAnne Miller stated that she did not feel that there would be a large facility in this area in the next 10 years, and felt that a Special Use Permit would be proper. Members discussed the feasibility of wind towers, and large facilities. Todd Bowland noted the 10 kilowatt limit was arbitrary, and gave his employer's perspective for a minor vs. major facility as an example. Jack Simoneau stated to the members that he felt the definitions recommended by staff be used to avoid the numbers of production of electrical energy, and the beneficiary purposes. Bruce Andersen felt that there should be a limit other than small and large, because the small can be very large, even using 25,000 megawatts. JoAnne Miller stated that it would be okay. Jack Simoneau responded that it is all relative, and gave the example of the Metrolina Greenhouse that could be generating solar power for their use and it there should not be a problem with the minor use definition even though their facilities are big. Bruce Andersen feels the rules should be stiffer for "Joe Business" verses the person with a house and windmill. Jack Simoneau reminded that the members that right now we are establishing limits. Bruce Andersen felt that more oversight be used with a big facility (physically and electrically) to be sure they are safe, correct, and without damage to their neighbors. Jack Simoneau asked Mr. Andersen what language he would be comfortable with, and Mr. Andersen was not sure. He did note that when the facility gets larger there should be more oversight by the Town. Jack Simoneau reminded Mr. Andersen of the setback and height limitations in the proposed amendment. JoAnne Miller suggested that if someone has more than one turbine it should require a Special Use Permit. Lisa McCarter stated this was already in the proposed amendment.

Lisa McCarter noted that there is additional proposed language in the Town's amendment that is not in the Southwest Model (i.e. coloration, lighting, signs). It is further proposed to keep the definition for wind turbine height, instead of the definition in the Southwest Model. JoAnne Miller commented that if there is more than one turbine it should have a Special Use Permit (SUP), and Staff responded that it is in the proposed amendment to have a maximum of one turbine for minor wind.

Lisa McCarter continued to inform the members about the additional language in the proposed amendment, such as the aesthetic regulations for coloration to blend with the surroundings; no lighting except as required by FAA; and no flag or advertising signs. Staff will keep their definition for wind turbine height instead of the definition in the Southwest Model, because it is more explanatory. There is also a requirement for a decommissioning plan.

The members discussed the minimum acreage (5 – 10 acres). JoAnne Miller and Sam Mount commented they felt the minimum should be 10 acres. Staff provided the map showing the lot sizes in Huntersville. A majority of the members wanted the language to be a minimum of 10 acres for small/minor wind turbines.

Joe Sailers commented that the minimum size for major should be increased to 20 acres. JoAnne Miller responded that it should be left out of the language since there will be a SUP. Addison Causey commented that the language could include that any property requiring more than one wind turbine shall seek a SUP. Jack Simoneau intervened for clarity that with respect to minor wind facilities there is a minimum of 10 acres with one turbine, and with two turbines it is an automatic a major facility which limits the districts to an R, TR, or SP zones; and it is being suggested that there is a limit of 20 acres. Hal Bankirer commented that the acreage for a major facility should be 30 acres, which was agreed to by the members. In looking at the map, Bruce Andersen questioned the amount of lots greater than 30 acres that are conservation lands. Jack Simoneau replied that there are a huge amount of properties owned by Mecklenburg County that fall into that category.

Lisa McCarter continued reviewing her chart comparison, and stated that the lattice towers are not prohibited in the proposed language. Also, the onsite collector systems were noted. Jack Simoneau stated that #4 could be that lattice towers are prohibited if recommended by the Planning Board. The members discussed guy poles and wires, and agreed that for aesthetics and safety they should not be allowed. The foundation for turbines should be structurally sound and capable of withstanding the wind loads without the guy wires and poles. Jack Simoneau reminded the members of the height limitation of 75 feet and the need of support for the turbine, along with the Mecklenburg County's inspection requirement for certification.

