



**Planning Board  
Regular Planning Board Meeting Agenda  
May 26, 2020 - 6:30 PM**

**Town Hall**

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**Virtual Meeting Information** - *Members of the public may view the meeting on Facebook Live at <https://www.facebook.com/HuntersvilleNCTownGovernment>. If you would like to speak at the upcoming meeting during public comment or during the public hearing, please send your name and email address to Tracy Barron at [tbarron@huntersville.org](mailto:tbarron@huntersville.org) to be added to the speaker's list. The Town will use your email address to send you an email invitation from Ring Central. This will allow you to call in and/or access the meeting to deliver your comments (the 3-minute time limit still applies). For members of the public who don't have internet access, there will be seats in the lobby for no more than 10 people to adhere to current social distancing guidance from Mecklenburg County and the CDC. Space will be available on a first come-first served basis. In addition, the Town will receive written comments for the public hearing below by email to Tracy Barron at [tbarron@huntersville.org](mailto:tbarron@huntersville.org) until twenty-four (24) hours after the close of the public hearing.*

**A. Call to Order/Roll Call**

**B. Approval of Minutes**

B.1 Consider approval of April 28, 2020 Minutes

**C. Public Comments**

**D. Action Agenda**

**E. Other Business**

E.1 Huntersville 2040 Briefing

E.2 APFO Update

**F. Adjourn**

**Town of Huntersville  
Planning Board  
May 26, 2020**

**To:** Planning Board

**From:** Tracy Barron, Planning

**Date:** 05/26/20

**Subject:** Consider approval of April 28, 2020 Minutes

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**EXPLAIN REQUEST:**

Consider approval of April 28, 2020 Minutes

**ACTION RECOMMENDED:**

Consider approval of April 28, 2020 Minutes

**FINANCIAL IMPLICATIONS:**

**ATTACHMENTS:**

- [April 28 Minutes.pdf](#)



**Planning Board**  
**Regular Planning Board Meeting Minutes**  
**April 28, 2020 - 6:30 PM**

**Town Hall**

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**Virtual Meetings:** - *Information on Accessing Virtual Meeting - Members of the public may view the meeting on Facebook Live at <https://www.facebook.com/HuntersvilleNCTownGovernment>. Any who would like to participate in the public comments may email [tbarron@huntersville.org](mailto:tbarron@huntersville.org) to request access. The deadline to request access for public commenting is Monday, April 27 at 5pm (the 3-minute time limit still applies).*

**A. Call to Order/Roll Call**

The Chairman determined quorum, and opened the meeting.

Members Present: Jennifer Davis, Chairman, Stephen Swanick, Vice-Chairman; Hal Bankirer, Catherine Graffy, Scott Hensley, Greg Baber, Frank Gammon, Susan Thomas and Jeff Sny

**B. Approval of Minutes**

**B.1 Consider Approval of the February 25, 2020 Planning Board Minutes**

C. Graffy made a Motion to Approve, and S. Hensley seconded the Motion. The motion passed unanimously (9-0).

**C. Public Comments**

Vince Fioramonti, 15120 Pavillion Loop Drive spoke in support of the R19-19 proposal. During high school and college years he worked in the golf industry but pursued a career in finance. He is familiar with the golf business and what Julie and Eric (applicants) are presenting is unique, a golf facility for entertainment and skill development. They have produced over 30 kids playing college golf, 3 college scholarships playing professionally, and hundreds of kids participating in their clinics each year. I have personally witnessed Julie and Eric over the years. On a Saturday morning Julie can be teaching 15, 4-7 year-olds on the elements of the game and the kids are having a ball or Eric preparing a 12 year-old for their first tournament or Julie be a calming influence. They are a team that were both college golfers and now are highly skilled teachers. I do not know of any other male and female team with this caliber and their skill level. Golf is a really tough business, virtually all teachers need to be attached to a golf course and those golf courses are private. Their dream is a public venue with easy access to the greater Charlotte area. What Julie and Eric are presenting will be a paradise for golf for all levels, family activities and focused teaching. It will be a regional magnet and will earn acclaim. Huntersville residents will be proud and will be destination. We are very lucky Julie and Eric are choosing Huntersville for the location of their concept.

Fred Dow, 12300 South Old Statesville Road spoke against R19-19 proposal. Speaking on behalf of Gloria Johnson, property owner to the North of the proposed driving range. Gloria has lived at that residence for over 70 years. She owns over 200 acres of land in Huntersville and they own the easement to the 60-acre lot behind this parcel. The 200-foot ordinance that Huntersville has was specifically for this to protect homeowners in a residential area so if you are going to put an entertainment center next to residential you need that kind of buffer. We view that buffer as a safety issue, golf balls can be flying off of a driving range if someone hooks it or slices it. Golf balls on our property is just an annoyance but they have a lot of grandchildren that are 3, 6, 8 years old plus other relatives that use the property along the edge. You

should not have to use a helmet to be on your own land safely. If you would maintain the 200-foot ordinance since it's already written in the Huntersville ordinance that would eliminate some of that plus putting in this netting that the proposed person wants to wait on, we don't want to wait until a child is hit in the head with a golf ball. We think the 200-foot buffer it cuts down on the light glare that Huntersville also brought up, that would help also. The applicant wanted to ignore our easement and go 35 feet and put things in the middle of the easement, then they wanted to ignore the Ordinance. They're not sounding like they want to be a good neighbor. I'm a golfer myself. I'm an average golfer on a bad day it's easy enough to slice it or hook it over on to her property. That's what we're asking you to pay attention to. We think they should be held partly responsible if one of the grandkids gets hit in the head with a golf ball and their response is they want to wait to put up netting if something happens but we think they should do it right the first time. If they want a world-class from the start not just if things go bad.

#### **D. Action Agenda**

##### **D.1 R19-19: Lake Norman Driving Range; a conditional rezoning request to rezone the property at 12218, 12132 and 12212 Old Statesville Road from Neighborhood Residential (NR) to Highway Commercial Conditional District (HC-CD).**

B. Priest, Principal Planner presented the rezoning request, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. Staff explained that the Public Hearing was held on March 2, 2020. Staff reviewed the proposed location and rezoning from NR to HC (CD) with a proposed golf driving range with a maximum 9,000 square foot building and a maximum of 55 tee boxes. It is lit for night use. Staff highlighted the notes on the plans and how they have been addressed.

Due to the traffic impact analysis including the use of food trucks the applicant has added a conditional note of a maximum of 9,000 square foot building, a maximum of 55 tee boxes, and no more than 2 food trucks during peak traffic hours Monday – Friday. Staff is good with how that is addressed and is in support of that.

Staff had a note requiring commercial access from Hwy 115 or an adjacent property shall be required. Since there is no technical road frontage on the east side of the railroad tracks, the applicant has proposed a note that says, "if access to an adjacent property is proposed then a rezoning would be required."

The applicant has put forward a note that says it is going to comply with the glare requirements of the ordinance. An electrical engineer has accepted that so staff is accepting it as the authority in saying that it will comply. When the lights are installed, staff will be able to inspect and work with applicant if needed to remove any glare should there be any. Staff is in support of that note as written.

The applicant has added a note that when the parking lot permit is issued the parking lot and putting green lights will be switched out to be the full cut off fixtures as typical in a parking lot, not be the flood lights. Flood lights will only be in the driving range area.

The northern buffer, the access easement to the north, the proposed note would make the following change. The current note proposed is to keep the site plan as it is, put the 30-foot buffer inside the 60-foot easement and at such a time in the future that the property to the east develops and this access easement is utilized, at that time the applicant would be required to

remove what is in the indicated area and establish a 30-foot buffer. Staff's recommendation is to get out of the easement, establish the 30-foot buffer outside of the 60-foot access, establish a 90-foot setback and then move that tee box outside of the 90 feet so that it doesn't have to be torn down at a future time. Final recommendation is that a modification to the rezoning plan would be needed if commercial access is not granted to Highway 115.

G. Baber followed up with questions regarding the Church Street extension and how it relates to the location of the property. Staff confirmed that the notes on the plan are to comply with the structure fronting and maintaining the right-of-way for a future street.

Susan Irvin, 19726 Zion Avenue, Cornelius identified the applicants and team members present at the meeting to be able to speak to the project. Applicants Eric and Julie Herberth, 8317 Viewpoint Lane, Cornelius reviewed their education and experience with the local community and how that will be a strength to Huntersville.

Susan Irvin shared how the property is included in the Huntersville 2030 Community Plan higher intensity map. Following the public hearing, to her knowledge, the only comment not agreed to between staff and the applicant is the 60' access easement. All other comments have been agreed to by both parties. The electrical engineer provided a compliance statement certifying that the lighting proposed will meet the ordinance requirements. Regarding the safety issues, the hitting angles and ranges are actually better than Northstone and Meyers Park ranges. The consulting company analyzed the design and stated that the proposed design is well within the accepted safety playing corridors according to industry standards. While it is impossible to state that a golf shot would not leave the property and enter an adjacent parcel, it would be safe to say that it would have to be played intentionally. A diagram was shown indicating a 384-foot distance from the northern most tee box to the north and west to reach the adjacent residential parcel.

The proposed structure would have the appearance of 2-stories although primarily 1-story with some possible interior loft meeting space. A new TIA determination was submitted and received the determination that a TIA was not required even with the addition of the food trucks and a maximum number of 55 tee boxes.

The 60' access easement is to serve the property to the east. That parcel now has a stubbed access point to the Bryton neighborhood that could be utilized for far less expense than utilizing the 60' easement to the west. Therefore, the applicant is willing to assume the risk of removing part of the structure if the easement were ever to be used

H. Bankirer asked for clarification regarding the 150 foot turn lane requirement and adjacent property access. Staff confirmed that this is an NCDOT requirement for Highway 115 southbound into the driveway crossing the railroad track through modified widening. We do not know what improvements across the railroad will be required by the railroad at this time. The adjacent property access is if the property is unable to gain access crossing the railroad then an alternate rezoning plan must be presented.

H. Bankirer expressed concern over allowing the buffer in the easement and stated that a reduction of the buffer to this extreme seems drastic in the event that the adjacent property was to be developed. S. Irvin responded that she does not believe there is a buffer requirement

between residential developments and it is 80 feet if it were industrial development so the applicants belief is that the proposed request is still less disturbing than anything else that would likely be developed there. Staff stated that outdoor amusement use of land has a 200-foot buffer requirement. The applicant is asking for a modification of that requirement from 200 feet down to 60 feet. Staff is not comfortable with the 60 feet, staff is recommending 90 feet because it leaves the 60-foot easement alone and maintains the 30-foot buffer which is within the realm of what has been done in the past.

J. Sny asked if outdoor music would be allowed or any other outdoor noise aside from striking the golf balls and the lighting or golf ball tracking technology. S. Irvin stated that the music is going to be inside the building and covered tee areas with the intent not to have any blaring music, it should be noise contained within the building. In the covered tee box areas there will be televisions and you will be playing simulation games with that. Regarding lighting, the intent is to use technology now available that does not require the original proposed lighting to track the ball.

H. Bankirer expressed concerns regarding the wording that the applicant will build driveway requirements to the extent not constructed by others and if this would allow the applicant to use an old driveway that is not to standard. Staff confirmed that the intent was that if someone develops the driveway to the standard required prior to the applicant then the applicant would not be required to do the work. S. Irvin stated that she believes similar language was used for Birkdale development and that the intent is that applicant would have to meet driveway requirements; however, if someone constructs it prior to the applicant being required to construct it then they are not required to construct it. H. Bankirer recommended that Staff and the applicant work together to reword this to a positive and not a negative. S. Irvin said they would look at it.

H. Bankirer discussed his email to Staff prior to the meeting regarding the Church Street extension and asked Staff to share that with the Board the resolution that is acceptable but not ideal. Staff explained that if the Church Street extension was placed in the right-of-way directly next to the railway then there could be a future functional issue with the intersections of Highway 115 and Church Street being so close together. The applicant worked with transportation staff to make sure the alignment of Meacham Farm Road would allow for accurate connections in the event that Church Street extension is completed. Stephen Trott worked with Staff and the applicants to confirm that with a regular amount of traffic the proposed intersections could be functional.

H. Bankirer asked if the septic was resolved. Staff confirmed on the notes that it noted on the plan and this is a functional element of the development that will be dealt with at the permitting stage.

S. Hensley thanked the applicants for their persistence to bring this project to Huntersville and stated that the concerns he has relates to adjoining property owners, particularly things like light and noise pollution. Staff confirmed that the ordinance on lighting requires that no more than 1.0 foot candles leaving the property. The plan the applicant has submitted shows proposed conformance to that and is enforceable. Additionally, the glare off of the fixture itself must not become a problem and is enforceable according to the ordinance. There is some protection in the ordinance related to properties in the town limits. This property is currently in the ETJ so if

the property were to be annexed then there is some protection. S. Irvin stated that voluntary annexation has not yet been discussed.

S. Hensley agreed with H. Bankirer that the northern buffer and easement situation is challenging and asked about the note for the future netting installation if needed. Staff confirmed that the note would be there and would need to be moved in the event that the easement is used.

F. Gammon asked who decides if the netting is needed. Staff confirmed that staff would do an inspection and if the golf balls are leaving the site then they would meet with the applicant regarding resolution.

J. Sny asked if the 60-foot easement becomes the actual road and then there is a 30-foot buffer, what are staff's thoughts on the netting instantly becoming required or would it be decided based on the proposed usage and type of road. Staff confirmed that if it became a road it would seem the net would be needed and that would be evaluated at that time.

H. Bankirer expressed concern about the open-ended wording about the netting being installed at some future time for either a road in the easement or future development of the adjacent property. S. Irvin stated that the applicant would be willing to add language to the note that if the road is built they will install the net and the additional 30-foot buffer.

S. Hensley asked the applicant about the possibility of buying the easement rights to allow the buffer requested. S. Irvin said that is one of the solutions being discussed.

J. Davis made a Motion to Approve rezoning R19-19, the Lake Norman driving range, based on the amendment being consistent with CD-2 and ED-12 of the 2030 Plan, it is reasonable and in the public's interest to approve the application with the following conditions and that the rezoning plan will conform to the ordinance and be consistent with the adjacent development, 1) the applicants establish a street frontage or commercial access to Old Statesville Road, 2) conditional notes are added to the plan limiting tee boxes to a maximum of 55, restricting the food service in the main building, limiting the food trucks on-site, limiting the bar/entertainment area to 2,000 square feet maximum or an updated TIA determination of need form is submitted modifying those parameters and all outstanding comments are addressed, 3) Accept the easement as it is presented by the applicant of a 90 foot buffer with the 60 foot easement inside of the buffer. 4) When or if the road is built within the northern 60' easement, the applicant will be responsible for putting up the net. S. Swanick seconded the motion.

H. Bankirer stated that this is a conditional motion so specific language should be included in that there are still dangling issues out there that are not included and in his opinion these are not yet included. J. David agreed and said she was willing to listen to H. Bankirer's recommendation. C. Graffy stated that the motion does include the statement that all notes must be addressed and that should cover those loose ends. H. Bankirer stated that there are too many loose ends in his opinion and he recommends deferral so that all the notes can be addressed and a clean application be presented with clean notes.

S. Hensley agreed with H. Bankirer since it is the Planning Board's responsibility to send something clean to the Town Board that they themselves understand so despite his desire not to

hold up the applicant because he is in support of the idea he thinks it would be in their best interests.

S. Swanick restated his support for the motion because the while we are not in chambers this is our current situation and the economy is shifting, we have a plan before us that basically all are in agreement on and he would hate to see it delayed due to a few notes not being written as well as they could when staff can address that as per normal.

G. Baber asked how many tee boxes would be lost with the buffer being moved, expressed his concern about business hours ending at midnight and the issue of lights being on until midnight. S. Irvin confirmed that they would lose 2 tee boxes and stated that the applicant is agreeing with part 6 of the staff analysis, the applicant has already revised the condition notes with the Town attorney and staff and the only outstanding issue was that the applicant would like to leave the 60-foot setback with the 30-foot buffer on the property line which differs from staff recommendation for a 90-foot setback. That is the only outstanding difference prior to this meeting and now the applicant has agreed to remove the “or adjacent to” for the commercial access.

H. Bankirer respectfully disagreed with S. Irvin that there were some other items discussed today requiring adjustment of notes. H. Bankirer moved for a substitute motion for this to be deferred to the May Planning Board meeting, if possible, so that all points in today’s discussion can be properly translated into notes on the site plan and in the staff report for the Planning Board and Town Board review. S. Hensley seconded the motion.

S. Thomas stated that she would support the deferral since her primary concern is the issue of the buffer and she would like to see if Staff and applicant can come to an agreement along with addressing the balance of the items discussed.

J. Sny stated that he understood the reason for the deferral recommendation however like Stephen he is confident in staff to address the notes and he is in support of the first motion to approve the plan.

C. Graffy stated that she does not want to defer. She agreed the notes have been a little cumbersome today but she believes compromising between the staff and applicant’s proposals of the buffer and netting should the road go in.