The members discussed the height limitations for the major facilities, and it was proposed by Bruce Andersen that the maximum height of 180 feet was too high. He suggested 120 feet. The consensus for the minor height limitation is 75 feet, and the consensus for the major is 150 feet. The rotor clearance from the ground is 20 feet for both minor and major. The over speed controls were discussed as well, and it was the consensus to leave the language as proposed by Staff. Regarding interference, Harold (Hal) Bankirer suggested that the language be changed to, "the applicant will avoid any disruption, and will address any harm..." Bruce Andersen suggested "shall", which was agreed. Hal Bankirer commented if that the measurement of the setback should be from the edge of the rotor or the center of the base, and Staff responded it is proposed to be from the base. Hal Bankirer questioned if the measurement was sufficient, and if it should be replaced with the measurement from the tip of the rotor to the property line. The members agreed with having a minimum setback to adjacent occupied structures being 2.5 times the height of the turbine, and minimum setback to adjacent property lines being 2 times the height of the turbine.

Bruce Andersen commented about the minor wind turbines on a roof and the 10 foot clearance being small. Joe Sailers suggested that a wind turbine should be eliminated on a single family structure. The members agreed that the proposed language for the 10 foot clearance for a minor wind turbine on a roof was fine. Bruce Andersen suggested there be a disclaimer in the recommendation to the Town Board that a workshop should have been arranged instead of a 2 part Planning Board meeting for a subject this complex.

Hal Bankirer questioned the Enforcement procedures in §11.2, and the earlier comments. Jack Simoneau gave examples of a past violator that would not cooperate with Code Enforcement. He further made the point that it is rare the Town will go to Court for compliance. Zoning violations are different from structural building code violations that this the turbines would need compliance. There is an Environmental Court that can deal with these type issues/violations. Mecklenburg County Building Inspectors will be involved as well. Bruce Andersen suggested that the penalties be stronger if violations are found and cited. Jack Simoneau reminded the members of the 30 day language in the Ordinance, and the additional procedures. With respect to the towers that generate electricity it is not known what type of interference is created and those issues will need to be dealt with in the future. Hal Bankirer suggested he would be more comfortable with language that states the owner must shut down the facility immediately. Sam Mount commented that a neighbor may claim interference because he does not like it, and the 30 days in the Ordinance gives time required to comply. Jack Simoneau strongly recommended going with the proposed Ordinance and Enforcement provisions in place and deal with problems, if any, in the future. Sam Mount questioned if it could be certified about interference within a certain range.

Sam Mount made a **Motion to Approve** with the comments made herein above. Furthermore, this Board finds the amendment to be consistent with the Town of Huntersville Community Plan and other applicable plans. It is recommended amending the Zoning Ordinance as it is reasonable and in the public interest to amend the ordinance because it is in the best interest of the citizens of Huntersville; it promotes energy conservation; and protects the citizens to the best of our ability at this point in time. Jeff Neely seconded the Motion. The vote was unanimous.

#### ***Other Business***

1. Jack Simoneau, Planning Director presented the information for the Grant for Pedestrian Planning. He informed the members that the Town Board voted on November 16, 2009 for the Town Staff to submit for a NCDOT Grant for Pedestrian Planning (“the Grant”). The Grant will be submitted, and the Town is asking for \$31,500.00 from the State of North Carolina. The Town will match \$13,500.00 for a total of \$45,000.00. The Grant will not be awarded until June 2010. The Town Board did recommend approval. The planning will assist in the issues with sidewalks and how to prioritize them. In submitting for a grant it is helpful to have other Boards endorse the submission. Zachary Gordon, Principal Planner, has asked if the Planning Board would be will to endorse the Town submitting for this Grant.

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

***Adjournment***

Sam Mount made a Motion to adjourn and Joe Sailers seconded the Motion. There being no further business the meeting was adjourned.

Approved this \_\_\_\_\_ day of December 2009.

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Bruce Andersen, *Chairman*

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Michelle V. Haines, *Secretary*

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