F. Gammon is not in support of a deferral and would agree with J. Davis that amending the original motion to address the area of concerns of supporting staff with the 90-foot buffer and the comments made by H. Bankirer. The facts as we have them today are that the adjacent property has an easement, it could elect to have two entrances, it is currently zoned NR and discussion of what it could become is speculation. In viewing this request for what it is today, he supports the staff’s position that the buffer not be placed in the easement and he is in support of the balance of the petition.

The Substitute Motion failed (3-6) with J. Davis, S. Swanick, F. Gammon, C. Graffy, J. Sny and G. Baber voting against.

J. Davis made an amended Motion to Approve rezoning R19-19, the Lake Norman driving range, based on the amendment being consistent with CD-2 and ED-12 of the 2030 Plan, it is reasonable and in the public's interest to approve the application with the following conditions and that the rezoning plan will conform to the ordinance and be consistent with the adjacent development, 1) the applicants establish a street frontage or commercial access to Old Statesville Road, 2) conditional notes are added to the plan limiting tee boxes to a maximum of 55, restricting the food service in the main building, limiting the food trucks on-site, limiting the bar/entertainment area to 2,000 square feet maximum or an updated TIA determination of need form is submitted updating those parameters and all outstanding comments are addressed, 3) The site plan is modified to move the 30' buffer outside the 60' access easement to create a 90' northern setback along the northern residential property line. 4) When or if the road is built within the northern 60' easement, the applicant will be responsible for putting up the net. G. Baber seconded the motion.

S. Thomas concurred that with these changes she would be in support. G. Baber clarified the notes on the net. J. Sny asked if staff still reserved the right to require the netting if golf balls are leaving the property. S. Irvin confirmed that the applicant was in support of the new requirement for the netting and the staff would still have the ability to analyze if golf balls were leaving the property if there was also a need for the netting regardless of the road being installed or not. S. Hensley stated his preference is deferral and requested that the action item be provided to the Planning Board members prior to being sent to the Town Board. H. Bankirer expressed his continued concern over the lack of clarity on the modifications and the legalities of conditional rezoning and the specific language that sometimes comes back with the requirement of Planning Board to explain and enforce.

The Motion passed (8-1) with H. Bankirer opposed.

## **D.2 SUP20-01: NC 73 HWY Event Venue; application for a Special Use Permit to operate a Banquet Facility at 14418 NC 73 HWY in the Rural Zoning District.**

B. Priest, Principal Planner presented the rezoning request, and entered the Staff Report into the record, a copy of which is attached hereto as Exhibit B, and incorporated herein by reference. Staff stated that the banquet facility uses in Rural is a special use permit with the specific conditions listed in Article 9.59 of the Zoning Ordinance. Staff sent those requirements to the Board and how the applicant through the site plan and application met those findings or conditions. Staff addressed the question provided by an adjoining neighbor regarding the proposed widening of NC 73. Staff and the applicant have reviewed the proposed widening and the site plan has addressed the widening in the site plan submitted which is consistent with the current NCDOT plans.

One of the requirements for banquet facilities is that you must have 10 acres. The applicant is purchasing 10.71 acres for this parcel. Approximately 1.5 acres is the NCDOT right-of-way leaving a remaining 9.49 acres. The applicant has proposed a 5,000 square foot event barn with 94 gravel parking spaces and a secondary smaller parking lot for catering services and an additional 32 grass overflow parking spaces. There is the option of gravel or asphalt per the ordinance. There is a maximum of 200 guests and the buffers proposed are per the minimum, a 60-foot buffer and keeping the 100-foot buffer along the proposed public street. There is no

proposed removal of any of the specimen trees and the staff has provided recommendations to assist in keeping the large oak tree nearest the overflow parking spaces.

Jay Henson, 8926 Lizzie Lane Huntersville spoke regarding the design provided to keep within the rural character, save the trees, address the NC 73 widening, they have identified the septic field and have addressed the NCDOT requirement to pave the drive 50 feet in from the edge of the street. Kevin and Gale Allen, applicants 15550 Stumptown Road Huntersville were present to answer questions.

G. Baber asked for clarification regarding parking requirements and if the proposed parking spaces speaks to any concerns about maximum capacity of the building and outside area. Staff confirmed that the ordinance only requires a minimum number of 10 spaces however this would not fit the specific needs and the applicant appears to be proposing a reasonable number of spaces for a capacity of 200 people and the overflow parking may need to be asphalt or gravel in the future.

C. Graffy asked for clarification on the staff's position regarding the required size of the parcel and the how this changes with the proposed NC 73 widening. As it stands now it conforms and in the event of the right-of-way being used they will not be in conformance which will be up to the Town Board to decide how they will address this.

S. Hensley expressed a strong concern regarding us addressing future proposed changes in their qualifications. The applicant has 10.71 acres in his opinion that is what we should base the qualifying measurement on.

F. Gammon stated that he agreed with S. Hensley. He asked if the storm water plan has been approved by the Town. Staff confirmed it has not approved but it has been reviewed and does not have any major comments at this point. Has the driveway connection been approved by NCDOT. Staff confirmed that NCDOT has made comments but the driveway permit has not yet been issued and the timing on this is in line with the status of the application. Finally, the maximum capacity on the various notes is conflicting and should be cleaned up.

H. Bankirer asked if there are any plans for backup generators on site and if so, where will they be located and what size are they? The applicant stated that there were no plans for this as of now. He asked what the proposed tree save canopy amount is. Staff confirmed that the ordinance requirement is 30% and the applicant is saving 91.8% of the canopy.

F. Gammon made a Motion to Approve Special Use Permit SUP20-01, NC 73 Event Venue, based on the request meeting all required conditions and specifications, is reasonable, and does not pose an injurious effect on adjoining properties. The Planning Board further finds that the impact upon the character of the neighborhood; as well as the health, safety and general welfare of the community will be minimized. This decision is supported by the Town of Huntersville Zoning Ordinance as stated in the Staff Analysis Findings as follows: 1) The request meets the zoning ordinance criteria of Article 3.2.1 2) The request meets the zoning ordinance criteria of Articles 9.59.1 through 9.59.10 This recommendation for approval is contingent upon: 1) Approval of the storm water plan by the Huntersville Engineering Department 2) Approval of the driveway connection to NC 73 HWY by NCDOT 3) In coordination with staff, clarification, and correction, of the maximum number of guests shown on various permits and conditions to

show matching numbers. Currently those Permits and stated conditions provide conflicting maximum numbers: Site Plan list 200 guest, TIA Determination list 175 guest, and Septic Permit list 150 seated guest. 4) Further, the proposed grass overflow parking area is shown about 20 feet from a large 70-inch Oak Tree. For the health of this large specimen, it is recommended that if this parking area is converted to paved or gravel parking, that the parking area be shifted to the east away from the tree. S. Thomas seconded the motion. The motion passed unanimously (9-0).

**E. Other Business**

**F. Adjourn**

**Town of Huntersville  
Planning Board  
May 26, 2020**

**To:** Planning Board  
**From:** Dave Hill, Planning  
**Date:** 05/26/20  
**Subject:** Huntersville 2040 Briefing

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**EXPLAIN REQUEST:**

**ACTION RECOMMENDED:**  
Huntersville 2040 Briefing

**FINANCIAL IMPLICATIONS:**

**ATTACHMENTS:**

**Town of Huntersville  
Planning Board  
May 26, 2020**

**To:** Planning Board  
**From:** Tracy Barron, Planning  
**Date:** 05/26/20  
**Subject:** APFO Update

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**EXPLAIN REQUEST:**

Consider the APFO Update

**ACTION RECOMMENDED:**

Consider the APFO Update

**FINANCIAL IMPLICATIONS:**

**ATTACHMENTS:**

- [APFO Assessment - 26 May 2020 Planning Board Mtg Report 05202020.pdf](#)

# MEMORANDUM

**DATE:** May 20, 2020  
**TO:** Huntersville Planning Board Members  
**FROM:** Dave Hill, Senior Planner  
**SUBJECT:** *Adequate Public Facilities Ordinance (APFO)*  
**COPIES:** Jack Simoneau, Planning Director; Anthony Roberts, Town Manager

## **SUMMARY**

The current Town of Huntersville Adequate Public Facilities Ordinance (APFO), Chapter 13 of the Town of Huntersville Zoning Ordinance (adopted in December 2007), should be rescinded by the Town Board of Commissioners. Any other references to the APFO in other regulations (such as the Town's Zoning Ordinance or Subdivision Regulations) should also be removed. The purpose of the ordinance is to prevent the approval of development proposals if the service capacity of the Town's Police, Fire, or Parks & Recreation departments fall below certain capacity levels and to provide a capital facilities planning tool.

At the time of adoption, the APFO served a useful purpose. The Town's population had grown from about 25,000 to about 38,000 between 2000 and 2006, and with projections showing continuing rapid growth, the addition of a tool to address potentially overwhelming service demand made sense. However, Huntersville has consistently improved capital capacity of Police, Fire, and Parks & Recreation services, and these departments have improved the efficiency and effectiveness of their operations.

Specific reasons the APFO should be rescinded include:

1. The Level of Service (LOS) standards contained in the ordinance are intentionally set as minimum thresholds meant to delay or deny a development proposal in the event that extreme service capacity problems are encountered. The fact that this "stopgap" measure has never been triggered in the 13 years since the APFO was adopted indicates that the Town has responded favorably to service demands, even in the face of rapid growth.
2. The database required for administration of the APFO is cumbersome and expensive to maintain. On two occasions (2009 and 2010), the Town hired consultants to update APFO data. Planning staff will continue to maintain a detailed development database even if the APFO is rescinded, but related tasks will be less complicated and more useful for departments that use the data.
3. Huntersville Police, Fire, and Parks & Recreation staff representatives met with Planning staff, and provided the comments found in Attachment 1. None of the affected departments rely on the APFO as guide to plan service programs or related budget proposals. Instead, they use professionally accredited programs, comparable city studies, citizen surveys, and frequent review sessions (including budget review) with the Town Board to determine appropriate service levels.
4. The APFO sets minimum LOS thresholds tied to 6 capital facility standards with the specific intent to deny or delay development proposals. This is a simplistic system that doesn't allow discretion, nor does it recognize the complexities of service delivery for the affected departments. For example, the Police Department responds to far more service calls for the Walmart Superstore than it does for any other retail business (or combination of businesses) with the same amount of floor space.

If the APFO is rescinded, the affected departments are satisfied that existing processes, including the use of professional accreditation standards, comparable city studies, citizen surveys, and frequent Town Board review sessions serve to determine appropriate levels of service. This type of approach constitutes an informal “best practices” strategy used by many municipalities nationwide.

Rescission of the APFO does not mean that the Town will have no other means of addressing service capacity during development proposal review. Provisions already contained in the Town’s Zoning Ordinance and Subdivision Ordinance allow the consideration of the adequacy of public facilities and services during the review of development applications. These provisions are shown below:

### **Zoning Provision**

e) In considering any petition to reclassify property the Planning Board in its recommendation and the Town Board in its decision should consider:

- 1) Whether the proposed reclassification is consistent with the overall character of existing development in the immediate vicinity of the subject property;
- 2) The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, transit service, parks and recreational facilities, police and fire protection, hospitals and medical services, schools, storm water drainage systems, water supplies, and wastewater and refuse disposal; and
- 3) Whether the proposed reclassification will adversely affect a known archaeological, environmental, historical, or cultural resource.

### **Subdivision Provision**

#### **19. IMPACT OF DEVELOPMENT ON PUBLIC FACILITIES.**

When reviewing certain subdivisions, the town shall consider the impacts the proposed development will have on public facilities in light of the requirements of Section 6.300(13) and [Article 13](#) and [Article 14](#) of the Town Zoning Ordinance, as applicable. The developer shall demonstrate the proposed subdivision does not adversely affect the health, safety and welfare of the community, and where applicable, the developer may provide mitigation measures to minimize adverse impacts. Examples of mitigation measures include altering development layout and plans, providing improvements at nearby intersections to address impacts of that development (not existing deficiencies), and providing street connections to adjoining property for safe and efficient movement of traffic, as further provided in Section 6.300(13) and [Articles 13](#) and [14](#) of the Zoning Ordinance.

### **BACKGROUND**

On February 26, 2019, The Huntersville Planning Board approved a motion requesting that the Town Board of Commissioners charge the Planning staff, with Planning Board members included, to examine the calculations, methodology and requirements for the Adequate Public Facility Ordinance, to recognize the increasing density and demands upon the Town.

On April 1, 2019, Town Board Commissioners were briefed regarding the intent of the Planning Board motion, and agreed by consensus to conduct the APFO examination as requested by the Planning Board.

On May 10, 2019, Planning Board Chair Jennifer Davis and Planning Board members Hal Bankirer and Scott Hensley met with Town Planning staff to discuss how the examination would be performed. Several issues were raised:

1. How do communities of similar size approach this issue?

2. What is the relationship between the APFO formulae and actual Town Capital Improvements Program (CIP) budget decision-making?
3. Can the following be provided:
  - a. A clearer idea of Level of Service (LOS) over time?
  - b. Do the Police, Fire, and Parks & Recreation Departments agree with the LOS?
  - c. How is LOS calculated?
  - d. Is the method of LOS calculation appropriate at the current time?

From May 2019 through December 2019, Planning staff spent considerable time updating and verifying the development permit data used to calculate different measures used in producing a "Determination of Adequacy"

On January 28, 2020, planning staff presented preliminary APFO findings to the Huntersville Planning Board. Primary discussion points are provided below:

APFO Observations (January 28, 2020 Planning Board Presentation)

1. Since the adoption of the APFO in late 2007, the APF Application process has never resulted in the rejection of a Development Proposal in Huntersville.
2. The APFO is quantitative in design – the calculation of Available Capacity is formulaic. There is no allowance for qualitative judgement.
3. Assumptions made during development of the APFO included "Committed Capacity" for development approved prior to APFA adoption. This consumed facility capacity whether the projects were built or not. Current Available Capacity reflects the absorption of 3,230 dwelling units from 2007-09 – many of which have not been built. Similar assumptions were made for non-residential Committed Capacity.

APFO Issues (January 28, 2020 Planning Board Presentation)

1. The APFO has never resulted in denial of an APF application. Is it needed?
2. The APFO sets minimum thresholds for Levels of Service. The Huntersville community does not seem likely to set a low bar given the Town's quality of life expectations.
3. The APFO became effective in January 2008. NC legislative changes over the years raise questions regarding the legal defensibility of Huntersville's APFO. If the APFO is to be retained, professional review of the ordinance would be appropriate.
4. Informal discussions with Police, Fire, and Parks & Recreation representatives led to a few conclusions that will be revisited by Planning staff:
  - a. The departments do not use the APFO LOS thresholds to determine service delivery.
  - b. The departments do employ a "Best Practices" approach to service delivery that is much more diverse than the APFO's standards, is much more adaptable to changing technology and service methods, and allows discretion to make qualitative decisions.
  - c. The departments spend considerable time with elected officials and citizens to discuss improvement priorities and long-term budget strategies.
5. Maintenance of the APFO database consumes considerable Planning staff time and resources. Development information is provided separately to the affected departments, and these same departments participate in development review in a very detailed manner.
6. A policy issue that may need to be discussed publicly is whether or not the Town of Huntersville wants a tool to stop Development Proposals.

**ADEQUATE PUBLIC FACILITIES ORDINANCE BASICS**

A copy of the APFO is provided as Attachment 2.

➤ **Applicability / Administration**

- The APFO affects Development Proposals, which include:
  - Special Use Permits;
  - Overlay District with Required Site Development Plans;
  - Conditional Zoning District;
  - Subdivision Sketch Plans or Preliminary Plans;
  - Final Plats; **and**
  - Building Permits.
  - Note: The APFO does not apply to residential projects that have less than 20 lots / dwelling units, or nonresidential projects that have less than 10,000 SF of floor area, or will create less than 50 peak hour or 500 daily vehicle trips.
- A Development Proposal applicant must submit an APF application.
- Planning staff (Administrator) must make a Determination of Adequacy that the Development Proposal meets all applicable Level of Service (LOS) thresholds.
- If Available Capacity exists, the Determination of Adequacy is valid for one year, provided the applicant achieves vesting for the project. Capacity for the project is then reserved, and is called Allocated Capacity.
- If Available Capacity does not exist, the APF Application must be denied. The applicant may change or reduce the size of the project, stagger the project phases, or prepare a Mitigation Plan.
- The APFO is applicable to Huntersville’s town limits and ETJ.

➤ **Database Maintenance**

- Planning staff maintains an APFO data base, tracking Development Proposal activity on a month-to-month basis.
- Development Proposals are tracked by type of use: Single Family Residential, Multi-Family Residential, Commercial, Office, and Industrial.
- Planning staff also tracks capital improvements programmed for the Police, Fire, and Parks & Recreation departments. Capital improvements approved in the annual budget are used to adjust Available Capacity when applicable.
- Non-residential uses are exempt from LOS thresholds for Parks & Recreation.
- LOS thresholds were established in 2007. They were based on existing conditions in the Town, with additional built-in capacity based on one year of projected development. They are not based on any state or nationally accepted standards of service.
- LOS thresholds for all measures of service adequacy are based on facilities available per 1,000 people.

**Current APFO Level of Service (LOS) Standards** (Last adjusted in 2010)

Facility Category	Facility Type	LOS (per 1,000 population)*
Fire Protection	Fire Vehicles	0.20
	Fire Station (SF GFA)	445.10
Law Enforcement	Police Vehicles	1.68
	Police Station (SF GFA)	171.20
Parks & Recreation	Gyms (SF GFA)	710.20
	Parks (Acres)	6.40

## Current APFO Capacity Thresholds (Without Additional Capital Expenditures)

<b>Current Development Capacity* (as of January 1, 2020)</b>					
<b>Facility Type</b>	<b>SF Dwelling Units</b>	<b>MF Dwelling Units</b>	<b>Commercial (Gross Square Feet)</b>	<b>Office (Gross Square Feet)</b>	<b>Industrial (Gross Square Feet)</b>
<b>Fire Vehicles (#)</b>	<b>4,861</b>	<b>6,870</b>	<b>1,563,912</b>	<b>1,094,738</b>	<b>1,563,912</b>
<b>Fire Station (SF GFA)</b>	<b>41,587</b>	<b>58,751</b>	<b>13,377,497</b>	<b>9,364,246</b>	<b>13,377,497</b>
<b>Police Vehicles (#)</b>	<b>596</b>	<b>843</b>	<b>158,009</b>	<b>110,602</b>	<b>158,009</b>
<b>Police Station (SF GFA)</b>	<b>110,233</b>	<b>155,728</b>	<b>29,204,724</b>	<b>20,443,289</b>	<b>29,204,724</b>
<b>Gyms (SQ GFA)</b>	<b>12,651</b>	<b>17,873</b>	-	-	-
<b>Parks (ac)</b>	<b>4,137</b>	<b>5,844</b>	-	-	-

### Committed Capacity

Assumptions made during development of the APFO included "Committed Capacity" for development approved prior to APFO adoption. This consumed facility capacity whether the projects were built or not. Today's Available Capacity reflects the absorption of 3,230 dwelling units from 2007-09 to account for properties that could be developed through approval of a building permit only – and by staff estimates, more than half of these units have not been constructed. Similar assumptions were made for non-residential Committed Capacity – a total of 402,616 square feet of nonresidential floor space was added for previously approved but unbuilt projects.

### Projected Permitted Development, by Dwelling Units (DUs) and Population

<b>Year</b>	<b>SF DUs</b>	<b>SF Pop Change</b>	<b>MF DUs</b>	<b>MF Pop Change</b>	<b>Total DUs</b>	<b>Total Population Change</b>
<b>2007</b>	878	2,391	250	482	1,128	2,872
<b>2008</b>	878	2,391	173	333	1,051	2,724
<b>2009</b>	878	2,391	173	333	1,051	2,724
<b>TOTAL</b>	<b>2,634</b>	<b>7,172</b>	<b>596</b>	<b>1,148</b>	<b>3,230</b>	<b>8,320</b>

Source: Town of Huntersville; Planning Department, 2007

### INITIAL APFO ORDINANCE ADOPTION

In August 2006, the Town of Huntersville hired the consulting firm White & Smith, LLC to prepare an "Adequate Public Facilities Ordinance" (APFO). An overview of the APFO was presented to the Town Board in June 2007. Three (3) capital facilities were and still are included in the APFO: Parks & Recreation, Fire Protection, and Law Enforcement. Levels of Service (LOS) were established for each of the three (3) facilities to be included in the APFO. A "Capacity Baseline Assessment" was then prepared which detailed remaining available "capacity" based upon Town growth projections. At the time (2007), the ordinance's initial assessment concluded that between 1 and 2 years of capacity remained, after accommodating existing residential and non-residential development, as well as one year of facility capacity for approved (permit-ready) but unbuilt residential and non-residential development ("Committed Capacity").

Based upon LOS standards set forth in the Draft APFO, none of the three (3) facilities were deemed to be deficient at the time.

At the Town Board's November 19, 2007 meeting, the Town Board voted to defer final action on the APFO/TIA Ordinance Amendments until its December 3, 2007 meeting. Several Board members expressed concern about the effect that the proposed ordinance changes would have on economic development. Planning staff then reviewed the text of the ordinance changes to determine the impact on economic development. Based upon this review and after meeting with Jerry Broadway, of the Lake Norman Economic Development Corporation and the Town Manager and Assistant Town Manager, changes to the draft ordinance were made that allowed for third-party (The Town, NCDOT or other public or private entities) participation in any required mitigation. Specifically, such mitigation would permit the Town to include any required APFO mitigation (including road improvements) as part of an Economic Development Initiative (EDI) Grant, or other economic incentive package associated with the expansion or new development of a business in the Town of Huntersville.

The Adequate Public Facilities Ordinance was adopted on December 3, 2007, with an effective date of January 2, 2008.

In 2009, the Town paid \$12,000 for consulting services to update the APFO database. In 2010, the Town paid \$9,600 for consulting services to update the APFO database.

### **Options**

1. Rescind the APFO and any references to the APFO contained in other Town of Huntersville regulations.
2. Keep the APFO intact and commit the necessary resources to update the APFO database.
3. Investigate alternatives that could make the APFO more effective and useful, such as reexamining the capital measures that are used to determine available capacity.

### **Next Steps**

If the decision is made to begin formal the formal process to rescind the APFO, the following Town of Huntersville boards will have to take action:

- Huntersville Ordinance Advisory Board
- Huntersville Planning Board
- Huntersville Town Board of Commissioners

## Police, Fire/EMS, Parks & Recreation Department APFO Comments

### APFO Questions & Responses

In February 2019, The Huntersville Planning Board asked Planning staff to examine the Adequate Public Facilities Ordinance (APFO). Following an in-depth analysis of the ordinance and the database associated with the APFO, a preliminary briefing was provided to the Planning Board in January 2020. Staff questioned the need for the ordinance, but also indicated some more discussion with affected departments was needed.

On February 19, 2020, a meeting was held to discuss the Adequate Public Facilities Ordinance. The following staff members attended: Barry Graham & Kevin Johnston (Police), Jim Dotoli (Fire), Michael Jaycocks (Parks & Rec), Jackie Huffman (Manager's Office), and Jack Simoneau, Brian Richards, and Dave Hill (Planning).

During the meeting, it was clear that the affected departments (Police, Fire, Parks & Rec) were not familiar with the APFO, do not currently use the APFO in any way to determine appropriate Levels of Service (LOS), and when familiarized with how the APFO functions, indicated that the APFO would not be useful in the future. The affected departments said the APFO Levels of Service were well below the standards they currently use, and that they use several measures that are much more preferred when assessing performance.

Planning staff suggested that, if the APFO were to be rescinded, there are alternatives that could be considered to take its place, particularly when it comes to public assurance that Police, Fire, and Parks & Rec use appropriate LOS standards to measure performance, and to report on performance periodically. The option of 'Best Practices' was brought up, and planning staff said it would ask the affected departments some operational questions to help explore a Best Practices Option / Alternative. The questions are below:

### **Police Department Comments**

1. What measures does your department use to establish Levels of Service?

**We are accredited through CALEA and are required to comply with over 400 law enforcement standards that requires our department to develop a comprehensive, uniform set of written directives, which is the one of the most successful methods for reaching administrative and operational goals, while also providing direction to personnel. CALEA Accreditation standards require dozens of reports and analyses a CEO needs to make fact-based, informed management decisions. CALEA Accreditation requires a preparedness program be put in place—so our department is ready to address natural or man-made unusual occurrences. Finally, CALEA Accreditation strengthens our department's accountability, both internally and within the community, through these standards that clearly define authority, performance, and responsibilities.**

***Note: CALEA is a national nonprofit organization titled "The Commission on Accreditation for Law Enforcement Agencies."***

2. What standards does your department use to establish LOS?

- a. Professional?
- b. Comparable towns / cities?
- c. User surveys?
- d. National / state?
- e. Required for accreditation?

**As previously stated the department complies with over 400 law enforcement standards to maintain CALEA Accreditation. CALEA Accreditation is an international award recognizing professional excellence and requires the department to comply with over 400 standards related to six major areas of law enforcement: (1) role, responsibilities and relationships with other agencies; (2) organization, management and administration; (3) personnel administration; (4) law enforcement operations, operational support and traffic; (5) prisoner and court related services; and (6) auxiliary and technical services.**

3. Do you have a written Plan of Service? If so, can you provide us with a copy?
4. What process does your department use to review how services are provided? Other than the annual Town Board retreat and budget process, are there other times when the quality of your department's services are publicly reviewed?  
**Through CALEA Accreditation the department conducts many annual reviews/analyses to review current procedures and revise or update procedures to maintain levels of service.**
5. Does your department cooperate with or coordinate the provision of services with other agencies? If so, who are they?
6. We talked about Best Practices as an alternative way to establish and monitor Levels of Service. Would this work for your department?
7. What type, when, and how often is Planning Department information and data most useful to your department?

**Traffic issues.**

## **Fire Department Comments**

1. What measures does your department use to establish Levels of Service?  
**HFD uses a number of standards to establish the level of Fire and Rescue services in the town as well as the ETJ.**
  - **To effectively manage the fire service, it is imperative that fire department administration, town administration and political leaders understand how resource deployment in the Huntersville Fire District will affect outcomes in three (3) areas of**

**importance: firefighter injury and death, Civilian injury and death, as well as property loss.**

2. What standards does your department use to establish LOS?
  - **National Fire Protection Association Handbook**
  - **National Fire Protection Association Standards**
  - **Office of the North Carolina Fire Marshal's Office**
  
3. Do you have a written Plan of Service? If so, can you provide us with a copy?
  - **The Huntersville Fire Service plan is integrated with the Mecklenburg County "Emergency Operations Plan" which details the appropriate response to mitigate fire and rescue incidents.**
  
4. What process does your department use to review how services are provided? Other than the annual Town Board retreat and budget process, are there other times when the quality of your department's services are publicly reviewed?
  - **The Office of the State Fire Marshal conducts periodic inspections and grades the level of service that is being provided. Of course, each time HFD answers a call for service it is reviewed by the public. The level of service provided is dictated by what the citizens of any given community are willing to pay through the political leaders that have been elected.**
  
5. Does your department cooperate with or coordinate the provision of services with other agencies? If so, who are they?
  - **Neighboring Fire Agencies, Medic, Emergency Management Office, Fire Marshal's Office**
  
6. We talked about Best Practices as an alternative way to establish and monitor Levels of Service. Would this work for your department?
  - **Yes**
  
7. What type, when, and how often is Planning Department information and data most useful to your department?
  - **HFD uses planning department information throughout the year to understand projected growth, geographic location of that growth and how it relates to the possibility of increasing the level of service in those areas.**

## **Parks & Recreation Department Comments**

1. What measures does your department use to establish Levels of Service?  
**This is done through our master plan process.**

2. What standards does your department use to establish LOS?
  - a. Professional?  
**Internal Data is used to determine LOS. Growth of programs, turning away participants or users due to lack of parks and facilities.**
  - b. Comparable towns / cities?  
**Benchmarking with similar size towns is considered when developing our LOS in our Master Plan**
  - c. User surveys?  
**We do surveys as part of our master plan process.**
  - d. National / state?  
**We consider National Standards as well as trends.**
  - e. Required for accreditation?
  
3. Do you have a written Plan of Service? If so, can you provide us with a copy?  
**Below is the link to our current master plan that we are currently updating and hope to have completed by summer 2020.**  
**<https://www.huntersville.org/DocumentCenter/View/380/Final-Master-Plan-Documents-Approved-1-Nov-7-2011-PDF?bidId=>**
  
4. What process does your department use to review how services are provided? Other than the annual Town Board retreat and budget process, are there other times when the quality of your department's services are publicly reviewed?  
**We send out surveys after each program or event as well as survey users of our parks and facilities. We also review google reviews and other social media review forums to see what users are saying about our facilities and programs.**
  
5. Does your department cooperate with or coordinate the provision of services with other agencies? If so, who are they?  
**Yes, we have many partnerships. K-12 Schools, CPCC, Athletic Associations, Davidson, Cornelius, Mecklenburg County, Civic Groups, American Legion, Visit Lake Norman, non-profits and local businesses.**
  
6. We talked about Best Practices as an alternative way to establish and monitor Levels of Service. Would this work for your department?  
**I think what we have works for us.**
  
7. What type, when, and how often is Planning Department information and data most useful to your department?  
**Yearly population numbers and updated estimates for future years.**

**Town of Huntersville Zoning Ordinance**  
**ARTICLE 13: Adequate Public Facilities Ordinance (APF)**

**ARTICLE 13.1 - SHORT TITLE**

This Article shall be known and may be cited as the Huntersville "Adequate Public Facilities Ordinance."

**ARTICLE 13.2 - PURPOSE, INTENT, & FINDINGS**

**13.2.1** The purpose and intent of this Article is:

- a) To implement the provisions of the Town of Huntersville Community Plan and other adopted plans of the Town related to the adequacy of Public Facilities as new growth occurs.
- b) To ensure that Public Facilities needed to support new development meet adopted level of service standards.
- c) To ensure that the Town maintains realistic Capital Improvements Programs to accommodate new development based on its ability to provide adequate Public Facilities to that development.
- d) To protect the character of the Town and to conserve the value of buildings and encourage the most appropriate use of land throughout the Town.
- e) To ensure that no Development Proposal is approved that would cause permanent reductions below adopted guidelines in the level of service for Public Facilities addressed in this Article.
- f) To ensure that adequate Public Facilities needed to support new development are available within a reasonable period of time as new development occurs.
- g) To establish uniform procedures for the review of APF Applications subject to the standards and requirements of this Article.
- h) To encourage the efficient development of land in Huntersville.
- i) To ensure that new growth occurs at a rate that is consistent with the Town's and its partnership agencies' obligation and ability to provide Public Facilities.
- j) To encourage development in areas where Public Facilities are adequate and/or planned in Capital Improvement Programs.
- k) To ensure that all applicable legal standards and criteria are incorporated in these procedures and requirements.
- l) To ensure that Proposed Development will not adversely affect the public health, safety, and general welfare of existing and future residents of Huntersville.

**13.2.2** In adopting this Article, the Town hereby finds and determines as follows:

- a) The Public Facilities subject to the provisions of this Article are necessary for the public health, safety, and general welfare.
- b) New growth and development within the Town has an impact on the availability and capacity of Public Facilities, the capacity of which can be maintained if development is approved consistent with adopted level of service standards.
- c) The Town has prepared and adopted a Capital Improvements Program to provide the Public Facilities needed to accommodate reasonable rates of growth and development, which CIPs will be reviewed and updated if necessary annually to reflect changes in the Town's growth rate, available financial resources, and other relevant factors.

- d) The level of service standards adopted for each Public Facility are necessary for the protection of the public health, safety and welfare, and will not unduly inhibit new growth and development within Huntersville.
- e) This Article is necessary so that continued growth does not outstrip the Town's ability to plan for and fund necessary Public Facilities.

### **ARTICLE 13.3 - DEFINITIONS**

The words, terms, and phrases used in this Article shall have the meanings set forth in Article 12.2 of the Huntersville Zoning Ordinance, except as set forth below.

**Adequate Public Facilities (APF) Allocation** - a reservation of Capacity made by the Administrator upon a Determination of Adequacy.

**Adequate Public Facilities (APF) Application** - an application for a Determination of Adequacy of Public Facilities.

**Adequate Public Facilities (APF) Schedule** - a schedule maintained by the Administrator that tracks the capacity of Public Facilities.

**Administrator** - the Huntersville Zoning Administrator or the Zoning Administrator's designee.

**Advanced Facility** - a Capital Improvement proposed to be constructed, dedicated, or funded by an applicant pursuant to an approved Mitigation Plan.

**Capacity** - the demand that can be accommodated by a Public Facility.

**Capacity, Allocated** - Capacity reserved pursuant to an unexpired APF Allocation made under this Article.

**Capacity, Available** - the circumstance where Public Facilities have sufficient Capacity, based on adopted Levels of Service standards, to accommodate the demand created by a Proposed Development, including where an applicant has provided Advanced Facilities sufficient to mitigate the impacts of the Proposed Development on Public Facilities.

**Capacity, Committed** - Capacity consumed by development approved prior to the effective date of this Article and not subject to the requirements of this Article.

**Capacity, Reserved** - Capacity reserved for a specified development or use, other than those set aside pursuant to an APF Allocation, including developments proposed after the effective date of this Article, which impact Public Facilities, but which are exempt from the requirements of this Article.

**Capacity, Used** - capacity dedicated to habitable structures and existing land uses, served by the Public Facility at the time of the APF Determination.

**Capital Improvements** - a physical asset, including land, that mitigates the offsite impacts of new development on Public Facilities, the costs of which generally are non-recurring, may require multi-year financing, and provide additional capacity needed to accommodate the demand for Public Facilities.

**Capital Improvements, Existing** - Capital Improvements either constructed and operational at the time of an APF Application or the portion of a Capital Improvement which was designed to serve existing residents and employees as of the effective date of this Article.

**Capital Improvements, Planned** - Capital Improvements included on a CIP and expected to be available by the end of the third fiscal year following the date of the APF Application.

**Capital Improvements, Total** - Existing Capital Improvements and Planned Capital Improvements.

**Capital Improvements Program or "CIP"** - plans and budgets adopted by the Town, or service provider of a particular public facility, which itemize planned Capital Improvements and the timing and means of funding such improvements.

**Determination of Adequacy** - a determination by the Administrator, after consultation with the responsible agency or Town department, that each Public Facility impacted by a Proposed Development has Available Capacity, which determination may be based on an approved Mitigation Plan.

**Development Proposal** - any of the following applications that specify the amount of proposed floor area and/or number of units or lots, by land use type, and which has not received a Determination of Adequacy:

- (a) a special use permit;
- (b) any overlay district for which a site specific development plan is required under the provisions of this ordinance;
- (c) a conditional zoning district;
- (d) a subdivision sketch plan or a preliminary plan when required by the subdivision ordinance;
- (e) a final plat when no sketch plan or preliminary plan is required; or
- (f) building permit.

**Essential Public Services** - facilities operated by governmental or quasi-governmental agencies that provide services on behalf of the public, which are critical to the health, safety, and welfare of the public. Essential Public Services may include but are not limited to governmental offices, parks and recreation facilities; public transit facilities; schools; gas, electric, or steam distribution systems; water and sewer services; solid waste systems; communications systems; emergency services; publicly-owned housing; fire protection services; and law enforcement services.

**Level of Service (LOS)** - an indicator of the extent or degree of service provided by a Public Facility, based upon and related to the operational characteristics of the facility, in comparison to the Capacity of the Public Facility.

**Mitigation Plan** - a voluntary plan, effectuated through a binding agreement, to ensure the provision of Available Capacity through Advanced Facilities, where Capacity would not otherwise be adequate to support the demand resulting from a Proposed Development.

**Phased Development Proposal** - a Development Proposal wherein the Proposed Development will be constructed incrementally in a logical time and geographical sequence according to an approved Phasing Schedule.

**Phasing Schedule** - a schedule that sets forth the timing of the development of a Development Proposal, including, but not limited to, provision of necessary Public Facilities, the number of units, as applicable, and their location on the site.

**Proposed Development** - development proposed pursuant to a Development Proposal and an APF Application.

**Public Facilities** - parks and recreation, law enforcement, and fire protection facilities.

## ARTICLE 13.4 - LEVEL OF SERVICE STANDARDS

13.4.1 The Level of Service standards applicable to Public Facilities are as follows:

Facility Category	Facility Type	LOS (per 1,000 population)
Fire Protection	Fire Vehicles (#)	0.2
	Fire Station (SF GFA)*	445.1
Law Enforcement	Police Vehicles (#)	1.68
	Police Station (SF GFA)*	171.2
Parks & Recreation	Gyms (SF GFA) *	710.2
	Parks (acres)	6.4

\*Square Feet Gross Floor Area

13.4.2 Based on the above Level of Service standards, the following demand factors apply, by land use:

Facility Category	Facility Type	LOS by Land Use Type				
		Single-Family (per DU)*	Multi-Family (per DU)*	Commercial (per 1,000 SF GFA)	Office/Civic Uses (per 1,000 SF GFA)	Industrial (per 1,000 SF GFA)
Fire Protection	Fire Vehicles (#)	0.000277	0.000196	0.000861	0.001230	0.000861
	Fire Station (SF GFA)	0.540518	0.382611	1.680335	2.400479	1.680335
Law Enforcement	Police Vehicles (#)	0.002071	0.001466	0.007818	0.011169	0.007818
	Police Station (SF GFA)	0.185883	0.131579	0.701615	1.002308	0.701615
Parks & Recreation	Gyms (SF GFA)	1.933530	1.368668	n/a	n/a	n/a
	Parks (acres)	0.017442	0.012347	n/a	n/a	n/a

\*Dwelling Unit

**13.4.3** Based on the unique impacts of a Proposed Development on Public Facilities, the Town may initiate or an applicant may submit an application to the Administrator requesting that an alternative demand factor be applied to the Proposed Development for purposes of complying with the terms of this Article. The alternative demand factor must be supported by professional economic and land use-based analyses, such as the latest edition of the Trip Generation Manual (ITE), which clearly demonstrates an impact on Public Facilities different from those set forth in subsection 13.4.2, based on the Level of Service standards set forth in 13.4.1. The Town's analysis or an application under this subsection must be approved by the Administrator prior to the submission of an APF Application and the completeness review provided under section 13.6.3 of this Article.

## **ARTICLE 13.5 - APPLICABILITY**

### **13.5.1 GENERALLY**

Except as provided in subsection [13.5.2](#), below, the provisions of this Article shall apply only to Development Proposals submitted on or after the effective date of this Article, as follows:

a) Residential Uses.

This Article shall apply to residential Development Proposals that involve more than twenty (20) lots or dwelling units.

b) Nonresidential Uses.

This Article shall apply to nonresidential Development Proposals that either (i) involve 10,000 square feet or more of floor area or (ii) are expected to create fifty (50) or more peak hour vehicle trips or 500 or more daily vehicle trips, whichever is less.

c) Parks and Recreation.

A Determination of Adequacy is required for any residential Development Proposal within the Town or its extraterritorial jurisdiction. No Determination of Adequacy is required for nonresidential Development Proposals with respect to parks and recreation facilities.

d) Fire Protection Facilities.

A Determination of Adequacy is required for any residential or nonresidential Development Proposal within the Town or its extraterritorial jurisdiction with respect to fire protection facilities. The adequacy of fire protection facilities will be determined based on the stations and vehicles within the Huntersville/Craighead Fire District only.

e) Law Enforcement Facilities.

A Determination of Adequacy is required for any residential or nonresidential Development Proposal within the Town or within its extraterritorial jurisdiction if the applicant offers to be annexed into the Town limits, with respect to law enforcement facilities.

f) Consecutive or Sequential Applications.

Proposed Developments may not be phased or subdivided in piecemeal fashion to avoid application of this Article. Two or more developments represented to be separate developments shall be aggregated and treated as a single development under this Article if the Administrator determines them to be part of a unified plan of development and physically proximate to one another, based on the following factors:

- 1). There is unified ownership, indicated by the fact that:
  - (a) The same person has retained or shared control of the developments;

- (b) The same person has ownership or a significant legal or equitable interest in the developments; or
  - (c) There is common management of the developments controlling the form of physical development or disposition of parcels of the development.
- 2) There is a reasonable closeness in time between the completion of 80% or less of one development and the submission to the Town of a Development Proposal for a subsequent development that is indicative of a common development effort.
  - 3) The voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments.
  - 4) There is a common advertising scheme or promotional plan in effect for the developments.
  - 5) Any information provided by the applicant that the project is not being phased or subdivided to avoid the requirements of this Article.

### **13.5.2 EXEMPTIONS**

- a) Essential Public Services.  
The provisions of this Article shall not apply to Essential Public Services.
- b) Agricultural and Farm Uses.  
Upon determination of the Administrator, the provisions of this Article shall not apply to any lands or structures dedicated to bona fide farm purposes.
- c) Accessory Structure or Use.  
The provisions of this Article shall not apply to any Development Proposal, or portion thereof, that is an accessory structure or use, as defined in [Article 12](#)
- d) Previously-Approved Development.  
The provisions of this Article shall not apply to any Development Proposal that was part of a conditional zoning plan or subdivision plan submitted prior to the effective date of this Article.
- e) Vested Rights.  
This section shall not be interpreted or deemed to affect any rights that have vested prior to the effective date of this Article, nor shall any provision of this Article be applied to a specific property or applicant in a manner that would result in a taking of a property.

## **ARTICLE 13.6 - APPLICATION & REVIEW PROCEDURE**

### **13.6.1 WHEN REQUIRED**

Subject to the requirements of this section, no Development Proposal Application will be accepted by the Town unless an Adequate Public Facilities (APF) Application is submitted prior to, or in conjunction with the Development Proposal application.

### **13.6.2 REQUIREMENTS FOR APF APPLICATION**

- a) Pre-Submittal Meeting Required. Prior to submission of an APF Application, the applicant must meet with the Administrator to confirm the scope and applicability of this Article and to identify potential Public Facility deficiencies that may need to be mitigated. At or following the pre-submittal meeting, the Administrator shall:
  - (1) provide the current APF Schedule;
  - (2) identify planned and funded Capital Improvements that affect Available Capacity for the project;

- (3) provide other relevant and available demand and Capacity information for Public Facilities; and
- (4) summarize the scope of the APF Application requirements, which shall include, but not necessarily be limited to, the information listed in subsection 13.6.2(b).

b) General APF Application Requirements. The APF Application shall include:

- (1). A description of the Proposed Development, including the type and amount of each proposed land use.
- (2). A Phasing Schedule, as applicable.
- (3). A description of any past or proposed Public Facility dedicated, constructed, or funded in order to mitigate the impacts of the Proposed Development.
- (4). A Mitigation Plan, if applicable, proposing any improvements to be completed by the applicant.
- (5). Other information required by the Administrator in order to evaluate the APF Application and to make a Determination of Adequacy.

### **13.6.3 COMPLETENESS REVIEW**

Within ten (10) working days of its receipt, the Administrator shall determine whether the APF Application is complete and complies with the submission requirements set forth in section 13.6.2. If the APF Application is complete and the submission requirements have been met, the Administrator shall provide copies of the application to responsible agencies and Town departments for review and input regarding Available Capacity. If the APF Application is not complete, the Administrator will notify the applicant of its deficiencies in writing within fifteen (15) working days of its receipt.

### **13.6.4 DETERMINATION OF ADEQUACY & ALLOCATION OF CAPACITY**

- a) After consultation with the responsible agency or Town department, the Administrator shall determine whether Available Capacity exists for each applicable Public Facility, based on the level of service standards set forth in section 13.4 and the following:
  - 1) Calculate Total Capital Improvements by adding:
    - a. Capacity provided by Existing Capital Improvements, based on the LOS standards set forth in Section 13.4, to
    - b. The Capacity of any Planned Capital Improvements.
  - 2) Calculate Available Capacity by subtracting from the Total Capital Improvements the sum of:
    - a. Used Capacity;
    - b. Committed Capacity;
    - c. Reserved Capacity;
    - d. Allocated Capacity; and
    - e. the demand on Public Facilities created by the Proposed Development.
- b) The Administrator's Determination of Adequacy shall be reflected in a written report that:
  - (i) Identifies Existing and Planned Capital Improvements and any Available Capacity of Public Facilities that serve the Proposed Development, pursuant to the terms of this Article.

- (ii) Describes Capital Improvements funded and assumed to be in place to serve the Proposed Development.
- (iii) Identifies any previously dedicated, constructed, or funded Public Facility made in order to mitigate the impacts of the Proposed Development.
- (iv) Sets forth findings and conclusions related to the impact of the Proposed Development on Available Capacity.
- (v) After consultation with the responsible agency or Town department, states whether there is Available Capacity for each applicable Public Facility sufficient to accommodate the Proposed Development.

c) Approval of Determination of Adequacy.

- 1) Where Available Capacity exists for each applicable Public Facility, the Administrator shall issue a Determination of Adequacy.
- 2) Upon issuance of a Determination of Adequacy by the Administrator, the Administrator shall:
  - a. Notify the applicant in writing within ten (10) working days of the Determination of Adequacy and APF Allocation; and
  - b. Record the APF Allocation on the Adequate Public Facilities Schedule.
- 3) If a Determination of Adequacy is based on an Advanced Facility, the APF Allocation and approval of the APF Application shall be conditioned on the timely completion of the Advanced Facility.

**13.6.5 DURATION AND EFFECT OF A DETERMINATION OF ADEQUACY**

- a) Unless an extension is granted as provided in (b) below, a Determination of Adequacy and the issuance of an APF Allocation shall be deemed to indicate that:
  - 1) Available Capacity exists at the time of the Determination of Adequacy by the Administrator; and
  - 2) Except as provided in (a)(3)-(5) below, a Determination of Adequacy shall remain valid provided that, within one (1) year the issuance of the Determination of Adequacy, the applicant has achieved vesting under section 2.2 of the Zoning Ordinance.
  - 3) The Determination of Adequacy shall expire if one of the above approvals expires pursuant to the terms of the Zoning or Subdivision Ordinance.
  - 4) A Determination of Adequacy issued as provided above shall expire if a certificate of occupancy, or final plat approval, as applicable has not been completed within three (3) years of the approval described in (a)(2) above.
  - 5) A Determination of Adequacy shall be withdrawn from the APF Schedule, if an applicant releases the determination to the Town in writing.
- b) Upon the request of the applicant, the Town Board may extend the duration of a Determination of Adequacy. No extension will be granted except upon a showing by the applicant that the application is actively continuing through the development process, by demonstrating such factors as:

- 1) whether building permits for the Development Proposal have been issued and remain active;
  - 2) whether the applicant can demonstrate unique hardship or extenuating circumstances not created by the applicant; or
  - 3) whether site improvements and development has progressed during the duration of the initial Determination of Adequacy.
- c) A Determination of Adequacy shall not affect the need for the applicant to meet all other requirements set forth in the Zoning and Subdivision Ordinances or any other lawfully adopted ordinance or law of the Town.

### **13.6.6 NONAVAILABILITY OF CAPACITY; MITIGATION PLANS**

- a) If the Administrator determines that Available Capacity does not exist for a particular Public Facility and no Mitigation Plan has been proposed pursuant to subsection (c)(3) below, the Administrator shall deny the APF Application and no Determination of Adequacy or APF Allocation shall be entered.
- b) Upon denial of an APF Application, the Administrator shall notify the applicant in writing within ten (10) working days of the denial and shall state the reasons for the denial and any actions that the applicant may take voluntarily to receive a Determination of Adequacy.
- c) Where there is no Available Capacity or upon a denial of an APF Application, the applicant may:
  - 1) submit a Development Proposal that has a reduced amount of development for which Available Capacity exists;
  - 2) submit a Phased Development Proposal that includes the following:
    - a. a proposed Phasing Schedule setting forth the amount, location, and timing of development associated with each proposed phase;
    - b. a showing that Available Capacity will exist for each phase of development;
    - c. where Advanced Facilities are proposed, the location and timing of the proposed facilities based on the Phasing Schedule and Mitigation Plan as provided in (c)(3) below; and
    - d. other additional information or materials identified by the Administrator or other Town staff as necessary to ensure the timely and adequate provision of Public Facilities, based on the level of service standards and requirements of this Article.
  - 3) propose a Mitigation Plan, at the applicant's expense, which provides Advanced Facilities that would mitigate the proportionate-share impacts of the Proposed Development on Public Facilities, based on the Level of Service standards in section 13.4.

Should mitigation be required in conjunction with a Development Proposal, nothing shall preclude the participation of third-parties (public or private) in defraying all or a portion of the cost of such mitigation. Any Mitigation Plan that proposes the provision of Advanced Facilities must provide an estimate of the incremental cost of providing the Advanced Facilities, a schedule for commencement and completion thereof, and a description of how the Advanced Facilities will mitigate the impact of the Proposed Development. In order for a Mitigation Plan to be accepted, it must be approved by the Town Board.

### **ARTICLE 13.7 - CAPITAL IMPROVEMENTS PROGRAM**

### **13.7.1 CAPITAL IMPROVEMENTS PROGRAM**

- a) Purpose. The CIP is the mechanism by which the Town of Huntersville and its partnering agencies provide new and expanded Public Facilities Capacity needed to accommodate anticipated future population and employment at adopted level of service standards. Through the implementation of CIPs, the Town will use all reasonable means to ensure that the provision of Public Facilities Capacity is sufficient to accommodate new growth and development, consistent with the reasonable availability of revenue sources; contributions of Capital Improvements; and physical, environmental, or topographical constraints on the expansion of the Capacity of Public Facilities.
- b) Requirements for monitoring and evaluation. The Town and/or its partnering agencies shall maintain a CIP for the Public Facilities subject to this Article and shall implement this Article based on adopted CIPs.

### **13.7.2 MONITORING REPORTS**

At the beginning of each fiscal year, the Administrator shall prepare an annual report addressing the following:

- a). The Available Capacity of Public Facilities.
- b). Anticipated increases in residential and nonresidential development within the Town.
- c). The current need for any Public Facilities resulting from changes in population increase, employment growth, or other relevant factors.
- d). The development of lots and land uses approved prior to the effective date of this Article.
- e). Other matters or actions recommended to effectuate the purpose and intent of this Article, including any related to demand assumptions, need factors, level of service standards, and other matters recommended by the Administrator for reconsideration or revision.
- f). The projected financing for any additional Capacity resulting from the factors set forth in subsections (a) through (e), above.

The monitoring reports shall be made available to the Town Board and each agency or department responsible for Public Facilities.

### **ARTICLE 13.8 - APPEALS & VARIANCES**

An applicant may seek a variance from the terms of this Article or appeal a determination by the Administrator or other Town official or agency, made pursuant to the terms of this Article, to the Zoning Board of Adjustment, as provided in Article 11.3 of the Zoning Ordinance.